

Land Position In The Coastal Arising By Act No. 1 Of 2014 Concerning The Management Of Coastal Areas And Small Islands

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Abstract. The purpose of this research is to know and understand the position of the land arose in the legal system of national land and to know and understand land management arise in the effort to reorganize the coastal areas pursuant to Act No. 27 of 2007. The data used in this study are primary data, secondary data, and the data to support tertiary study, then analyzed with descriptive analytical method.

Based on the analysis concluded that the position of the land arises in national land law system is including state land. It is, as the land has not been adhered by something any rights that the state as the highest organization that was entrusted by the Constitution to master, setting, allocation, land use arise. Land management arises in the effort to reorganize the region coastal areas in an integrated manner, in a sustainable spatial planning through the stages of structuring and planning, formulation, implementation, and evaluation by considering the legislation concerned.

Keywords : Land Arise; Coastal Areas; Small Islands.

1. Introduction

National development is an effort to realize a society that is fair and prosperous, equitable material and spiritual conducted jointly by the public and the government as the improvement of the life of social justice as well as the objectives and ideals of the independence of Indonesia based on Pancasila and the Constitution of 1945 in containers unitary Republic of Indonesia independent, sovereign, united and sovereign nation livelihood of the people in an atmosphere that is safe, orderly and dynamic in the world milieu independent, friendly, orderly and peaceful.

The essence of development is a continuous process of change which is progress and improvement toward the direction to be achieved. Therefore, the national development carried out by a general pattern of national development is a series of national programs that thoroughly set forth in Article 33 paragraph (3), which reads: "Earth, water and natural resources contained in it are controlled by the state and used for the greatest prosperity of the people ". The article is a basic law in the land sector setting extensively in Indonesia.

On this basis, the country is not as landowners but the party acting as the procurement for leading and managing the national wealth as much as possible for the prosperity of the people. The powers given to the state the obligation to the state to regulate the ownership of land and determine its usefulness, so that the land in all parts of Indonesia can be used for the welfare of the people.³

Translation of authority rooted in the rights of control of the country contains an understanding of the need for an active role of the government in regulating the possession of the land and the arrangement of the ground and then with the adjustment to the second aspect of the policies in the area of land, the exploitation of the land can be directed towards the achievement of goals and long-term goals national, namely to

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³ Eddy Ruchiyat, 1995, *Politik Pertanahan Sebelum dan Sesudah Berlakunya UUPA*, Alumni, Bandung, p. 1.

realize a just and prosperous society in which material and spiritual evenly based on Pancasila and the Constitution of 1945 in the Unitary State of the Republic of Indonesia.⁴ Land use planning must be in line with and support the goals of the long-term. Wisdom land use planning should be directed to support optimal land utilization, increase productivity and quality of land uses and the conservation of soil as a natural resource that is very valuable to people's lives.

One of the things pertaining to the utilization of land is the emergence of resistant arise in coastal areas as the mainland of naturally occurring and man-made because the process of settling in rivers, lakes, and coastal or island raised and mastery of the land controlled by the local government.⁵

North coast, for example, that in the area of Eretan and Pondok Bali is facing a fairly complex issue. In addition to the relatively high levels of abrasion, many residents do arise enclosure and certifying land on the beach, whereas land is a land arise that no owner individually, and therefore can be classified as land owned by the state.

The issue of the North Coast should receive serious attention from the local government, especially the local government Indramayu and Subang, for tens of kilometers along the coast which stretches it experienced a complex issue. Looking at the phenomenon in the field, the number of raised land on the seaside population.⁶ This is contrary to the Law of the Sea Convention which states that a radius of 200 meters from the beach is an area that must be projected to repair damage to the coast, for example to the area of replanting mangrove. The plant functions after thrives into the mangrove forest is to inhibit the abrasion process.

Research Methods

The method used is normative, with specification of the study is a descriptive analysis through the stages of the research literature and field research with engineering data collection through literature study and interviews, then analyzed the data using the method of analysis of normative qualitative without using mathematical formulas and figures.

2. Results and Discussion

2.1 Arising Land Position in the National Land Law System

Man was created by a loving God to live together with another man (society). Such an attitude is contrary viewpoint of awareness about the nature of humanity as an individual as well as social beings,⁷ whose interests is a unity round which should be developed in a balanced, harmonious, and harmonious.⁸ In social life is their mutual relations which, if examined the number and nature is not infinitely many.⁹

It is a fact of nature that man has always found living with their fellow human beings. Humans have a nature to life converge with each other.¹⁰

⁴Soni Harsono, *Pokok-pokok Kebijakan Bidang Pertanahan dalam Pembangunan*, Csis, Tahun XX No. 2, 1991.

⁵ Article 1 point 3 Indramayu Regional Regulation No. 90 of 2003 on Land Arise.

⁶ Naskah Akademik Rancangan Peraturan Daerah Kabupaten Subang tentang Tanah Timbul, Pemerintah Kabupaten Subang, 2007, p. 34-35.

⁷ Eddy Damian, 2002, *Hukum Hak Cipta*, Alumni, Bandung, p. 30.

⁸ *Ibid.*

⁹ Retnowulan Sutantio & Oeripkartawinata, 1997, *Hukum Acara Perdata dalam Teori dan Praktek*, Mandar Maju, Bandung, p. 1.

¹⁰ Sudiman Kartohadiprodjo, 1977, *Pengantar Tata Hukum Indonesia*, Ghalia Indonesia, p. 22.

A philosopher named Aristotle, stated that humans from birth until death, living among other human beings, which is living in relationships between people that make members of the public; man is *zoon politicon*. This philosophy is expressed more forcefully by PJ Bouman with the words: a new human being human after living with another man. Man and society is a single inseparable.¹¹ If the philosophy of the individual's relationship with the community is taken much further with the law, then there is a match with the philosophy expressed in Roman times famous philosopher named MT Cicero who raises a slogan *societas iam, iam ius*.¹²

Jonny Purba¹³ said that as social beings, humans can never live alone. Where and when else, people always require cooperation with others. Humans need a harmonious social environment for survival.¹⁴ Harmonious social environment that not only takes the one, but also by all people in the group. To realize the harmonious social environment it needed more collective cooperation among members.

Cooperation is intended to create and implement the rules agreed upon by the residents as a mechanism to control social behavior. Those rules, often embodied in the form of institutions or social norms to be followed by each member of the group (legal norms).¹⁵ Generally, until now, people rely on the word "all nations", that is taken as the principle of the unity of the entire nation of Indonesia (the principle of national unity). In addition, the word "protect", according to Az. Nasution, it contains also the principle of protecting the (law) on the entire nation. Legal protection to all the people, certainly for all nations, without exception.¹⁶

Its main objective is the creation of a strong foundation for the nation itself towards a just and prosperous society based on Pancasila.¹⁷ Development is a step in the reform, involving the entire community in order to realize order, justice, and prosperity in the end everything should lead to the welfare of society¹⁸ as the embodiment of social justice, that one of them is the development in the sector of coastal zone management.

The opinion is based on the view of Roscoe Pound as saying that the law as a tool of social engineering, or in other words, as pioneered by Mochtar Kusumaatmadja, that the law is a means of development (a tool of development), which is the law in the sense of rules or rule of law functioned as the means by which regulates development in the sense of channeling the direction of human activity in the desired direction by the development or renewal.¹⁹

Furthermore, it can be seen from the legal definition of Mochtar Kusumaatmadja as follows:²⁰ "The law is the overall principles and rules that govern human life in society

¹¹ Ujang Charda S., 2008, *Mengenal Hukum Ketenagakerjaan Indonesia (Sejarah, Teori & Praktiknya di Indonesia)*, Fakultas Hukum UNSUB, Subang, p. 121.

¹² Eddy Damian, Op. Cit., p. 30.

¹³ Jonny Purba dalam Supriyadi, 2006, *Hukum Lingkungan di Indonesia : Sebuah Pengantar*, Ghalia Indonesia, Jakarta, p.14.

¹⁴ *Ibid*,

¹⁵ *Ibid.*, p. 15.

¹⁶ Az. Nasution, 2002, *Hukum Perlindungan Konsumen (Suatu Pengantar)*, Diadit Media, Jakarta, p. 31.

¹⁷ Neni Sri Imaniyati, 2002, *Hukum Ekonomi & Ekonomi Islam dalam Perkembangan*, Mandar Maju, Bandung, p. 171.

¹⁸ Ujang Charda S., 2005, *Kapita Selekta Hukum Ketenagakerjaan*, Bungo Abadi, Bandung, p. 3.

¹⁹ Mochtar Kusumaatmadja, 2002, *Konsep-konsep Hukum dalam Pembangunan*, Alumni, Bandung, p. 88.

²⁰ Mochtar Kusumaatmadja, *Hukum, Masyarakat dan Pembinaan Hukum Nasional*, Binacipta, Bandung, 1976, p. 15.

which also includes agencies (*Institutions*) and processes (process) that embody the enactment of rules that in reality ".

Mochtar Kusumaatmadja further argued that:²¹ "A good law is the law in accordance with the laws of life (the living law) in the community that would be in compliance or a reflection rather than the values prevailing in the society".

Based on this view leads to the function of law in society which can be returned to the basic question, namely what is the purpose of the law? Answers to questions of this is that in the final analysis the ultimate goal of the law, when reduced to a matter of course, is the order (order).²² In addition to the order, another purpose of the law is to achieve justice varying in size according to the hand and society and era.²³ In order to achieve order in society, needed certainty in an orderly society.

Meanwhile, for the touch of happiness, man should be sufficient for what to them as proposed by Aristotle (to be happy means to be sufficient for one's self). Enough what may not be achieved without the auspicious words "development", while on the other hand is the welfare of the community (at large) is the supreme law (*solus publica supreme lex*).²⁴

In principle the issuance of the decree according to the preamble a philosophically directed that first and foremost should be based is that the agrarian resources / natural resources which include land, water, space and natural riches contained therein is the grace of the Almighty to nation, a national asset that must be grateful. The consequence is that the agrarian resources / natural resource that must be managed and utilized optimally for the current generation and future generations in order to realize a just and prosperous society.²⁵

Boedi Harsono, argues that the definition of agrarian in Act No. 5 of 1960 is used in a broad sense, namely that the notion of agrarian cover the earth, water and natural resources contained therein, and then further regulated in Article 48 of Act No. 5 of 1960 which includes also the space, the space above the earth and water containing power and elements that are used for efforts to maintain and develop the fertility of the earth, water and natural resources contained dialamnya and matters concerned with it.

Agrarian law basically covers some of the legal relationship between man and land, among others:²⁶

The relationship between the people with the land under their control.

- The relationship between the community where he lived in order to utilize and efficient use of land.
- Relationships among people in order to utilize the land utilization.
- This means that someone belongs Proprietary should not be solely used for private purposes but the right must have social functions that provide various rights of others.²⁷

²¹See Mochtar Kusumaatmadja, tanpa tahun, *Fungsi dan Perkembangan Hukum dalam Pembangunan Nasional*, Binacipta, Bandung, h. 2.

²²*Ibid.*

²³ *Ibid.*

²⁴ Ujang Charda, "Perlindungan Satwa Langka", Makalah dalam *Seminar Pembahasan Rancangan Peraturan Daerah Kab. Subang tentang Perlindungan Satwa Langka*, Pemerintah Kab. Subang Bekerjasama dengan Universitas Subang, Subang, 2007, p. 8.

²⁵ Maria S.W. Sumardjono, 2008, *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, Kompas, Jakarta, p. 92.

²⁶Gunawi Kartasapoetra, 1994, *Hukum Tanah Jaminan UUPA Bagi Keberhasilan Pendayagunaan Tanah*, Tarsito, Bandung, p. 84.

²⁷Wantjik Saleh, 1997, *Hak Anda atas Tanah*, Ghalia Indonesia, Jakarta, p. 15.

2.2 Efforts Arises Land Management In Turkish Territory Arrangement Back Under Act No. 27 of 2007

Arranged on land management arise intended to regulate land tenure arise that can not be separated from a variety of interests, as in the study of agrarian law coast can not be owned by individuals / private legal entities as property rights, except the right to lease, the right lease / disposable obtained by request land rights that are intended for business activities, but not owned and sold, such as property rights.

Serious attention of local authorities, including the National Land Agency in terms of land certifying receipt of the request arises, should assess in advance and depth. It is given that the North Coast is now experiencing an appalling erosion and abrasion levels each year is estimated at around 10 meters. It happened because of the extinction of mangrove forests, and the lack of planting mangroves. In addition, due to booming business activity is farming. The number of coastal areas used for farming, the impact abrasion (death of marginal land coast), then here came the ground arise directly exploited population with given markers to mark ownership, even some already been certified and ironically, obtained the land at a price of between 20 to 50 million.²⁸

The enactment of Act No. 1 of 2014 on the Management of Coastal Areas and Small Islands is already an urgent need as the legal basis for doing wisdom coastal land use and utilization arising from natural phenomena or due to human actions. In the current national development program framework foundation stabilization in land use planning and utilization should be improved by arranging its software in the form of regulations implementing the law of spatial and land use at national and regional level.

Article 1 paragraph 1 of Act No. 1 of 2014 states that: "Management of coastal and island is a process of planning, utilization, monitoring, and control of the resources of coastal and small islands between sectors, between government and local government, between terrestrial and marine ecosystems, as well as between science and management to improve kesejahteraan community".

Act No. 1 of 2014 made as a complement to the implementation of Act No. 5 of 1960. In addition, it is also a National Strategy for the Development of Spatial Pattern coastal region that includes policies and measures needed to develop a national spatial pattern. Therefore, the government needs to encourage the formulation of spatial planning in various areas of adequate quality and can be operationalized and coordinated implementation of and integrated vertically or horizontally. Land use planning is not an easy job, but it needs to be done so that the land be used in a planned manner for the sake of prosperity of the people.²⁹

3. Closing

3.1 Conclusion

- The position of the land arises in national land law system is including state land. It is, as the land has not been adhered by something any rights that the state as the highest organization that was entrusted by the Constitution to master, setting, allocation, land use arise.
- Land management arises in the effort to reorganize the region coastal areas in an integrated manner, in a sustainable spatial planning through the stages of structuring

²⁸ Ujang Charda S., Op. Cit., p. 35.

²⁹ A.A. Oka Mahendra, 1996, *Menguak Masalah Hukum, Demokrasi dan Pertanahan*, Pustaka Sinar Harapan, Jakarta, h. 277-279, p. 277-279.

and planning, formulation, implementation, and evaluation by considering the legislation concerned.

3.2 Suggestion

- It is expected that the government can utilize, manage and regulate land arise in coastal areas to the public interest.
- It is hoped that using raised soil can create coastal zone management and sustainable development

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