

# IMPLEMENTATION OF AGRARIAN POLITIC IN REALIZING A PEOPLE- CENTERED ECONOMY IN INDONESIA

Darwin Ginting<sup>1</sup>

Email: [gintingkira@gmail.com](mailto:gintingkira@gmail.com)

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**Abstract:** In the perspective of the history of Agrarian Law, land issues are faced with different challenges in different eras, and they are more and more complex, because their dimensions are continuously growing in line with the development and thinking paradigm of humans in a bid to achieve prosperity of all less prosperous nations.

The collapse of the New Order regime has left some crucial problems, particularly in agrarian area, that is, the reappearance of landlords that should have been ended according to the purpose of the enactment of Agrarian Law and the deterioration of environment quality. In addition, some different land regulations were overlapping and contradictory with one another.

Such condition was closely related to the complexity of problems in agrarian law politics, and thus its implementation has always been bringing about problems, for it could never be implemented as in nearly ideal ways.

The objective of the present research was to study and to find out solutions theoretically and practically, so that a pro-people agrarian policy which prioritizes equality may come close to reality, and hence the mandate and demand of the reformation era can be realized.

In achieving the objective, the researcher used a juridical-normative method, with philosophical, legislation, legal history, and legal politic approaches.

From the result of analysis it could be concluded that the difficulties in implementing the agrarian legal politic were as follows: 1. The ruling governments often ignored national agrarian law and land law principles, thus leading to diverse problems the solution of which are hard to find. 2. During a transitional period in the succession of a regime in attempt to build a democratic, socially equal, and human right-respecting state, there often occurred clashes and tensions between social order and old rule, the latter being aspiring to stay with the new order that was intended to be established; 3. Slow reformation of legislation and its implementation in regulating operationally according to national agrarian law principles; 4. Conflicts between different legislations both vertically and horizontally; and 5. Development in national and internasional political dynamics often demands the making of choices in implementing an occasionally dilemmatic legal politic.

Based on the result of the study above, the measures to take are as follows: 1. The concept of agrarian area policies should be changed into a policy concept that is people-oriented, paying attention to human right protection, and prioritizing justice and with sustainable management; 2. The abstract concept above has to be followed by a more practical format by considering interrelated people-centered politic-economic aspects; and 3. The development of agrarian legal politic should be a common will of the nation by choosing people spirit-based substances with a focus on a reformation of national land law, by implementing agrarian reformation program.

**Keywords:** Implementation, agrarian legal politic, people-centered economy.

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<sup>1</sup> Lecturer of Agrarian Law and National Land Law for Bandung Law College

## 1. INTRODUCTION

In a bid to get rid of poverty, the nation had struggled to set free itself from centuries-lasting colonization. Then, the government was, by its political will, determined to fight for people's rights as an embodiment of people sovereignty. It is in the context that the government strived to accomplish a goal that the 1945 Constitution Preamble mandates, that is, that the government should "develop the nation's intellectual life and people's welfare" in a broad sense. One of the aspects of people life that the government prioritizes was people's economic prosperity that the government deals with by managing natural resources and utilizing lands for people welfare. The statement of will is contained in a land legal politic which is a derivative of the 45 Constitution Preamble, and more completely contained in Article 33 paragraph (3) of the 45 Constitution, and later in Basic Agrarian Law, particularly in Article 2.

In struggling for the aspiration, it is not sufficient to simply amend laws, but rather should also implement the basics and politic of people prosperity where land is the main source. How strong a law may be, if each farmer owns only ¼ ha of land and modest technology it could not bring about any change or empowerment of farmers.

We are in the hope that there will be changes in the condition, where the farmers get more land and more sophisticated technology for their farming production. The more the farmers' land and the higher their produces, the better the welfare of the farmers will be. That is the goal of the land legal politic. Our land law, in effect since the Indonesia independence till now, in fact fails to improve farmer welfare. Why? There are lots of causes. But one thing I want to remind is that, since Simpronius era,<sup>2</sup> year 133 B.C., the provisions of land laws have favored general public and laws have to help ignorant people (*lex succurit ingnoranti* principle). From the principle, land and natural resource should be principally capable of empowering people and improving their welfare.

Realizing the aspiration is no easy task, given that each era has its own different challenges and dynamics. To inquire the dynamics, the writer would investigate the land legal politic in form of legislation policy intended to realize the welfare of farmers based on people economy in Indonesia.

## 2. THE DEVELOPMENT OF LAND LEGAL POLITIC

Etymologically, term *legal politic* is derived from the Dutch *rechtspolitiek*, composed of two words, *recht* and *politiek*. In the Dutch, the term is also meant as *beleid*. In Indonesia, it is translated as *kebijakan* (policy). Legal politic is also known by other term, i.e., legislation policy.

Padmo Wahjono<sup>3</sup> describes that legal politic is a basic policy that sets the direction, form, and substance of the laws to be enacted. The policy may be related to the enactment, implementation, and enforcement of law. On the other side, Mahfud MD<sup>4</sup> defines legal politic as a legal policy that emerges from the political configuration that is developing in government. That is, a law is strongly affected by the political will of those who control parliaments and government.

It leads the writer to a conclusion that: "Legislation policy is the government's political will in performing its activities toward the accomplishment of its predetermined goals. Thus, land legal politic is a statement of will that the government makes in utilizing land resources.

Poet Pramoedya Ananta Toer<sup>5</sup>, a great Indonesian poet who survived four eras of Indonesia, that is, the Dutch and Japan occupation era, Old Order era, and New Order era, and now Reformation era, once said that Javanese politic is the key force in Indonesian political realm from Old Order to Reformation Order, and therefore a measure of Javanese political system affects the political system in Indonesia, including its governance system.

Below is described the way of land legal politic pursued by the government since the Indonesian Independence Day till now.

<sup>2</sup> Ahmad Sodiki, *Agrarian Law Politic*, Konstitusi Press, Jakarta, 2013, p. 45

<sup>3</sup> Padmo Wahjono, *Indonesia Based Rule of Law*, Jakarta, Second Edition, Gahlia Indonesia, 1986, p. 160

<sup>4</sup> Moh. Mahfud MD., *Legal Politic in Indonesia*, Jakarta, Pustaka LP3ES, 1998, p. 347

<sup>5</sup> Pramoedya Ananta Toer, *Politic & Literature*, Media Pressindo, Jakarta, 2017, p. 2

### a. Old Order Regime Period

The Basic Agrarian Law (UUPA) that Old Order regime introduced upholds people-centered values in undergoing humane and socially just life and living activities. Social justice can be seen in the principles upheld by UUPA. A key principle is land-controlling state, where the government has an authority to be used for the greatest prosperity of people.

UUPA is intended to serve as an instrument for making a change in the economic condition of people by managing land structure, land controls, and land titles, which encourage developmental changes in agriculture and industry but without disregarding justice and equality in land ownership. In addition, UUPA is also intended to prevent the emergence of landlords, as provided for in Article 17 UUPA.

In the regime era, land legal politic has been directed to realizing equality and prosperity for all people, e.g., by a *landreform* program as regulated in Law No. 56/PRP/1960 and its implementing regulations. However, in its implementation, the government was still busy with confrontational politic problems, so it has no power to encourage the successful accomplishment of the program. The program became more obstructed by a tragic battle for power in 1965 where lots of Communist organization membership and sympathizers were involved.<sup>6</sup>

Afterwards, *landreform* was suspected by Communist Party's enemies as a product of Indonesian Communist Party (PKI), and consequently land distribution by the *landreform* program was stopped.

### b. New Order Regime

During this regime there occurred a change in the ideology of development from Indonesian socialism that Soekarno initiated to capitalism and its offspring in form of liberalization and privatization of land control and utilization. Early in the decade of 1990s, there were visible privatization and liberalization in agrarian policy, even inclining toward making lands as a business commodity.

As a result, the poor became more marginalized and more difficult for them to get asset of and access to land in particular.

While Old Order regime prioritized the development of agriculture by empowering farmers, New Order regime prioritized economic growth, by some processing industries the raw materials of which had been imported.

Furthermore, for a reason of pragmatism, in the beginning of New Order regime the government issued a regulation of domestic and foreign investment in 1967. It was then followed up by regulations per activity sector that have to do with the utilization of natural wealth, such as mine, plantation, forestry, oil and gas, and fishery, all of which did not refer to UUPA, hence overlapping of regulations in agrarian area. Or, in other words, UUPA was marginalized. Therefore, in the last days of New Order regime, there were accumulations, controls, and ownerships of lands in certain sectors. For example, in land sector, 0.2 per cent of Indonesia's population controlled 56 per cent of assets in forms of properties, plantations, and farms, so that the remaining 99.80 per cent of Indonesia's population have to struggle for controlling and utilizing the remaining 44 per cent. Other data in agriculture sector shows that, in 2003, 70 per cent of farmer households controlled only averagely 0.17 ha farm land.<sup>7</sup>

Viewed from the implementation of the regime's public policy, it was farther away from UUPA aspirations, given that it allowed the reappearance of landlords.

### c. Reformation Era Regime

This era brought about a fresh wind to the interest of general public because, according to the reformation era spirit, all developmental sectors have to be directed toward optimizing a people-centered economy. That is instructed by TAP MPR (People's Consultative Assembly Decree) No. XVI/MPR/1998. The developments of national agrarian law and land law were particularly provided for in MPR Decree No. IX/MPR/2001 and Presidential Decision No. 34 of 2003, instructing that the reformation of national agrarian law and land law should be directed to the protection of a people-centered economy.

<sup>6</sup> Herman Rajagukguk at al., *Land Issues in Indonesia from Time to Time*, UI Law Faculty, Legal Study Institute, Jakarta, 2007, p. 61.

<sup>7</sup> Nurhasan Ismail, *Direction of Agrarian Law and Protection of People Land Ownership*, Journal of *Rechtsvinding*, Jakarta, p. 45

One of the mandates that the government has to implement is preparing the amendment of UUPA that has once been close to its final process but then simply disappeared, may be due to a struggle between sectoral interests of some different ministries. That is reasonable, given that, of so much the dimensions of agrarian or land law development, political dimension is of highest importance. During the status quo (vacuum) period, there emerged a demand for the preparation of a national agrarian law, which hopefully would be able to solve comprehensively land law problems. The draft agrarian law has been discussed comprehensively through a preparation academic draft and has been registered in Parliament's Legislature, put at a scale of priority. However, the fate of the draft has not been clear yet. This is one of the dilemmas of national land law building closely related to the arrangement, control, and limitation of lands in Indonesia. Hopefully, during the Jokowi-JK administration the draft can successfully be enacted to be a law.

In agrarian field, Jokowi-JK administration has been determined to continue distributing 9 million hectares of land the administration had promised before by its landreform program. However, in the course there were more comprehensive, diverse considerations, so that the government preferred to take an agrarian reformation program. The latter is wider than simply landreform program, being only a part of the former. We should support the agrarian reformation program, because if it is successful it will be able to eliminate the poverty of farmers, and to create employments and arrange land control and titles in Indonesia.

### 3. PEOPLE-CENTERED ECONOMY AND ITS REGULATIONS

Term people-centered economy (*ekonomi kerakyatan*) was coined by Muhammad Hatta in his articles "Colonial-Capital Influence in Indonesia" and "People's Economy is at Risk" as quoted in Elli Ruslina.<sup>8</sup> In the two articles, Hatta explains concerning people economy and people miseries under pressure of colonialism. Moreover, Hatta describes that public interest is a first priority, because without people the state can do nothing. It is the anxiety that came to be the starting point of the emergence of a people-centered economy. The concept of people-centered economy became a background of the provision of article 33 paragraph (3) of the 1945 Constitution. The article strengthens a people-centered spirit.

According to Mubyarto, people-centered economy is a democratic economic system, referring to the fourth principle of Pancasila, "democracy guided by the wisdom of representative deliberation, where people economy is protected by the government."<sup>9</sup> During New Order era regime, people-centered economy was developed by Mubyarto and Adi Sasono. Their idea on Pancasila economy is identical to people-centered economy. The distinction between people-centered economy and people economy can be explained as follows:

The goal of people-centered economy is to realize people potentials in managing public interest-based enterprises. It is conceptualized by Hatta as an inspiration in determining the crucial position of people in building the state and nation. In such a people-centered economy system, the people are made as the subject that should play actively some role and be facilitated by governmental policies. In an economic democracy, all citizens get equal right of enterprise, but the disadvantaged people should be subsidized by the state in some aspects. Thus, the development cake can be felt by the whole components of the nation proportionally. That is, the rich is allowed to do their business by themselves, and the poor should be helped by the government. Thus, an opportunity to get land asset and access to the state is open to all citizens. We must support it, so as to open a way for enjoying the fruits of development.

In agrarian sector particularly, the ideal condition is still far from the expected. It is here that the government ought to show its presence in realizing the opportunity of all citizens to get welfare in a broad meaning.

### 4. PRINCIPLES OF PROTECTION IN PEOPLE-CENTERED ECONOMY ACTIVITIES

Term principle means basis or trust as a basis of thinking and acting.<sup>10</sup> From the meaning of principle, legal principles are very fundamental for a legal concept. Pieter van Dijk distinguishes legal principle from legal policy and legal rule.<sup>11</sup>

<sup>8</sup> Elli Ruslina, *Basics of Indonesian Economy in Violation of the 1945 Constitution's Mandate*, Total Media, P3IH of Faculty of Law, Muhammadiyah University, Jakarta, 2013, p. 329

<sup>9</sup> Mubyarto, "Developing People Economy as a Basis of Pancasila Economy", *Journal of People Economy*. Article-ThII-No. 8 November 2003

<sup>10</sup> Center for Language Development and Advancement, Jakarta, 1999, p. 235

<sup>11</sup> Pieter van Dijk, *Supervisory Mechanism in International Economic Organization*, Klower, Deventer, 1984, p. 693

Economic activities have to be accompanied by a principle of protection for the actors in order to prevent monopoly practices and unhealthy business competition by big businesses against weak or small ones.

If people enterprises were not protected by the government, the weak will find it difficult to develop on an equal playing field.

The principles of protection in economic law for business activities consist of six forms, namely:<sup>12</sup>

1. Principle of economy in the 1945 Constitution;
2. Principle of national interest protection;
3. Principle of protection in national law and protection by international private law;
4. Principle of national protection by a state;
5. Principle of healthy business competition;
6. Principle of protection for weak economic group.

The six principles above have been included in legislations relating to economic and financial sectors, but its implementation is still far from the expected. That is a challenge for the government currently in realizing a spirit of people-centered economy that has been mandated by the struggle of the 1998 reformation era.

## 5. LEGAL PROTECTION FOR PEOPLE-CENTERED ECONOMY IN LAND SECTOR

In essence, the objective of a state is to protect all people in every aspect of life, through a sovereign government. However, over time, there often occurred special conditions, so that there were some aspects included into a scale of priority and need to realize as soon as possible.

People's welfare and chance of self-development in a people-centered economy have to be made as a priority because developed countries highly depend on its people's quality and welfare. That is, simply natural resource wealth cannot assure the successful development of a country, without being supported by the quality of its people who own knowledge and business-minded or self-sufficient. Such a reality can be seen in some developed West countries which are poor in natural resource but controlling world economy.

Departing from the above, the course of our national agrarian politic that has passed through several government regime periods, there were some the rises and falls and dynamics in its realization, because it depends on both political will and challenges that each government encounters in their era.

In the reformation era nowadays, having been going on for 20 years, the governments have done much. But the governments were faced with various global challenges, so that the development of people economy cannot simply pursue the protection of people welfare but should also pay attention to the protection of human rights and of justice as well as sustainable protection in dealing with any challenges in the future.

That is why the current challenges should be overcome by the government in regulatory policies that may stimulate people to enthusiastically enhance their quality in relation to the development of their quality, particularly in people-centered economy activities mandated and demanded by the reformation era as contained in a state document by TAP MPR No.XVII/MPR/1998 and TAP MPR No. IX/MPR/2001, mainly in the fields of development and reformation of agrarian law, national land law, and natural resource development directed to the empowerment of people by giving them opportunities to obtain assets and accesses to the government in relation to agrarian sector.

In following up the mandate, the agrarian reformation program that has been proposed since the beginning of reformation era should be kept on in spite of the barriers and challenges in its course. A measure the government takes by issuing mass certificates that Jokowi-JK administration is now actively undertaking should be supported because it can encourage protection of people against legal uncertainty on people asset as well as realize a national land registration program. However, its process has to be conducted carefully, so as to avoid an impression that it is done hastily, or even by

<sup>12</sup> Teguh Suista, *Legal Aspect of Small Enterprises in People-Centered Economy*, Andalas University Press, Padang, 2006, p. 111

maladministration. This needs to emphasize so that any heavier duties will not cause problems in the future in relation to the legal certainty of the mass certificate.

An urgent thing that the government should take now is to accomplish agrarian reformation because it can be a foundation of people-centered economy and in the end may overcome the problems of poverty, land ownership discrepancy, and scarcity of employment, especially in rural areas. Therefore, the measure that the government took in a working plan provided for in Penpres No. 45 of 2016 which proposes five priority programs relating to agrarian reformation is logical and should be kept on. The five priority programs are as follows:

1. Strengthening a framework of regulation and resolution of agrarian conflicts;
2. Arranging the control and ownership of the lands which are the objects of agrarian reformation;
3. Legal certainty and legalization of the lands which are the objects of agrarian land reformation;
4. Empowering people in the use, utilization, and cultivation of the lands which are the objects of agrarian reformation; and
5. Institutionalization of the implementation of central and regional agrarian reformation

Realizing the five programs is no easy task because the government will be faced with some interest groups, be they are internal to the government or external to the government like conglomerates and landlords, who had been born in New Order era, and land mafia in Indonesia. However, if the implementation of the agrarian reformation program is under direct command of the president, it will not be so hard to realize the aspiration.

If the five programs can be successfully implemented simultaneously, the protection of the development of a people-centered economy will automatically be open broadly, and it is not impossible that it can be realized, though it takes a quite long time.

Therefore, in the future each policy on agrarian or land sector or natural resources should pay attention to the economic aspects closely related to prosperity. That is, in a current context, any policy the government takes should be capable of seeing the existing reality of people, rather than looking backward to earlier policies.

A weakness of our legislation policy is that it pays less attention to the aspects of legal certainty, justice, and prosperity of the people of the local areas where the natural resources are exploited. Therefore, even though all natural resources have been totally depleted but local communities do not get any benefit. The involved companies or investors cannot be fully blamed for this, because a large part of the companies' profits have been paid to the state through the central government. The central government, through regional governments, has to return some of the profits proportionally to local communities by a responsive policy.

Therefore, the government's legislation policy should be studied comprehensively, and if necessary restudied philosophically as accurate as possible, so that it will be applicable for a long time period to protect the rights, assets, and access of people to the existing lands and resources.

In the future, any policies concerning a protection of people should not only assure that people may live their life economically, but should also pay attention to their level as human being and to their opportunity for making creations, so that they can survive the democratization process and have an adaptive capability to survive in overcoming national and global challenges.

## 6. CLOSING REMARKS

In view of the progression of our agrarian politic from one period to another, the direction of legal politic of land initially secured the realization of prosperity for all Indonesia's people. That is the goal of the enactment of Agrarian Basic Law (UUPA), the realization of which has undergone some rises and falls in the implementation of the legal politic of land according to the government's political will and the challenges of the eras. Therefore, in the future, the implementation of regulations in agrarian law and national land law reformation should be continued by paying attention to the interest of the welfare of general public, protection of human rights, justice, and a sustainable people-centered economy.

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