



Agrarian Reform in Regulation Future Land (*Ius Constituendum*)

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Abstract. This study looks at land-related policies in order to pay attention to the philosophy and fundamental principles outlined in the Basic Agrarian Law (UUPA), which will enable agrarian reform goals to be successfully implemented and to benefit society at all levels. The issues raised in this study are What are the arrangements in the land sector based on the philosophy of the principles of Agrarian Reform? Furthermore, the purpose of this study provides a framework as a basis for regulation in the land sector based on the principles of agrarian reform. This research uses a normative law and statutory approach (statute approach), as an approach carried out by examining the norms contained in statutory provisions. This research found that policies in the agrarian sector have not fully accommodated the values contained in the philosophy of Pancasila, it can be seen from some existing laws and regulations that are still exploitation-oriented and their partiality is still to the financiers so that they do not reflect a sense of social justice and are more oriented towards exploitative use with less attention to the maintenance aspect, it can be seen that there are many productive land use conversions.

Keywords: Agrarian reform, Social justice, Philosophy of Pancasila.

1 Introduction

Article 33 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945 (UD 1945), which is a regulation of the earth, water, and natural resources contained therein as a mandate from the constitution. In the ten articles in the Basic Agrarian Law (BAL), the basics that can be used as guidelines in relation to Natural Resources have been regulated, although of the ten articles there is only one article that regulates natural resources other than land as regulated in Article 8 of the Basic Agrarian Law (BAL) namely there are also mining and others [9].

Boedi Harsono, gave the same opinion on the matter. The drafting committee of the draft basic agrarian law gave the name “Law on Basic Principles of Land Law”, while the Soewahjo Committee as the party that prepared the Basic agrarian law plan considered that the name was changed to “Law on Basic Regulations of Agrarian Principles” [1].

In line with the degradation of the main function of the BAL which at the beginning of its preparation was aspired to be a *lex generalis* on the regulation of natural

resources then seemed to be equal to other sectoral legislation, so that there was a change in the role of the Basic Agrarian Law from *lex generalis* to *lex specialis* which only regulates land. There are differences that show the abandonment of the ideals and principles contained in the Basic Agrarian Law (UUPA) by sectoral laws, including: 1. Orientation; 2. Partisanship; 3. Management and implementation; 4. Protection of Human Rights; 5. Arrangements on good governance; 6. The relationship between people and natural resources; 7. The relationship between the state and natural resources [10].

The excesses of the emergence of dissynchronization of sectoral laws with others are shown in the Decree of the People's Consultative Assembly of the Republic of Indonesia No. IX / MPR / 2001 concerning Agrarian Reform and Natural Resources Management (TAP MPR RI No. IX / MPR / 2001). There are two options that can be given to perfect the UUPA, namely the first to put the Basic Agrarian law (BAL) as a permanent *lex generalis* as its original function or to perfect the Basic Agrarian law (BAL) as a *lex specialis*. The refinement of Basic Agrarian law (BAL) as *lex specialis* needs to be done to complement the shortcomings in the Basic Agrarian Law (UUPA) and improve the multi-interpretation arising from the distortion of the philosophy and principles contained in the Basic Agrarian law (BAL).

Based on the description of the background that has been stated above, the following problems can be formulated: How is the regulation in the land sector based on the philosophy of the principles of Agrarian Reform?

2 Research Methods

The study uses normative law. Legal research, according to Marzuki, is a procedure used to identify legal regulations, legal tenets, and legal doctrines in order to address legal issues [8]. The statutory approach (statute approach) was applied to review the norms contained in the provisions of the legislation. The primary sources of materials used in this study are the Constitution of the Republic of Indonesian Year 1945 (UUD NRI 1945), Law Number 5 Year 1960 concerning Basic Regulations on Agrarian Principles (BAL), People's Consultative Assembly Republic of Indonesian Decree (TAP MPR No. IX / MPR / 2001 concerning Agrarian Reform and Natural Resources Management (TAP MPR RI No. IX / MPR / 2001), and Presidential Regulation of the Republic of Indonesia Number 86 Year 2018 concerning Agrarian Reform (Perpres 86/2018). While the secondary legal materials used by the author are publications in the field of law but not official documents, namely: books, journals, and commentaries.

3 Results and Discussion

The following laws and rules provide the legal framework for the agrarian sector's regulation in Indonesia.:

1. According to article 33 paragraph 3 of the Republic of Indonesia's constitution from 1945, "the Earth, water, and natural resources contained therein are con-

trolled by the state and used as much as possible for the prosperity of the people,” 2. Article 6 Paragraph (1) Letter (b) 27 of the Decrees of the People's Consultative Assembly Number of IX/MPR/ 2001 concerning Agrarian Reform and Natural Resources Management states that “carry out a fair rearrangement of control, ownership, use, and utilization of land (land reform) by taking into account land ownership for the people, both agricultural land and urban land”.

2. Land reform in a wide sense in accordance with UUPA Number 5/1960, as per Law Number 5 of 1960 establishing Basic Regulations on Agrarian Principles, as follows: [6]
 1. The execution of agrarian law reform, namely the revision of existing agrarian law provisions that no longer reflect the conditions and circumstances of the modern era and the replacement of such provisions with legal provisions more in line with the advancement of the modern era.
 2. Elimination of all forms of colonial ideas and foreign rights.
 3. Put an end to the land being ruled by landlords and feudal lords who have oppressed a lot of people by holding onto the land.
 4. Reforming land ownership, control, and the different land tenure relationships.
 5. Organizing the inventory, distribution, and intended use of land in accordance with capability.

From a broad meaning, land reform is an effort to reform through laws oriented towards returning rights and adjusting the needs of land objects by dynamic communities.

3. Presidential Regulation Number 86 of 2018 concerning Agrarian Reform

According to Article 1 number (1) of Presidential Decree 86/2018 (Agrarian Reform), agrarian reform entails a more equitable redistribution of the ownership, control, and use of land through Asset Management and Access Arrangement for the welfare of the Indonesian people. Furthermore, the arrangement of assets referred to in Article 1 number (1) of Presidential Regulation 86/2018 (Agrarian Reform) above according to Jumadil in his writing through the okezone.com news website, states as follows:[2]

The asset arrangement referred to by Presidential Regulation 86/2018 (Agrarian Reform) consists of land redistribution and asset legalization. The subjects of agrarian reform are individuals, community groups with common property rights, or legal entities.

It has been stated in advance that the control, use, and exploitation of land rights or natural resources constitute an equitable action when it comes to land redistribution.

When viewed theoretically related to the understanding of agrarian reform, several statements or theories are found related to the understanding of agrarian reform itself. In her paper agricultural Reform in the Context of Increasing Access of Poor Peasants to Land Tenure in Indonesia, Fati-mah quotes Krishna Ghimire as saying the following on agricultural reform: [4]

Land reform is a significant adjustment to the agrarian system that increases access to land for low-income farmers and provides security of tenure for landowners. Ac-

cess to markets, agricultural supplies, and other associated services and requirements are included.

If followed by the description above, judging from the substance of agrarian law in Indonesia has provided protection through the 1945 Constitution and BAL, plus the latest regulations related to agrarian reform, namely Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

Basically, since the Agrarian Law legislation was passed, many criticisms have been born from various parties who doubt the legal regulation. Indeed, in its development, such a reality. Agrarian law is only seen from one narrow aspect, namely land, even though the actual concept of agrarian includes: land, earth, water and so on. Changes in the development of more modern law, which is heavily influenced by capitalism, in turn affect efforts for agrarian reform in Indonesia. This condition places agrarian reform efforts on the political dynamics of Indonesian society. Efforts to realize agrarian reform with such a large role of capitalism make agrarian reform efforts a social movement [7].

Max Weber stated that the procedure of law administration that is increasingly rational techniques and uses increasingly strict deduction methods, is a stage in the development of law so that law can be called modern law. Weber further stated that legal development generally moves from one level of development to the next. The elaboration of the rule of law as in the principle of equality before the law turns out not always to be a means for the fulfillment of a sense of justice at the level of substantive justice.

Philosophy of Principles of Agrarian Reform

Land is a national asset of Indonesia and serves as the basic building block for the development of a just and successful society. Therefore, how technology is used must be based on ideas that advance in Indonesian culture. Attempts to turn land into a commodity, an investment, or other things that go against the values outlined in Article 33 paragraph 3 of the 1945 Constitution must be avoided in this situation.

Agrarian reform and natural resource management are governed by a number of laws and regulations, which are all based on People's Consultative Assembly Decree Number IX / MPR / 2001. According to Maria S.W. Sumardjono [5], there are at least four things that need to be considered as a basis for future policy makers, including: 1). The basic principles laid down by the BAL need to be emphasized and developed orientation so that they can be translated into conceptual and operational policies in responding to various needs and can lead to dynamic change. 2). It is necessary to equate the perception of policymakers regarding various principled matters, so as not to delay the way out of existing problems. 3). Without denying the number of policies that have been successfully issued, there is still an impression that there are policy makers who are partial or to meet short-term needs, because there is no priority order for policies to be issued. 4). There is still a need for a policy blueprint in the land sector that clearly shows the relationship between policy principles, goals to be achieved, and targets.

The promulgation of the BAL was motivated by the condition of the system, relationship patterns, and social structure of feudal and colonizing communities. Efforts

to eliminate the pattern of relations and social structure of the community are carried out in various ways, one of which is agrarian reform (BAL) which is focused on efforts to favor economically weak communities. The Basic Agrarian Law (BAL) is based on the following principles: a) equality of position between people and nations; b) the state as the personification of all people is responsible for achieving equality of position between people in an effort to ensure the greatest prosperity for all; and c) laws and regulations relating to agrarian resources issued prior to the BAL are seen as obstacles to achieving the goals of agrarian reform. BAL reinforces the crucial role of the state in Indonesia's global period in order to achieve the maximum prosperity for the people, as well as the reaffirmation of the identity of the Indonesian country [12].

Nationality, Citizenship, and Social Justice, as the principle of State Democracy and national ideals, as stated in the Preamble to the Constitution, argue that national agrarian law must embody the incarnation of the One and Only God, Humanity, in point c4 of the BAL on Basic Regulations on Agrarian Principles.

Thus, it can be stated that the philosophy of the principles of agrarian reform has been set forth in consideration in the basic regulations of the Agrarian Tree. The precepts of Pancasila have become the basis for regulation in the field of agriculture and natural resources. Pancasila as a guideline in state and nation, including in regulating the field of agrarian and natural resources. In realizing the goals of statehood, namely realizing social justice, equitable distribution of results in the agrarian sector and providing maximum benefits to all Indonesian people.

The research is normative legal research, Peter Mahmud Marzuki argues that legal research is a process to find legal rules, legal principles and legal doctrines to solve legal problems [8].

4 Conclusion

From the description stated above, it can be concluded as follows that the philosophy of the principle of agrarian reform has been outlined in the consideration of opinion by accommodating the precepts contained in Pancasila in the formation of legislation in the field of agrarian and natural resources, with the aim of providing social justice for all Indonesian people, realizing that agrarian resources are a gift from God Almighty must be managed wisely in order to provide benefits and welfare for all Indonesian people.

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