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REFORM OF ROAD AGRARIA TOWARD PEOPLE'S PROSPERITY IN THE CONCEPT OF RIGHTS TO COUNTRY

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The purpose of this study is to find the Reform of Road Agraria Toward People's Prosperity In The Concept of Rights to Country. The rationale of the Agrarian Reform Program will affect the rate of welfare of the people. The Agrarian Reform is a national agenda that is expected to provide a bright spot for the realization of social justice and the achievement of community welfare, and is expected to help the poor from economic downturn toward a decent and prosperous life. This is qualitative study with phenomenology methods.The results show that the Agrarian Reform can not be negotiable. Agrarian reform is the most fundamental answer to social problems in society by putting back the foundations and development goals for people's welfare and social justice.

Keywords: Agrarian Reform, Social Justice, Community Welfare, Landreform.

1. INTRODUCTION

The mandate of the constitution in the field of land demands that the politics and policies of the land can make a real contribution in the process of realizing "social justice for all Indonesian people." (Sila the fifth Pancasila in the Preamble of the 1945 Constitution), and realizing "the greatest prosperity of the people" (Article 33 paragraph (3) of the 1945 Constitution). These basic values require the fulfillment of the right of the people to be able to access various sources of prosperity, especially land that will ensure the sustainability of the community system, nationality and state and also shows that Indonesia uses the concept of the state of prosperity (Wicaksono & Nugroho, 2015).But the realities faced, the problems of land continue to emerge in the dynamics of our nation's life. This situation is increasingly evident, as a consequence of the basic understanding and the Indonesian view of the land. Most Indonesians view land as a means of shelter and provide livelihood so that the soil sounds a very important function (Hutagalung, 2013).In the age of the Republic of Indonesia to the 72nd Indonesia should have felt the meaning contained in Article 33 paragraph (3) of the 1945 Constitution, "namely: earth, water and natural resources contained therein in the controlled by the state and used for the greatest prosperity people". But what is expected (das sein) has not materialized. This is because land issues are still not resolved to date. This condition is reflected, where not all Indonesian people have the land as the foundation of their lives, which in the end in the process of impoverishment will be easy to happen, while on the other hand there are still a handful of people who have excess land. This condition indicates the absence of justice and prosperity for the people.

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In order to realize the national objectives as in the Preamble of the 1945 Constitution, in particular to improve the general welfare, the starting point or inevitably the agrarian reform should be realized immediately.Agrarian reform includes a levy on the ownership, control and use of agrarian resources, especially for the interests of farmers, farm laborers and small people in general, which essentially is the redistribution of land as well as the basis for prosperity (Arisaputra, 2015).Actually, the spirit of agrarian reform has been echoed since 1960, with the invitation of Law no. 5 of 1960 on Basic Regulations of Agrarian Principles or better known as Basic Agrarian Law (UUPA). But until now uu has not been effectively used in realizing agrarian reform.

The effort to implement agrarian reform was initially intensively carried out by various elements, including, government, academia, NGOs and related parties, by conducting various meetings, including seminars, workshops, interactive dialogues, even hearings with DPR-RI, DPD -RI, especially in post-amendment with the issuance of TAP MPR-RI No. IX Year 2001 About Agrarian Reform and Natural Resource Management. But what can be said, the initial effort intensively carried out eventually weakened, even until now more or less 16 years, (2001 - 2017) the desire of the MPR TAP can not be realized.

As the main focus of agrarian reform is how the Indonesian people can have a plot of land for the prosperity of the people, because with the ownership of the land is expected to improve people's living standards, through the control and utilization of land. Therefore, efforts to implement the agrarian reform program must be supported by all the children of the nation, and on the other hand the government must seriously facilitate the creation of agrarian reform program.

2. LITERATURE REVIEW

2.1. The Underlying Concepts Hastened Agrarian Reform

Philosophically, the main problem of agrarian policy is the politics of agrarian law which prioritizes natural resources, especially land not as big as people's prosperity in accordance with the mandate of our constitution. Even the birth process of agrarian policies is driven by the interests of large investors and international financial institutions.

Today's land-based land law policy often brings up debate, with diverse views expressed in public spaces. This view is based on the different perspectives on land policies that are heavily influenced by pragmatic politics from policy makers (Handoko, 2014). In addition, agrarian policies and natural resource management are still unchanged from past policies.Based on the review of existing policies found a number of characters, in which legislation or policies made more oriented to large, centralized capitalist, characterized by the granting of great authority to the state (Syarif, 2013).

State control over agrarian resources is a concept that is based on the understanding that the state is an organization of power of all people. The people here are constructed by the 1945 Constitution to give the state a mandate to make policies (beleid) and bestursdaad, regelendaad, management (bebeersdaad), supervision (toezichthoudensdaad), for the greatest benefit of the people's welfare (Syarif, 2013).Concerning the concept of the State's Right to Control, Mahfud MD argues that the State's Controlling Rights should give way to other responsive acts, because from that right the government can take actions in favor of the public interest. That is, the government as a representation of the state in a proactive and responsive regulation about the regulation and implementation of agrarian resource management within the framework of its alignment to the interests of society. But it is unfortunate that various policies published in the past have often deviated from the philosophy and principles contained in the UUPA (Republic of Indonesia. 2013).

Arrangement in the field of land by the Basic Agrarian Law (UUPA) covers the things that are basic, so that over time, things that have not been antipasi need to be equipped in accordance with the development of science, technology, socio-economic and cultural, to be able to accommodate the development needs increasingly complex society.

BAL (UUPA) which was originally a legal fundamental for land policy in Indonesia, became non-functional and even substantially contradicted by the issuance of various sectoral regulations. Where the concept of State's Controlling Rights set forth in each sectoral legislation has contributed to a number of denials, and there has been a marginalization of the rights of the people.

The concept of agrarian policy is often very interesting at the abstract level, but at the implementation level it is the opposite. For example the concept of the right to control the state that supposedly lifted from the treasury of customary law, that is ulayat right which describes the strong will to realize the national agrarian law rooted from the original law of Indonesia, so that philosophically get its place of justification (Sodiki, 2013).

The problems of agrarian resources, especially land development, are growing in line with the growth and development of people's lives. The problem of land is caused by the sectoral ego of the ministries/institutions associated with the land to make sectoral laws that castrate the Loga, and sectoral laws should be based on the Law on Agrarian Law which is the legal fundamental for agrarian resource legislation. According to Achmad Sodiki, the core of the problem is the State's Controlling Rights set out in the sectoral law does not show the same interpretation of the content and its limits. So it seems that the overlapping of authority will ultimately lead to legal uncertainty (Sodiki, 1999). Differences in viewpoints or more precisely because each stand or refer to different provisions and legal basis. On the one hand, the legal basis used is the LoGA and its implementing regulations, while on the other hand (Ministry of Forestry), for example, is based more on the provisions of the Forestry law and its implementing regulations (Supriyadi, 2014).

The establishment of a sectoral law (eg Forestry Law, Mining Law, etc.) that does not have any effect on the BAL, makes it difficult to resolve comprehensive, integral and holistic land issues, and is triggered by government delays in implementing the mandate of the BAL by making its implementing regulations. For example, where the regulation of customary rights was born in 1999, namely by the issuance of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Affairs Agency no. Law No. 5/1999 on Guidelines for the Complaint of Rights Issues of Indigenous and Tribal Peoples, which has been amended by Regulation of the Minister of Home Affairs No.52 of 2014, while Article 3 of the LoGA urges to grant firm status on the existence of communal land rights.

In addition to other examples, where many land cases are caused by the arbitrary application of legislation to eliminate individual property rights. Like, Law no. 26th 2007 on Spatial Planning that normatively respects individual ownership rights, is in fact implemented as a tool of government to suppress, kill, and even eliminate individual rights. For that reason it is necessary to think about issuing the law of property rights (Limbong, 2012), as instructed by Article 50 Paragraph (2) of BAL, which until now has not been implemented.

3. METHOD

The type of research used is the type of normative legal research, namelyresearch conducted by reviewing norms or rules that apply in society, and become the reference of everyone's behavior (Muda *et al*., 2016). This research is done by reviewing and analyzing the materials libraries in the form of legislation, documents and books related to the issues to be discussed (Lubis *et al*., 2016). Legal research normative is also called theoretical/dogmatic legal research. Legal research is essentially a scientific activity based on methods, systematics and specific thoughts, which aims for learn one or more specific legal phenomena by the way analyze it (Muda and Dharsuky, 2015). For that, held a thorough examination of the facts the law to then seek a solution above the problems that arise in the symptoms concerned. Legal research activities need to be done continuously to disclose the real truth of a legal event as an empirical fact becomes the object of legal research. Legal research can be divided into 3 (three) types, namely: normative legal research, normative-empirical law research, and empirical legal research.

4. RESULT AND DISCUSSION

4.1. Result

4.1.1. Overlapping Agrarian Resource Arrangement

Other problems arise, especially in the formation of laws. Where the formation of legislation has not fulfilled the purpose of law making, because it is not supported by the professionalism of its human resources, which play a role in the formation

of law. The formation of a law is always a requirement with a political interest, as well as exacerbated by weak inter-sectoral coordination in the preparation of material content of the law (Yuliandri, 2011).Regarding the quality of DPR members in the drafting of the Bill can refer to Jimly Asshiddiqie's opinion, which says: there are several factors that could be the cause of the decline in the quality of legislation products. First, majority politics is the basis of the thinking of lawmakers, not constitutional measures. The majority politics in question are narrow political interests, political groups in parliament. Second, members of the House are too much involved in technical matters, which should be done by skilled staff.

Another cause is the multiple positions of members, so they are less concentrated in the preparation of legislation products. In fact, many members of the Legislative Council of the House of Representatives hold multiple duties and positions at the DPR, such as being a member of a committee, a Working Committee (Panja) or Special Committee (special committee).Legislation which is the source of the law of regulating agrarian resources in Indonesia is characterized by confusion and overlapping regulations, both vertically. or horizontal. The presence of the Act is a form of deregulation which is characteristic of the neoliberal economic system.

The weaknesses of UUPA during the New Order period have been used by giving interpretations that deviate from the principle and purpose of the relevant provisions. Among others, the interpretation of the extent of authority sourced from the Right to Control the State, and the application of the principle of the social function of the right to land which is the basis for being able to easily provide land and control the community land needed for development, either by the government or private companies(Harsono, 2013).Many new regulations made for the sake of industry and development begin to forget the important joints in the UUPA (Law Online, 2014).

The facts show that since the Reformation, in Indonesia there are many regulations that are out of sync (overlapping) laws and regulations. There are at least 12 overlapping laws, 48 Presidential Regulations; 22 Presidential Decree; 4 Presidential Instruction, and 632 Regulations/Decisions/Circular Letter and Instruction of State Minister / Head of BPN which regulates agrarian matter. Such overlaps can be grouped into two major things. Firstly the synchronization of the rule of law governing agrarian resources, where the higher law (vertical sync) of the Constitution, MPR TAP and Law are stripped down, diverted and not referred to by the lower law (judging by the number of laws tested by the material).Second, legal disharmony, the same level of law (horizontal) rules are set differently and even contradictory (Republic of Indonesia).

Various irregularities against UUPA, and not yet the implementation of the concept of the State Control Rights as desired by Article 33 Paragraph (3) of the 1945 Constitution, namely for the greatest prosperity of the people has encouraged

the birth of MPR.RI. No. IX Year 2001 on Agrarian Reform and Natural Resource Management, which is the basis of regulation in the field of agrarian / land and pengeolaan natural resources (Sumarjono, 2009).

This MPR's Decree instructs the House of Representatives and the President to immediately regulate further its implementation and revoke, alter and/or replace all its laws and implementing regulations that are inconsistent with such provisions.

4.1.2. What is an Agrarian Reform?

Agrarian reform or legally formal is also called Agrarian Reform is the process of restructuring (arrangement) the composition of ownership, control and the use of agrarian resources (especially land) for the benefit of farmers, farm workers and small people or economically weak groups in general, which are implicitly summarized in several articles of the BAL, among them: Articles 6, 7,9, 10, 11, 12, 13, 14, 15, 17, which are in foreign terms known as Landreform.Landreform is defined as an overhaul of the structure or system of land that aims to improve the relationship between man and the land and the increasing standard of living of farmers, to realize the goal of independence contained in the Preamble of the 1945 Constitution.In Article 2 of TAP MPR - RI No. IX / MPR / 2001, explained that: "The agrarian reform includes a continuous process with respect to the rearrangement of tenure, ownership of use and utilization of agrarian resources, implemented in the framework of the achievement of certainty and protection of law and justice and prosperity for all Indonesian people"

In the operational order of Agrarian Reform in Indonesia implemented through 2 (two) steps, namely:

1. Reorganization of the political system of land law based on Pancasila, the 1945 Constitution and the Basic Agrarian Law (UUPA)
2. Landreform Plus Implementation Process, namely the arrangement of land assets for the community and structuring public access to utilize the land properly

In the framework of this MPR TAP Megawati's government issued a policy on the national land issue, namely Presidential Decree no. Law No. 34 of 2003 on National Policy in the Land Sector, by mandating the Head of the National Land Agency (BPN) to:

a) Preparing the Bill on the Enhancement of UUPA 1960 and the Bill on Land Rights and other laws and regulations in the field of land;
b) Preparing the construction of information systems and land management to support land reform and the granting of land rights;
c) Establish norms and/or standardize management mechanisms, product quality and human resources required in order to provide most of the

government authority in the land sector to provincial/district/city governments.

In implementing the MPR TAP above, President Susilo Bambang Yudoyono has issued 5 (five) instructions, namely:

1) Continuing the agrarian reform program, where people have the right to own land and access to land use,
2) Control of abandoned land, lest there be a stretch of millions of hectares of land but no master, but there are owners who are not responsible and ultimately can not be used by the people.
3) Continue the settlement of conflicts and land disputes.
4) Accelerate legalization (certification) of land assets owned by the public and the state.
5) Improving the quality of land certification services to the community well, ie services that are cheap, easy, and not complicated, and accurate (Bogor Palace West Java, 2010).

4.1.3. Why the Need for Agrarian Reform (Agrarian Reform) in Indonesia

Muhammad Hatta (1943) in Basic Pre Advies to the Inquiry Committee and. Adat Istiadat mentions:"Indonesia in the future becomes a prosperous country, so that its people can and on the world culture and participate in enhancing civilization. To achieve the prosperity of the people in the future, the political economy meskilah arranged on the basis of what is now, namely Indonesia as an agrarian country. Since land is a principal factor of production, it should be that land-owned regulations strengthen the position of land as a source of prosperity for the common people "

The agrarian reform is the restructuring of ownership, and the use of agrarian resources (especially land), whose primary purpose is to change the social fabric of the legacy of feudalism and colonialism into a just, prosperous and prosperous society.Sumardjono (2009)mentions the Agrarian Reform essentially includes the following: (1) a continuous process, which means dilaksanakaan in a time frame (time fame), but as long as the objectives of Agrarian Reform has not been reached, Agrarian Reform needs to continue to be pursued; (2) concerning the restructuring of the ownership/control and utilization of natural resources (agrarian) by the community, especially rural communities: (3) implemented in the framework of legal certainty and legal protection of land ownership and utilization of natural resources (agrarian) social justice for all the people of Indonesia.

Agrarian policy during the New Order-oriented economic growth has resulted in changes in the perception of land function as one of nature's unique resources. This is supported by a shift in land policy (pro-people into pro-capital), which proves to be further away from the realization of equitable development, and that

means it is increasingly difficult to achieve social justice.The people need the land for the source of life and their survival, while others generally require the land for their economic activities on a large scale. Thus it can be said that the dispute between these two sides can not be said to be due to massive capital expansion which is then connected with the interests or with the culture of the common people. Thus, in the context of the development of large-scale economic enterprises, what happens then is that peasants' lands or lands belonging to indigenous peoples are taken over by entrepreneurs through the facilities of transferring the rights to agrarian resources provided by the state (Gunawan, 2001).

Regarding this Agrarian Reform, Gunawan Wiradi argues that: Implementing Agrarian Reform without accommodating cultural diversity will ultimately be the same as suppressing or violating a number of human rights, in particular the right to determine community development and enjoy development outcomes based on local cultural realities. In the case of principles of control and utilization of land and other natural resources a national agrarian development policy must accept the fact that there are certain communities and communities in Indonesia that still have room to develop other natural resource development laws and procedures based on knowledge based on local customary law. With the ongoing agrarian reform, all this diversity should not be abolished, but must be acknowledged socially, politically and legally and given space to develop.

However, this principle is not open to the development or continuing development of a discriminatory, oppressive, community-driven community or management of natural resources, as well as creating inequality of mastery at the local level. If the system of mastery and management of natural and customary land resources or local customary law is discriminatory, oppressing or creating food imbalances within the community itself is contrary to the principles of agrarian justice which is the main objective of agrarian reform (Gunawan, 2001).

Included in this principle is the recognition of indigenous peoples' ownership of the natural resources in which they live. Especially in the basic society and social social order based on the utilization and management of natural resources in the vicinity (Gunawan, 2001). In addition, the control and utilization of natural resources should be such that can be enjoyed not only by the present generation, but also the generations to come. Utilization of natural resources by a generation should not sacrifice the interests of future generations so that it must be maintained in order to avoid exploitation for the sake of short term interests.

The presence of the TAP MPR-RI No. X of 2001 on Agrarian Reform and Management of Daygraria Resources is not an abrupt one, but it has undergone a very long process, as it relates to the interests of various sectors (earth, water, space). Where each sector formulates and develops rules of sectoral ego rules that are in them. In addition, the lack of clarity of meaning from land, agrarian, natural resources, forest and so on added to the protracted process of formation of the decree.

On the other hand there is a growing notion of the need to review the existing land and other existing agrarian/natural resource laws and regulations to anticipate the various paradigms that evolve in the realms of reform, and to resolve the conflicts that occur especially in relation to the control, ownership, use and utilization of land, and anticipate potential conflicts in the future. To answer the above problems, the Agrarian Reform (Agrarian Reform) can not be negotiable. Agrarian reform is the most fundamental answer to social problems in society by putting back the foundations and development goals for people's welfare and social justice. But it is unfortunate that in the broad context of agrarian reform is a necessity.

In accordance with its nature which is full of justice, the problems about and around the land seem to never finish. The old problem has not yet been solved, other problems have arisen or perhaps the same problem has arisen, along with the idea or idea of soil problems also continues to grow in accordance with the dynamics of the development of society as a result of progress in the political, economic, social and cultural fields. Since the reform era, Indonesia has suffered especially in the economic field. Many domestic and overseas investors are out of business. This makes Indonesia must be incentive to improve and restore the stability of the national economy for the realization of community welfare. One way is to create a conducive investment climate and synergistic with the social, economic and cultural conditions in Indonesia (Lutfi *et al*., 2016). Indonesia is a flourishing and rich Natural Resources (SDA), which is highly potential to be managed and utilized optimally as capital in realizing national development. Indonesia is a developing country. To build, required a large capital or investment. One of the existing capital in the form of natural resources such as land. Land as the basic right of every person, its existence is guaranteed in the 1945 Constitution. The birth of Law number 11 of 2005 on the ratification of International Covenant On Economic, Social, and Cultural Rights (international covenant on economic, social, and cultural rights).

5. CONCLUSSION

1. Landreform is an effort to restructure land tenure and other natural resource ownership structures aimed at achieving justice, especially for those whose livelihoods depend on agricultural production.
2. In an effort to accelerate the process of settlement of agrarian disputes, it is necessary to consider restoring the function of agrarian court that once existed in Indonesia. This is because the ordinary courts are overloaded, and the verdicts are often far removed from a sense of justice due to the judge's lack of understanding of the land issue.
3. There are still many Indonesians who have no clear ownership and control over their land. This is because the government up to now has not implemented the Agrarian Reform Program properly.

4. The rationale of the Agrarian Reform Program will affect the rate of welfare of the people. Agrarian Reform is a national agenda that is expected to provide a bright spot for the realization of social justice and the achievement of community welfare, and is expected to help the poor from economic downturn toward a decent and prosperous life,
5. It is a pity that the Agrarian Reform Program and Natural Resource Management as mandated by MPR Decree No. RI. IX/2001, until now can not be realized.

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