

Legal Protection for Farmer Who Posses state Land on Agricultural Crop Business Use: A Case Study in Sumberklampok Village-Bali

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ABSTRACT

In the perspective of social status, farmer lays in the lowest position, but in the perspective of development farmer regard as the basis of state economy. In develop countries; equality between each aspect is synergic ally. Based on the field practice especially in Indonesia, there are few gaps in various sector especially agricultural sectors that have not obtained sufficient notice from government rather than political aspect. This research use empirical research study that derived from the gap between das sollen and das sein. The problem is, why do the farmer who possess state land as used for crop agricultural business cannot upgrade its possession right? The purpose of this research is to obtain and analysis on farmer who posses state land and in its essential way to help government problem in order to improve people life quality universally. Social welfare is state responsibility, especially in food area, so that food incensement may obtain in a way to improve right status of state land that posses by farmer to become right of use as its legal protection.

Keywords: Legal protection, state land, farmer, agricultural crop

INTRODUCTION

Crop agricultural as one of the commodity, as the development foundation of economic sector, towards a prosperous society. Prosperous society is one of the objectives of national development. National development is a holistic Indonesian human development, which is based on Pancasila practice and as the implementation of the Constitution of the Republic of Indonesia Year 1945 (Constitution NRI1945) that aims to enhance the dignity, and self confidence to fulfill fair and prosperous society. The form of intended public welfare is in the form of equity control and ownership of land, which is the instrument in the form of land reform programs. Land reform is a process intended to make those who work on the land (farmers /tenants) have the needed land or obtain protection for the land use.

Law No. 56 Year 1961 on the establishment of Prp maximum and minimum limits, inspired by Article 7, 10 and 17 of Law No. 5 of 1960 on Basic Regulation of Agrarian State Gazette No. 104 of 1960, the Act known as the Land Reform Act

Land in terms of its function has two functions: as a Social Asset and Capital Asset. Social Asset namely as a means of bonding social unity among people who live. Capital Asset, which is the capital factor in land development and has grown as an economic good which is also very important as commercial materials and as a speculation object of speculation. In the realm of sociology of law, land is part of a social object that is fundamental for the formation of land policy. Considering the importance of soil functions and values in human life, then it is needed a consistent attitude of government to provide legal protection based on authority given to farmers in Bali which controls state land used for agriculture crops. Food is the source of people's lives, especially farmers. In the preamble to the Law of the Republic of Indonesia Number 18 Year 2012 on Food stated; "That Food is a

basic human need and the ultimate fulfillment is part of the human rights guaranteed in the Constitution of the Republic of Indonesia Year 1945 as the basic component for realizing the quality of human resources;"

Food availability for each individual nation is in a state obligation in its fulfillment, so that food safety must be guaranteed by state. Therefore, to ensure food availability it is needed legal protection for government toward farmer who possess state land for crop agricultural. What means by legal protection provided by government for food crop farmers is going to be able to provide security and comfort for farmers and it also may improve their performance in achieving food security. In conjunction with the supplementary of government cropland as it is distributed 8.15 million hectares of land (coming from degraded land, convertible production forest, abandoned land, state-owned land in which its use right is expired, former self-government land) to the poor people who meet certain criteria. This step as a part of agrarian reformation. State land in which HGU has ended located in one of the villages in Bali which Gerokgak Sumberklampok Village Buleleng, Bali which dominated by the villagers used for agriculture crops. The village society is a farmer's society, who manages critical land (dry land) for farming crops.

This study uses theoretical approaches of Welfare State Law as grand theory and the theory is supported by the authority theory as a middle range theory and the possession theory as applied theory. And other theories as support theory, relating to the legal protection for farmers who possess state land and used for agriculture and food crops.

The appliance of welfare state law as grand theory considering that Government in performing its governance, either in the form of power and authority, based on the law or the constitution as its basis. Welfare state law aim to achieve the welfare of the people. While authority theory serve as a middle range theory because government in carrying out its duties and functions without legal or constitutional foundation will mean nothing, so based in authority which is mandated by law or the constitution it can perform its functions. Similarly, the use of the control theory as applied theory, of the authority theory is related, as it can conduct when possession obtain authority granted by law or constitution.

Similarly with legal protection theory, as it is may used as instrument by government to protect people associated with the state land occupied by farmers and used for agriculture crops. As the ultimate goal of society, in accordance with the purposes of law in which to obtain justice, certainty and purpose in obtaining land use rights that have possessed in a long period. Apart from the used theory, it also uses concepts. Conceptual in Indonesian dictionary defined "associated with or characterized as" Conceptual regarding law enforcement.

Based on these concepts, then law enforcement should be objective, to every human being as a citizen, in every way. Law enforcement in granting land rights are controlled by the state physically farmers in the Sumberklampok village, as it can improved the status of rights into land rights legally. Based on the three concepts by Muladi, researcher more likely use the total enforcement concept, which means that this concept applies to all Indonesian citizens. The meaning of the concept according to investigators that everything human beings subjects of the imposed law, should be respected and implemented.

So for the people/farmers who had taken control of the land more than 20 years in a row and is hereditary and stay in a Sumberklampok villages, as it is granted by government to ensure legal certainty to the their right. Based on above background, the legal problem that appear in this research, why does the farmer who own state land and use it for crop agricultural business cannot upgrade its right for possession ship?

Legal Protection for Farmer Who Posses State Land On Agricultural Crop Business Use (Case Study in Sumberklampok Village-Bali)

Soil is the object of the law of the land. Land law does not regulate land as a whole, but only set up one of its aspects. One aspect of the land is the property rights over the land. Similar thing was stated by Nathaniel Liechfeld as cited by Boedi Harsono:

"For a legal scholar, land is something tangible, in the form of the physical surface of the earth as well as what's on it man-made, which is called " fixtures". Even so attention was more interested in the ownership and control of land and its development. Object concern not land law, but the rights and obligations with respect to land owned and controlled in a variety forms, including legal and institutional framework, removal and supervision by society"

The notion of land have been given by many experts both formally and infact, however, restrictions on land officially been set in the UUPA in Article 4 paragraph (1) stated that on the basis of state control of the land as referred to in Article 2 it has been determined that the existence of a variety of rights to the earth's surface is called land that can be given to an downed by the people, either alone or jointly with others as well as legal entities. Land rights derived from the right to control of State over land can be granted to both individuals as well as citizens of Indonesia or foreign nationals, a group of people together and both legal entities and private legal entities of public legal entity. Therefore, the definition of land in the juridical sense is above the surface of the earth, which are directly related to humans, the place where human stay, where humans perform daily activities, where humans live, even the place where the man died.

Article 4 paragraph (2) UUPA states that rights to land not only authorized to use a certain portion of the earth's surface what so-called "land" but also the existing body of earth and water as well as below the existing space on it. This means that belongs to the person or legal entity is the soil, while the right controls in the broader sense includes a part of a body of water and earth in the form of space as sources of human life. Processing of agricultural land especially for food crops, cannot produce if it is not accompanied by the use of water and the air above it.

Crops that are planted on the ground are very dependent on the state of water, and air. Related with food crops produced by farmers in the Sumberklampok village which is very hot and dry. When planting plants rely solely on rainwater, it can produce only once a year. To get the maximum results it must be cultivated by using the existing water in the soil by making bore holes drawn using the machine then flowed into the crops, so that the planted crops will provide maximum income. Therefore, the three elements of earth, water and air is a unity that cannot be separated, in order to achieve agricultural crops according to expectations of the nation and the state.

The definition of control of land rights can be interpreted legally and physically, means that possession ship of physical land rights, where the land is in direct contact with the right holder, whether the land was used as housing, or taken advantage when the land is managed for agricultural businesses. Physical possession to the right holder has proof of ownership is not necessarily legal, such possession that originated from forest show an effort. But if the government as the embodiment of the State is consistent, then the binding of UUPA 24 September 1960, the lands occupied by indigenous people physically be converted into individual property. Unlike the case with land tenure rights which are legally not necessarily have legal protection for rights holders, yet it also authorizes the holder right to master the

physical. Although not all parties as the holder of the right control the land legally, authorized necessarily control the rights to the land in physical form.

Land tenure rights are also called land rights is a legal relationship that gives the authority to do something on the land, such as transfer, mortgage charge over a number of loans, and agricultural businesses to utilize as fulfilling life tenure holders. In general, control of land rights includes physical possession and control of land rights legally. For holders of land tenure physically, they only have a direct legal relationship with the land, to use for example for food crop farming in the fulfillment of their needs. But considering the juridical basis of the control of land rights may used to physically conversion provisions of Article VI of UUPA and registration can used as the basis of Article 61 of Regulation of the Minister of Agriculture / Ka. National Land Agency Number 3, 1997, for the acquisition of tenure legally.

The rights of land in Bali, especially in the Sumberklampok village since the Dutch era, in which society / farmers clearing forests, should thus the establishment of UUPA, the control by indigenous people can be converted to the property by paying attention to national and state interests. Land rights are not absolute, but such rights must be protected by law, as in Article 18 of the UUPA stated: "*For the public interest, including the interests of the nation as well as the common interests of the people, the rights may be revoked, by providing adequate compensation and in the manner provided for by law*".

The fact that appears the field, not as regulates by law and opinion of legal experts, is that farmers who controls the land since the days of the Dutch inheritance until the current government does not provide legal protection in the form of state land rights.

Article 33 paragraph (3) UUD'45 regulates that; Earth's water and natural resources as appears therein controlled by the State and used for the maximum wealth of people. Philosophically that the universe (earth, water and air space) is indispensable to human life. One part of the earth is the land of the uppermost layer. Water means one element of human life as a source of life. That is the human relationship with the land (part of the people) in a country (Indonesia) by Article 1 paragraph (3) UUPA expressed as a lasting relationship. Implicitly, land for Indonesia has a very close relationship, that cannot separated and even it has a religious magical relationship.

Therefore, the obligation for man in which possesses the land must maintain, well manage and take advantage of the best, since it is a gift of God. Based on the Hinduism concept explain that the relation between men and nature (land) as a part of three framework concept in Hinduism that called as Tri Hita Karana (Three types of relationship) which is: man's relationship with God, man's relationship with man, and man's relationship with nature. The third relationship aims to balance the three aspects of life to prosper. Prosperity in the sense both spiritually and physically. Spiritually that treats human nature so closely, so that is part of his life. Physically that people need to eat, drink and shelter so which virtually all of it is in nature. Hence so high rhetoric farmers with land.

Land is part of the gift of God which gives life to human, so -called motherland. This proved any activities related to land are always preceded by a ceremony, like any plant will grow it will start first with ceremony, by asking the Lord to blessed success. Similarly, when harvest period it will also be preceded by a ceremony to offer our gratitude to God for the gifts bestowed on the form of the results of the earth (ground) as the source of life. Thus sacred ground and close relationship with humans as the people in the country (Indonesia), the tenure background by high rhetoric and as a source of magical and religious life as well as the acquisition of land by state, food crop farmers in the village of subtle Sumberklampok, except

only through government policy with the existing legal basis to improve the status of the right to control their rights into use rights. Farmers state that controls the land in Bali, especially in the village street merabas Sumberklampok with forests and controlled for generations should be confirmed as the holder of the right to services and land held rhetoric against it.

Farmers in Bali, especially in the Sumberklampok village since mastered the land used for agriculture crops have proved that they support government programs in order to improve the life of the people for his own business with opening forest roads. This means that without government help those with its own conscience to strive for life can be sustained by natural resources such as soil as a result of food products. If the government is responsive to respond or provide protection to farmers, then farmers will certainly improve its performance by increasing soil fertility and controlled working on, which have an impact on improving people's welfare as the goal of the government program. During the period the populist farmers' groups which have not benefited from the existence of Agrarian reform as attempt welfare of the people. This has proved that the application of legislation in land is inconsistent, and more supportive than the capitalist populist groups. The concept of the social function of land rights is particularly relevant to the concept of customary law which, among others, stated that the land be longed together and to meet the needs of every citizen by given the opportunity to open farmland to open forest, control and use of the land and with the presence of this concept reduced UUPA into national law. That means people's actions/farmers clearing forests for agriculture is a concept of the state as stipulated in the UUPA. In relation with the land in Bali which controlled by the farmers since the days before the publication of the Dutchor UUPA, UUPA was supposed by the presence of the lands occupied by indigenous (farmers) can be converted into a land individual rights (use rights, or property rights).

As the embodiment of the ideals of the nation to achieve the welfare of the community, humanity need for land to the need for optimal response of various parties. Because human relationship with the land is not just a relationship as Social Capital assets and assets, but regarding social, political, cultural, psychological, and religious. Therefore, in terms of solving the problems of land rights, government is not only based on positive law, but also pay attention to the principle of social welfare, the principle of order, and the principles of humanity that problems do not develop land that could destabilize society. In relation with the acquisition of land by the state of farmers in Sumberklampok village through political reform in government land field is supposed to be able to convert from customary land rights into national land to the status of individual rights such as right to use.

Rights in general are always attached to the legal terms, but between legal rights and can be distinguished by using the Objective recht and Subjective recht. Control and possession can be used in a physical and juridical sense. The meaning of possession cannot interpret as an inherent property rights as it is the most powerful right.

Land right in Bali, especially in the Sumberklampok village since Dutch era by open forest, should such establishment of UUPA, and then the control by indigenous people can be converted into a property with attention to national and state interests. Land rights are not absolute, but such rights must be protected by law. Land rights are not absolute, but such rights must be protected by law. Article 18 of the BAL stated that;

“For the public interest, including the interests of the nation as well as the common interests of the people, the rights may be revoked, by providing adequate compensation and in the manner provided for by law”.

Facts on the ground, not as defined by law and opinion of legal experts, is that farmers that controls the land since the days of the Dutch generation to generation until today, government did not giving possessed land rights status. Furthermore Mertokusumo distinguish two kinds of rights namely absolute rights and relative rights.

Absolute right provide authority to the right holder to do or not to do and can carry out to anyone or any person involved in. The object of land law is land possession right that may divide into two that are:

1. Rights of land tenure as a legal institution. Tenure over land and land has not been associated with the person or legal entity specified as the subject or right holder.
2. Rights of land tenure as a concrete legal relationship. Land tenure rights have been linked to certain rights as an object and a particular person or legal entity as the subject or right holder.

Rights are something that provides pleasure and freedom to individual in carrying out something, while obligation is a restriction and burden, so that what stands out is the active side in legal relation, which is right.

The nature of state possession right), is designation, supply, including the supply of land for food crops. This means that what should be (prescriptive) through State government should provide what is needed by the community, especially for farmers. Relation to agricultural land extending by opening forest. This means that when the state land occupied by farmers used for agriculture crops, it can be given legal protection because they have helped government efforts in order extension of agricultural land with their awareness.

Essentially all rights of land when society wants to possess, certainly proceeded by opening forest, because Indonesia in a whole, was forest. Therefore by opening forest that happened before Independence Day, when it established an independent State and Law No. 56 Year 1958 on Nationalization, when farming community in the Sumberklampok village have earned land right through the conversion.

Legal protection for farmers is very important. Within the legal protection granted for farmers, they become motivated in conduct business as farmers on improving their agricultural products. The impact of high agricultural productivity has universal implications for providing welfare society.

CONCLUSION

Based on above explanation, it can conclude that the status of state land possess by farmer and use as crop agricultural business cannot improve for its right, due to the inconsistency of government, specially provincial government in applying such action, yet with other priority related with capitalist purpose rather than populist purpose. Due to differences of right between local government and society, therefore the application for land state possess by farmer and use for crop agricultural business may have problem. Due to this issue, the agricultural activity in Sumberklampok village cannot increase in line with nation hope.

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