

Transfer of Land Functions and Social Functions of Land Rights in Indonesia

Suriansyah Murhaini

Law Studies Program, Faculty of Law,
Palangka Raya University, Indonesia.

Yetrie Ludang

Department of Forestry, Faculty of Agriculture,
Palangka Raya University, Indonesia.

ABSTRACT

This paper discussed understanding the social function of land rights, existence of land in the context of social change and social shift, relationships, social functions of land rights with public interests, land procurement in relation to social functions, and the role of enforcing the social function of land rights. In addition, agrarian reform in Indonesia is also discussed includes understanding, objectives, subjects and objects, principles, mechanism and failure in implementing agrarian reform. Moreover, this paper discussed the practice of diversion function of agricultural land, including the understanding of land and transfer of functions land, factors that drive the transfer of use functions land, abuse of land use change and transfer impacts the function of agricultural land on people's lives.

Keywords: land function, social change, land rights, agrarian reform

INTRODUCTION

Land ownership, both in Indonesia and in other countries can be done by individuals or legal entities and can also be done by the community. In Indonesia, a certain group of people, namely the customary law community, is known as the Hak Ulayat. Ownership of land together in a community of indigenous and tribal peoples is recognized by the law. The state respects the rights of indigenous peoples to their land (Murhaini, 2016).

The authority of the state to control the land is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in the society and the rule of law of Indonesia that is independent, sovereign, just and prosperous. In the exercise of the right to control the state can be empowered to autonomous regions and customary law communities, just as necessary and not in conflict with national interests (UUPA, 1960).

Therefore, with the authority that is owned, the holder of land rights can use the land in accordance with its purpose. It's just that the use of land by right holders is limited by the provisions in force in the legislation. One of the provisions relating to the use of land is to pay attention to the social functions inherent in the rights to land. This has been regulated in Article 6 of the Basic Agrarian Law which states that all land rights have a social function.

The meaning of a social change in general can be interpreted as a process of shifting or changing the structure or order in society. Changes in structure and behavior include more innovative mindsets, attitudes, and social life to get a more dignified life. In terms of quality, the purpose of the change naturally is to improve the quality of life for the better.

That changes that occur in society generally involve complex matters. Therefore, a social change basically cannot be explained by and adheres to a single factor. Thus, changes that occur in society are influenced by various factors. The intelligence factor as mentioned above, there are other factors that influence, for example natural conditions can also trigger people to look for something (change) that is better than before.

In this perspective, which is related to social change, land has a lasting relationship with humans. Land is the source of life, power and prosperity. The existence of land in human life has meaning and at the same time has a dual function, namely as social assets and capital assets. As social assets land is a means of binding social unity among the people for life and life, while as capital assets land is a capital factor in development.

METHODOLOGY

In discussions on social change due to shifting land use, it cannot be separated from the allocation of natural resources in general. This is due to the fact that land is an important asset of natural resources and is an inseparable part of the natural resource itself. Land, which is generally an inseparable part of the problems relating to agrarian management.

As a basis for the elaboration of social change, development theory is used. That development theories that developed in the mid-20th saw that development in developing countries could not be done without first transforming society through structuring agrarian structures.

RESULTS AND DISCUSSION

Definition of Agrarian Reform

Agrarian reform and land reform are often considered identical. Various parties, with very diverse perspectives provide different understandings of Agrarian Reform. In a limited sense, Agrarian Reform is seen as a land reform, with one of the programs being land redistribution (land distribution), but this time the Agrarian Reform study has a broader meaning and not only in the form of land reform.

According to Wiradi (2000), Agrarian Reform is a complete restructuring of the structure of ownership and control of land along with all the supporting packages. The supporting packages are legal guarantees for the rights granted, availability of affordable credit, access to advocacy services, access to new information and technology, education and training, and access to various production facilities and marketing assistance.

Setiawan (2001) says that the term Agrarian Reform is an agrarian reform because what is meant is broader than just the distribution of land. Furthermore according to Sahyuti (2007), Agrarian Reform is interpreted as land reform plus, meaning that the core of the implementation of Agrarian Reform is in the form of land reform which in the strict sense is the rearrangement of the structure of control and ownership of land. The plus components of the Agrarian Reform referred to are the forms and ways of cultivating land, agricultural extension, and others.

According to Sutarto (2006) agrarian reform should not be understood as a mere land-sharing project, but must be oriented to efforts to improve the welfare of farmers and to revitalize agriculture and rural areas as a whole. For this reason, besides having to be an structural structuring effort to guarantee the people's right to agrarian resources through land reform, Agrarian Reform must be a broader development effort involving multi-parties to ensure that the given land assets can develop productively and sustainably. This includes the fulfillment of basic rights in a broad sense, for example education, health and also the provision of capital,

technology, management, infrastructure, market and other support. The first component is called asset reform, while the second is called access reform. The combination of the two types of reform is what is meant by land reform plus.

In line with this understanding, Winoto (2007) argues that Agrarian Reform is "land reform plus", which is based on the Pancasila and the 1945 Constitution. so that the provision of land for farmers can be used as a means of reproduction.

Various terms and meanings are very much put forward, but this is only limited to the provision of definitions that are rarely debated. The principle is the basic concept of reform carried out by the Agrarian Reform namely land for justice and welfare of the people. Based on the basic concept, the formulation used as the definition of Agrarian Reform will be held in Indonesia as follows:

1. According to the TAP MPR Number IX / MPR / 2001

Agrarian reform is the restructuring of the use, use, control and ownership of agrarian resources, especially land that is able to guarantee justice and the continuous improvement of people's welfare.

2. According to the Explanation of Law Number 5 of 1960 (LoGA) Article 10 Paragraphs 1 and 2

In Article 10 paragraphs 1 and 2, "land reform" or "agrarian reform" is defined as a provision that land must be actively worked or cultivated by the owner himself. Furthermore, this provision needs to be followed by light conditions, so that the owner will not be forced to work in another field, by giving up control of his land to someone else.

The operational definition of Agrarian Reform as an effort of a government program in an effort to solve various problems by giving a direct touch to the root of the problem is:

1. Agrarian Reform is a restructuring of the political system and land law based on the principles of the 1945 constitution and the LoGA;

2. Agrarian Reform is a process of implementing land reform (LR) and access reform (AR) together; LR is the process of land redistribution to organize land tenure, ownership, use and use based on political and land law. AR is a process of providing access for the community (the subject of Agrarian Reform) to all things that enable the community to develop their land as a source of life (economic-political participation, capital, market, technology, assistance, capacity building and capability).

In the implementation of Agrarian Reform includes two components, namely:

1. Land redistribution (land reform) to guarantee the people's right to agrarian resources. This is called asset reform.

2. Broader development efforts and can develop productively and sustainably, this is called access reform which includes among others the fulfillment of basic rights in the broadest sense such as health and education, as well as providing capital, technology, management, infrastructure, market support, and so forth.

Social and Ecological Functions of the Soil.

In the position of humans as individuals, as well as social creatures, there are obligations (social) that arise and belong to every right holder. The rights possessed by a person are not unlimited, because they are always limited by the rights of others and the rights of the wider community, whether carried out by the government for reasons of public interest, or by other parties for various development activities.

Land is one form of gifts given by God to our country. Land is an inseparable part of human life, both concerning social, economic, housing, movement and activities. Because of that very important nature, land issues will always be a problem, especially for the physical development of the state. For this reason so that it does not cause problems, the government tries to regulate it well.

The process takes quite a long time because one of the parties feels an injustice. This long process automatically stalled the course of development. For this reason it is necessary to introduce to the community the importance of social functions that apply to all land rights so that they can help change the way individuals think individually. With this principle personal interests in land are not allowed to harm the interests of many people (the public).

Moreover, coupled with new regulations namely Presidential Regulation No. 36/2005 with amendments to Presidential Regulation No. 65/2006 concerning Land Procurement for the implementation of development in the public interest. The two regulations were later revoked and replaced with a higher regulation, namely Law No. 2 of 2012 concerning Land Procurement for Development in the Public Interest.

The Nature of Social Function

Social function in this connection refers to the fact that the principle of land has a social function is actually an antithesis of Western land law, sourced from the Dutch *Wetboek Burgerlijk* compiled based on the French Civil Code. The basic philosophy of the French Civil Code embraces the concept of individualistic-liberal, a foundation of European bourgeois society in the nineteenth century. This principle was later adopted based on the principle of concordance into Indonesian law regulated in Law Number 5 of 1960 (LoGA).

Before the birth of the LoGA, the provisions regarding this social function were regulated in article 26 paragraph (3) of the 1950 Constitution which stated: "Property rights are social functions". After the birth of the LoGA, the provisions regarding social functions are regulated in article 6 which reads, "All land rights have a social function." This is different from the provisions in the 1950 UUDS where only property rights have a social function. With the word "have a social function", then the rights to land that exist in a person will still be respected.

CONCLUSION

Land use conversion or commonly referred to as conversion land is a change in the function of some or all of the region the land from its original function (as planned) becomes other functions that have a negative impact on the environment and the potential of the land itself. Broadly speaking, the factors are causing land use change to be classified as three, namely external factors, internal factors and policy factors government.

The impact of development activities and human activities on the environment is divided into two, namely positive impacts and negative impacts will certainly cause pros and cons in the community. For this reason, the government is paying attention public interests but also need to pay attention to interests individual society so that problems don't occur later day. Similarly, the impact of the transfer of functions on nature and the environment must be considered carefully so as not to cause harm to the lives of humans and beings other life.

References

Articles:

Murhaini, Suriansyah (2016). *Hukum Pemerintahan Daerah: Kewenangan Pemerintah Daerah Mengurus bidang Pertanahan*, LaksBang Grafika, Yogyakarta, hal. 165.

Setiawan, Boenie (2001). *Konsep Pembaharuan Hukum Agraria*, Cetakan I Yogyakarta, Hapera Pustaka Utama.

Sutarto, Endriatmo (2006) *Perlunya Konsensus Mengenai Reforma Agraria ala Indonesia*, Speech of Head of the National Land Academy (STPN) at Workshop of Formulation of Agrarian Symposium Results, Yogyakarta 17-18 December 2006.

Syahyuti. 2007. *Gabungan Kelompok Tani (Gapoktan) Sebagai Kelembagaan Ekonomi Kebijakan Pengembangan Di Perdesaan*.

Winoto, Joyo (2007). *Reforma agraria: "Suatu Pengantar"*, Sambutan 99 Tahun Kebangkitan Nasional, Jakarta.

Wiradi, Gunawan (2000). *Reforma Agraria: Perjalanan yang Belum Berakhir*, Yogyakarta: KPA-Insist Press-Pustaka Pelajar.

Regulations:

Tap MPR No.IX/MPR/2001 Tentang Pembaruan Agraria dan Pengelolaan Sumberdaya Alam.

UU No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok -Pokok Agraria.

UU No. 51 Prp Tahun 1960 Tentang Larangan Pemakaian Tanah Tanpa Izin Yang Berhak atau Kuasanya.

UU No. 26 Tahun 2007 Tentang Penataan Ruang.

PP No.8 Tahun 1963 Tentang Penguasaan Tanah Tanah Negara.

PP No. 224 Tahun 1961 Tentang Pelaksanaan Pembagian Tanah Dan Pemberian Ganti Rugi.

PP No. 4 Tahun 1977 tentang Pemilikan Tanah Pertanian Secara Guntai.