Land Authority Control by the State as a Basic Principal of an Authority and Land Ownership in Indonesia

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Abstract

The controlling power by the State on land as a source of state authority to provide the disposition control, ownership, allotment, and the land utilization in Indonesia is limited by Indonesian constitution, UUD 1945. Besides UUD 1945, there is another substantive restriction in which regulations created by the state should be relevant to the purpose achieved for the greater citizenry prosperity. Therefore, refraction rule that involves self-interest conflict and could cause other detriment is a form of law's violation. The state authority to make arrangements related to its authority cannot be delegated to the private sector since it involves public welfare which is loaded with a service mission and will possibly create self-interest conflict. This research is a juridical normative approach using conceptual and legislative framework. The research question in this research is what state's formulations are in obtaining authority power to control land in Indonesia. The result shows that the state control the land as a result of the authority granted by the Constitution as the transference of the public's right that gives some of their freedom right voluntarily to be regulated by the State

Keywords: Controlling power, the state, Tenure and Land Ownership

1 Land Ownership in Indonesia at a Glance

Indonesia as the recipient of the gift from God Almighty over the earth of Indonesia implies that the earth of Indonesia belongs to all components of Indonesian society members, so that every citizen has been as a subject of equal rights and responsibilities in the maintenance, utilization and the allotment of Indonesian land in term of improving the welfare of Indonesian societies.

For the Indonesian, the relation among human and land had a natural characteristic. In this case it couldn't be eliminated by anyone, unless the land was affected by a disaster, the owned land couldn't be occupied, managed, utilized, even traded. Due to the importance of the land as a basic of human need, therefore the state presented to provide a protection to the Indonesian which has been regulated in the constitution of the Republic of Indonesia.

Constitutionally, the state had an obligation to realize the state objectives as being outlined in the 1945 Constitution, to promote the general welfare. One of the main resources in realizing common welfare was through land tenure and ownership, land

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management and utilization. Reasoning that the land within the territory of this Republic was one of the main natural resources, besides having deep inner value for the Indonesian, the land also had a very strategic function in fulfilling the needs of the state and the societies who have been continuously increasing and more divers, either at the national level or international level [1]. Therefore the land should be managed and utilized optimally for the present and future generations in term of creating equitable and prosperous society. The mandate of the Constitution was intended to realize the purpose of the state, to promote the common prosperity and achieve social justice [2].

Article 33 Paragraph (3) of the 1945 Constitution stated distinctly that the earth, water, and natural resources contained were controlled by the state and being utilized for the greatest prosperity of the societies. Then, the mandate was verified in UU no. 5 of 1960 about the Basic Regulations of Agrarian Affairs or being familiar with the Basic Agrarian Law (BAL or UUPA). This means that the management and utilization of land as part of Indonesia's natural resources should be wise for the prosperity and safety of the Indonesian societies. The arrangement of land tenure, ownership, utilization and management had to be done through the regulation of legal relationships rooted in the noble values of the Indonesian Nation.

In its fluctuation, the nationalist and populist Basic Agrarian Law (BAL/UUPA) which was based on Indonesian customary law does not work as the purpose of its formation. Various BAL deviations encouraged the emergence of MPR Decree No. IX Year 2001 on Agrarian Reformation and Natural Resource Management, which has been the basis of legislation in the field of agrarian reform and natural resource management.

Nowadays, some agrarian conflicts, especially land affairs have been increasing in various regions, either conflict between people or government, conflict between people or companies, and among individuals in society itself. The land cases that have surfaced so far have been dominated by unequal land tenure factors. For examples, the case of land that occurred in Mesuji Lampung, the land dispute of East Kalimantan fertilizer widely known as Pupuk Kaltim, in Bontang East Kalimantan, land cases in Riau Province, Papua, etc. The land cases have caused prolonged conflict. From a legal standpoint, some questions have been raised, such as: what the legal matters are, whether the legal regulations were inadequate, or the inconsistent enforcement of the law. After 57 years of Basic Agrarian Law (BAL or UUPA) have been exist, various elements viewed that the noble values of BAL have not been able to be implemented in land policy. On the other hand, some of the laws and regulations which have been mandated the formulation by BAL or UUPA also have not materialized yet, while the formulation of various sectorial laws related to the agrarian sector, especially land, was widely considered to have weakened the BAL because its substance was overlapping or even contradictory to the values arranged in the Basic Agrarian Law (BAL or UUPA).

After examining the background of this research, the research problem is what the conceptions of the state are in obtaining an authority over the land in Indonesia. This study aims to analyze and find the state conception in obtaining power authority over the land in Indonesia. The research design used is normative juridical research (legal

research), namely research on the application of positive legal norms. This research is conducted by reviewing the authoritative law regulation with literature as the theoretical concept and the opinion of legal expert on the problems being analysed. Meanwhile, the approach used is statute approach and conceptual approach. The statute approach was conducted to examine all laws and regulations relating to the legal issues which is being studied (State authority over the land), while a conceptual approach is used to provide a solution to the legal analysis of state authority over the land as the juridical ground of land affairs in Indonesia.

2 Indonesian State Land Authority

In the Indonesian General dictionary, the word "control" means a position of dominion over something or holds power over something. The definition of "controlled" by the state as it has been stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. After the amendment of the 1945 Constitution of the Republic of Indonesia there was no explanation, either general explanation or the elucidation of article by article. This allowed the right of land control by the state to be interpreted for various understandings, depending on the point of view and interpreting interests.

Here were some of definitions formulas, meaning, and substantial "controlled by the state" as the basis for reviewing the rights of state control, among others, namely:

1. Mohammad Hatta formulated the notion of being controlled by the State. Controlled by the state did not mean the state itself become an entrepreneur or businessman. It has been more appropriate to say that the power of the state lied in the making of rules for the smoothness of economic roads, a rule which prohibited the exploitation of the weak by the capitalists [3].
2. Muhammad Yamin formulated the notion of being controlled by the state including regulating and/or organizing primarily to improve and enhance production by prioritizing cooperation [4].
3. Bagir Manan formulated the scope of understanding controlled by the state or the right of state control, as follows [5]:
   a. The control of such ownership by the state, meaning that the state through the Government was the sole authority to determine the right of authority over it, including here the earth, water and wealth contained therein,
   b. Manage and monitor the use and utilization,
   c. Equity participation and in the form of a state enterprise for certain businesses.

In accordance to the above constitutional provisions, the right to control the land by the state covered all the land, without any exception. So, the formula was that the state hold the power over the agrarian resources as it has been stated in article 33 paragraphs (3) of the 1945 Constitution [6].

When It was viewed in Article 2 of the BAL as the elaboration of article 33 (3) of the 1945 Constitution, the explanation memory of points II /2 confirmed that the notion of being controlled was not meant to be possessed, but the meaning was giving an authority to the state as the power organization of the Indonesian nation at the highest

level to arrange the allotment, regulated the legal relationship between the person and the parts of the land and the arrangement of the legal relationship between the person and the legal act [7].

The definition of the right to state control as the Constitutional Court (CC) decision, related to the decision on the Privatization of Oil and Gas, stated that the Conception of control by the state was a public legal conception related to the principle of popular sovereignty embraced in the 1945 Constitution, both in the political field (political democracy) as well as economics (economic democracy). In the sense of popular sovereignty, it was the people who were recognized as the source, owner, and ultimate authority in the life of the state, in accordance with the doctrine "from the people, by the people, and for the people". In the sense of supreme authority was also covered the sense of public ownership by the people collectively. That the earth, water and wealth contained within the territory of the state law were essentially the public property of all people collectively mandated to the state to control it to be used for the greatest possible prosperity. Therefore, article 33 (3) determined "the earth, water and natural resources contained therein were controlled by the state and used for the greatest prosperity of the people" [8].

Based on the argument, the definition of "controlled by the state" had to be interpreted to include the meaning of control by the state in a broad sense derived from the sovereignty of Indonesian concept over all sources of wealth "earth, water and natural wealth contained in it", It also included the definition of public ownership by the collectivity of the people over the sources of wealth. The people collectively were constructed by the 1945 Constitution mandating to the state to establish it: 1) policy (beleid), 2) handling action (bestuursdaad), 3) arrangement (regelendaad), 4) management (beheersdaad), and 5) supervision (toezichthoudensdaad) for the greatest possible prosperity of the people.

The arrangement function (bestuursdaad) by the state, conducted by goverment with its authority to issue and revoke licensing facilities (licenses), licenses (licenties), and concessions (consessie). Wherease the regulatory function of the state (regelendaad) was conducted through the legislative authority by the People's Legislative Assembly with the Government, and the regulation by the government. Meanwhile, the management function (beheersdaad) was done through a share-holding mechanism and/or through direct involvement in the management of State-Owned Enterprises or State-Owned Legal Entities as institutional instruments, through which the state, c.q. Government, utilize its control over the resources to be used for the greatest prosperity of the people. Similarly, state control (toezichthoudensdaad) is done by the state, c.q. Government, in order to supervise and control for the implementation of the control by the state on the sources of wealth intended to be done for the greatest prosperity of all people [8].

Notonagoro [9] established three types of direct relationships between the state and the earth, water and space, as follows:

1. Country as a subject, being given the position not as an individual, but as a country. In this form the state did not have the similar status as the individual.

2. The State as a subject, which was likened to an individual so that the relationship between the state and the earth and so on was "equal" with the individual right to the land.
3. The relationship between the "direct" state with the earth and so on was not an individual subject and not in its position as a possessing state, but as a state which was the personification of all people so that in this concept the state couldn't be separated from the people. The state was only the founder and supporter of people unity.

Referring to Notonagoro's view above, the relationship formula between the state and the earth, water, and space, in accordance with the meaning of the right to control the state was a relationship form to the three relationships, because the state as the personification of the people. Controlling the land would be more appropriate because of the social and human nature of the place.

In line with Notonagoro's point of view above, Imam Soetiknjo also agreed that the right to control the state included into the state relationship as the personification of all people (the 3rd relationship formula), because if it was viewed in terms of humanity, it was in accordance with the nature of social beings. Thus, the state has the following two rights: 1) Right Communes, if the state as a personification which holds power over land and so on; 2) Empire Rights, if the state only holds the power of land use [10].

The term "control" is entirely different from the term "owned" as understood in the concept of "domain" of the state before the BAL or UUPA was being implemented. The equalization of the term "control" with the term "possess", according to Maria S.W. Sumardjono [11] would bring the effect on the people who couldn't have a private property on the land. In this case, there might be only the right to use for individuals whereas in reality, in Indonesia there were various rights to land which could be owned by either a person or a legal entity as being stipulated in Article 16 of the BAL.

The distinction between "controlled" and "owned" was judged precisely by Boedi Harsono in an attempt to draw the legal basis for state authority in performing his duties state. On the right of state ownership over the land, it was not a concept of modern state law, but rather a concept of feudal state law. Further Boedi Harsono argued that it was appropriate that BAL or UUPA didn't use the concept of nation or state domain, but rather the concept of customary law which concerned on private property rights in the domain of federation right. This didn't mean that lands that were not owned by a person/legal entity became res nullius, where everyone could freely control and use the land.

In the right of nation framework, the right to control the state and federation right, according to Boedi Harsono [12], the meaning of res nullius land was unknown, as the land that nobody authorized it, for controlling the land without the basis of rights granted by the state or without any permission from whom who owned it, it was unjustifiable, even it could be threatened with the criminal sanctions as It has been regulated in Article 2 and 6 of Law No. 51 year 1960 concerning the Prohibition of Land Usage Without the rightful authorization or its legal authority. Article 2 states that: "It was prohibited to use the land without any proper authorization or legal authority".

In the right of the nation concept, the right of state control and federation right, although the relationship was not a property right, but it was still a concrete legal relationship with the muddy lands within the territory of the country and the customary law of concerning community. In the context of federation right, the concrete legal relationship could be stated in the basic map of land registration, as being regulated in Article 5 paragraph (2) on Regulation of the Minister of Agrarian Affairs No. 5 year 1999 under the Guideline for the Settlement of Customary Communities of Land Rights issues, namely, "The existence of customary land of customary communities as it was written in paragraph (1) should be stated on the basis of land registration by applying a cartography mark and, whether it was possible drew its limits and recorded it in list of the land".

By these provisions, it was actually very possible if the citizen of customary law could have their right certificate over federation land. However, the provisions on the implementation of such matters should be regulated in the form of regional regulation where the federation right was located, as it was mandated by Article 6 on Regulation of the Minister of Agrarian Affairs No. 5 year 1999, there was no region that has implemented or formed it [6].

3 The Philosophy of State Land Controlling Authority

The law of land affairs history in Indonesia has an important meaning in the construction of national law; therefore, the law of land affairs construction required not only the development of contemporary law material, but also the development of the past law material. Through the history of a nation would be able to explore various aspects of Indonesian law of land affairs in the past.

In term of historical and philosophical perspective, one of the important meanings from the conceptualization of Land Controlling Authority over State in the Basic Agrarian Law (BAL or UUPA) was the explicit elimination of the principle domain adopted by the colonial land law. The concept of land ownership by the state which actually aimed to provide legalization and legitimacy for private plantation companies in large land acquisitions in the Dutch East Indies, was contrary to the independent state of Indonesia and the nation's view of life, therefore it had to be abolished from the national land law [13].

The Domain's principle of state ownership of the land was born as a result of the revitalization of feudalistic relations of the past which had been exploited by the VOC (Vereenigde Oost-Indische Compagnie), as well as during the reign of Raffles (1811-1816), which was further reinforced by the principle of domainverklaring in Agrarisch Besluit (Staatsblad 1870 No. 118) as the implementer rule of Agrariche Wet 1870. Article 1 Agrarisch Besluit (Staatsblad 1870 No. 118) stated "by not diminishing the enactment provisions of paragraphs two and three of the Agrariche Wet, so it was maintained that all others could not prove that the land was the land of its eigendom, was the domain of the State". The provisions of Article 1 of the Agrariche Besluit could be specified that:

1. The application of *domainverklaring* principle should not violate the provisions of Article two and three Agrariche Wet, that were the articles contained protection of indigenous people's rights to land. In other words, the application of *domainverklaring* principle should not harm the indigenous Indonesian society.
2. In article 1 of Agrarisch Besluit there was the word "retained principle". This means that before the implementation of the Agrarisch Besluit there was already a regulation containing the principle of *domainverklaring* which was contained in Article 520 BW whose translation was "other unshakable grounds and immovable property and no owner, such as those who died without inheritance, or whose inheritance had been abandoned, was the property of the State ". The principle contained in article 520 BW was maintained (persisted by Agrarisch Besluit).
3. Another party who could not prove that the land was its eigendom land is the state of land. In other words, if the community could not prove that a plot of the land is the right of its *eigendom*, so the land was declared as the land of state.

Although on its conception, aiming to guarantee the right of Indonesian to their land and the state power over the land as the absolute owner is meant only on the no man's land which could not be proven of its eigendom right and the right of agrarische eigendom [13], yet the application was quite different [14]. The Dutch Government interpreted narrowly the rights of eigendom as customary of property rights (customary people's property of rights) which had been requested by the owner through certain procedures and recognized only by the court. This was truly very detrimental to the indigenous people because without any Western law-based verification, the indigenous (the holders of customary rights) only considered as the users of the country's land domain. Even though the legal relations with the relevant land remained to be recognized, yet in legislation, customary property was only referred as the right of the hereditary individual use (erfelijk individualueel gebruiksrecht) and then as the right to dominate the land into state land domain (Inlands bezitrecht). Then the lands of customary property rights since they were not equated with the right of eigendom in Western law even It was not regarded as a free country land (onvrij lands domain), in which the state could not freely give it to other parties, with the limited rights of the people.

Event The land of federation right still exists and being obeyed by the customary law community, was not acknowledged by domain verklaring, till it was categorized as the domain of the country, namely as the free land of country (vrij lands domain) [13]. Thus; all the land being owned or has been owned by indigenous of Indonesia, with the ownership rights and land being owned or has been owned by customary law communities with the federation right was the land of the State domain. The Land whose been owned by the indigenous of Indonesia with property rights was only valued as a hereditary right of use, yet the customary rights should be protected and respected so that the Governor-General might not take it even to be granted to the entrepreneurs with erfpact rights [15].

It could not be denied that AW 1870 was a political product driven by certain interests, in this case mainly the interests of the capitalists, foreign businessmen. The explicit enforcement in wet required the capitalists to ensure legal certainty that

facilitated them in acquiring vast land for the establishment and the development of their businesses in the Indies. The domain's state concept gave a wide authority to the state as the owner to utilize it based on his interests and needs. It was also similar when the insistence of capitalist urged the State to utilize its authority on behalf of their interests. By the shift of state authority over vast land to the capitalists, it would create a "state within the state." This was what a major problem became since the beginning of Indonesian independence.

Furthermore, after post-independence, the formulation of article 33 in the 1945 Constitution "The earth and the water and the natural resources contained therein were controlled by the State and used for the greatest prosperity of the people" was the constitutional basis for the formation and formulation of the Basic Agrarian Law (BAL or UUPA) [2].

BAL itself was born in the context of the struggle for the reform of the national agrarian law went hand in hand with the history of the Indonesian struggle to escape from the clutches, influences and remnants of colonialism; especially the peasants' struggle to free themselves from the constraints of the feudal system on the land and the exploitation of foreign capitalists [16].

The spirit of opposing the strategy of capitalism and colonialism which had led to the "exploitation de l'homme par l'homme" on the one hand and at the same time opposed the strategy of socialism which was considered "negate the individual rights of the land" on the other, the ideological and philosophical foundation of the BAL formation.

In the general explanation of BAL, it was clearly stated that the purpose of BAL was:

1. Laying the groundwork for the drafting of national agrarian law which would serve as a tool for bringing prosperity, happiness and justice to the state and people, especially the peasants in the framework of a just and prosperous society;
2. Pint pointing the groundwork for holding unity and simplicity in law of land;
3. Laying the groundwork for providing legal certainty of land rights for all people together.

In term of laying the groundwork for the drafting of national agrarian law, the domainvelkraring principle as set forth in Article 1 Agrarsch Besluit, Stb. No. 1870 No. 118, in which before the implementation of BAL became the basis of colonial agrarian law, it had to be abandoned and the domain statement which assumed all land was the property of the state unless it could be proven its eigendom right, had to be revoked. Instead, it was stipulated the principle of Land Ownership Rights by a State based on Pancasila and Article 33 Paragraph (3) of the 1945 Constitution, which stated: "The earth and the water and the natural resources contained therein were controlled by the state and used for the greatest prosperity of the people".

It was also similar to the concept of the State Right of Control (SROC or HMN). The authority of the state right of control was understood within the framework of the relationship between the State and the earth, water and natural resources within it as a relationship of control, not of ownership such as in the West and in communist countries. The control by the State in the SROC concept did not mean to have

eigensdaad. If the State control of right was defined as eigensdaad, then there would be no guarantee for the objective achievement of the State's right to control the land, which was as big as the welfare of the people [17]. The state in this case as the authority at the highest level was authorized to regulate the use of land in a broad sense and to determine and regulate legal relations and legal acts with respect to the land. As the recipient of power [18], then the State had to be responsible for the community as the authorizer. With this AP. Parlindungan called it as the right of the people at the State level [19].

This constitutional directive was further elaborated in Article 2 of the BAL. Furthermore, as the embodiment of Pancasila the philosophy of the state, the provisions of Article 1 paragraph (1), paragraph (2) and paragraph (3) BAL established the following [6]:

1. The whole territory of Indonesia is the unity of the homeland and all of Indonesians were united as the nation of Indonesia.
2. All of the earth, water, and space, including the natural wealth which contained therein within the Republic of Indonesia territory, as a gift of God Almighty was the earth, water, and space of the Indonesian nation and those were a national treasure.
3. The relationship between the Indonesian nation and the earth, water, and space which was included in paragraph (2) of this article was a lasting relationship.

According to Mahfud MD, there were several important points of this the state right of control (SROC or HMN) is that:

1. The State Right of Control was born in the context of anti-imperialism, anti-capitalism and anti-feudalism;
2. For the abolition of the domain principle of the state utilized by the colonial government to take over the ownership of the people and then lease or sell it to foreign or private entrepreneurs;
3. As a synthesis between individualism and collectivism/socialism;
4. This control is more regulating and organizing (public), for the greatest prosperity of the people (as accountability);
5. Restricted by the Constitution;
6. Implementation of HMN is for general welfare, can be delegated to local or customary law community, but not to private

Furthermore, Moh. Mahfud.MD hoped that SROC or HMN should instead give way to other responsive actions because of the government right could take actions that were aligned to the interests of the community [20]. Two important points of the opinion, the Government should be able to proactively and responsively issued regulations on the regulation and management of agrarian resources, taking into account at least six elements contained in the above SROC or HMN. However, all regulations on behalf of SROC or HMN must be within the framework of its alignment to the public interest.

4 The Nature of State Authority to Control

The state's authority in land tenure comes from the Constitution or the Constitution of the State. Normatively recognized interpretation in jurisprudence was that societies voluntarily surrender some of their liberty rights to be governed by the State and restored to society to preserve the order, protection and prosperity of the people. The State or Government must have a sense of public service, while the public must have the duty of public obedience [21]. In such of this balance, the objective of surrendering some society's rights to the state gained political legitimacy and social legitimacy. The legal relationship between the State and the land think out the right to control the land by the State. The relationship between indigenous and tribal peoples with their federation lands think out federation right, and the relationship between individuals and land think out the individual rights to the land. This was in line with Van Vollenhoven's thinking that the state as the highest organization of the nation was given the authority to regulate everything including the right to control the land and the state based on its position also has the authority to make the rule of law [22].

State authority in land tenure comes from the constitution. In the preamble or preamble of the Constitution it was stated that one of the tasks of the State which constituted the Republic of Indonesian's government was to promote the common welfare and to protect the entire nation of Indonesia.

The Further explanation of the right to control land by the state, was contained in Article 2 of Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles (then it was mentioned as BAL or UUPA) which stated that the earth, water and space, including the natural resources contained therein it was at the highest level controlled by the State, as the organization of the power of all people. The right control of the State authorized the State to:

1. Arrange and organize use of land, inventory and maintenance. The rights concerning the designation of such designation were outlined in various products of other laws and regulations, in such areas as:
   a. Land use
   b. Spatial arrangement
   c. Land acquisition for public interest
2. Regulate the legal relationship between people with parts of the land. The rights relating to such legal arrangements were outlined in various product laws and other legislation, in such areas as:
   a. Restrictions on the number of fields and land area that may be controlled (land reform)
   b. Arrangement of right land management
3. Regulates legal relationships between people and legal actions. Rights concerning the regulation of legal relations and legal acts are outlined in various products of other laws and regulations, in such areas as:
   a. Registration of land, which was a series of activities undertaken by the Government continuously, continuously and regularly, including collection, processing, book keeping, and presentation and maintenance of physical data and

juridical data, in the form of maps and lists, on the plots of land and units apartment buildings, including the provision of a certificate of title to the existing land rights and property rights of the apartment units and certain rights that burden it (Article 1, paragraph 1 of PP 24 of 1997 on Land Registration)

b. Dependent right.

Based on Law no. 4 Year 1996, mortgage rights were security rights imposed on land rights covering property rights, use rights and building rights. Mortgages can be classified into legal relationships between people and legal acts on the land, because basically the mortgage is a follow-up (accessory) of a major commitment, such as the debt relation of the receivable secured by the mortgage. These three things were the essence of the BAL regulation Article 2, Paragraph 2, which concerned on the authority derived by the state to the government.

The land tenure by the state in the above context was a dominion whose authority raises responsibility, namely for the welfare of the people. On the other hand, the people could also have the right to the land. Article 2 of the BAL provided an understanding that understanding was controlled by the State did not mean owned. However, there was a right which authorized the State to regulate the above 3 points.

The contents of the State's authority based on the right to control the earth, water and natural resources owned by the Indonesian nation were merely "public", that was, the authority to regulate and not the authority to control the land physically and in the use of the land as the right holder on "private" land. Therefore, if the State needed land to build government offices, it was pursued by granting a right to land (use rights/management rights) to government agencies [15].

As for the scope of the regulation, The Right State of Control (RSOC or HMN) applied to all existing land in Indonesia, whether the land has not been abused, or land that has been hailed by an individual. Against land has not yet individually been abused, RSOC or HMN gave birth to the term "land directly controlled by the state," or subsequently referred to briefly as "state land", while the land which had been individually abused was called "land controlled indirectly by the state," or "land right". The authority over land which has been acquired by the individuals was basically passive, unless the lands was left untreated/abandoned so that the State may arrange for it to be productive or fall in the hands of the state [10].

The State's power of the land which a person has already been possessed with a right and it has been limited by the content of the right itself. This means that the State gives power to those who have to exercise their rights. The rights and limitations were stated in Article 4 paragraphs 1 and 2 of the BAL which stated that:

1. On the basis of the right state of control as referred in article 2, it was determined that there were various kinds of rights on the surface of the earth, called land, which may be given to and possessed by persons of their own or together with others and legal entities.
2. The land rights referred in paragraph 1 of this article authorize the use of the land concerned as well as the earth body and water and the space above it, is merely necessary for the immediate interest in relation to the land, within the limits of this law and higher regulations.

5 The Restriction of Controlling Land by the State

In the state constitution of Indonesia, the existence of the right to control the land by the state was mentioned explicitly in Article 33 Paragraph (3) of the 1945 Constitution which stipulated that the earth, water, and natural resources contained therein were controlled by the state and used for the people greatest prosperity. Theoretically, the arrangement was actually declarative. That was, with or without the provision of Article 33 paragraph (3) of the 1945 Constitution above, the state of Indonesia remains as the holder of the right to control the state over the earth, water, and natural resources contained therein.

With such a way of thinking it was understandable to van Vollenhoven's view that: "... in fact the state's right to land to govern and so on was nothing other than the state's power over all things and the land was a specimen, a special thing. If in this case we needed to give another form, then surely it should not reduce and change the state position against all things. "However, the explicit mention of state authority over land with the right to control the state remained more positive, because with the mention it means that there was an 'affirmation' that the right to control the state was attached to all the land in the legal environment of the Unitary State of the Republic of Indonesia (NKRI) [23].

In Article 2 Paragraph (2) BAL also explicitly spelled out the contents of the authority of the right to control the country. One of the contents was to organize and organize the inventory of land. The substance of Article 2 paragraph (2) might be interpreted including the provision of land for the sustainability development for the public interest. The Procurement of land for the supply of land might be voluntary, such as sale, purchase or disposal of rights, might also be compulsory, such as the revocation of rights. Since the compulsory of land acquisition was essentially a forced (unilateral) means, the arrangement of mandatory land procurement had to be done on a statutory basis. In a theoretical perspective, the occurrence of the state control over the state constitution was due to the delegation of the public element of the right of the nation as the right to control the highest land in the national land law (Article 1 BAL).

The right to control the land by the state still needs to be limited so that the right holder controls the state to be spared and not fall within the authority that harmed him. Restrictions on the right of the state control were necessary because each authority had the potential to be diverted. However, such restrictions should not be intended to dwarf the power of the state itself. The state should have a great power to organize its territory including organizing the tasks of government in the field of land. The important thing was the right to control the land by the State was ensured to be directed seriously for the realization of the greatest prosperity of the people.

The Right of Land Ownership over the State was limited by the rights to the land of a person and legal entity. The General explanation of the Numbers II of BAL provided an understanding that the state's power over land that was not owned by a right by a person or other party was broader and fuller than those lands which have been acquired by a person or legal entity. In other words, the state was more empowered to exercise its control over land which was still state land status, whereas for the land that has been attained the right, state power over the land was limited, for example: under normal

circumstances should not take the land without the consent of the owner and in circumstances forcibly removing the right to land should be subject to appropriate compensation. Therefore, the rights to a person's land or legal entity became the limiting authority of the state's right of control.

The explanation of BAL also explicitly stated that the Right to Control Land by the State was limited by the existence of customary rights of customary law community which in fact still exist. If the public interest was to have federation right, then the acquisition of the land could only be done after the customary law community of the right holder "hears his opinion" in the sense of being invited to deliberation and given recognition. Strictly speaking, under ordinary circumstances, it could not obtain the customary land without the consent of the customary law community that holds the Federation Right.

Regarding the right to control the land by the State, Mary SW Sumardjono said that the authority of this country was limited to two things: first, it was limited by the 1945 Constitution. That the things regulated by the state should not result in human rights violations guaranteed by the 1945 Constitution. The bias regulation against an interest and causing harm on the other hand was one such form of violation. A person who discharged his/her rights had to receive legal protection and a fair reward for the sacrifice. Second, the restrictions that were substantive in the sense of regulations made by the state should be relevant to the goal to be achieved that is for the greatest prosperity of the people. The authority of the State to make arrangements relating to this authority cannot be delegated to the private sector because it concerns the general welfare that is full of service missions. Delegation to the private sector that is part of the community will create a conflict of interest, and therefore is not possible.

6 Conclusion

The right of control from the State includes all the land within the territory of the Republic of Indonesia, whether or not the land which has been abandoned with an individual right. The land which has not been abused by the individual rights as the newly formed land acquired by nature through the process of sedimentation and land reclamation by BAL are lands directly controlled by the State.

The right of control from the State cannot be transferred to another party. But the State land may be granted with a right to the land to another party. The granting of a land-country right to a person or a legal entity does not mean relinquishing the Mastering Right from the land concerned. The land remains in state control. The State does not relinquish its authority as regulated in Article 2 of the BAL, on the land concerned. It is just that the authority of the State over the lands that have been granted with a right to another party, to be limited, to the extent of authority which is the content of the rights granted.

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