

Agrarian Legal Politics in Land Reform Sector Carried Out by Regional Government in Order to Increase Welfare of Farmers Who Occupy State Land: A Case Study of Village Sumberklampok-Bali

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ABSTRACT

*National development is development in every aspect of life, those are political, legal, economic, defense aspects, including agricultural sector. In advanced countries, developmental balance of all aspects is very synergetic. In practice, especially in Indonesia, there is still a developmental imbalance in several sectors; agricultural sector in particular has not come to government attention yet significantly in comparison with other sectors, such as political sector. This research uses the study of empirical law, which starts from the existing discrepancy between *das solen* and *das sein*, with a question asked in this research is how agrarian legal politics in land reform sector carried out by regional government in order to increase farmers' welfare? The objective of this research is to find out and to analyze agrarian legal politics in land reform sector carried out by regional government in order to increase farmers' welfare. Basically it helps governmental program to uplift social welfare, universally. Social welfare is responsibility of the state, especially in food sector, so that food increase can be achieved by implementing land reform program intensively, by regional government in particular. Land reform is a process by which people who works on the land (farmers) own the land or has protection on the land they use.*

Keywords: Agrarian Legal Politics, Land Reform, Sumberklampok-Bali

INTRODUCTION

If legal politics is examined etymologically, word politics and word legal (law), are different things, if they are combined, however, to become one word, that is legal politics, will mean one. Politics is a policy or engineering. This research uses the word politics refers to the policy. Whereas the law is the product of politics. The relationship between politics and law can be described as follows: Law is considered as dependent variable, and politics as independent variable, or with other words, law which is an abstract object as crystallization from interactive and competitive political will. Therefore, if people want responsive laws to be born, the first thing they have to do is to manage their political life in order to be democratic, in any event the law is the product of politics.

Alimoeso formulates agricultural policy in general in the slogan "Pancayasa" consisting of five targets, those are: (1) increase in agricultural infrastructure, (2) development of agricultural institution, (3) development of upgrading to farmers (as done in the era of New Order) and technological application; (4) increase in agricultural capital; and (5) development in marketing of agricultural products. In particular, developmental strategy or output increase from crop sub-sector is defined by 4 ways simultaneously, those are; productivity increase, area expansion, product protection and institutional and funding development.

With regard to evenness for distributing agricultural land, government has issued agrarian reform (*reforma agraria*) in land reform sector, for achieving social welfare, especially for crop farmers. What has been done by government reflected that state by way of governmental apparatuses has created a justice for achieving social welfare, by distributing evenly agricultural land. It means that Indonesian people want everyone can enjoy natural riches; especially those come from the land. Moch. Hatta quoted by Subadi stated that basically the land belongs to Indonesian people and the state is a manifestation of people who has the rights to manage the utilization in order to reach common prosperity.

The words “the land belongs to Indonesian people”, meaning that every individual from Indonesian citizen is entitled to the land, especially agricultural land without exception, including farmers in Bali that one of the samples is farmers in a village, Desa Suberklampok, who had occupied the state land since Dutch colonization continuously and from generation to generation. Government has carried out agrarian reform through land-reform. Land reform is a process by which people who works on the land (farmers) own the land or has protection on the land they use. According to Lipton, land-reform covers two main things, those are;

“Firstly, compulsory land take-over from big owners by the state with compensation, and secondly, land management in such way that it spreads a wider benefit from just human relations with the land in comparison with before taking over”. From the aforementioned explanation, the question is: how agrarian legal politics in land reform sector carried out by regional government in order to increase welfare of the farmers who occupy the land?

RESEARCH METHOD

Research method is the main means of scientific and technological development, since by way of research one can get accurate data which can describe clearly the issue prevailing in the society, by searching factual data. The research method has some understandings, those are; (a) logic of scientific research, (b) study of research procedure and technique, and (c) a system of research procedure and technique.

The research carried out is qualitative research and it was carried out in Bali area, especially in Desa Sumberklampok, Kecamatan Gerokgak, Kabupaten Buleleng, Provinsi Bali. The selection of the location was based on consideration that in this village the farmers who occupy or own the state land, they got them by opening the forest since the era of Dutch colonization continuously and from generation to generation till today. But the duration of utilizing the land for agricultural crop cannot uplift the status rights to become rights of use. The owned land functions as economic resources which can support their life, even their life depend on product of the land they own.

Desa Sumberklampok has status as desa pakraman and official village, consisting of 2 banjar adat, those are banjar adat Suberklampok and banjar adat Sumberbatok, as official village consists of 3 banjar/hamlet, those are banjar/hamlet Sumberklampok, banjar/hamlet Sumberbatok and dusun (hamlet) Tegal Bunder. Two hamlets, banjar Sumberklampok and banjar Sumberbatok are customary hamlets whose people are Hindus, whereas dusun Tegal bunder whose people is Muslims.

Empirical research is an analytical descriptive, that is research results will be presented by describing data found in the research and it will not be presented in the form of graphics (chart), table, or other form of calculation. The researcher wants to describe facts in the field where one of the samples is existent in the Desa Sumberklampok regarding the question how agrarian legal politics in land-reform sector carried out by regional government in order to uplift the welfare of farmers who own the state land? Empirical legal research uses several kinds of legal sociological approaches or site-direct approach as primary data, and as

secondary data through legal approach, conceptual approach, historical approach and also philosophical approach. As to empirical legal approach, it is expected that legal formation is based on concrete data found in the field. To Sutjipto Rahardjo, the legal sociology is very helpful for deconstructing absolute legal thinking by bringing the law into daily reality. He sees legal sociology is one of gates (entries) into what is called as “the scientific study of law.”

To find the existing data, it is necessary to do legal sociological research or direct research in the field on apparatuses of rural government and on people in Desa Sumberklampok. The parties playing a part in the control of state land, such as non-government organization peduli lingkungan alam (Pilang), regional government of Kabupaten Buleleng, legislative of Buleleng, agrarian office of Kabupaten Buleleng, and agricultural office of Kabupaten Buleleng. Doing empirical juridical description means that one want to see how the law works in daily life, such as how the law is implemented, how the upholders of the law work. Secondary data are data used as support in the research, work as a base or a ground for doing an assessment on primary data. Legal approach aims to compare *ius constitutum* with *ius constituendum*, means that whether the existing rules in the legislation are in accordance with reality or not, if they are not, what the problem is, then what the solution is, and what law is to have to be developed.

Norm written in the law is represented in the form of explicit and/or explicit language, then the implicit word needs to be interpreted, such as the word “own” (control or occupy). Own can refer to control as a fact (physically) or control based on the prevailing rule (juridical). History approach aims to see how the background is or what the problem is or why so far it has not got an affirmation, for the farmers who control state land, especially those in the Desa Sumberklampok. Sociologically or as a fact, there is a discrepancy between positive law (*rechtspositiviteit*) and legal fact (*rechtswerkelijkheid*) in the society. Positive law according to the laws, prohibits the control of state land without license from the authority, but as a fact those people who control the state land, even though they have no rights to control it, no sanctions to be imposed against them. So there is no a clear meaning in the word control (own or occupy).

Data in this empirical legal research are related to agrarian politics in land-reform sector implemented by regional government in order to uplift the welfare of farmers who control the state land by using primary, secondary, and tertiary data. This research uses some data-collecting techniques, those are: First, by way of observation, i.e. data-collecting tool carried out by observing and writing systematically indications inquired. To find out accurate data, it is necessary to use an observation as one of the instruments in the research, in addition to other instrument by way of interview technique, as a real foundation to uncover social situation and regional condition. One also can look directly at land control in reality, and agricultural work and process of rights-application and of agricultural production. What is really happening in the research site cannot be explained only by words or a sentence, without being observed directly in the field. The same thing is suggested by Sanapiah Faisal as follows: “that in a research, using technique of interview needs to be complemented by collecting data found in the field by way of observation, because words (sentence) cannot always substitute for the real situation in the field.”

Related to the topic concerning those who cannot get the rights status of the land, especially the farmers who own or control the state land, some aspects which can be observed;

- a. Existence of the farmers who control the state land utilized for agricultural work, especially concerning the process of rights-application and process by which they are working on agricultural products.

- b. Relationship between the lands controlled and worked for agriculture and attitude of the farmers, particularly concerning their religious magic.
- c. Attitude of the farmers toward situation of government politics in the supervision of the state land control.

The object of the observation is human beings because what are observed are their attitude and nature, as farmers and holders of authority as well. The researchers can observe directly in the field about the event or legal act which occurs in the field, so that they can clearly describe the situation and attitude of the farmers who control the state land. The researchers do direct observation with participant observation. Wuisman calls this by “involved observation”. The researchers aim to; firstly, deepen the meaning of relationship between farmers and the land they control and work, legal relationship and religious magical relationship. Secondly, by way of depth interview. The interview is a process of asking-answering orally in the research between two or more people, face to face, listening directly as information. To ensure accurate data in the field, it is necessary to collect data with structured interview, i.e. as one of techniques of collecting data by coming in contact with one respondent or more in Desa Sumberklampok. In the interview, it will be carried out by taking notes and using recorder, Galaxy Note, to save data of information from certain sources. The sources are rural apparatus, prajuru adat, farmers, regional government of Buleleng, Agrarian office of Kabupaten Buleleng, legislative of Kabupaten Buleleng, and Agricultural office and animal husbandry of Kabupaten Buleleng. The data found in the field used as primary data.

Secondary and tertiary data will be dug through library research, i.e. to collect legal documents, previous results of research, and legal dictionary, and general dictionary which will be analyzed systematically. According to Lincoln and Guba followed by Lexy J. Moleong that to reconstruct people, events, activities, organizations, feeling, motivation, claims, compassion and so forth; to verify, change and spread information found from other people, human beings or not; and to verify, change the construction developed by the researchers as member-checking.

To find out valid data, the researchers need openness in dealing with respondents when the interview is held, so that it is becoming clear what the goal is the research wants to achieve. Moleong said that it is an open interview. Before doing interview, the researchers prepare interview guide so that data-collections are focused on the goal of the research. Moreover, Moleong said that this mixed interview is operational by preparing a framework and outline of the questions which will be asked before doing interview.

To avoid ambiguity in the interview, and to reach maximal results, the researchers use phases suggested by Lincoln and Guba followed by Sanafiah Faisal, those are:

1. Decide respondents to be interviewed,
2. Prepare outline of the problems or questions which will become the topic in the interview guide. The outline (the subject) as written in the interview guide is arranged in order from the questions which need answers with more complex thought
3. Start and open interview line, interviewer explain the goal of interview to respondents, and then try to entwine harmonious and relax relations.
4. Maintain flow of interview, firstly by communicating “light” questions and then more and more crucial questions.
5. Confirm the interview results with the respondents, and end it. This phase is carried out by communicating orally the temporary interview results which have been

written in the field, and respondents only affirm or correct the answers which have been said.

6. Write down the interview results on the field note as the material of data analysis.

The interview carried out in Desa Sumberklampok focuses on existence of the farmers on the state land, status of controlled land, the relationship between the farmers and the land. . The efforts of farmers striving for their rights on the land they use, intervention from government against the farmers, contribution of agricultural products for the life of the farmers, and problems faced by farmers in submitting their rights-application on the land. The intervention by regional government in distributing evenly the land in Desa Sumberklampok.

The research chose the research site in Desa Sumberklampok. Deciding the location in that village based on consideration that in that village, the state land is being occupied or controlled by farmers in Desa Sumberklampok used for agricultural work. The village is being disputed between provincial government of Bali with PT Margana and PT Dharma Jati Utama as the holder of HGU (Hak Guna Usaha) – rights of tenure by long lease, which has been expired. The disputed land had been controlled by the farmers in Desa Sumberklampok by tens of years and from generation to generation. The existence of the farmers as rural community in that village has received affirmation from regional government. The state land occupied by the community had not received affirmation from the government for uplifting status of rights to become rights of use.

RESULT AND DISCUSSION

Based on the rule in Article 13 point (1.k) and Article 14 point (1.k) of UU No 32 of 2004, the area of agrarian service is the matter under the authority of regional government of province and regional government of district/city to be held regarding regional autonomy. Central government, especially the agency which administers the land gradually hands in agrarian service to regional government in province and district/city. But regional government has not completed regulation of authority-transfer in agrarian sector. The central government still postpones the transfer to regional government based on stipulations in:

1. Kepres (presidential decision) No 10 of 2001, which among other things states that the authority in agrarian sector will be regulated later in the governmental regulation.
2. Article 1 (6) Kepres No 62 of 2001, states that part of governmental duty carried out by national land/agrarian body BPN (Badan Pertanahan Nasional) in region is still carried out by central government until all regulations in land sector are specified at the latest of 2 years.
3. Kepres No 34 of 2003, states that implementation of authority for regional government of district/city in the land sector is postponed. In Article 3 point (2) it is stated that the issuance of regulation in the land sector for regions will be carried out by BPN at the latest of August, 1, 2004.

The three presidential decisions are policies of non-enforcement of regional autonomy in the sector of land. But the stipulations should be obeyed by regional government throughout Indonesia, because president, as the head of government, made these decisions. So, based on those stipulations, the authority for administering the land sector is still the one of central government with BPN as unit of implementer in center and district office of land in Province and agrarian office in regency/city.

Government has certain authorities, there are two kinds of governmental authorities in general, those are:

- I. Compulsory Authority and;

II. Loose Authority (Discretion).

Compulsory authority is an authority granted to governmental organ to do what legislator wishes for without any possibility for making other decisions from what has been defined by legislator. Loose authority (discretion) is the power of governmental organ to make certain decisions based on initiative or self-assessment and to interpret vague norms.

Government in implementing the authorities must follow the rule of public administration in order to avoid or prevent abuse of power. The decisions are bound to three legal principles, those are:

1. Principle of *yuridiktas* (*rechtmatigheid*), governmental or administrative decision must not break the law (*onrechtmatige overheidsdaad*).
2. Principle of legality (*wetmatigheid*), a decision has to be made based on a regulation or a stipulation of laws.
3. Principle of discretion (*discretie, freies ermesen*), the ruler cannot refuse to make a decision with the reason that there is no rule.

There are two kinds of discretions, those are “free discretion”, when the laws only set the limits, and “compulsory discretion”, when the laws set some alternatives to be chosen by the administrative officer. The officer chooses one of them as he considers it as the closest.

From the side of the law, governmental organ acts in the certain limits by looking at the authority or power underlying it. When an organ commits acts based on compulsory authority, it has to see the underlying regulation, regarding the power, material or substance, procedure, and so forth. Discretionary authority can be used with reference to unwritten law, for instance general principles of good governance.

The authority or power used by government is not only to regulate, but also to define. Governmental authority has to be carried out based on clear law so that it can be responsible for.

According to F.P.C.L. Tonnaer, “Government authority is considered as competence to uphold positive law, in that way, it can be created legal relations between government and citizen.” In constitutional state, the power or authority of government comes from the prevailing rules of law or regulation, and it means that source of power for government is the regulation, or rules of law. Theoretically, authority came from the rules of law can be obtained through 3 ways, those are:

1. Attribution, i.e. the power or authority granted by legislator to governmental organ.
2. Delegation that is transfer of authority from one governmental organ to another. Attribution always predates delegation.
3. Mandate, when one governmental organ allows its authority is carried out by other organ on behalf of the first. Every policy or governmental act must rest on legal or legitimate authority and so does the authority in the agricultural sector.

Attribution is the authority to make decisions which directly rest on the laws. The attribution can also be said as a normal way for obtaining governmental authority; the authority which is obtained by way of attribution by governmental organ is an original authority since the authority is acquired directly from the rules of law. Attribution means that a new authority is acquired by a governmental organ, it doesn't exist before.

Article 33 point (3) of 1945 Constitution specifies that earth, water and natural capital are dominated by the state and used for social prosperity. The prevailing positive law claims that

earth, water and natural capital are controlled, or dominated, by state, therefore at the highest level the state has authority or is entitled to regulate the employment.

Dominating rights by state is defined in Article 2 of UUPA, it grants the authority to the state, to regulate or to control and to define various aspects of land control. Article 2 point (1) of Kepres No 34 Of 2003 on national policy in land sector said about part of governmental authority in the land sector which is performed by regional governments.

Based on the framework of national agrarian policy formed by technical team of policy development and agrarian management, it is said that land policy is based on the principles as follows:

1. Land is national asset constituting main capital of development toward a just and prosperous society. Therefore, the employment has to be based on principles developing in Indonesian people or society. One cannot consider land as a transactional, speculative object, and other things which are in contradiction with the principles in the Article 33 point (3) of 1945 Constitution.
2. land or agrarian policy is based on consistent work to implement the mandate from Article 33 point (3) of 1945 Constitution, that is....earth, water, space, and natural capital are controlled by the state and used for prosperity of the people.....Therefore, it is the duty of the state to protect the rights of the people on land and to give fair access to agrarian resources, land is one of them.

Agrarian policy is laid as a foundation for implementation of development program in order to accelerate economic reform focused on economy of people empowerment, development of economic stability and environmental conservation.

CONCLUSION

Agrarian legal politics in the land-reform sector carried out by regional government in providing legal protection to the farmers has not been completely performed in accordance with the understanding and goal of land-reform. Basically, land-reform wants people to develop the potency of the land they occupy or control through legal fact based on the authority of regional government. But because of legal aspect, or legal problem, is surrounded by such other aspects as political, economic, power aspects, these results in obstacles, which needs to be resolved by all parties.

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