

# Implementation of Welfare State Ideology in the 1945 Constitution Toward the Right to Land for All Citizens

RJ Agung Kusuma Arcaropeboka<sup>1\*</sup> Januri<sup>1</sup>

<sup>1</sup>*Faculty of Law, Universitas Sang Bumi Ruwa Jurai, Lampung, Indonesia*

<sup>\*</sup>*Corresponding author. Email: doktorrajaagung14@gmail.com*

## ABSTRACT

Indonesia's constitution which makes the understanding of the welfare state (welfare state) currently open. Nothing else is in accordance with the context and reality of the ability of the Indonesian people to prosper every citizen, as the ideals of the founders of this nation. The State's goal is to "advance public welfare" based on the principle of "social justice for all Indonesian people" where one of the constitutional mandates which is the basis of the implementation of national development in agrarian law, must be put forward in the form of policies or regulations, this is very useful to accelerate the process of granting rights property of land to citizens. In the current global economic development, land is one of the basic rights that must be fulfilled by the state to each of its citizens, and to fulfill it is very complex. Where every person or citizen would need land, both as a residence and place of business. In addition, by increasing the population, there is also an increase in the need for land especially ownership rights, while the broad scope of land in the territory of Indonesia is limited and remains in other words unchanged. Data needed in the writing of this research, obtained through field research and library research, is done by reading books, legislation, and readings related to this research while field research is conducted obtained through interviews with several informants related to this research , The results of this study since the enactment of Presidential Instruction No. 2 of 2018, regarding the complete systematic land registration program (PTSL), and given free of charge to citizens who meet the criteria in the legislation, this is the Implementation of the land registration program as mandated by the Act - Law Number 5 Concerning Agrarian Issues. In addition it also shows a form of government responsibility towards its citizens, in order to obtain legal certainty, and provide maximum welfare for every Indonesian citizen, especially in the city of Bandar Lampung.

**Keywords:** *welfare state, social justice, regulation, land rights*

## 1. INTRODUCTION

Prosperity and prosperity for all Indonesian people is a very fundamental goal and one of the ideals of the founders of the Indonesian state. At present development which provides an opportunity for a small number of community groups to enjoy the fruits of development and marginalize other community groups is a denial of the ideals of the nation.

Many community economic researchers are of the view that the development process in Indonesia has increasingly moved away from the ideals of social justice, prosperity and prosperity for all Indonesian people. This happens because development policies are not grounded in the people and tendency to follow the market economy, so who is strong will be able to access more productive economic resources while the people are more considered as objects of development so that they are accustomed to being passive and resigned to accepting the situation. When this situation occurs continuously, the consequences, poverty and social inequality arise as a result of the development process earlier.

The formulation of the welfare state ideology included in the basis of the Indonesian state (Pancasila and the 1945 Constitution ("promoting public welfare" and the fifth principle of Pancasila "Social justice for all Indonesians")) was then manifested into the body of the constitution to serve as the nation's guide and organizer. The term "Welfare State" is the responsibility of the state for the welfare of its citizens, as in the Encyclopedia Britannica defines Welfare State as a concept of government in which the state plays a key role in maintaining and promoting the economic and social welfare of its citizens.

Not only is Welfare State associated with meeting basic needs, but public service providers including the provision of land ownership or land for housing at low cost or free, are also other basic features of the welfare state. this is because it is considered as an equal distribution mechanism for the gaps caused by the market economy.

When the founding fathers of the Indonesian state, especially Muhammad Hatta, proposed a meeting to establish the 1945 Constitution, especially the issue of social justice, the proposal wanted, and emphasized that the position of the people was substantial (main), this was appropriate in

economic democracy who obtain justification, namely; "The interests of society are more important than the interests of individuals." Prioritizing togetherness (mutualism), not based on individualism.

Prioritizing the interests of the community does not neglect individual rights, as stated by Muhammad Hatta in the BPUPKI session on July 15, 1945, regarding the proposal for the need to protect the rights of individual citizens. stated;

"We want social justice. Why should grondwet write, that human beings do not only have the right to vote independence, freedom of voting rights, holding hearings and meeting, if for example there is no rechtvaardigheid sociale like that? For what do we make grondwet, what is the use of grondwet? if it cannot fill the stomachs of people who want to die of starvation, grondwet containing "droit de Thomme et du citoyen", cannot eliminate the starvation of those who are poor who want to starve to death, so therefore, if we really want to base the country we are to the ideology of kinship, the understanding please help, the understanding of mutual cooperation and social justice. "

On August 18, 1945, the day after independence, the adoption of the 1945 Constitution turned out to be Muhammad Hatta's proposal and statement, approved by meeting participants present in the Indonesian Independence Preparatory Committee (PPKI), so that in Chapter IV on Social Welfare, against article 33 verses (1), (2), (3) state;

1; "The economy is structured as a business based on the principle of kinship." Kollektivism.

2; "The branch of production which is important for the state and which controls the life of many people is controlled by the state." Socialism.

3; "The earth and water and natural resources contained therein are controlled by and used for the greatest possible prosperity of the people."

With the mandate of the founding of this nation, one of the efforts in the welfare of each of its citizens, the government through Nawacita as the vision and mission of the current government policy can provide a breakthrough in legal certainty over land ownership for disadvantaged communities based on the stipulated conditions.

## 2. PROBLEM

1. How is the implementation of the welfare state ideology in the 1945 Constitution?
2. What is the Government's Role in the PTSLS Program?.

## 3. RESEARCH RESULTS AND ANALYSIS

Welfare State Ideology in the 1945 Constitution? In the development of Article 33 of the 1945 Constitution, it changed with the amendment to the Constitution in 2002, in the original text of the 1945 Constitution, article 33 was set out in chapter XIV with the title Social Welfare, the results of the 2002 amendment, in article 33, chapter XIV changes its title to Indonesian Economy and Social Welfare, which reads;

- 1) The economy is structured as a joint venture based on the principle of kinship
- 2) The branches of production which are important for the state and control the lives of many people are controlled by the state.

- 3) The earth, and the water and natural resources contained therein are controlled by the State and are used for the greatest prosperity of the people.
- 4) The national economy is organized based on economic democracy with the principle of togetherness, efficient justice, sustainability, environmental insight, independence, and by maintaining the balance and unity of the national economy (\*\*\*)
- 5) Further provisions regarding this article are regulated in the law (\*\*\*\*)

The understanding contained in Article 33 of the 1945 Constitution as a result of this amendment, still retains the essential meaning contained therein, which is reflected in the existence of economic democracy, democracy in this case is social democracy, based on togetherness (collectives), not liberal democracy based on individualism.

So that in the understanding of Economic Democracy, the people together have economic sovereignty, grassroots economy plays a dominant role and becomes the foundation of the national economy.

One of them is the current development of agrarian reform, which requires joint consensus from stakeholders to be implemented through government programs, especially policy holders in provincial and district / city areas towards the central government program on ownership of land, this is done to support the interests of citizens and interests national strategic state.

These broader interests in economic democracy are stated in article 33 paragraph (3) of the 1945 Constitution which states:

"The earth, water, and natural resources contained therein are used for the greatest prosperity of the people ....."

Ownership of land for citizens is an essential for every citizen which is one of human rights, so to fulfill it, the state has also regulated in the 1945 Constitution the second amendment to article 28 H Paragraph (4) that states :

"Everyone has the right to have personal property rights may not be taken arbitrarily by anyone"

With the Government's program on Complete Systematic Land Registration (PTSLS), through the Ministry of Agrarian and Spatial Planning the National Land Agency (ATR / BPN) is expected to provide certainty of land rights to the community, especially ,. people who are brought under the poverty line or are unable to do it all this time, felt by some people, various ways people or legal entities, to own or control land even if done in violation of the law.

Land ownership rights for the community, in the definition of ownership rights. is a hereditary, strongest and most fully fulfilled right that a person can have on land by remembering social functions. Hereditary means that these rights can continue as long as the owner is still alive and if he dies, these rights can be continued by his heirs.

The strongest shows that the position of the rights is the strongest when compared with other land rights, because it is registered and the owner of the right is given proof of rights (certificate), so that it is easily defended against other parties. In addition, the term of ownership is unlimited.

The most complete shows that the right gives its owner the most extensive authority, when compared to other land rights, does not have rights to other land rights, and the designation is not limited as long as there are no restrictions from the authorities. This shows that property rights have a social function. These properties do not exist in other land rights.

According to Boedi Harsono inventory the characteristics of property rights as follows:

- 1) The strongest and most fully fulfilled rights;
- 2) Rights are hereditary and can be inherited;
- 3) Being the parent of other land rights;
- 4) Can be a guarantee of debt burdened with mortgage rights;
- 5) Can be transferred to other parties;
- 6) Can be released by the owner and become state land;
- 7) Can be represented.

At present there are many land titles without legal permits or legal proxies, often referred to as illegal land residents, not infrequently this happens in communities. This happens is nothing but in an effort to control the land, due to the growing need for land a is increasingly limited while the need for land by the community is increasing. The program launched by the current government is a partisanship program for citizens, especially people in the Bandar Lampung city area.

## 2. The Government's Role in a Complete Systematic Land Registration Program

Systematic land registration is a government program having national strategic value, this refers to Presidential Instruction No. 2 of 2018 concerning the Acceleration of the Implementation of Land Registration throughout Indonesia. Nationally this program proposes 5 (five) million parcels of land to be recorded and made a free certificate in each region, but in development in 2019 increased to 9 (nine) million parcels of land, explained in the Presidential Instruction in the second provision as follows :

- a. Cluster 1 (one), namely parcels of land that meet the requirements for certificate issuance.
- b. Cluster 2 (two), i.e. plots of land which are only recorded in the land book because they have not met the requirements for the issuance of certificates due to the disputes or having a case in court.
- c. Cluster 3 (three), namely parcels of land that are only registered in the registration of land because they have not met the requirements for the issuance of certificates because the subjects or objects do not meet the requirements to be granted land rights in a complete systematic land registration activity or the whereabouts are unknown.

So with the issuance of this INPRES, certificates for each citizen who do not yet have a certificate will be made through the PTSL program. Currently the Bandar Lampung City Land Office ensures that in this program there are no costs whatsoever in the process of obtaining a land certificate including registration of legal data collection or physical checking.

In addition, the regulation regarding funding for this program is contained in the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 1 of 2017 in Article 15 states as follows:

- a. Sources of funding to accelerate the implementation of Complete Systematic Registration can come from the government, regional governments, Corporate Social Responsibility (CSR), State-Owned Enterprises / Regional-Owned Enterprises, Private Legal Entities and / or Community Funds through self-supporting mass certificates.
- b. The financing referred to in paragraph (1) comes from:

- 1) List of Budget Program Filling (DIPA) of the Ministry of Agriculture and Spatial Planning / National Land Agency and / or other Ministries / Government Institutions.
- 2) Provincial, Regency / City and Village Fund Regional Revenue Budget (APBD).
- 3) Corporate Social Responsibility (CSR), State-Owned Enterprises / Regional-Owned Enterprises.
- c. In addition to the funding sources as referred to in paragraph (2), financing for the acceleration of the implementation of a Systematic Complete Land Registry may be derived from collaboration with other parties obtained and used and accounted for in accordance with the provisions of the legislation.

Clustering is a grouping of types of output / output / results of complete systematic land registration activities based on the results of research on juridical and physical data or documents. This cluster is divided into Cluster 1, Cluster 2, Cluster 3 and Cluster 4.

According to technical guidance number 1069 / 3.1-100 / IV / 2018 2018 concerning the implementation of the PTSL budget covering all parcels of land without exception, both parcels of land that do not yet have land rights or parcels of land that have rights in order to improve the quality of registration data in order to obtain 99 Juridical data that are inventory / collected at Bandar Lampung BPN, then an analysis by the acceleration adjudication committee concerns ownership data that shows the legal relationship between PTSL participants and objects in a complete systematic land registration. The juridical data inventory results are grouped into 4 (four) clusters as follows:

1. Cluster 1 (one), i.e. plots of land whose juridical data meet the requirements for the issuance of certificates of land rights, including:
  - a) Customary land
  - b) State land
2. Cluster 2 (two), i.e. plots of land whose juridical data meet the requirements for certificate issuance but there are cases in court, the acceleration adjudication committee takes the following steps:
  - a) The acceleration adjudication committee can book the rights by clearing the name of the right holder
  - b) The acceleration adjudication committee issues a certificate of land rights after a court ruling has permanent legal force, and the ruling states that one party has the right, in this case the head of the BPN signs and issues a certificate if the court ruling having legal force remains issued, after the budget year of activity Complete systematic land registration ends, without replacing the land book that has been signed by the adjudication committee speed.
3. Cluster 3 (three), namely parcels of land for which juridical data cannot be recorded and certificates are issued due to:
  - a) Subjects of foreign nationals, BUMN / BUMD / BHMN, Private Legal Entities, Subject unknown, subject not willing to take full systematic land registration.
  - b) The object is P3MB land (Committee for the Implementation of Dutch Ownership), PrK 5, House of Group III, Object of Nationalization, Land of Ulayat, Land of Absente.

- c) Customary-Owned Land Objects, Documents that prove ownership is incomplete, participants are not willing to make a statement of physical control of land parcels of land that cannot be recorded and whose certificates are recorded in the land register.
4. Cluster 4 (four), namely when the subject and object do not meet the requirements for complete systematic land registration because it is already certified.

Furthermore, in the management of PTSL, the implementation process in this program is carried out faster because the registration data is declared correct and complete, and certificates can be directly issued to the applicant.

For participants who take part in this program, certainly it can be implemented at every BPN office throughout Indonesia, which according to Presidential Instruction Number 2 of 2018, concerning the Acceleration of Complete Land Registration throughout Indonesia, in Paragraph 1 states the program's priorities are expected to the community:

1. The community cannot afford
2. Communities included in government programs in the field of simple housing.
3. Legal entities in the field of security and social use of land for worship, boarding schools, orphanages, nursing homes, nature reserves, sites or places of pilgrimage.
4. Veterans, retired civil servants, retired military and police and husband / wife / widow / widower, veterans / pensioners
5. Government agencies and local governments to carry out their duties and functions and not be profit,
6. Waqif
7. Customary law communities.

With the presence of this program, it is very real that the state is present in people's lives, welfare in general is not only for people who have a middle to upper social position but the state's goal of welfare to the bottom is achieved without exception.

#### 4. CONCLUSIONS

The orderly administration of land is in the interests of both the government and the community, so that the government can create order and data completeness as material for decision making and policy, while the public obtains legal certainty.

The creation of a Complete Systematic Land Registration program is very helpful for every citizen in building welfare for the community.

#### 5. SUGGESTIONS

Complete Systematic Land Registration needs to be informed and carried out on an ongoing basis for all parcels of land in the village and kelurahan in order to create an orderly administration of land in all regions of Indonesia.

Implementation of a Complete Systematic Land Registration is sought not only depending on the government but through self-help and self-funding can be the realization of an independent community in the implementation of land registration.

#### REFERENCES

- [1] Harsono Boedi, *Undang-undang Pokok Agraria, Sejarah Penyusunan dan Pelaksanaannya*. Jakarta: Djambatan, 1970.
- [2] Muhammad Yamin Hadji, *Naskah Persiapan Undang-Undang Dasar 1945, sidang-sidang BPUPKI dan PPKI yang berhubungan dengan penyusunan UUD 1945 jilid 1*. Yayasan Prapantja, 1959.
- [3] Nunung Nuryatono dan Hendri Saparini, *Kesenjangan Ekonomi Sosial dan Kemiskinan" Ekonomi Konstitusi Haluan Baru Kebangkitan Ekonomi Indonesia*. Jakarta: Soegeng Sarjadi dan Imam Sugema, 2009.
- [4] Sri Suyekti, *Hukum Agraria Nasional*. Bandar Lampung: Universitas Lampung, 2000.

#### Undang-Undang Dasar 1945

Instruksi Presiden nomor 2 tahun 2018, tentang Percepatan Pelaksanaan Pendaftaran Tanah di seluruh Indonesia.

Peraturan Menteri Agraria dan Tata Ruang/ Kepala Badan Pertanahan Nasional Nomor 1 tahun 2017 tentang Perubahan atas Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 35 Tahun 2016 tentang Percepatan Pelaksanaan Pendaftaran Tanah Sistematis Lengkap.

Petunjuk Teknis Menteri Badan Pertanahan Nasional/ATR Nomor 1069/3.1-100/IV/2018 Tahun 2018, Tentang Pelaksanaan Anggaran PTSL Meliputi Seluruh Bidang Tanah yang belum ada hak atas tanahnya maupun bidang tanah yang memiliki hak dalam rangka memperbaiki kualitas pendaftaran tanah.