

Legal Basis of Land Reform

Lina Jamilah, Arif Firmansyah*

Faculty of law

Bandung Islamic university

Bandung, Indonesia

*arifunisba05@gmail.com

Abstract—Land reform is an overhaul of ownership and control of agricultural land and legal relations related to land acquisition. The purpose of holding land reform is to enhance income and standard of living of smallholder farmers as a foundation or prerequisite for carrying out economic development towards a just and prosperous society based on Pancasila. The purpose of the land reform implementation is by the government distributing land to the community (farmers) by giving ownership rights, but the ownership rights cannot be traded for 10 years and there must be an authorized permit. This is contrary to the concept of ownership rights in the UUPA, which states that property rights are hereditary, strongest, fulfilled rights that people can have on land by looking at Article 6 regarding social functions. The strongest meaning of ownership rights over land is stronger than other ownership rights and does not have a term. The method used in this research is normative juridical which prioritizes secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. Then the secondary data is described and analysed using the theory of land law in the UUPA.

Keywords: *land, reform, right*

I. INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution states that the earth, water and wealth contained therein are controlled by the state. The provisions of Article 33 paragraph (3) of the 1945 Constitution are redefined by Article 2 paragraph (2) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (abbreviated as UUPA), Article 2 paragraph (2) of the UUPA states that: The right to control the State over land gives the state authority to:

- To regulate and administer the designation, use, supply and maintenance of earth, water and space;
- Determine and regulate legal relations between people and water and space earth;
- Determine and. Regulate legal relations between people and legal actions concerning earth, water and space.

Implementation of Article 17 of the UUPA on the minimum and maximum limits on land rights the government issued Law No. 56 / Prp / 1960 concerning the Determination of Agricultural land area [1]. Law No. 56 / Prp / 1960 is a land reform law. Land reform is an overhaul of ownership and control of agricultural land as well as legal relations related to land acquisition. The purpose of holding land reform is to

enhance the income and living standards of smallholders as a foundation or precondition for carrying out economic development towards economic development a just and prosperous society based on Pancasila. To achieve this goal, a fair share of farmers' livelihoods and an end to the landowner's system and protection of a weak economy is needed.

The purpose of the land reform implementation is by the government distributing land to the community (farmers) by giving ownership rights, but the ownership rights cannot be traded for 10 years and there must be an authorized permit. This is contrary to the concept of ownership rights in the UUPA, which states that property rights are hereditary, strongest, fulfilled rights that people can have on land by observing Article 6 regarding social functions. The strongest meaning of ownership rights over land is stronger than other ownership rights and does not have a term. With the limitation of the legal actions of the landowner, then it collides with the concept of ownership itself.

II. DISCUSSION

A. *The Concept of Land Rights Rights Landform in the Framework of Legal Certainty*

The basic foundation for the right to control land is found in the preamble to the 1945 Constitution. The preamble to the 1945 Constitution reads as follows:

- That in fact freedom is the right of all nations and therefore, colonialism in the world must be abolished, because it is not under humanity and justice.
- And the struggle for the Indonesian independence movement has arrived in a happy moment with a safe Sentosa to deliver the Indonesian people to the front gate of the independence of the State of Indonesia, a united, sovereign, just and prosperous independence.
- Thanks to the almighty blessing of Allah, and encouraged by noble desires, so that the national life is free, the Indonesian people hereby declare their independence.
- Then rather than to form an Indonesian government that protects all Indonesian people and to advance public welfare, educate the nation's life and participate, carry out world order based on independence, eternal peace and social justice, the Indonesian national independence

is arranged in a law the basis of the Indonesian state, which is formed in an arrangement of the Republic of Indonesia that is sovereign of the people based on the divinity of the Almighty, just and civilized humanity, the unity of Indonesia and popularity led by wisdom of wisdom in deliberative representation, and by realizing a social justice for all people of Indonesia.

The above mentioned four thoughts are the basis of legitimacy for the state's authority to exercise control over land for the greatest prosperity of the people. The government has the responsibility as well as the main task to protect the entire nation of Indonesia and all the Indonesian blood. The words "spilt blood" have the meaning of the motherland. Indonesia's homeland includes the earth, water and natural resources contained therein. All of them are aimed at advancing public welfare, educating the life of the nation and participating in carrying out the world order of the State through the government to strive so that natural resources in Indonesia include those contained in the earth, water and natural resources contained therein are used primarily for the welfare of the Indonesian people, which the translation of the Article in the 1945 Constitution is abbreviated (UUD) [2].

The relationship between the basic agrarian law and the land reform will assume that there will be an overhaul of the legal relationship between land and humans that was not previously the case. The UUPA states that it no longer applies the principle of *domein verklaring* which states that all land not proven by one's *eigendom* rights belongs to the state [3]. The government enforces the principle of the Right to control the country.

The right to control the state over land is contained in Article 33 paragraph (3) of the 1945 Constitution which states that water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people. The content of the meaning in the article has two broad lines: first, the state controls the water earth and the natural resources contained therein. Second, the earth, water and natural resources contained therein are used for the greatest prosperity of the people.

Restrictions on the right to control the state over land are granted by the UUPA described in Article 2 paragraph (2), namely:

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

Notably, Article 2 paragraph (2) is based on Article 33 paragraph (3) of the Constitution, which provides that land is controlled by the state for the welfare and prosperity of the people of Indonesia. This means that with the granting of ownership rights over state land by the government in the village of Mekarmukti has made a little contribution in realizing the objectives of the state listed in Article 33 paragraph (3) of the Constitution. Because, by granting

ownership rights to state land, at least the recipients of ownership rights to state land can utilize and work on the land itself without having to lease it to another party.

The state's authority to determine and regulate the rights that can be owned on land can be seen in Law No.5 of 1960 concerning Basic Agrarian Regulations that divide land rights into ownership rights, business use rights, building rights, usage rights and management rights. Meanwhile, according to Government Regulation No.40 of 1996 concerning Right to Cultivate, Right to Build, and Right to Use only regulates the right to use the business, the right to build, and the right to use.

According to Article 20 of the UUPA, property rights are hereditary, strongest, and most fully owned rights that can be owned by people on land, bearing in mind the provisions of Article 6. This means that property rights can be transferred by inheritance and the strongest and the full means the holders of ownership rights to land are free to exercising his land rights. Property rights are one of the material rights, property rights as they are known are the strongest material rights and are fulfilled among other material rights. It is said so because the holders of property rights can do anything to the object which is bound by such property: use, own control or sell and rent [4].

In connection with this property rights, Sunaryati Hartono said, in Indonesia, the idiotic foundation of property rights is the Pancasila and the 1945 Constitution, the idiotic foundation is not only based on one precepts or one article of the 1945 Constitution but by the Pancasila and the Constitution as a systematic whole. Property rights come from the fact of life, that to be able to support themselves, certain goods must be owned because for humans there is a certain group of goods which is "the natural media on which human existence depends" [5].

Historically, property rights (*eigendom*) are "*droit inviolable et sacre*", is rights that cannot be contested. However, in its development the property rights as *droit inviolable et sacre* cannot be maintained anymore because there have been various restrictions, such as restrictions by administrative law, restrictions by neighboring law, may not cause interference for others, may not abuse rights (*misbruik van recht*), violations of these things may be subject to sanctions [6].

Property rights (ownership) is related to the law of property. Mariam Darus Badruzaman mentioned that the ownership rights or ownership in terms of ownership rights and ownership rights are defined as property rights in the general sense and objects are objects. In connection with the law of matter, she said that material rights that provide perfect enjoyment (full) for the owner, called the institution of ownership rights. The term property rights mean that objects which are controlled by property rights can be passed on to heirs, can be transferred to others or can be traded. The term property rights are not solely aimed at the object but also on the type of rights. Property rights under customary law are called *inlandsch bezitrecht* in Dutch.

According to customary law, ownership of property means ownership rights or ownership rights that are not absolute. In contrast to western property rights, which are called *eigendom*

rights (self-ownership rights) in the sense of the right to enjoy freely and to freely exercise property with full power (KUHperdata Article 570), customary ownership rights are not absolute because they are influenced by family and religious principles. So if someone declares "my right" is not necessarily free to make transactions.

Property rights in customary law which are family-based and have a social function, so basically everyone can have ownership rights. However, the extent to which the strength of property rights to be transacted is influenced by the place of residence and the background of one's position as a citizen (adat), the type of object, and how property rights occur.

The definition of property rights that occur in practice in the village of Mekarmukti is different from the provisions contained in Article 20 of the UUPA. The holder of free ownership rights to use ownership rights to the land owned for any origin is not in conflict with the laws and regulations, but the granting of ownership rights to state land leftover in the Mekarmukti Village has restrictions. The limitation in question is the prohibition on the alienation of land objects that are given before a period of 10 (ten) years from the time the ownership rights on state land are leftover. If the tenure of 10 (ten) years has passed and the ownership rights are to be transferred, there must be permission from the government concerned. The government referred to in this case is the State Minister for Agrarian Affairs / Head of the National Land Agency which has delegated its authority to the Cianjur City National Land Agency, based on Article 135 of the Head of National Land Agency Regulation No. 9/1999 concerning Granting and Cancellation of State Land Rights and Management Rights. As for the restrictions imposed by the government listed in Article 134 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No.9 of 1999.

Property rights can occur in many ways, the first by way of transfer, by way of switching. That is, the transfer of rights that occurs automatically means that the action occurred not because of action but because of the law, for example, inheritance. Then the transfer by way of transfer, i.e. the transfer is done deliberately so that the rights are free from the original holders and become the rights of other parties, meaning that this transfer is done through legal actions, for example, such as buying and selling. Second, by determining the government. Property rights that occur by the designation of the government are granted by the competent authority according to the manner and with conditions determined by government regulations. The land granted in this case is land that was originally state land. The third, by way of conversion. Namely, land rights that existed since before the enactment of the UUPA, these rights can be converted into property rights, such as eigendom rights, agrarisch eigendom, and others.

How property rights occur when the government gives ownership of state land in the village of Mekarmukti, Cianjur Regency is through the second method, namely by determining the government. Where the granting of ownership is given by the National Land Agency (BPN) of Cianjur Regency with the approval of the State Minister of Agrarian / Head of the National Land Agency. Government officials from the lowest

level such as Cibinong Village Sub-District Head to the highest level government officials such as the State Minister for Agrarian Affairs are directly involved in it. This indicates that there is a need for contributions and interventions at all levels of government officials to facilitate and expedite the process of granting ownership rights to the remaining state land of land in this Mekarmukti Village. The involvement of the Cibinong Village Sub-District Head in granting ownership rights over state land in Mekarmukti Village is urgently needed, in order to provide clear information on the status to administrative data on the granting of land ownership objects needed for the smooth process of granting ownership rights over the remaining state land of the said land reform. .

Pursuant to Article 28 paragraph (1) of the Loga for use rights is the right to cultivate land that is directly controlled by the state, for a maximum period of 25 years or 35 years and can be extended for another 25 years, for agricultural, fishery companies, with the most area a little 5 Ha. In addition to the UUPA, further regulation regarding the right to use is also contained in Government Regulation No.40 of 1996 concerning Land Use Rights, Building Use Rights, and Use Rights.

The granting of the right to use has occurred in the village of Mekarmukti, Cianjur Regency. This business use right was granted by the government to PT.Cikenceng with a land area of 1,968,3860 Ha in 1994. However, in the course of the land, the land was granted an area of 1,907,9634 Ha was indicated abandoned because it was not used according to its designation and included land for lease. to the farmers working in Mekarmukti Village covering an area of 500 Ha. Until finally, the usufructuary rights granted by the government to PT.Cikenceng was transferred to PT.Menara and still partially abandoned its land, until the government revoked PT. Menara's concession area of 200 Ha from 1,968,3860 Ha to 1,768,3860 Ha which will be given to the farmers of Mekarmukti Village.

Revocation of the right to operate by the government is correct and by the provisions of Article 34 of the BAL and Article 17 of Government Regulation No.40 of 1996 which contains how to delete the right to operate, that is, because it has been abandoned. Revocation of the right to use the business carried out by the government against PT.Menara is only an area of 200 hectares, even though the land being abandoned is more than that. If you see where the revoked land ends, it is better to revoke the 500-hectare land, considering that the revoked land is given to the farmers of Mekarmukti Village who have been working on it for more than 20 (twenty) years. And in Mekarmukti Village, starting from 2017, permits will not be given for the right to cultivate, the right to land that can only be given permission is the right of ownership, right to build, and use rights.

According to Article 35 paragraph (1) of the UUPA the right to build is the right to construct buildings and own buildings on land that is not their own, with a maximum term of 30 years and can be extended for another 20 years. The method of giving is based on 32 Decree of the Head of the Land Agency No. 9 of 1999 and Article 33 submitted in writing to the National Land Agency by fulfilling the requirements such as fulfilment of physical and juridical data,

this method is based on Article 22 of Government Regulation No.40 of 1996 including in the category of decision making by the Minister of Agrarian Affairs.

In the village of Mekarmukti itself, in addition to the granting of ownership rights also occurred the granting of building rights. The granting of building use rights in the village of Mekarmuti occurred by making a written request by the party wishing to obtain the building use rights to the Cianjur Regency National Land Agency office accompanied by complete data and requirements. The process for applying for building rights is almost the same as the process for obtaining ownership rights to land.

The right to build is one alternative that can be proposed by interested parties to obtain land rights of the remaining land reform in the village of Mekarmukti because given the right to use the business no longer issued to the village of Mekarmukti. The granting of the right to use the business must also consider other aspects such as environmental and social aspects so that the granting of the right to use the building can be detrimental to the environment and the people of Mekarmukti Village itself. The granting of the right to build the building itself is considered to have an impact on employment in the Mekarmukti Village, given the high percentage of unemployment in the Mekarmukti Village.

In granting ownership rights over state land the rest of the land reform object is state land, which based on Article 1 number 2 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No.9 of 1999 is land directly controlled by the state as stipulated in Law No.5 1960 concerning Basic Rules of Agrarian Principles. This means that the land is completely free of any land rights. The state land that can be given land rights is first, state land that is empty or pure, that is land that has not been encumbered with any rights, second is land rights that have expired, ie land that is placed with business use rights, building rights, and usage rights the time period has expired, and the third is state land originating from the voluntary waiver of rights by the owner.

Regarding the requirements for the procedure for granting ownership rights over state land contained in Articles 4-16 of the Regulation. Based on Article 4 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 states that before applying rights, the applicant must control the requested land evidenced by juridical and physical data by statutory regulations. This means that mastery must be supported by evidence, both physical and non-physical evidence. Physical evidence can be in the form of SPPT and non-physical data can be in the form of testimonies that the applicant has controlled the cultivated land for at least 20 (twenty) years.

Farmers in the village of Mekarmukti have been cultivating land which has been the object of granting ownership rights to the remaining state land of land reform starting from 1994, this means the farmers have been cultivating the land for more than 20 years. They cannot fulfil the requirements for the fulfilment of written evidence, but they have controlled and worked on the land which has been the object of granting land rights for more than 20 (twenty) years and is supported by the testimonies of the residents of Mekarmukti Village. This can be

evidence to be able to receive ownership rights over the land of the remaining land of land reform in the village of Mekarmukti. regulations and not harming the community around Mekarmukti Village.

Based on Article 8 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 the parties that can submit applications for ownership rights are Indonesian citizens and legal entities determined by the government in accordance with the provisions of the applicable laws and regulations namely, government banks and religious bodies as well as social agencies appointed by the government. The implementation of the granting of state land rights in the village of Mekarmukti Cianjur Regency is specifically for the farmers of Mekarmukti Village who have been working on the object of granting ownership rights to the remaining state land for 20 (twenty) years or more.

Farmers in the village of Mekarmukti have been cultivating land which has been the object of granting ownership rights to the remaining state land of land reform starting from 1994, this means the farmers have been cultivating the land for more than 20 years. They cannot fulfil the requirements for the fulfilment of written evidence, but they have controlled and worked on the land which has been the object of granting land rights for more than 20 (twenty) years and is supported by the testimonies of the residents of Mekarmukti Village. This can be evidence to be able to receive ownership rights over the land of the remaining land of land reform in the village of Mekarmukti. regulations and not harming the community around Mekarmukti Village.

Based on Article 8 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 9 of 1999 the parties that can submit applications for ownership rights are Indonesian citizens and legal entities determined by the government in accordance with the provisions of the applicable laws and regulations namely, government banks and religious bodies as well as social agencies appointed by the government. The implementation of the granting of state land rights in the village of Mekarmukti Cianjur Regency is specifically for the farmers of the village of Mekarmukti who have worked on the object of granting land rights over the remaining land reform for 20 Mekarmukti Village Communities who have received certificates of the granting of ownership rights to this country's land, there are some residents resell the land that has been given by the government. They resell the gifted lands before the 10-year term is in the possession of the recipient of the ownership rights on state land.

In the land certificate given to the recipient of ownership rights on state land, there is a record that, the recipient of ownership rights on state land is prohibited from transferring the land given by the government within 10 years in the control of the recipient of the ownership of the said land.

If the 10 (ten) year period has been exceeded and the rights holder wants to transfer the rights to his land, then the act must be known to the government. Or in other words, when the right-holder will transfer his land rights, he must notify the government. (twenty) years or more.

With the limitation in the certificate of ownership which states that it is not allowed to transfer ownership for 10 (ten years), and if you want to transfer the rights required permission from the government (Minister), has violated Article 20 of the Loga that the ownership right is the strongest and most fully fulfilled right, and can switch and be diverted. Although there is an agrarian Ministerial Regulation No. 9 of 1999 concerning Procedures for Granting and Revoking State Land and Management Rights Article 134 states that the license to transfer land rights is required only for the transfer of ownership rights owned by religious legal entities, social legal entities and other legal entities that are appointed by the Government, the right to use the land, the right to use the agricultural land on State land and other rights which are recorded in it require a permit. So this Article provides limits on ownership rights that will be transferred that require a permit is only limited to ownership rights owned by religious legal entities, social legal entities and other legal entities, while individual lands are not included in the category that requires permits.

III. CONCLUSION

The restriction in the certificate of ownership which states that it is not permissible to transfer ownership for 10 (ten years), and if you want to transfer the rights required permission from the government (Minister), has violated Article 20 of the Loga that the property rights are the strongest and most complete rights, and can be transferred and transferred. With the limitation to transfer land has also violated the principle of legal certainty.

REFERENCES

- [1] Undang-Undang No 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria
- [2] W. Erwiningsih, Hak Menguasai Negara Atas Tanah, Universitas Islam Indonesia. Yogyakarta, 2009.
- [3] A.P. Parlindungan, Landreform di Indonesia, Mandar Maju. Bandung, 1991.
- [4] P. Purwacaraka, Hak Milik Keadilan dan kemakmuran Tinjauan Flasafah Hukum. Jakarta: Ghalia Indonesia, 1982.
- [5] C.F.G. Sunaryati Hartono, Kapita Selekt Perbandingan Hukum. Bandung: Citra Aditya Bakti, 1991.
- [6] D. Hasan, Lembaga Jaminan Kebendaan Bagi Tanah dan Benda Lain yang Melekat Pada Tanah Dalam Konsepsi Penerapan Asas Pemisahan Horizontal. Bandung: Citra Aditya Bakti, 1996.