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“Legal Reconstruction in Indonesia Based on Human Right”

IMAM AS SYAFEI BUILDING

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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Political Directions For Land Law On Land Property Rights For The People

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Abstract

The Basic Agrarian Law can be placed as progressive law or prismatic law. As a progressive law, UUPA is intended as an instrument to create an advanced change in society in its economic sector through structuring the structure of land ownership, which on the one hand encourages changes in increasingly advanced agriculture and industry but does not neglect justice in the sense of creating equal distribution of land ownership. As a prismatic law, the principles of the UUPA are translated from 2 (two) groups of social values, namely modern and traditional according to the plurality of Indonesian society. The description of modern social values is reflected in the principles: individualization of ownership of land rights (Article 4 in conjunction with Articles 9 and 15), equal access for everyone to own land in all parts of Indonesia regardless of nationality or gender status (Article 4 and Article 9 and articles on land rights), and granting of land ownership for large-scale business development in the agricultural or industrial sector with limitations certain (Article 28 and Article 35). In evaluating the implementation of political policies on land law, reforms that are just, welfare, with decentralization principles, and good governance in the management of land resources are necessary. All of this is of course in order to achieve a common goal of achieving a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. and granting land ownership for large-scale business development in the agricultural or industrial sector with certain limitations (Articles 28 and 35). In evaluating the implementation of political policies on land law, reforms that are just, welfare, with decentralization principles, and good governance in the management of land resources are necessary. All of this is of course in order to achieve a common goal of achieving a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia. and granting land ownership for large-scale business development in the agricultural or industrial sector with certain limitations (Articles 28 and 35). In evaluating the implementation of political policy on land law, it is necessary to carry out reform that is just, welfare, with the principles of decentralization, good governance in land resource management. All of this is of course in order to achieve a common goal of achieving a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

Keywords: Political Land Law, Land Ownership Rights, People.

A. INTRODUCTION

Land for the people of Indonesia has a multi-dimensional meaning. First, from an economic standpoint, land is a means of production that can bring prosperity. Second, politically, land can determine one's position in community decision-making. Third, as a culture, it can determine the owner's social status. Fourth, land has a sacred meaning

because it deals with inheritance and transcendental problems.¹

Talking about national land policy, we cannot be separated from talking about land policy in Indonesia since colonial times. Land policy as a public policy in the form of legislation has been in effect for more than 50 years. Within

¹ Supriyanto, *Implementasi Kebijakan Pertanahan Nasional*, FH Unsoed Purwokerto, Jurnal Dinamika Hukum, Vol.8 No.3 September 2008, page 222

During this time, there have been three eras of power, namely the old order power, the new order power and the reform order power. Even though changing eras, basic national land politics has not shifted from the constitution of Article 33 of the 1945 Constitution of the Republic of Indonesia as outlined in Law No.5 of 1965 concerning Agrarian Principles (hereinafter referred to as UUPA).²

The UUPA contains societal values and a mandate to carry out a life and life that is humane and socially just. The embodiment of these values can be seen from the principles in the UUPA, namely the principle of land tenure to be used maximally for the prosperity of the people, the principle of respect for community land rights, respect for customary law, landreform principles, and planning principles in use. land and its preservation, as well as the last principle of nationality.³

This paper tries to provide a brief description of the political course of land law and its impact in certain aspects on the legal protection of community land ownership.

In various eras, land issues and national land politics mainly revolve around two main problems, namely, first, the problem of formulating the formulation and stipulation of national land policies, and the second problem of implementing these policies. Thus the success of a regime in power in land issues, can be seen and measured from both of these. Therefore, when the public criticizes a public policy, it should be done comprehensively and intelligently so that it provides fair and objective information.

B. PROBLEM FORMULATION

Based on the background of the problem above, a problem formulation is formed in the form of:

² Lufti Ibrahim Nasution, *Evaluasi Pelaksanaan UUPA, Program Masa Kini dan mandatang*, Makalah Seminar Nasional, BPN, 2005.

³ Maria SW Sumardjono, *Reorientasi Kebijakan Pertanahan*, Jakarta, penerbit Kompas, 2006, page 12

- 1) What is the direction of the politics of land law in Indonesia today?
- 2) How to evaluate the implementation of political policy on land law for the Indonesian people?

C. DISCUSSION

1. Current Political Direction of Land Law in Indonesia

In Mahfud MD's view, law cannot only be viewed as articles that are imperative or necessities that are *das sollen* in nature, but must be seen as a sub-system which in reality (*das sein*) is not impossible to be very determined by politics, both in the formulation of the material and its articles as well as in its implementation and enforcement.⁴

The politics of land law in terms of the choice of objectives and legal principles that are used as guidelines for realizing the objectives are contained in the UUPA. On the one hand, the UUPA serves as the elaboration of the objectives and legal principles of Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution, but on the other hand, the LoGA and its legal principles serve as a source for the development of national land policies and regulations.⁵The aim is to ensure the realization of prosperity for all Indonesian people. To achieve this goal, the LoGA contains principles of land tenure and use to encourage progress in the economic, industrial and other fields whose implementation depends on the availability of land. However, the LoGA also pays special attention to community groups who are weak and marginalized by previous land policies.⁶

Departing from the definition of legal politics above, it can provide a close understanding that national agrarian law

⁴ Moh. Mahfud MD, *Politik Hukum di Indonesia*, Jakarta, Pustaka LP3ES Indonesia, 1998, page 2

⁵ Padmo Wahyono, *Menyelidik Proses Terbentuknya Perundang-undangan*, Jakarta, Forum Keadilan, 1992, page 65.

⁶ Riant Nugroho D, *Kebijakan Publik, Formulasi, Implementasi dan Evaluasi*, Jakarta, Elex Media Komputindo, 2005, page 158

politics is the direction of agrarian law policy whose contents and forms are made by the determinants of state regulations based on the political configuration that affects them at that time. The results to be achieved in studying legal politics are whether a legal rule to be made or has been made will lead to the creation of: (1) legal unification-codification of law, or (2) pluralism or legal pluralization (legal dualism), or (3) simplification (simplification) of law, or (4) legal harmonization.⁷

With a choice of principles intended to guarantee the realization of these objectives, LoGA can be placed as progressive law or prismatic law.⁸ As a progressive law, UUPA is intended as an instrument to create an advanced change in society in its economic sector through structuring the structure of land ownership, which on the one hand encourages changes in increasingly advanced agriculture and industry but does not neglect justice in the sense of creating equal distribution of land ownership.

As a prismatic law, the principles of the UUPA are translated from 2 (two) groups of social values, namely modern and traditional according to the plurality of Indonesian society. The description of modern social values is reflected in the principles: individualization of ownership of land rights (Article 4 in conjunction with Articles 9 and 15), equal access for everyone to own land throughout Indonesia, regardless of citizenship status or gender (Article 4 and Article 9 and articles on land rights), and the granting of land ownership for large-scale business development in the agricultural or industrial sector with certain limitations (Article 28 and Article 35).⁹

⁷ Soetandyo Wignjosoebroto, *Dari Hukum Kolonial Ke Hukum Nasional; Suatu Kajian Tentang Dinamika Sosial-Politik Dalam Perkembangan Hukum Selama Satu Setengah Abad di Indonesia (1840-1990)*, Jakarta, Raja Grafindo Persada, 1995, pages 9-11.

⁸ Nurhasan Ismail, *Perkembangan Hukum Pertanahan: Pendekatan Ekonomi-Politik*, Jakarta-Yogyakarta, Huma dan Magister Hukum UGM, 2007

⁹ Nurhasan Ismail, *Arah Politik Hukum Pertanahan dan Perlindungan Kepemilikan Tanah Masyarakat*, FH

2. Evaluation of the Implementation of Political Policy on Land Law for the Community

Assessment is carried out both on the process and results of policy implementation. The assessment of the policy process is focused on the stages of policy formulation, especially to see the cohesiveness between stages and the extent to which programs and community services follow established policy lines. An assessment of the results is carried out to see the influence or impact of the policy, the extent to which the policy is able to reduce or overcome the problem. Based on this evaluation, the strengths and weaknesses of policies are formulated which will be used as input for the next policy refinement or the formulation of new policies.¹⁰

According to some experts there are many weaknesses that need updating, which include:

- a. The concept of state control over land and natural resources is too dominant. In fact, this concept has been manipulated by the authorities to eliminate and negate people's rights to land and other natural resources;
- b. The recognition of indigenous peoples' rights by UUPA is very weak. Even though ulayat rights are repeatedly mentioned in their clauses, almost all of them use conditions that weaken the customary rights themselves;
- c. UUPA narrows agrarian regulation to only the land sector because most of the clauses in this law only regulate land administration.¹¹

Usep Setiawan noted a number of things that should be noted:

- a. The improvement of the UUPA must have the meaning of strengthening the

UGM, Yogyakarta, Jurnal Rechtsvinding, Vol.1 No.1, April 2012, page 37

¹⁰ Edi Suharto, *Analisis kebijakan Publik*, Bandung, Alfabeta, 2005, page 14

¹¹ Usep Setiawan, *Menemukan Pintu Masuk Untuk Keluar*, Jurnal Analisis Sosial, Vol.9, No 1 April 2005, page 75

- populist spirit contained in it. Improvements must improve the contents of the LoGA, not delete or replace it with other laws which have a completely new spirit and content. Improving also means the need to strengthen the orientation of the fulfillment of the people's needs, not the other way around;
- b. Improving the UUPA must be carried out carefully, so as not to be dragged into the interests of globalization, capitalism which wants to strengthen its political economy interests in the agrarian field. Therefore, the essential content of improving the LoGA must ensure that agrarian political policies remain on the populist path as the original character of the UUPA;
 - c. The amendment of the UUPA should strengthen its position as an umbrella for agrarian legislation. The revised UUPA must become the umbrella for the implementation of just agrarian reform;
 - d. Regulations on the forestry, plantation, mining, water, forestry, coastal and marine sectors and so on must refer consequently to the UUPA;
 - e. The process of improving the LoGA should be carried out in a democratic and participatory manner. Ministries and other state institutions related to agrarian must be actively involved. Experts and non-governmental organizations (NGOs) whose integrity is tested must also be involved. And the most important thing to talk to is the people who have the most interest in agrarian affairs, farmers' unions, fishermen, indigenous peoples, and the common people;
 - f. The improvement of the LoGA must be followed by the preparation of a social basis for the implementation of agrarian reform. Awareness movements, political education and organizing the people or farmers, as well as the socialization of ideas to the public at large are absolutely

necessary to ensure that the agrarian reform agenda becomes the common agenda of the nation. Thus horizontal conflicts among the nation's children due to the implementation of agrarian reform can be avoided from an early age.¹²

The alternative offered to reduce or even eliminate the negative impact of the current politics of land law is to develop a "prismatic" land law politics based on the principle of legal diversity in unity, the principle of equality on the basis of inequality, the principle of prioritizing justice and benefit over legal certainty, differentiation of functions in cohesiveness.¹³

That is a bit of an evaluation of the implementation of national land policies where the important essence here is to prepare the potential to stimulate changes in agrarian reform policies that are more just with the principles of decentralization, good governance in the management of land or agrarian resources, or some call resources. natural.¹⁴

D. CONCLUSION

1. With a choice of principles intended to guarantee the realization of these objectives, LoGA can be placed as progressive law or prismatic law. As a progressive law, UUPA is intended as an instrument to create an advanced change in society in its economic sector through structuring the structure of land ownership, which on the one hand encourages changes in increasingly advanced agriculture and industry but does not neglect justice in the sense of creating equal distribution of land ownership. As a prismatic law, the principles of the UUPA are translated from 2 (two) groups of social values,

¹² Ibid

¹³ Nurhasan Ismail, Op.Cit, page 50

¹⁴ Arie S Hutagalung, *Konsistensi dan Korelasi Antara UUD 1945 dan UUPA 1960*, Jurnal Analisis Sosial, Vol 29 No 21, April 2005.

namely modern and traditional according to the plurality of Indonesian society. The description of modern social values is reflected in the principles: individualization of ownership of land rights (Article 4 in conjunction with Articles 9 and 15),

2. In evaluating the implementation of political policy on land law, it is necessary

to carry out reform that is just, welfare, with the principles of decentralization, good governance in the management of land resources. All of this is of course in order to achieve a common goal of achieving a just and prosperous society based on Pancasila and the 1945 Constitution of the Republic of Indonesia.

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