



Agrarian Reform In The Perspective of Pancasila

Mas Subagyo Eko Prasetyo

Universitas Nasional Jakarta

Email: massubagyoekoprasetyo@yahoo.co.id

Abstract

In the construction of the thought of the Preamble to the 1945 Constitution, Pancasila is the basis of the state which is the subject of the fundamental rules of the state and is the highest norm in the hierarchy of the system of legal norms of the Republic of Indonesia. Pancasila is the basic norm that creates all lower norms in the legal system. Pancasila should also determine whether or not the legal norms under it apply. In the thought construction of the Preamble to the 1945 Constitution, Pancasila will be realized through the making and implementation of state policies (the constitution, laws, government regulations and so on to the lowest implementing regulations) and is revealed in the practices and habits of acting of the administrators of state power, executive, legislative and judicial. Law number 5 of 1960 concerning the Basic Agrarian Regulations, better known as the Basic Agrarian Law (UUPA) can be put forward as an example of Indonesia's positive law which flows directly from Pancasila (especially the principles of Social Justice) and Law No. The 1945 Constitution (especially Article 33 paragraph 3), although in practice the law seems to have been deliberately not implemented because of the complexity of the interests that played out after the open door policy was implemented in 1967.

Keywords: Agrarian Reform, Perspective

A. Introduction

Agrarian reform can be interpreted narrowly as a redistribution of agricultural land carried out or supported by the government, or broadly as a realignment of the agrarian system in a country. Agrarian reform in its narrow sense is also known as land reform. Agrarian reform involves changes to laws and regulations relating to land ownership and management, which generally aim to transfer land ownership from the strong to the weaker ones, such as the redistribution of agricultural land from the landlords. to small farmers. Agrarian reform or land reform can take place radically, such as large-scale transfer of land ownership from one group to another, or it can take place less dramatically, such as regulatory reforms aimed at improving land administration.

In Indonesia, agrarian reform is regulated by Law Number 5 of 1960 concerning Basic Agrarian Principles, better known as the Basic Agrarian Law (UUPA). Even though this law is more than 53 years old, and is normatively still valid to this day, in practice it cannot be implemented in real life.¹ Even according to Prof. Dr. Achmad Sodiki, SH The UUPA is often openly denied. One of the reasons why the UUPA is not implemented seriously, so that Indonesia is still known as a country that has not implemented land reform, is the political situation caused by the The September 30th Movement of 1965, which was suspicious of all things left; and the land reforms that were rolled out and implemented based on the LoGA were considered to be communist in nature. This paper aims to straighten out the meaning contained in the UUPA by deepening its cognitive meaning and

removing its emotive meaning so that there is no longer any doubt for the Indonesian people to implement it wholeheartedly.

B. Method

Indonesia is a country based on Pancasila, and therefore all laws and regulations that are born must be based on Pancasila. This paper aims to explain that Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is based on Pancasila and not on other principles or ideologies other than Pancasila. The problem that often arises in the reluctance to implement the LoGA is the dominant use of the jargon "Indonesian socialism" in the implementation of the LoGA. The explanation of Law Number 5 of 1960 states that the current agrarian law (until the promulgation of the UUPA – 24 September 1960) has a dualistic nature and makes a distinction between land rights according to customary law and land rights according to customary law. western law. The LoGA intends to eliminate this dualism and consciously wants to establish a legal unity. By itself, the new agrarian law must be in accordance with the legal awareness of the people, most of whom are subject to customary law.

Therefore, the agrarian law is based on the provisions of customary law as the original law, which is perfected and adapted to the interests of the people in the modern state and in relation to the international world, and adapted to Indonesian Socialism. Besides the term "Indonesian Socialism", in the Elucidation of Law Number 5 of 1960, we also find the use of "Socialism in Indonesia". the term "Indonesian Socialist Society." The use of these two terms needs to be explained so as not to get the negative connotation that has been interfering with the implementation of the LoGA. There are still certain parties who claim that the LoGA is communist, which makes some people reluctant and afraid to fight for the implementation of the UUPA.

C. Result and Discussion

The theoretical basis used in this paper is the view of Hans Kelsen in his book entitled Pure Legal Theory, Fundamentals of Normative Law (translated from Pure Theory of Law, Berkeley University of California Press, 1978). The theory aims to explain a legal provision from the perspective of the law itself and seeks to clear the object of its explanation from all things that are not related to the law. This kind of view seems appropriate, but from a quick glance at the development of the science of law in the 19th and 20th centuries it can be clearly seen that it was far from pure and uncritically mixed with elements of psychology, sociology, ethics, ideology, and political theory. This confusion is understandable because the fields of study mentioned above also discuss many issues related to law. Pure Legal Theory seeks to limit the understanding of law from fields outside the law, but that does not mean ignoring its relevance. The aim of pure legal science is to avoid methodological syncretism (mixing of various fields of science with different methodologies) which often obscures the nature of legal science.

Using Hans Kelsen's view as a theoretical basis, the author attempts to conduct a literature review, selected as necessary, relating to land reform and the LoGA, as well as how the Pancasila state basis is operated to enforce the law based on Pancasila.

1. Discussion

Pancasila is the basis of the state, and as the basis of the state Pancasila regulates the behavior of the state. According to Prof. Notonagoro in his presentation in front of the Pancasila Seminar which was held at Gajah Mada University, Yogyakarta, in 1959, Pancasila is the basic principle of the state's fundamental rules which are the highest legal norms in the legal system of the Republic of Indonesia. Viewed from the point of view of

the legal norm system of the Republic of Indonesia, the basic norms of Pancasila form the legal norms below it in stages, where the legal norms below are formed based on and sourced from higher legal norms.

Prof.'s view. This Notonagoro is based on the theory of Hans Nawasky, a student of Hans Kelsen, about the position of Staatsfundamentalnorm in the legal hierarchy of a country. Staatsfundamentalnorm is a norm which is the basis for the formation of a constitution or Basic Law (staatsverfassung) of a country. The legal position of a Staatsfundamentalnorm is as a condition for the enactment of a constitution. Staatsfundamentalnorm exists before the constitution of a country.

Complementing the views of Prof. Notonagoro, Prof. A. Hamid A. Attamimi argues that in addition to its position as Staatsfundamentalnorm, Pancasila is also Rechtsidee which functions as a guiding star in the preparation of every statutory regulation. Rechtsidee or ideals of law are indeed outside the legal system, but have an important meaning that has a constitutive function and a regulatory function in making laws and regulations.

It has been stated above that Pancasila is the basis of the state, and as the basis of the state, Pancasila regulates the behavior of the state, which is manifested in the making and implementation of laws and other laws and regulations, all of which will be revealed in the priorities, practices and habits of acting in the administration of state power. . When viewed from the context presented by Hamid A. Attamimi, the role of the organizers of state power (both executive, legislative, and judicial) is very vital, because the realization of Pancasila in everyday life is highly dependent on them.

If we look at the contents of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which is better known as the UUPA, it is clear that this law is a positive Indonesian law that flows from Pancasila (especially the principles of Justice and Human Rights). Social as one of the precepts of Pancasila and at the same time the goal of the founding of the state) and the 1945 Constitution (especially Article 33 Paragraph 3). The relationship is very real and does not require any interpretation to explain it. The management of natural resources is based on Article 33 Paragraph 3 of the 1945 Constitution which stipulates that the earth, water and natural resources contained therein, whose supervision is left to the Republic of Indonesia and used for the greatest prosperity of the people, the implementation is regulated in the UUPA which has the same goal and is congruent with the struggle of the Indonesian nation, namely to create a just and prosperous society based on Pancasila.

In an effort to end the abuses carried out by the New Order, in 1998 the Indonesian people were introduced to the term "reformasi." If reform is understood as an effort or effort aimed at gradually and regularly improving the situation, the Indonesian people have carried out reforms to improve the colonial heritage land ownership structure since the early days of its independence. This series of activities began with the abolition of perdikan villages in Central and East Java in 1946 and the abolition of what are known as conversion rights in the areas of Surakarta and Yogyakarta. 1948. However, all of these activities were partial and incidental in nature, not yet comprehensive and fundamental activities. With the enactment of the UUPA starting on September 24, 1960, reforms in the land or agrarian sector became fundamental and comprehensive. The LoGA contains objectives, conceptions, principles, legal institutions, and outlines the main provisions of national agrarian law. Due to its fundamental and comprehensive nature, and it also contains objectives, conceptions, principles, and basic provisions of agrarian law, the

UUPA is not merely agrarian law, but can also be viewed as agrarian politics that requires political will to implement it.

The LoGA creates a single-structured national agrarian law, namely positive law based on customary law on land that controls the legal consciousness of most Indonesians, as stated in the dictum a) Opinion section of the LoGA and General Elucidation on the LoGA. Customary land law is placed on a communalistic conception, which embodies the spirit of mutual cooperation and kinship, and is filled with a religious atmosphere. Land is land with groups in a certain territory. Individual rights to land are directly or indirectly sourced from these joint rights. Thus the concept underlying the LoGA can be formulated in the words “religious communalism, which allows the control of parts of the common land, as a gift from God Almighty to the Indonesian people, individually, which is personal but at the same time contains elements of togetherness. in essence it is the conception of customary law that is raised at the national level.

Thus, it is immediately apparent to us that the UUPA as a positive law does not only clearly flow from the Staatsfundamentalnorm of Pancasila and the 1945 Constitution, but is also clearly directed by LeitsterenPancasila which is filled with the spirit of mutual cooperation and cooperation. kinship. In indigenous peoples, Rechtsidee or Cita Hukum does directly affect individual morality and community morality and form a deposit of values which eventually forms customary law. But in today's modern times, Rechtsidee can function as a guiding star that tests and gives direction to positive law. Although the Rechtsidee is located outside the legal system, its function is very important as a guideline for administering state power in forming and implementing legal norms. Rechtsidee can be operated to carry out a constitutive function (which determines the existence of law) and a regulatory function (which determines the operation of the principle of justice in law).

It has been stated above, even though it is more than 56 years old, the LoGA cannot be implemented in accordance with its objectives. One of the causes was the G30S/PKI incident in 1965. The UUPA, which was considered a toddler, was considered to be influenced by communist ideology. With this assessment, there is an assumption that implementing the LoGA can be accused of being communist. The UUPA was shunned, unpopular, and was twisted at the time of its birth. Competent agencies to administer agrarian affairs can be said to be unable to do anything, and people in need do not dare to fight for their rights, which are already regulated in the UUPA.

In relation to this communist accusation, the terms “Indonesian Socialism” and “Indonesian Socialist Society” which are found in the LoGA, often haunt or are deliberately used as ghosts in the implementation of land reform. These two terms become full of emotive meanings because of the dominant political-ideological interpretation of these terms. This emotive meaning not only disturbs and obscures the cognitive meaning, but also biases it. To retrace the cognitive meaning of these two terms, we can use the views of Hans Kelsen in Pure Law Theory. Normative law must be cleaned of interpretations from interpretations that are not legal interpretations.

In the consideration of MPRS Decree Number II/MPRS/1960 concerning the Outlines of the Planned Universal National Development Pattern in 1961-1969, it was stated that the Indonesian Socialist Society was a “just-and-prosperous-society based on Pancasila. Meanwhile, in the Outlines of the Universal National Development Patterns Plan 1961-1969, the following explanation is contained: “Indonesian socialism is a teaching and movement regarding a just-and-prosperous society order based on Pancasila.” This text also explains that Indonesian Socialism contains a harmonious blend of elements of

socialism, namely social justice and welfare, and Indonesian elements as illustrated in the principles of mutual cooperation and kinship.

Following the views of Hans Kelsen as enshrined in his book *Pure Legal Theory*, exploring the meaning of the terms "Indonesian Socialism" and "Indonesian Socialist Society" based on the positive law that was in effect at the time the UUPA was enacted, it is deemed necessary to remove views that can still be we find in the community as if the UUPA was influenced by communist ideology and is contrary to the spirit of Pancasila.

In the current development of land reform implementation, there is no longer a question of whether land reform is a communist program or a capitalist program. Today, land reform has become part of the World Bank's agenda to improve property rights which can reduce land conflicts and also improve the rate of economic growth. Joseph Stiglitz, winner of the 2001 Nobel Prize for Economics, in one of his interviews in August 2007, recommended the Indonesian government to implement land reform in order to improve economic growth which was already quite good in a period of 10-15 years. -hun forward.

D. Conclusion

From the description above, it can be concluded that Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or better known as the Basic Agrarian Law (UUPA) is a positive Indonesian law that flows from Pancasila (especially the principles of Social Justice). and the 1945 Constitution (particularly Article 33 Paragraph 3), and was formulated using Pancasila as a legal ideal which is imbued with the spirit of gotong royong and kinship. The UUPA is not a communist product nor is it influenced by communist ideology. Therefore, the Indonesian people no longer need to hesitate to implement the LoGA, because the LoGA is the entrance for the Indonesian people to realize justice and prosperity.

References

- Attamimi, A. Hamid A. *Peranan Keputusan Presiden Republik Indonesia Dalam Penyelenggaraan Pemerintahan Negara, Suatu Studi Analisis Mengenai Keputusan Presiden Yang Berfungsi Pengaturan Dalam Kurun Waktu Pelita I- IV*, Disertasi Ilmu Hukum Fakultas Pascasarjana Universitas Indonesia, Jakarta, 1990.
- Barkatullah, Abdul Halim, *Filsafat Hukum*, Nusa Media, Bandung, 2010
- Darji Darmodiharjo, Shidarta, *Pokok-pokok Filsafat Hukum, Apa Dan Bagaimana Filsafat Hukum Indonesia*, Gramedia, Jakarta, 1995.
- Lili Rasdjidi Dan Ira Rasjidi, *Dasar-dasar Filsafat Dan Teori Hukum*, Citra Aditya bakti, Bandung, 2001.
- Lubis, M. Solly, *Sistem Nasional*, Mandar Maju, Bandung, 2002.
- Satjipto Raharjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 2006.
- Sudargo Gautama, *Pengertian Tentang Negara Hukum*, Alumni, Bandung, 1983.
- Soedjarwo Soeromiharjo, *Mengkritisi Undang-undang Pokok Agraria*, 2009.
- W. Poespoprodjo, *Filsafat Moral Kesusilaan dan Teori dan Praktek*, Remaja Karya, Bandung.