

## The Land Legal Politics in Creating the Prosperity of Indonesian Society

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**Abstract.** *Land is a necessity that is needed by citizens, in the current era, it is inseparable from various kinds of interests that result in the occurrence of land politics. The purpose of this paper is to find out and analyze the politics of land law to create people's prosperity. The approach method uses a normative juridical approach. The results of the writing can be concluded that the politics of land law in creating people's prosperity is carried out by laying the foundations for the preparation of the National Agrarian Law, which will be a tool to bring prosperity, happiness, and justice to the state and people, especially the people. In the context of a just and prosperous society and the implementation of land law politics in creating people's prosperity, it is regulated that the distribution of land rights that can be granted can be distinguished as regulated in Article 16 paragraph (1) of the Basic Agrarian Law.*

*Keywords: Land; Politics; Prosperity; Society.*

### 1. INTRODUCTION

Land has a very important role in the life of all people, such as the role for housing, plantation business, agricultural business, mining business, and others. The increasing demand for land for industrial, social or commercial purposes.<sup>1</sup> Indonesia is very well known as an agricultural country, so land is one of the important factors for the life of the Indonesian people. The arrangement of land use needs to pay attention to the people's rights to land, the social function of land rights, the maximum limit of land ownership, including various efforts to prevent the concentration of land tenure which is detrimental to the interests of the people.

Land institutions are perfected so that an integrated, harmonious, effective and efficient land management system can be realized, which includes an orderly administration of life. Land administration development activities need to be improved and supported by better land analysis tools and information tools.<sup>2</sup>

<sup>1</sup> Amiludin, Politik Hukum Pertanahan & Otonomi Daerah: Kebijakan & Kewenangan Pemerintah Pusat dengan Daerah Terkait Pertanahan, *Journal of Government and Civil Society*, Vol. 2, No. 1, April 2018, p. 19-32

<sup>2</sup> Suteki, (2005), *Masa Depan Hukum Progresif*, Thafa Media, Yoyakarta, p.75

The arrangement of land right by state officials through act no 5 of 1960 on the basic regulation of agrarian (hereinafter referred UUPA) on the principle of social function of land.<sup>3</sup> Some of the problems that often occur in Indonesian society are unequal ownership or control over land, land tenure without a permit, problems related to land acquisition for development purposes who are entitled or their proxies<sup>4</sup>.

Land is no longer the property of only a few people, but the common property of the Indonesian nation. Land must have a social function for all Indonesian people, meaning that land tenure prioritizes common interests over personal interests.<sup>5</sup> The state can determine various types of land rights, regulate the extraction of the natural resources contained therein, make plans regarding the provision and use of the earth, water and space contained therein<sup>6</sup>. In relation to the land issue, Article 33 paragraph 3 of the 1945 Constitution states that land in the entire territory of Indonesia is controlled by the state, whose control is intended for the prosperity of the people.<sup>7</sup>

In its arrangement, it is contained in Act No. 5 of 1960 concerning the LoGA. In Article 3 and Article 22 of the LoGA, there is an acknowledgment of property rights over the lands of indigenous peoples. In article 3 of Act No. 5 of 1960 is a law that regulates the recognition of the rights of indigenous peoples and property rights over the lands of indigenous peoples. Then in Article 22 of the UUPA that a person can be given ownership rights to land by his customary law alliance because he has been given permission to open and cultivate his land continuously. Furthermore, the politics of land law in the 1945 Constitution after being amended is expressly stated in Article 18 paragraph (2) "The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia which regulated by law".

This paper aims to identify and analyze the politics of land law to realize people's prosperity so that it can be used as a basis for implementing the state's goals, namely creating public welfare.

## 2. RESEARCH METHODS

The approach method used was a normative juridical approach, namely legal research with a normative doctrinal approach, or normative juridical legal research or normative

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<sup>3</sup> Donna Okhtalia Setiabudhi, the problematic of small-scale land acquisition (less than 5 hectares) for public interest development, *Hasanuddin law Review*, Volume 2 Issue 1 April 2016, p.061-074

<sup>4</sup> Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia*. *JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/4135>

<sup>5</sup> Indah Sari, Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA), *Jurnal Mitra Manajemen*, Vol 9, No 1 (2017), p.15-33

<sup>6</sup> Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

<sup>7</sup> Candra Perbawati Dampak Politik Hukum Pertanahan Yang Belum Berperspektif Ham Bagi Masyarakat Hukum Adat Mesuji Lampung, *Masalah-Masalah Hukum*, Vol. 44 No. 4, October 2015, p.521

legal research is basically an activity that will examine internal aspects of positive law,<sup>8</sup> regarding land law politics implemented by the government to prosperity of the Indonesian people.

### **3. RESULTS AND DISCUSSION**

#### **3.1. Indonesian Land Legal Politics in Creating People's Prosperity**

According to Soedarto, legal politics is a policy from the state through state agencies that are authorized to establish the desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired to. The definition of legal politics put forward by Soedarto above covers a very broad scope. Soedarto's statement regarding 'expressing what is contained in society' can be interpreted with community problems regarding land. Land law politics will answer questions about what goals are to be achieved, what will be done with the existing land, and what means will be used.<sup>9</sup>

The politics of land law in Indonesia dates back to the colonial era before Indonesia's independence. Indonesia became independent on August 17, 1945, but at that time Indonesia did not have a land regulation. Therefore, the principle of concordance as regulated in Article II of the transitional provisions of the 1945 Constitution applies, which reads "All existing state bodies and regulations are still valid, as long as new ones have not been made according to this Constitution". Indonesia issued Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles on September 24, 1960. Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles marked the birth of agrarian law in Indonesia.<sup>10</sup>

The background of the formation of land law politics in Indonesia begins with the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest people prosperity. The role of the state in the land aspect and guarantees for the implementation of constitutional provisions are transformed into the right to control land by the state and laws and regulations in various sectors related to land and natural resources.<sup>11</sup>

Some government regulations related to land law in Indonesia are as follows:

- Act No. 5 of 1960 concerning Basic Agrarian Regulations
- Decree of the People's Consultative Assembly number IX of 2001 concerning Agrarian Reform and Management of Natural Resources

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<sup>8</sup> Kornelius Benuf, Muhamad Azhar, Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer, *Jurnal Gema Keadilan*, Volume 7 Edition I, June 2020, p.20-33

<sup>9</sup> Abdul Latif, & Ali, Hasbi Ahsin. (2011). *Politik Hukum*. Sinar Grafika. Jakarta, p.41

<sup>10</sup> Meiliyana Sulistio, Politik Hukum Pertanahan di Indonesia, *Jurnal Education and development*, Vol.8 No.2 Edition May 2020, p.105-111

<sup>11</sup> H.Nuridin, Politik Hukum Pertanahan, (Suatu kajian Hukum Mengenai Hak Milik Dalam Peroses Pendaftaran Tanah), *Meraja Journal*, Vol. 1, No. 3, November 2018, p..20

- Decree of the President of the Republic of Indonesia number 34 of 2003 concerning the National Policy on the National Land Agency in the Land Sector
- Presidential Regulation number 10 of 2006 concerning the National Land Agency
- Government Regulation number 38 of 2007 concerning the Division of Government Affairs between the Government, Regional Government, Province, and Regency/City Government which has just been enacted on 9 July 2007 namely Government Regulation number 46 of 2007
- Decree of the Head of the National Land Agency number 2 of 2003 concerning the Norms and Standards of the mechanism for administering the Government's authority in the Land Sector carried out by the City/Regency Government

Indonesia issued Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles on September 24, 1960. Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles marked the birth of agrarian law in Indonesia. Act No. 5 of 1960 (UUPA) The politics of land law in the colonial era of the Dutch East Indies was aimed at providing benefits to the Government of the Netherlands Indies. The Dutch East Indies government regulations contained in *Agrarische Wet*, *Agrarisch Besluit*, had the aim of increasing the treasury of the Dutch East Indies Government. Therefore, when Indonesia became independent, Indonesian land politics had a very different main goal, namely to achieve the greatest prosperity of the people.

The Basic Agrarian Law fulfills all these formal requirements so that the Basic Agrarian Law has a formal national character. From a material point of view, the new agrarian law must also be national in nature, meaning that with regard to its objectives, principles and contents it must be in accordance with the national interest.<sup>12</sup> The purpose of the basic agrarian law as a means to achieve people's prosperity can be seen in the general explanation I of the basic agrarian law:<sup>13</sup>

- Laying the foundations for the preparation of the National Agrarian Law, which will be a tool to bring prosperity, happiness, and justice to the state and people, especially the peasants in the framework of a just and prosperous society.
- Laying the foundations for unity and simplicity in land law.
- Laying the foundations to provide legal certainty regarding land rights for the whole people.

The basic agrarian law makes policies that are used to increase people's prosperity, for example, it contains provisions for land reform as regulated in articles 7, 10, and 17 of the basic agrarian law. With the existence of this basic agrarian law, there is a provision that those who own land that exceeds the limit are not allowed. The basic agrarian law also makes policies so that agricultural land can be actively cultivated by

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<sup>12</sup> Alif Abdurrahman, Konsistensi Penerapan UU No. 5 Tahun 1960 terkait dengan Hak Milik atas Tanah bagi WNI Non Pribumi di Yogyakarta, *Jurnal Gema Keadilan*, Volume 6, Edition II, Agustus 2019, p.170-183

<sup>13</sup> Nurjannah, Undang-Undang Pokok Agraria (UUPA) Sebagai Induk landreform, *Al-Daulah*, Vol. 3 No. 2 (2014), p.193-205

farmers. Therefore, there is a prohibition on absentee land ownership, namely agricultural land located outside the sub-district area of the owner.<sup>14</sup>

The purpose of the establishment of the basic agrarian law is to abolish dualism and pluralism in Indonesian agrarian law.<sup>15</sup> With the regulations in this basic agrarian law, it is hoped that the prosperity of the people will increase, especially the farmers will soon be achieved. Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) is also national in nature, namely made by Indonesian lawmakers, made in Indonesian language, and applies throughout Indonesia.

Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles recognizes the existence of individual rights to land, but has a social function which is a form of reform of the Indonesian nation related to the regulation of land rights, which used to be pluralistic in nature and greatly benefited the colonial nation.<sup>16</sup> The right to control the state over land for the greatest prosperity of the people. Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles is more in favor of people from weak economic groups, especially farmers.

Systematics in the LoGA consists of 5 parts, the first part consists of 58 articles, the second part consists of 8 articles on conversion provisions. The UUPA has a hierarchy of land tenure rights in Indonesia, namely:<sup>17</sup>

- Indonesian Nation's Right to Land (Article 1 UUPA)

The rights of the Indonesian people to land, namely all land within the territory of the Republic of Indonesia as a gift from God Almighty, belongs to the Indonesian nation and is eternal (Article 1 paragraph (2) and paragraph (3) of the BAL). Eternal nature means that as long as the Indonesian people who are united as an Indonesian nation still exist and as long as the land is still there, under no circumstances will any power be able to sever or nullify this relationship.

- State control rights over land (Article 2 UUPA)

State authority over land as regulated in Article 2 paragraph (2) UUPA, namely:

- Regulate and administer the designation, use, supply, and maintenance of land;
- Determine and regulate legal relations between people and land; and
- Determine and regulate legal relations between people and legal actions regarding land.

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<sup>14</sup> Sri Hajati, Sri Winarsi, Agus Sekarmadji, Oemar Moechtar, (2018), *Politik Hukum Pertanahan*. Airlangga University Press, Surabaya, p.36

<sup>15</sup> Dwi Pratiwi Markus, Amin Purnawan, Analisis Yuridis Kedudukan Hukum Adat & Peranan Notaris-Ppat Dalam Proses Pendaftaran Tanah Menurut Undang-Undang Pokok Agraria Di Kota Sorong Papua Barat, *Jurnal Akta*, Vol. 4 No. 3 September 2017, p.297-304

<sup>16</sup> Suparman, Peranan Undang-Undang Pokok Agraria Bagi Masyarakat Indonesia Yang Bersifat Agraris, *Jurnal Warta*, Edition: 54 October 2017, p.1-13

<sup>17</sup> *Ibid*

- Ulayat rights of customary law communities (article 3 UUPA) ulayat rights are the authority which according to custom is owned by certain customary law communities over a certain area which is the living environment of its citizens to take advantage of natural resources, including land in that area for survival and life, which arises from outward and inward relationships that are hereditary and uninterrupted between certain customary law communities and the territory concerned.<sup>18</sup>
- Individual rights to land:
  - Land rights (Article 16 and Article 53 of the LoGA) Land rights are rights that give authority to the holder of the right to use and/or take advantage of the land being entitled.
  - Waqf of proprietary land (Article 49 UUPA) Waqf land is a legal act of a person or legal entity that separates part of his assets in the form of proprietary land and institutionalizes it forever for the benefit of worship or other public purposes in accordance with Islamic teachings.<sup>19</sup>
  - Mortgage rights to land (articles 25, 33, 39, and 51 of the UUPA) Mortgage rights are security rights imposed on land rights as referred to in Law 5/1960, including or not including other objects that are an integral part of the land, for the settlement of certain debts, which gives priority to certain creditors over other creditors.<sup>20</sup>
  - Ownership rights to flat units (Act No. 16 of 1985) Ownership rights to flat units are ownership rights to units that are individual and separate, including rights to shared parts, shared objects and shared land, all of which are one unit which is inseparable from the unit concerned.<sup>21</sup>

Although according to Article 2 of the UUPA, the state is not the owner of the land but controls the land based on the state's right to control, in reality it is based on various other laws and regulations that apply in the land sector, as if the state owns the land. This is because the power of the state in question affects all of the earth, water, and space. So, whether someone has judged it, or it has been judged by indigenous peoples, or it has not been judged by anyone. In short, according to the Basic Agrarian Law, the state's right to control land means the state's right to regulate and manage land, not the right to own land. The concept of the UUPA is influenced by the concept of customary law which does not recognize absolute/absolute individual property rights over land, and only recognizes communal rights to land.<sup>22</sup>

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<sup>18</sup> Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles

<sup>19</sup> Article 1 paragraph (1) Government Regulation 28 of 1977 concerning Land Endowments

<sup>20</sup> Article 1 number 1 of Act No. 4 of 1996

<sup>21</sup> Article 8 paragraph (2) and paragraph (3) of Act No. 16 of 1985 jo. Act No. 20 of 2011

<sup>22</sup> Afifah Kusumadara, Perkembangan Hak Negara Atas Tanah: Hak Menguasai Atau Hak Memiliki? *Jurnal Media Hukum*, Vol. 20 No.2 Desember 2013, p.263-276

### 3.2. Implementation of land law politics to create people's prosperity

On the basis of the right of control from the state, it is determined that there are various types of land rights that can be owned by individuals or legal entities. Based on article 4 paragraph (2) of the UUPA, land rights give the authority to use the land in question as well as the body of the earth and water and the space above it only as needed for interests directly related to the use of the land within the limits according to this law and higher laws. Based on the provisions of Article 4 paragraph 2, the rights to land owned by these individuals and legal entities are still limited, namely by the UUPA itself and other higher regulations. Muhammad Bakri stated that all land rights that can be owned by individuals and legal entities are not absolute, meaning that land rights have limitations, namely land rights have a social function and the possibility of revocation of land rights.<sup>23</sup>

Control over the earth, water and space as well as the natural resources contained therein are used to achieve the greatest prosperity of the Indonesian people.<sup>24</sup> In creating people's prosperity, it is regulated that the distribution of land rights that can be granted can be distinguished as regulated in Article 16 paragraph (1) of the UUPA which is divided as follows:

- Permanent land rights, namely land rights whose existence is still recognized and will not be abolished. Included in these permanent land rights are property rights, building use rights, cultivation rights, and use rights.
- Temporary land rights are rights to land whose existence within a certain time will be removed, considering that these rights contain elements of extortion. Such rights can be seen in Article 33 of the UUPA, namely profit sharing rights, agricultural land pledges, boarding rights, and rental rights on agricultural land.
- Land rights to be determined by law. This kind of arrangement provides an opportunity for the emergence of new land rights which are sufficiently regulated in separate regulations without changing the basic agrarian law.

The definition of property rights based on article 20 paragraph (1) of the UUPA states that property rights are hereditary rights, the strongest and most fulfilled, keeping in mind the provisions of article 6 on it and the contents of the earth, as long as there are interests that are directly related to the use of the land.<sup>25</sup> Hereditary means that property rights do not only last for the life of the owner, but can be continued by his heirs if the owner dies. The strongest means that the term of ownership is not limited. This is different from the right to cultivate or the right to use the building which has a limited period of time. The fullest means that property rights give authority to the owner who is the most extensive when compared to his property rights. Property rights

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<sup>23</sup> Muhammad Bakri, (2006), *Jembatasan Hak Menguasai Tanah Oleh Negara Dalam Hubungannya Dengan Hak Ulayat & Hak Perorangan Atas Tanah*, Disertasi Thesis, Universitas Airlangga, Surabaya, p.197

<sup>24</sup> Kurniati, Hak Menguasai Negara Terhadap Tanah Menurut Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, *Varia Hukum*, Edition No. XXXIX Tahun XXX September 2018, p.1667-1677

<sup>25</sup> Maria S.W, Sumardjono, (1990), *Telaah Konseptual Terhadap Beberapa Aspek Hak Milik*. Makalah Medan, p.2

can be the parent of other rights, meaning that a land owner can give his land to other parties, such as rental rights, share profits, and mortgages.<sup>26</sup>

The right to cultivate is regulated in articles 28 to 34 of the UUPA. Based on article 50 paragraph 2 of the UUPA, it is stated that further provisions regarding the right to cultivate, the right to build, the right to use, the right to lease for the building, will be regulated in laws and regulations. Based on this article, Government Regulation No. 40 of 1996 was issued regarding the right to cultivate, the right to build, and the right to use the land. Cultivation rights are rights to cultivate land which is directly controlled by the state for agriculture, fishery and animal husbandry companies. Cultivation rights only occur on land that is directly controlled by the state. The granting of cultivation rights as regulated in the basic agrarian law is to support businesses in the agrarian sector. Businesses in the agrarian sector, especially those in agriculture, fishery or animal husbandry, are given facilities for the use of state land in the form of usufruct rights.<sup>27</sup> However, this does not rule out the possibility of land that is not directly controlled by the state, provided that the legal subject must be able to change the status of the land from land that is not directly controlled by the state to land that is directly controlled by the state.

Building rights is the right to construct and own buildings on land that is not one's own. The holder of the right to use the building is given the obligation to construct and own a building on the land with the right to use the building. The holder of the right to use the building may not lease the land with the right to the building to another party. Nowadays it can be known together that the period of use of Building Use Rights is based on Article 35 of Act No. 5 of 1960 on Basic Agrarian Provisions, it is clear that Building Use Rights in Management Rights are only for 30 years which can only be extended for 20 years when The government agreed to this, so that after 50 years the Building Use Rights could not be extended and automatically the Building Use Rights on Management Rights land also could not be extended after the Building Use Rights were declared non-renewable.<sup>28</sup>

Right of use is the right to use and/or collect proceeds from land that is directly controlled by the state, or land owned by another person who gives authority and obligations determined by the decision on granting it by the obligations specified in the decision or in the agreement with the land owner, which is not an agreement. Land that can be granted with usufruct rights include:<sup>29</sup> state land, management rights land, property rights land.

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<sup>26</sup> Effendi Parangin, (1991), *Hukum Agraria Indonesia, Suatu Telaah Dari Sudut Pandang Praktisi Hukum*. Rajawali. Jakarta, p.237

<sup>27</sup> Ni ketut sri parwati, sudjito, politik hukum pemberian hak guna usaha setelah berlakunya undang-undang penanaman modal No. 25 tahun 2007 & implikasinya terhadap nasib petani, *Mimbar Hukum*, Volume 21 No. 1 February 2009, p.141-154

<sup>28</sup> Herlina Hanum Harahap, Danial Syah, Juridical Review of Building Rights Extension on Management rights, *IJLR: International Journal of Law Reconstruction*, Volume 5, Number 1, April 2021, p.116-125

<sup>29</sup> Nurhasan Ismail, Arah Politik Hukum Pertanahan & Perlindungan Kepemilikan Tanah Masyarakat, *Jurnal Rechtsvinding*, Volume 1 No. 1 April 2012, p.41-54



#### 4. CONCLUSION

Land law politics in creating people's prosperity is carried out by laying the foundations for the preparation of the National Agrarian Law, which will be a tool to bring prosperity, happiness, and justice to the state and people, especially the peasants in the framework of a just and prosperous society. In the implementation of land law politics in creating people's prosperity, it is regulated that the distribution of land rights that can be granted can be distinguished as regulated in Article 16 paragraph (1) of the Basic Agrarian Law.

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