

The Perspective of Indonesian Administrative Law on the Authority of Industrial Estate Management in Order to Realize Welfare State

Alda Rifada Rizqi

Sekolah Tinggi Hukum Bandung
Bandung, Indonesia
aldarifada.rizqi@yahoo.com

Abstract—The Welfare State concept provides additional duties and responsibilities to the country, besides being responsible for the protection and security of citizens, the country is also obliged to realize the wellbeing of its citizens. The government has the authority in the field of industry that must be done with careful planning, one of them is by determining the industrial estate as the center of industrial activities that are expected to increase the effectiveness and efficiency. The industrial estate management is given the authority by the government to implement industrial administration. In this framework, the problem is what kind of authority that owned by the industrial estates management in implementing their duties, because this is related to their responsibilities and how industrial estates management can contribute in realizing the welfare state. In the perspective of Administrative Law, the government authority in the field of industry an attributive authority originated from the legislation, the government delegatively provides some of its authority to the industrial estate management along with its responsibilities. The industrial estate management has an important role, so that in the context of realizing the Indonesian welfare state must implement the principles of economic democracy or community-based economic prevailing in Indonesia.

Keywords—*administrative law; industrial administration; industrial estate management*

I. INTRODUCTION

The state is an organized authority that regulates legal community to realize certain goals for the commonweal. Thomas Hobbes further argues that the State is a body made by many people that promise to use it as a tool for their security and protection [1].

To achieve security, protection and welfare, the State is also an organization of authority, because in every organization called the state, there is always an organ or equipment that has the ability to carry out its will to anyone who lives in its territory [2].

In the article 33 paragraph 3 of 1945 Constitution, it is explained that the Earth, Water and natural resources are controlled by the State and are used for the people's prosperity. Economic aspects become very important to be considered by the State in order to realize prosperity. The rapid pace of

business and industry is the reason that the state must pay more attention to business and industrial practices. In this case, the presence of the State is realized by the given authority to manage and implement government affairs in the industrial sector in order to empower existing natural resources for people's prosperity through the supervision and control of business and industrial practices.

One form of state supervision and control in the industrial sector is the regulation regarding the determination of industrial estates that are expected to realize an advanced industrial development through strengthening industrial structures that are independent, healthy and competitive, by optimally and efficiently utilizing resources, and also encouraging industrial development to all regions in Indonesia by maintaining the stability of national economic improvement and unity based on democracy, justice and the noble values of the nation's culture by prioritizing national interests.

Industrial estate is a centralized area of industrial activities equipped by supporting facilities and infrastructure that are developed and managed by Industrial Estate Companies. Conceptually, Industrial Estate is a centralized area of industrial activities that are equipped with facilities and infrastructure, and other supporting facilities provided by the management agency (government / private), so that investors or entrepreneurs will have the enthusiasm to include their capital in the industrial sector. The availability of land, facilities and infrastructure as well as other adequate facilities, will result in economic efficiency in investing (establishing factories and industries) compared to the result when the investor must provide the facility by themselves.

The determination of industrial estates by the government aims to accelerate, disseminate and equalize the distribution of industrial development in all over Indonesia, so that the economic equality can also be felt by every citizen in each region of the country. The industrial zoning is also accomplished by considering the regional spatial plans, nationally utilize the regional resource potential, increasing industrial competitiveness based on the superiority of resources.

The determination of industrial estates by the government followed by the good management of industrial estates. Good

management of industrial estates is needed to create industrial estates that can increase the productivity of industrial activities. Industry is all forms of economic activities that process raw materials and / or utilize industrial resources to produce goods that have higher added value or benefits, including industrial services. Industrial estate is a centralized area of industrial activities equipped by supporting facilities and infrastructure that are developed and managed by Industrial Companies.

Industrial activities that are centralized in one area are expected to increase productivity so that the goods / services can have higher added value or benefits. It is also expected to stabilize economic interests on the one hand and maintain environmental sustainability, thus sustainable economic development can be realized. The authority to manage industrial estates is owned by both private or government industrial estate management, hereinafter referred to as industrial estate companies which seek the development and management of industrial estates.

The management of industrial estates can be interpreted as activities that include the operation and / or maintenance of supporting facilities and infrastructure for industrial estates including service activities for industries. In the framework of this management, industrial estate management with their authority implements industrial administration in order to create an orderly administrative industrial area so that it can support industrial productivity produced by industrial companies in its region.

As a form of industrial estate management, they are given the authority to set up industrial estate regulations that are arranged with the intention to specify provisions regarding the rights and obligations of each party involved in the industrial estate management, which are the Industrial Estate Company, Industrial Estate Management Company, and the Industrial Company included in the Industrial Estate.

Thus, it is necessary to further examine the source of industrial estate management authority in implementing industrial estate management including the industrial administration, so that industrial activities can be properly done. Moreover, the role of industrial estate management is also need to be considered in realizing a welfare state.

This research is descriptive-prescriptive with normative judicial approach. The type of data used is secondary data obtained from primary legal resource, secondary legal resource and tertiary legal resources. Data collection techniques are document studies and interviews. The collected data is then analyzed with qualitative methods.

II. DISCUSSION

A. *The Authority of Industrial Estate Management*

Indonesian independence was not obtained in an easy way, the founding fathers with all their sacrifices freed themselves from the shackles of colonialism to defend their nation and homeland. On August 17, 1945 Indonesian independence was declared through the reading of the Proclamation text by President Soekarno. The proclamation was a political act of Indonesian people to show the world that Indonesia had been

freed from colonialism and already had sovereignty. However, become a legally sovereign and independent country is not enough, legal action is needed as a basis for the legitimacy of Indonesian independence, this can be done by making agreements regarding the National principle which will be used as a guide in the life of nation and state.

The founding fathers of Indonesia agreed that Pancasila and the Constitution of the Republic of Indonesia is the National principle of the country. Pancasila as Rechts Idee means that Pancasila is an idea, feeling, creativity, and opinion that provide guidance in the life of the nation and state. Furthermore, as a staatsfundamentalnorm, Pancasila becomes the foundation in the development of national law in accordance with the needs and goals of the state.

Article 1 Paragraph 3 of the 1945 Constitution states that "Indonesia is a country of law". The statement is interpreted as a constitutional agreement of the founding fathers of the country which is used as a benchmark or basis in performing the life of the nation and state. The constitution is an agreement, consensus, or the highest agreement in State activities. After the highest agreement, the next problem is no longer the agreement or no longer the issue of right and wrong regulation. An agreement, right or wrong, good or bad, must be carried out, because the contents contain an agreement that was prepared based on the take and give compromise that was laboriously achieved by the representatives of the People's Consultative Assembly [3].

The state is an association which, acting through law as promulgated by a government endowed to this end coercive power, maintains within a community territorially demarcated the universal external conditions of social order [4].

The modern legal state (sociale rechtsstaat) has broader duties and obligations than the state of law in a narrow sense. In a modern legal state, the state has the duty to create prosperity and security for the benefit of all people. Thus, the modern legal state aims to create a Welfare State and eventually become a Social Service State which is given the public service duties [3]. A number of public services are provided by elected local authorities. Government may participate in or regulate the economy in a variety of ways [5].

The 1945 Constitution is the Welfare Constitution. This constitution is the liberating constitution and at the same time nation's integrating constitution, as a constitution of liberation (liberty) and integration (fraternity) for equality and prosperity. It is a constitution that frees the Indonesian people from all forms of colonialism and unites the Indonesian nation in a bond of Unity in Diversity (Bhineka Tunggal Ika). In the freedom and unity or harmony of life together, we need to realize the ideals of justice and prosperity that are evenly shared by all Indonesian people as a reflection of the progress and prominence of future civilizations [3].

In the current era of globalization, the dynamic influences of economic unity between countries are unavoidable, but at the same time we also need a mutual agreement in order not to dissolve in the era of pragmatism. The 1945 Constitution can be understood as a political constitution, as well as an economic and social constitution. Political Constitution

regulates the dynamics in state life, Social Constitution regulates the dynamics in civil society life, and Economic Constitution regulates the dynamics that occur in the business world and markets [3].

Constitutional Economy means that the economic practice is based on constitutional legal norms that are absolute must not be violated by the operational economic policy makers. The constitution is the highest law in a country, therefore all lower laws and regulations must be subject to and must not conflict with it. Constitutional economy is an economy based on a constitution, while an economic constitution is a constitution which contains basic norms of economic policy. Thus, the constitutional economy cannot be separated from the economic constitution, and vice versa [3].

Therefore, various developed economic policies must consider institutional aspects in the broadest sense, which include (i) institutions that work in the public or state sector, in the community sector, and in the business world, (ii) various law devices and legal institutions, and (iii) ethical cultures and traditions along with their supporting infrastructure that are expected to function well for the fair and equitable welfare [6].

Furthermore, in order to accomplish state obligations as well as the state of law, the separation of power has been determined to several groups, each of them is independent, has its own functions, and has its own power. Charles de Montesquieu (1689-1755) in his book *L'Esprit des Lois* (1748) divided the three power groups which were later known as *Trias Politica*.

This theory divides power in three main fields, each of them is independent, has its one function and one power. Executive power that enforce laws and government, legislative powers that have the function of forming laws, and judicial power that carries out judicial functions [6].

In accordance with the concept of the Welfare State, the role of executive power is substantial because the state has a responsibility to participate in maintaining peace, protecting citizens and social welfare. Asshidiqie further stated that the magnitude of the government's power (executive) caused the modern state bureaucracy tend to dominate and control the functions of the parliament, including in the western countries which generally claimed to be a symbol of democracy [7].

According to the discussion, Asshidiqie said that in the constitution of many countries there was a tendency to provide additional powers that were previously owned by the government, with the intention of giving temporary authority in supporting the implementation of urgent executive duties [7]. In achieving state goals, the role of the government is necessarily needed. This is in accordance with the function of the government in implementing Government Administration which includes the functions of regulation, service, development, empowerment and protection. The function of the state is concretized by giving authority to government officials to serve in the public law. Furthermore, it is said that the Actions in the public law can be in the form of Government Administration Decisions and Government Administration Actions.

In the perspective of administrative law, regarding the source of authority or the way to obtain authority, according to Philipus M. Hadjon [8], it is obtained through 2 (two) main ways, which are obtained by the attribution and delegation, while the mandate is stated as a separate way to obtain authority. This opinion is in line with Henc van Maarseveen's statement, that the authority possessed by the government in accomplishing concrete actions, regulating or issuing state administrative decisions can be based on authority obtained by "attribution", "delegation", or "mandate"[7].

Hamid S. Attamimi [7] with reference to the Dutch literature provides an understanding of attribution as the creation of (new) authority by the constitution (*grondwet*) or by the legislator (*wetgever*) given to a state organ, both existing and newly formed. This is in line with Indroharto who stated "At Attribution, there is a new administration of authority by a provision in legislation". Furthermore, as for the legislation made by the original legislators (MPR, DPR together with the President, and DPRD together with regional heads) and who act as delegated legislators (the President). This definition shows 3 (three) characteristics of attribution. First is the creation of (new) authority to make legislation. Second, the authority can be obtained by a constitution, law or regional regulation to an organ. Third, the state organ that receives the authority is responsible for the implementation of the relevant authority.

Delegation is seen as the given authority from officials or government bodies to officials or other government bodies. Similar opinion was also conveyed by Hamid S. Attamimi who interpreted the delegation as "submission of the authority to form legislation from delegans (holders of the original authority who gave delegations) to delegates (who received delegations) for their own responsibility".

Unlike the two sources of authority above, the mandate does not offer full delegation of authority, except to the extent of freedom in exercising mandated authority, the Mandate is a form of delegation of authority. The mandate or people who is given the mandate, implementing its power not on his own name but acts on behalf of the giver, therefore the Mandate does not have his own responsibility.

In accordance with Article 5 of Act Number 3 of 2014 concerning Industry, as a form of the state's responsibility in the people's welfare, the government has the authority to organize government affairs in the industrial sector. Government affairs in the industrial sector include aspects of regulation, guidance and development of industry. Furthermore, in Article 33 of Government Regulation Number 142 of 2015 concerning Industrial Estates, it is explained that the Management of Industrial Estates is implemented by Industrial Estate Management. Thus, the authority of the government in the industrial sector, particularly the management of industrial estates, is given to industrial estate management.

The business world, including in the industrial sector, has an important and strategic role in achieving the objectives of the Welfare State. Management of industrial estates is a part of the authority given by the government to industrial estate management to ensure that all activities in the industrial sector

are properly accomplished. Industrial estate management has the authority of delegations given by the government as agencies or companies that implement administrative practices in the industrial sector so that these activities are well organized.

One of the government interventions in the industrial sector is the establishment of Law Number 3 of 2014 concerning Industry and Government Regulation Number 142 of 2015 concerning Industrial Estates. One of the regulating points contained in the Government Regulation is giving an authority to Industrial Estate Management to implement industrial administrations in the industrial area. For instance, industrial estate management must facilitate one-stop licensing services to fulfill fast service in accordance with the regulations of the central government agency that organizes investment services and one-stop integrated services. Industrial estate management is also obliged to facilitate industrial relations for industrial companies located in industrial estates.

B. The Role of Industrial Estate Management in Realizing Welfare State

In order to realize the development of the country's economy, it has been stated that the principle of economic development in Indonesia is the principle of economic democracy or community-based economy. The management of industrial estates implemented by industrial estate management must be carried out based on the principles of community-based economy or economic democracy in order to realize welfare state. According to Mubyarto and Sri Edi Swasono, community-based economy or Pancasila Economic System has the following characteristics [9].

- The wheel of the economy is driven by economic, social and moral stimulus.
- The strong will of the whole community towards social equality (egalitarianism), in accordance with the principles of humanity.
- The priority of economic policy is the creation of a strong national economy, which means nationalism animates every economic policy.
- Cooperative is the main pillar of Indonesia's national economy ("soko guru perekonomian") and the most concrete form of joint venture.
- There is a clear balance between the planning at the national level and decentralization in the implementation of economic activities to ensure social justice.

On the other hand, according to Sri Edi Swasono, Pancasila economic system can be described as an economic system that is oriented or insightful to the principles of Pancasila, including:

- Belief in One and Only God/The Almighty God (the existence or enactment of religious ethics and morals, not materialism; religious humans carry out the Sharia owing to faith as the guidance of Allah).

- Humanity (humanistic, just and civilized economic life, against extortion, exploitation or usury).
- Unity (based on Indonesian socio-nationalism; togetherness and family-based, mutual cooperation, teamwork).
- Democracy (based on economic democracy, economic sovereignty, prioritizing the lives of many people, community-based economy as the basis of the national economy).
- Social justice for all Indonesians (the ultimate prosperity of the people, not a person's prosperity, fairness, prosperity).

The concept of community-based economy or Pancasila economic system above is very appropriate to be developed in Indonesia, with an assumption that the people (economic actors) in Indonesia are still poor in scale. In this context, the role of the state as a provider, regulator, entrepreneur, and umpire as stated by W. Friedman is highly expected. The economic principle that gives more prosperity to society is the embodiment of economic principles based on the 1945 Constitution, particularly Article 33 which is inspired by the Preamble, supported and completed by Articles 18, 23, 27 paragraph (2) and 34. Article 33 of the 1945 Constitution states that :

- The economy is structured as a joint venture based on the principle of family.
- Production branches that are important to the state and the control of livelihood of many people are controlled by the State.
- The earth, water and natural resources contained are controlled by the state and used for people's prosperity.
- The national economy is organized based on economic democracy with the principle of togetherness, efficiency with justice, sustainability, environmental insight, independence, and by maintaining a stability of progress and unity of the national economy.

It is agreed that the aim of the Indonesian state is to create a just and prosperous society, independent, united and sovereign based on Pancasila and the 1945 Constitution of the Republic of Indonesia, national development needs to be accomplished based on economic democracy. Development in the economic field is implemented in order to create a strong economic structure through advanced industrial development as an economic driving force supported by the strong strength and capability of resources. Industrial development must be implemented through strengthening industrial structures that are independent, healthy and competitive. Thus, resources must be used optimally, effectively and efficiently, and realizing industrial development in Indonesia by maintaining the stability, progress and unity of national economic based on democracy, justice, and noble values of national culture by prioritizing national interests over personal or group interests in order to realize a welfare state.

Irham Fahmi said the basic idea in connecting between people's welfare and industrial estate development is the occurrence of the trickle down effect (the existence of large investments can provide jobs opportunity for the community), the establishment of industrial estates will bring large capital in the context of national economic growth in the industrial sector, thus there will be a harmonization between economic growth and people's welfare [10].

Todaro said the establishment of industrial estates will produce major changes in the economic development sector. It will lead to several improvements in the economic field, which include opening up large investment opportunities [10]. It is explained that investment has an important role in the economy of a country because investment can create income and increase economic production capacity by increasing capital stock, an increase in industrial productivity in all fields, an increase in state revenues in the field of taxation, and create new and broader jobs opportunity. Then according to John Maynard Keynes by stating the multiplier theory in order to influence the flow of the economy, the government can increase the expenditure budget when the economy experiences recession, so that the jobs opportunity will increase, then the people's real income will also increase.

Therefore, the role of the industrial estate management in realizing a welfare state is very important. The industrial estate management company is expected not only to prioritize its own profits but also implements the industrial administration properly and carries out economic practices in accordance with the principles of economic democracy or community-based economy. By utilizing this principle, economic development can be implemented in order to improve the people's welfare and prosperity fairly and evenly. The management of industrial activity by industrial estate management must be based on community-based economy with the principle of togetherness, efficiency of justice, sustainability, environmental insight, independence, and maintaining the stability of national economic development and unity. Hence, prosperous society and entrepreneurs will be achieved, and the state income will be increased, so that the concept of welfare state will be realized.

III. CONCLUSION

In accordance with Article 5 of Act Number 3 of 2014 concerning Industry, as a form of the state's responsibility in the people's welfare, the government has the attribution authority to implement government affairs in the industrial sector. Government affairs in the industrial sector include aspects of regulation, guidance and development of industry. One of the forms of industrial development and guidance aspects is establishing an industrial estate, managed by an industrial estate company that is given the authority to manage the industrial estate. In Article 33 of Government Regulation Number 142 of 2015 concerning Industrial Estates, it is explained that the Management of Industrial Estates is accomplished by Industrial Estate Management. Thus, the authority of the government in the industrial sector, particularly the management of industrial estates, is given to the industrial estate management. Industrial estate management companies

both state-owned and private companies have delegative authority to manage industrial estates.

The given authority to industrial estate companies as industrial estate management has an impact on the obligations to perform their duties properly. Besides looking for the maximum profit from the industrial estates management, industrial estate management companies must also carry out their obligations in implementing industrial administration in industrial estates. The role of industrial estate management in realizing welfare state is very important. If the industrial estate management company implements the economic democracy or community-based economic principles, prosperous society and entrepreneurs will be achieved, and the state income will be increased, so that the concept of welfare state will be realized.

The authority given to the industrial estate companies to manage industrial estate comes from the delegation of government authority in the industrial sector, which is included in the legislation. Thus, the source of the authority is delegation. The form of authority delegation is contained in government regulation No 142 of 2015 concerning Industrial Estates. Considering many aspects related to the management of industrial estates, the author hopes that a special law which regulates industrial estates will be created. Thus, the legal sources of industrial estates management can give more detailed regulation regarding the industrial activities.

In order to accomplish business affairs in the industrial sector, the government as the authority holder can further improve its performance in terms of industrial administration, from the planning, development and operation stages of industrial estates. Therefore, the industrial sector as one of the economic development sectors can be properly implemented, so that it can improve the country's economy. The development of eco industrial park (environmentally friendly industrial area) is very important to be accomplished in order to realize sustainable development.

REFERENCES

- [1] I.G.P Astawa and S. Na'A, *Memahami Ilmu Negara & Teori Negara*, Bandung: Refika Aditama, 2015.
- [2] S.S. Martosoewignjo, *Sistem-Sistem Pemerintahan Negara-Negara Asean*, Bandung: Tarsito, 1976.
- [3] J. Asshidiqie, *Konstitusi Ekonomi*, Jakarta: Kompas Media Nusantara, 2016.
- [4] MacIver, *The Modern State*, London: Oxford University Press, 1960.
- [5] H.S.a.R.B.d. Smith, *Constitutional and Administrative Law*, 5th ed. Aucland: Penguin Books, 1985.
- [6] K. Harahap, *HAM dan Upaya Penegakannya di Indonesia*, Bandung: Grafiti Budi Utami, 2003.
- [7] R. Tjandra, *Hukum Sarana Pemerintahan*, Yogyakarta: Cahaya Atma Pustaka, 2003.
- [8] A. Fendri, *Pengaturan Kewenangan Pemerintah dan Pemerintah dan Pemerintah*, Jakarta: Raja Grafindo Persada, 2016.
- [9] P. Marojahan, "Politik hukum pengembangan ekonomi kerakyatan dalam perspektif negara hukum kesejahteraan," unpublished.
- [10] D. Ginting, *Hukum Kepemilikan Hak Atas Tanah Bidang Agribisnis: Hak Menguasai Negara dalam Sistem Hukum Pertanahan Indonesia*, Bogor: Ghalia Indonesia. 2015.