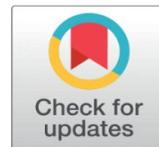


THE ROLE OF THE GOVERNMENT IN THE PROTECTION OF COMMUNITY LAND ON GREEN-ZONE



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ABSTRACT

Land rights are one of the rights of life of the community. This right should have been protected by the state as the implementation of Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution that the earth and natural wealth in it are protected by the state and used for the people's prosperity. This right is violated by the determination of land owned by the people declared in the green zone so that its use and allocation is limited by the government. On the other hand, when the land will be used in the framework of government planning, the status of the land will change according to the interests of the government. This phenomenon illustrates that the law that should support the state to give a sense of justice to the people on the contrary makes people's rights not fulfilled. The aim to be achieved in this study is to analyze the role of the government in protecting community land rights in the green zone. This research is normative legal research. Based on the research, it was concluded that community welfare and community justice were not well accommodated by the government regarding land in the green zone because there was a lack of clear arrangements regarding the ability to transfer the land.

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1. INTRODUCTION

The territory of the Unitary State of the Republic of Indonesia, both as a unit which includes land space, sea space, and air space, including space within the earth as well as resources, is a gift from God Almighty to the Indonesian people who need to be grateful, protected and managed sustainably for the greatest prosperity of the people as mandated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945) which affirms that "Earth and water and the natural resources contained therein are controlled by the state and space, which implement the authority exercised by the central government is used for the greatest prosperity of the people". In order to realize the mandate, the Law on Arrangements and regions was established, while respecting the rights held by everyone. The Spatial Planning policy was regulated through Law Number 26 of 2007 concerning Spatial Planning. ¹ The existence of regulations regarding spatial planning is expected to be used as a reference in organizing regional arrangements to be used properly so that natural damage can be



¹ National Legal Development Agency of the Ministry of Law and Human Rights of the Republic of Indonesia. (2014). Final Report of the Legal Study Team on Enforcement of Spatial Planning Law in the Framework of Regional Autonomy, p.1

avoided and the community can inhabit their homes comfortably.

Under Article 35 of Law No. 26 of 2007 concerning Spatial Planning, one form of controlling the implementation of spatial planning, one of which is through zoning regulations. Zoning regulations are provisions that regulate the requirements for spatial use and its control provisions and are compiled for each allocation block /zone whose zoning is stipulated in a detailed spatial plan. One of them is the green zone. Green lanes mean that the land is intended for agriculture and cannot be converted into yards or settlements.

The establishment of land on the green line poses a problem for people who have land title certificates on the route. People who have rights to the land certainly feel they have the right to use their land to be maintained as agricultural land or want to be converted into settlements. When they want to turn it into a settlement, of course, this is prohibited by the regulations of the area where he lives. When it gets sold it is quite difficult and the price of the land will usually go down due to the status of the green line. On the other hand, there are several instances where the land in the green zone has been determined to turn into a yellow zone by the local government and used as housing by the developer. One example ² is green-certified farmland in Sudimoro Hamlet, Timbulharjo Village, Sewon Subdistrict, many of which are converted into housing by developers. The government claims that the green-certified land is in the yellow farm zone.

The existence of the above case raises the question where the role of the state is in accordance with Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution that the government should use the earth, natural resources in this case land for the prosperity of the community. What is the role of the government in protecting the privacy rights of the community over their land? The problem to be investigated is how is the role of the government in protecting the rights of community lands in the green zone.

2. METHODOLOGY

This study uses normative legal research methods. This study uses secondary data in the form of primary legal material sourced from the legislation used as well as articles related to this paper. Primary Legal Materials are legal materials that have authority. The primary legal materials consist of Law Number 26 of 2007 concerning Spatial Planning, Law Number 5 of 1960 concerning Basic Agrarian Provisions, and other regulations related to land zoning. Secondary legal materials, namely legal materials that are closely related to primary legal materials and can help analyze and understand primary legal materials. Among the secondary legal materials in this study are books, theses, journals and documents that review the talak pledge which will be used as analysis in this study. The author uses a qualitative research method where the author connects the theory of public welfare where the role of the state is needed to fulfill it with the aim of achieving justice for the society.

² <http://www.harianjogja.com/baca/2015/04/16/pertanian-bantul-berasetifikat-hijau-tapi-berada-di-zona-kuning-595340>

3. RESULT AND DISCUSSION

3.1. LITERATURE REVIEW

3.1.1. STATE OF WELFARE

One concept of a welfare state is the government's obligation to seek public welfare or *bestuurszorg*. According to E. Utrecht, the existence of this *bestuurszorg* is a sign that states the existence of a "welfare state". Bagir Manan said that the socio-economic dimension of the state based on law is in the form of state or government obligations to realize and guarantee social welfare (general welfare) in the widest possible atmosphere of prosperity according to the principle of social justice for all people. This dimension specifically gave birth to the notion of a welfare state (*verzorgingsstaat*, the welfare state). If the government's obligation to advance public welfare is a feature of the concept of a welfare state, Indonesia is classified as a welfare state, because the duty of the government is not only in the government sector, but must also carry out social welfare in order to achieve state goals, which are carried out through development national. Constitutionally, there are state and government obligations to regulate and manage the economy, branches of production, and natural wealth in the context of realizing "social welfare", maintaining the poor and neglected children, fiber providing social security and health for citizens, such as specified in Chapter XIV Article 33 and 34 of the 1945 Constitution³.

This research in relation to the welfare state is how to implement Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which confirms that the Earth and water and natural resources contained therein are controlled by the state used for the prosperity of the community. This research confirms the role of the state in ensuring the welfare of the community through regulations made by the government to guarantee land rights owned by the community.

3.1.2. DEVELOPMENT LAW THEORY

The main task of law is social engineering (Law a tool of social engineering, Roscoe Pound) Law is not only formed based on the interests of the community but also must be enforced in such a way by the Juris as social control efforts in the broad sense that the implementation is oriented to the desired changes.⁴

According to Roscoe Pound, the law must be a driving factor in changing society to be better than before. The function of law in every society (except for totalitarian societies) is determined and limited by the need to balance legal stability and certainty in the development of law as a tool of social evolution. Therefore, changes in people's lives should be well planned and directed, so that the objectives of the change can be achieved with direction and protection from the law.

3.1.3. LAND RIGHTS

Land rights are rights that give authority to someone who has the right to use or take advantage of the land.⁵ Juridical control is based on rights, which are protected by law and generally authorize the right-holders to physically control the land being hijacked. But there is also juridical control that even if it gives authority to control the land that is physically hijacked, in fact, other parties do physical

³ Ridwan HR. (2011). *State Administrative Law*, Revised Edition. Jakarta: PT. Raja Grafindo Persada. (in Bahasa).P. 18-19

⁴ Abdul Manan. (2016). *The Role of Law in Economic Development*. Jakarta: Prenadamedia Group. (in Bahasa).P. 48

⁵ Sri Sayekti. 2000. *National Agrarian Law*. Bandar Lampung: University of Lampung. (In Bahasa) p.20

control. For example, if the land owned is leased to another party and the tenant who controls it physically or the land is physically controlled by another party without rights. In this case, the landowner based on his juridical control rights has the right to demand the return of the land concerned to him physically.⁶

In our land law also known as juridical mastery that does not give authority to control the land in question physically. Creditors holding collateral rights over land have juridical control over land that is used as collateral, but their physical control remains with those who own the land.⁷

The definition of "mastery" and "mastering" above is used in the civil aspect. In the 1945 Constitution and the UUPA the definition of "controlled" and "mastered" is used in the public aspect, as formulated in Article 2 of the UUPA.⁸

3.2. DISCUSSION

According to Article 14 paragraph (1) UUPA, namely, "keeping in mind the provisions in Article 2 paragraph (2) and paragraph (3) and Article 10 paragraph (1) and paragraph (2), the government in the framework of Indonesian socialism makes a general plan concerning inventory, designation, and use of earth, water, and space as well as natural resources contained therein:

- 1) For state purposes;
- 2) For the purposes of worship and other sacred purposes in accordance with the basis of the One Godhead;
- 3) or the purposes of centers of public life, social, cultural and other welfare;
- 4) For the purposes of developing agricultural, livestock and fisheries production, and in line with that;
- 5) For the purposes of developing industry, transmigration, and mining.

To achieve what the nation and state of Indonesia aspires to in the agrarian field, planning needs to be done regarding the allocation, use, and supply of earth, water and space for various purposes of life for the people and the state: general plans (national planning) covering all regions of Indonesia, which are then broken down into specific plans (regional planning) from each region. With the planning, land use can be carried out in a guided and orderly manner so that it can bring the maximum benefit to the state and the people.⁹

In the section weighing the provisions of MPR No. IX / MPR / 2001 Concerning Agrarian Reform and Management of Almighty Resources, it is stated that the management of natural resources that have taken place so far has resulted in a decrease in environmental quality, inequality in the structure of ownership, use, and utilization and has caused various conflicts. Therefore, it is necessary to rearrange its mastery and management optimally, fairly, sustainably and environmentally friendly by prioritizing the principle of recognizing, respecting and protecting the rights of indigenous peoples and the nation's cultural awareness of agrarian/natural resource resources.¹⁰

⁶ Boedi Harsono. (2005). Indonesian Agrarian Law, History of the Formation of Basic Agrarian Laws, Content and Implementation, Tenth Edition. Jakarta: Djambatan. (in Bahasa). P. 23

⁷ Loc.Cit.

⁸ Loc.Cit.

⁹ Ibid. Hal. 17

¹⁰ Isharyanto. (2016). Public Economic Policy Law. Yogyakarta: Thafamedia. (in Bahasa). P 152

The importance of governance and management of natural resources in order to realize environmentally sustainable development. To keep the use of natural resources and their ecosystems in the best possible way, especially for natural resources that have conservation value, so that natural resources and their ecosystems are always maintained and able to realize balance and attach themselves to the development itself.¹¹

One of the natural resources regulated by the government is regarding land use. Land is an important thing for life. Land can be used as a place of residence, agriculture, industry, etc. which can cause problems, especially in relation to environmentally sustainable development. Therefore, in accordance with the hierarchy of land use, the state has an important role to regulate the land allocation so that human needs are fulfilled, people's welfare increases and the environment is maintained.

One of the disadvantages of natural resource management in developing countries is perhaps the pursuit of economic growth by draining heavily from its natural resources without regard to side effects.¹² For example, the function of agricultural land continues to be a plantation, industrial and residential area. Even though it has had laws that regulate the ban on the conversion of agricultural land since a few years ago, currently less than half of the districts/cities are following up.¹³ Where this can result in threatened national food security.

The status of land in the green zone / green line is land that is intended for agriculture and cannot be converted into yards / for settlements. The government also regulates land-use restrictions through several regulations, namely:

1) Law Number 5 of 1960 concerning Basic Agrarian Principles

In Article 6 of the UUPA, it is explained that the land functions socially. The use of land is intended as much as possible for the benefit of the community. Furthermore, the UUPA also regulates land use hierarchies where an individual or private property is recognized but its use is emphasized not to harm the public interest and control the land should not exceed the permitted limits.

2) Law No. 41 of 2009 concerning the Protection of Sustainable Food Agriculture Land

The conversion of agricultural land is a threat to achieving food security and sovereignty. Transfer of land functions has serious implications for food production, the physical environment, and the welfare of agricultural and rural communities whose lives depend on their land. The conversion of fertile agricultural land has not been matched by integrated efforts to develop agricultural land through the printing of potential new agricultural land. On the other hand, the conversion of food crops causes the narrowing of the area cultivated and often has an impact on the declining level of welfare of farmers. Therefore, controlling the conversion of food agriculture through food crop protection is one of the efforts to realize food security and sovereignty, in order to increase the prosperity and welfare of farmers and the community in general.¹⁴ In this Law, it is regulated how planning involving provincial, municipal and regency governments determines the prediction of the distribution of agricultural land locations. This regulation also stipulates that this land is protected and prohibited from being converted except for the public interest.

¹¹ Ibid. Hal. 153

¹² Loc.Cit

¹³ Sri Lestari. 2017. Rice Field Turns into Housing or Industry Threatens Food Security. available at <https://www.bbc.com/indonesia/indonesia-41078646>

¹⁴ Law Number 41 of 2009 concerning the Protection of Agricultural Land for Sustainable Food

3) Government Regulation Number 16 of 2004 concerning Land Stewardship

This Government Regulation on Land Stewardship includes land stewardship policies and the implementation of land stewardship. Land stewardship policies include the control, use and use of land in protected areas and cultivation areas as a general guideline for land stewardship in the area. Land activities are an integral part of the agrarian cycle, which cannot be separated, including land tenure and ownership arrangements, land stewardship, regulation of land rights, and land registration. Implementation of land stewardship in districts/cities includes:¹⁵

- stipulation of land stewardship activities;
- implementation of land stewardship activities.

In addition to the above regulations, there are still regional regulations and other implementing regulations which function to support the state in carrying out its duties to use the land or land¹⁶ as well as possible for the welfare of the community. However, on the one hand, the people who have ownership rights to the limited land use they have are due to government policies in the regions where their land includes green zone / green lane, sometimes even the people do not know the status of their land. An example is the case of Mr. Hasan, a resident of Ketapang Village, Kademangan District, Probolinggo City, complaining about his land entering a green area or an agricultural area. Because of these conditions, he threatened that he could not sell or build a house there. He knows the status of his land when he wants to apply for permission to use land use (IPPT) or drying. Namely the permission to change the status of the land from the paddy field / tegal into the yard. because the land he bought two years ago included green areas, the permit did not come out. In the regions in the process of formulating regional spatial plans and other processes related to land, they did not pay too much attention to the Sustainable Food Agriculture Land Protection Act by diverting agricultural land into settlements and the industry would be more profitable for regional income, especially from the tax sector. A review of BPS data from 2003-2013 showed that 508,000 hectares of food land had changed ownership.¹⁷

In accordance with Article 7 PP No. 16 of 2004, explained the role of the regional government in regulating land-use restrictions for the welfare of the community through regional spatial plan regulations. On the other hand, the restrictions contained in the Sustainable Food Agriculture Land Protection Act can be ruled out if the land allotment is used for the public interest and obtains permission from the regional government even though the standard referred to as public interest is not yet clear. There are several cases¹⁸ where land areas in the green zone are used for the development of housing and industrial areas while there are cases¹⁹ when those who propose individuals as individuals who have rights to the land are not approved.

Permits are intended as things that can contribute positively to economic effectiveness, especially in an effort to explore Regional Original Income (PAD) and encourage the pace of investment. A permit is given by the government to create

¹⁵ Government Regulation Number 16 of 2004 concerning Land Use

¹⁶ Muhammad Fahmi. (2017). The Land Enters the Green Area These Residents Complain. Available at <https://radarbromo.jawapos.com/read/2017/09/27/15916/lahan-masuk-daerah-hijau-warga-ini-menguluh>.

¹⁷ Sri Lestari. 2017. Rice Field Turns into Housing or Industry Threatens Food Security. available at <https://www.bbc.com/indonesia/indonesia-41078646>

¹⁸ <http://surabaya.tribunnews.com/2016/09/26/banyak-lahan-hijau-berubah-bangunan-pemerintah-akan-kaji- ulang-tata-ruang-pemukiman-rawan-bencana>

¹⁹ Muhammad Fahmi. (2017). The Land Enters the Green Area These Residents Complain. Available at <https://radarbromo.jawapos.com/read/2017/09/27/15916/lahan-masuk-daerah-hijau-warga-ini-menguluh>

safe and orderly conditions so that every activity is in accordance with its designation. On the other hand, the purpose of licensing for the government is often associated with PAD, because revenue is important in the framework of realizing regional autonomy.²⁰

Ateng Syafrudin said, permission aims and means removing obstacles where prohibited things are allowed. Refusal to request permission requires a limited formulation.²¹ There are cases where many settlements, housing developments, and industries on land in the green zone which of course can have a negative impact on the community, indicate the role of the central and regional governments that have actually been regulated in various regulations have not gone well. On the one hand, the government limits the use of individual land rights in its use on the other hand in some cases when the industry requests permission, so the restrictions can be removed so that the obstacles no longer exist. Referring to this, community welfare and public justice were not well accommodated by the government because there was a lack of clear arrangements regarding the ability to transfer functions of the land.

4. CONCLUSIONS

Land tenure rights by the Indonesian nation carried out by the state or government are the highest hierarchy in land use. The government is obliged to use all earth, water and the natural wealth contained in it controlled by the state and used as much as possible for the prosperity of the community. The role of the government in regulating land use is regulated in the UUPA, Law Number 41 of 2009 concerning the Protection of Sustainable Food Farming Land, Government Regulation Number 16 of 2004 concerning Land Stewardship and supported by various other regulations such as regional regulations regarding regional spatial plans. Regional spatial plans are submitted to the policies of each local government that is more aware of the conditions of their territory. One of them is the determination of a green land zone which sometimes belongs to the community. Community welfare and public justice are not well accommodated by the government regarding land in the green zone because there is a lack of clear arrangements regarding the ability to transfer functions of the land.

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²¹ Loc.Cit

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