

# The Political History of Land Law in Indonesia

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## Introduction

Land is a very basic human necessity. In their lives humans carry out activities on the ground. Thus, whenever and wherever humans are in need or contact with the land, both directly and indirectly. Not only during life, even at death humans still need land for burial. Land also has a social function where individuals can manage and utilize land without having to own it. In line with the development and progress of the times, one thing that cannot be denied is that humans are increasingly increasing while the land will never increase even possible reduced, whether caused by shifting, abrasion or natural disasters.

In the history of community development, there are three features of land ownership. First, the pattern of pre-capitalist society. In this style the community sees / views land as a means of production that is communally controlled so that there is no concept of land ownership in this form of community. Second, the style of capitalistic society. In this style the community sees / views land as an instrument of production that is owned individually, and in this concept, individuals have rights and can freely own land or move it through market mechanisms to others. Third, the style of socialistic society. According to Syaiful Bahari, this style is almost the same as pre-capitalist where in this form of society land is seen as a means of production which is collectively controlled and the concept of ownership is also not justified. In addition to the three features, there is a form of land tenure as a means of production in indigenous peoples whose use and management arrangements are determined by the applicable customary law.

This paper aims to look at the real political issues of agricultural law in Indonesia. It covers the history of the development of agricultural law in Indonesia from pre-independence until the time of reform, what are the key issues in Indonesian agricultural law, and what are the main goals of the reform of agricultural law in Indonesia. The question is not in the purview of the legal system but in the political arena of law, and in it there are political, social, and cultural aspects as well.

## Literature Review

### Dutch colonial period

The principle of authority and entrepreneur is almost indistinguishable from the treatment of land or crops. This can be characterized by 4 (four) characteristics of being a unified legal system, namely Domination, Exploitation, Discrimination, and Dependencies, which aim to provide an opportunity for the private (foreign) party to obtain large tracts of land from the government in quite a long time by means of pay rent. This opens up opportunities for foreigners to obtain usufructuary rights over the land of the earth-son. In the end, this gave birth to the rules of rent between the earth-son and non-earth-son, as stipulated in Agrarische Wet (AW) Stb. 1870 No.55. This regulation causes irregularities and causes abuse of authority. So the Dutch East Indies Government then issued a policy of Vervreemdingsverbod Stb. 1875 No.179, and subsequently an agrarian policy was issued in Agrarische Besluit (AB) as the implementation of this AW provisions. This AB itself is promulgated in Stb. 1870 No.118. The most important thing in this AB regulation is the existence of land law politics regarding the state domain statement (king / queen) or better known as Domein Verklaring. Which means "that all other party's land whose eigendom rights cannot be proven is the state domain", so that there are two forms of state land known, namely: (1) Free State Land (*Vrij Landsdomein*), is land that has never been or has never been covered by any rights. As long as it does not register its rights by voluntarily submitting to western law then the land that is owned by the people is part of or status as state land, which is considered as the land of the people occupied by the people. (2) State land that is not free (*Onvrij Landsdomein*)" is state land on which there are people's rights to land or land that is controlled or occupied by the people based on their customary law (customary community's customary rights).

### **Indonesian Independence Period**

In order to reform the Dutch colonial agrarian law, it unified national conceptual law and provided legal assurance. Governments are gradually reorganizing ownership, and land ownership and legal relations related to land ownership to establish prosperity and justice, in line with the planning for the provision of land, water, and natural resources contained therein. The process of renewal takes place and continues in four periods / time, that is:

#### *Early period of independence*

The proclamation of independence of the Republic of Indonesia August 17, 1945, with the birth of the Constitution of the Republic of Indonesia of 1945 (Constitution 1945), which in this Law in Article 33 paragraph (3) reads "The earth and water and the natural resources contained therein by the country and used for the greater prosperity of the people ". Although this constitution has been passed twice, namely the RIS Constitution 1949 and the 1950 Constitution, it is under the Presidential Decree of July 5, 1959 that Indonesia returned to the Constitution of 1945. During the change and return to the 1945 Constitution the government has produced several legal products (The Law) on partial agrarianism has also succeeded in making the draft of the National Agrarian Law a product of national law which was enacted later.

#### *Old Order Period*

Governments make policies that focus on landreform within the framework of universal development, and enact legislation on land redistribution in accordance with Law No. 56 Prp Year 1960 and Law No. 2 1960 of the agreement on agricultural produce. Before that, there was also a Law No. 28 of 1956 regarding supervision of transfer of land rights to plantation, Act No. 1 1958 on Elimination of Particulate Land and Eigendom Verporing a total of 10 odors, and Law No. 29 of 1959 on Regulations and Actions on Plantation Lands. This is a process of nationalization of the land before the birth of the Law. 5 1960 of the Agrarian Laws (UUPA). This has shown the existence of the political realm of post-independence national defense law.

#### *New Order Period*

At this time the government focused on issues of development and economic growth, and started the economic development policy by giving birth to Law No. 1 of 1967 concerning Foreign Investment (PMA) to attract foreign investment in the management of Indonesia's natural resources. Land reform policy at this time was considered only a technical problem. This government regime eliminates the laws and regulations which form the basis of land reform, especially with the issuance of Law No. 7 of 1970 which abolished the Law on Land Reform Reform and Law No. 2 of 1960 concerning Production Sharing Agreements which were sociologically no longer enforced in this era. Land reform which became the main program of the Old Order in the equal distribution of land for the greatest prosperity of the people became blurred or neglected. The New Order Government's land policy is more aimed at centralizing land tenure and economic development, namely by increasing agricultural production to achieve self-sufficiency in food (through the green revolution) and can even export agricultural products to a number of countries. In 1993 the President issued Presidential Decree No. 55 of 1993 governing the revocation of regulations concerning land acquisition. In addition, in terms of land registration, the New Order Government replaced PP No. 10 of 1961 became PP No. 24 of 1997 concerning Land Registration, which is considered by many to be an Agenda of the World Bank and other international financial institutions in Indonesia. This regulation is intended not for the purposes of structuring land tenure through land reforms but for achieving legal certainty of ownership of land rights through certificates.

#### *The Reformation Period*

Changes in political constellation, strengthening the realm of democracy, and the implementation of a decentralized system have brought the spirit of agrarian reform. This spirit then gave birth to MPR Decree No. IX of 2001 recommending an update or revision on UUPA. Landreform re-entered the important program of agrarian reform during the Reform Order. The direction of the agrarian reform policy as referred to in Article 5 of the MPR TAP is: (a) Implement the restructuring of ownership, use, and utilization of land justly by paying attention to land ownership by the people; (b) Carry out land acquisition through comprehensive and systematic inventory, ownership, use, and utilization of land within the framework of landreform enforcement.

In the design of agrarian resources mentioned land and agrarian resources other than land whose control and ownership exceeds the state-controlled maximum and remains a landreform object for distribution to citizens of the community belonging to the group that has acquired the right to redistribution of land, and will also be distributed to the poor. The rest will only be given to productive entrepreneurs who involve plantation farmers.

## Politics of law

### *Politics of law*

Legal politics is a policy taken by the state through its institutions and / or officials to determine the law that needs to be replaced, amended, maintained, or the law on what needs to be regulated or issued so that with this policy the implementation of the state can take place properly, orderly, and safely so that the country's goals can be realized in stages and planned. Further mentioned, legal politics is the basic policy of the state administrators who determine the form, content, and direction of the law to be formed and about what is used as a criterion to punish something (*ius constituendum*). From the other side it can be said that the problem of legal politics is a matter of reasoning values, determination and development for the benefit of individuals and society, as well as the granting of its legal form. In addition, there are also other views which suggest that legal politics must be understood as part of social policy, namely the efforts of every community / government to improve social welfare (social policy) and legal protection policy (defense policy). The policy can be related to the formation of law and its application, or as a statement of the will of the state authorities regarding the law in force in its territory (*ius constitutum*) and regarding the direction of development of the law that was built (*ius constituendum*).

Furthermore, it is stated that legal politics is a directive or official line that is used as a basis and a way to make and implement law in order to achieve the goals of the nation and state. It can also be said that legal politics is an attempt to make law as a process of achieving the goals of the state. Besides that, legal politics is an effort to make law an answer to the question of what the law is going to do in the formal perspective of the state in order to achieve the country's goals. Furthermore, legal politics is also referred to as an activity to determine a choice regarding the objectives and methods to be used or as an activity to choose values and apply values to achieve legal objectives in society through legislative politics or limited to written law only. Related to this legal politics, in the literature study found several related terms, including political law, policy of the law, and legal policy. The term political law is the same as the understanding of political science which is understood as "the branch of learning with the study of the principles and conduct of government"

### *National Law Politics*

National law is defined as the basic policy of state administrators in the field of law that will, is, or has been in force, which is sourced from the values that have prevailed in society to achieve the goals of the country aspired. Whereas national legal politics is a policy of developing national law to realize a unified national legal system based on the Pancasila and the 1945 Constitution. From the above definitions of national legal politics, it can be determined that the territory of national legal politics is in the territory of the Unitary State of the Republic of Indonesia.

## Politics of National Land Law

Politics of national land law is the direction of legal policy in the field of land (agrarian) for actions to preserve, preserve, exploit, cultivate, benefit, manage, and divide land and other natural resources contained therein for the interests and welfare of the people which in its implementation can set forth in a statutory regulation containing principles, grounds and norms in the field of land (agrarian) as the implementation or direct elaboration of article 33 paragraph 3 of the 1945 Constitution.

The regulation of land activities is then made in the form of a law, namely the Basic Agrarian Law No. 5 of 1960. Furthermore, the government has made several updates (changed or replaced) implementing regulations for the Act because it is no longer appropriate or possible to be enforced in the present.

## Basic State Authority in the Politics of Land Law

In the opening of the 1945 Constitution it was mandated that the Government of the Republic of Indonesia must realize social justice for all Indonesian people. This is a constitutional guarantee that is in article 27 paragraph 2, article 28, and article 33 paragraph 3 of the 1945 Constitution. In its fundamental relation to the relationship between Indonesian citizens and land, the constitutional guarantee provides the basis for the birth of state authority to regulate and manage sources agrarian power, including land, throughout the territory of the Republic of Indonesia, which is known as the right to control the state which is further implemented as provided for in article 2 paragraph 2 – PA Law.

This authority includes: (1) Organize and maintain the allocation, use, preparation and maintenance of earth, water, and space; (2) Establish and regulate the legal relationships between people with the earth, water, and space; (3) Establish and regulate relationships between people and legal acts involving the earth, water, and space.



Article 2 paragraph 3 of the PA Law further states that “The authority which derives from the right to rule from that State in paragraph 2 of this Article is used to achieve the greatest prosperity of the people, in the sense of happiness, prosperity, and prosperity of the people, nation and State of the Law of Indonesia independent, sovereign, just, and prosperous.” In order to achieve social justice, Article 7 of the PA Law mandates that in the interests of the public interest the ownership and ownership of land beyond the limits is not allowed.

Further to achieve the purpose referred to in article 2 paragraph 3 of the PA Law then in Article 17 of the PA Law the maximum and / or minimum area of land may be owned by a person or a legal entity. Setting the maximum limit is based on the rules of the law. Pursuant to article 7 and article 17 of the PA Law, the Law was later issued. 56 Prp. 1960 on the Determination of Agricultural Land (Law 56/1960).

## **Direction of Legal Policy in the Field of Land**

### *During the Dutch Colonial Period*

The politics of Dutch agrarian law is influenced by their trade politics which focuses on how to increase Indonesia's yield with the lowest possible purchase price and the highest selling price in the European market. In other words, it is to the great advantage of the colonial rulers themselves as entrepreneurs. This is evident from the four features of his political system. (1) Dominance, the dominant principle rests in the power of the minority occupiers over the majority indigenous people. This domination was supported by the military superiority of the colonial powers to control and rule the indigenous people. (2) Exploitation, the exploitation was done by extorting the resources of the colonies for the benefit of the colonial nation. The natives were forced to labor and their produce to be handed over to the colonists, who were then sent by the colonists to their mother country for their own prosperity. (3) Discrimination, takes place with racial and ethnic differences. The colonialists were regarded as superior, while the colonized indigenous people were regarded as inferior or inferior. (4) Dependencies, the dependence of colonial communities on colonizers. Occupied societies are increasingly dependent on colonizers in terms of capital, knowledge and technology, and skills as they are weak and poor.

### *In the Early Independence Period*

At this time there was a push or demand for the government from various layers of society to make a product of national agrarian law. This was responded by the government responsively. Therefore the government issued several laws in the field of agrarian namely; (1) To issue various laws partially in the field of agrarian which contains the revocation of some parts of the agrarian law of the Dutch oppression which are very oppressive; (2) Draft a National Agrarian Law to replace Agrarische Wet (AW) 1870 through several design committees. In the end the draft law was successfully drafted but the promulgation was only carried out in the next period. In general, legal products and government responses to agrarian issues during this period were in the form of legal products and responsive actions.

### *During the Old Order*

The PA Law was a very responsive law, as it revised the entire system adopted in the Agrarische Wet (AW) of 1870 and all its implementation rules. The fundamental issues in the old agrarian law that were repealed by the PA Law include domeinverting, feudalism and the right to conversion in land law, as well as legal dualism. The PA law emphasizes the existence of social functions for every property on the land. Furthermore, the PA Law can be seen as the beginning of law reform and development in Indonesia. To implement the government's policy, the PA Law sets out land reform lines covered in the Agrarian Reform Program of Indonesia, which includes; (1) Land law renewal, providing land rights for the benefit of the government, individuals, and business and religious entities together with the assurance of legal certainty with the maintenance of land registrations; (2) The abolition of foreign rights and colonial concessions on land, which was transferred to the government; (3) End the feudal suppression gradually; (4) Renewal of ownership and ownership of land as well as the legal relationships involved in establishing prosperity and justice later known as landreform programs; (5) Planning, procurement, and allocation of land and its planned use in accordance with its sustainability and capability, later known as land acquisition activities.

### *During the New Order*

The rule of the Soeharto regime is marked by the passing of several Acts, including Law No. 1 In 1967 of Foreign Capital Investment (PMA), Law No.7 of 1970 in lieu of the Law on Landform Courts, and Law No. 2 1960 (continued with the publication of Permendagri No. 11 of 1975) which sets out the procedure for land liberation (previously there was Inpres No. 9 of 1973 on the Arrangement of Types of Public Interest). In fact, agricultural policy during this period was more focused on centralizing land ownership in the framework of

economic development to increase agricultural production to achieve self-sufficiency without regard to the prosperity of the people and without regard to the legal hierarchy.

#### *In the Reformation Era*

Numerous agricultural conflicts that have often been detrimental to the community have pushed for legal reform in the agrarian field. This agrarian law update is in accordance with RR MP No. IX / MPR / 2001 on Agrarian Update and Natural Resource Management. Such agrarian reforms will only succeed, if the agrarian law's renewal puts the farmers at the forefront of national economic development, without neglecting the interests of investors and large capitalists as one source of financing for development.

### **State Land and Land Rights**

#### *State Land*

Article 33 paragraph 3 of the 1945 Constitution expressly states that "The earth, water and natural resources contained therein are controlled by the State. Nevertheless there is still a connection from the sentence, which is: "And is used for the greatest prosperity of the people". Therefore, state land is land that is not or has not been clung to rights, that is, among others. (1) Land which since the beginning has not been given land rights. (2) Land of former foreign parties affected by the provisions of Law No. 1 of 1958 (nationalization). (3) Land rights expiring and not extended. (4) Land rights whose rights have been released by the rights holders. (5) Land that has been revoked according to Law No. 20 of 1961 (for public use). (6) Land whose rights are revoked. (7) Land rights whose owner dies without leaving an heir.

Although administratively referring to state land is used to indicate land that is not or has not been clung to rights, but does not mean that the state land is free from the interests of certain parties. Land rights that have been released or released by certain parties, even though their status is state land, the party who has a civil - rights has an interest in the land. Likewise, government land assets originating from the nationalization or acquisition of land through the APBN / APBD even though the status of the land is state land but the government clearly has an interest in the land.

#### *Land of Rights*

The term land rights refer to state land that has been granted or vested in registered rights under the PA Law: (1) Property rights; (2) Business use rights; (3) Building rights; (4) Usage rights

All rights to the land impinge on the right of state control, so the right to control the land is limited by the right to the land. Instead, on land that is directly owned by the state, the sovereignty of the nation is more complete. States may grant rights to individuals or bodies of law. Land registered rights are issued as proof of rights that provide legal certainty and prove the validity of juridical data on the status of land, which is very important to the rights holder as well as to the rights of third parties.

### **Land Conflicts and Disputes**

Such is the importance of land in human-lives therefore everyone always tries to control and own the land. Although there are many government policies in the form of laws and regulations and implementing regulations, the reality is that they have not been able to accommodate the possibility of land disputes in the community. This condition then encouraged the birth of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (APS). This law emerged as a response in connection with disputes in the field of land and its resolution through channels outside the court. This is very relevant, considering that there are a lot of cases that are related to land disputes, especially those in the Supreme Court (MA).

### **Conclusions & Suggestions**

#### **Conclusion**

When it comes to legal politics, we are actually talking about government policy which is then enshrined in a law that is legally binding. And when it comes to policy, we cannot speak of the law alone, but there are also various aspects, such as social, cultural, and even the interests of the parties involved in the policy making. This is what makes the review of the politics of law more colorful and compelling than the review of other areas of law.

In relation to the politics of national land law, it can be briefly stated that national politics of national law is the policy of government in the form of legislation aimed at regulating land governance in Indonesia. The establishment of this national land law itself involves many aspects and interests of both the public and the authorities.

When we look at the history, there are at least 5 different phases of agricultural law in Indonesia. The first phase was during the Dutch colonial rule. At present the existence of agricultural law aims to accommodate the interests of the colonial peoples who want to extract the bulk of the land from the archipelago. The second phase is in the early days of independence. At present the law of alienation was created to replace the law of reproduction in the Dutch colonial period and intended that existing agricultural law could accommodate a great deal of national interest, especially during the physical revolution. The third phase is during the reign of the old order. It was at this time the first landreform process, where lands that were once colonial concessions were then taken over by the state for later distribution to the people. The fourth phase is during the reign of the new order. The agricultural policy was primarily aimed at centralizing land ownership in the framework of economic development and increasing agricultural production to achieve self-sufficiency. And the fifth phase is in the post-reform period. Currently land management policy is focused on at least two things namely restructuring land ownership, ownership, use, and utilization of land as well as facilitating land acquisition through comprehensive and systematic inventory and ownership, ownership, use, and utilization of land.

In fact, although various phases have already been passed and various land-use legislation has been created, various issues and disputes regarding this land issue have yet to be resolved. And when we look into the legal field, criminal or civil matters related to this land dispute have settled the case in the Supreme Court.

### Suggestions

The political history of national defense law in Indonesia has indeed gone through a long period of travel from the Dutch colonial period to the reform era. This long journey itself has produced various laws in the field of agriculture based on the importance of its security. However, this long journey does not seem to be able to resolve the issues related to the land issue.

Given this situation, it should be up to the stakeholders, especially the government, to take more strategic steps to address the issues regarding the national land issue. There are at least 4 strategic steps the government can and should take. The first strategic step is that the government should create a grand design regarding this national land policy. It should be noted that many existing land policies are incidental and for the sake of convenience. As a result, many of the land rules that overlap and do not reflect the interests of the people. With such grand design it becomes clear what is the purpose of this national land management, as well as what steps should be taken and the laws and regulations that need to be made to achieve the goal of national land management.

The second strategic step is for the government to strengthen the inventory and registration system of land ownership. This is because the existing land inventory and registration system is very poorly evaluated. Do not regulate the land of the people as a whole, to regulate their own land even if the government is in trouble. As a result, there are often misunderstandings and overlapping of land ownership, which is currently the main source of land conflict in Indonesia.

The third strategic step, the government, together with legislative and judicial agencies, needs to create a breakthrough in the resolution of land disputes. It is a common secret that settlement of disputes in court is time-consuming and cost-effective. Additionally, there are often two overlapping decisions on the same thing. It is hoped that such breakthroughs will be expected to resolve the dispute quickly, efficiently, and provide consistent legal certainty. And the fifth strategic step is that the government needs to redo the landreform process that has begun post-reform. With this landreform the ownership of the land should not be returned to the country, to be distributed to the people. Through this it is hoped that land ownership can be enjoyed by the whole community and the utilization of these land resources can be optimized for the greater prosperity of the people.

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