

The Protection of the Land Rights Guarantee in Indonesia from the Perspective of Human Rights for Social Justice

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Abstract

Land is one component of human rights. However the real guarantee of the protection of land rights does not yet have a specific space in many international arenas, however the absence of discourse references does not cover the protection spaces that can still be found in many international human rights legal instruments. The formulation of the issues that will be discussed further in this paper as follows: How to Guarantee Protection of Land Rights in Indonesia from Human Rights Perspective. The purpose of writing is to build a strong discourse among civil society that can then be used as a reference by academics and government apparatus in encouraging the space of guarantee of the protection of land rights. In collecting accurate data and information, the authors used two data collection techniques, namely: literature study and limited group discussion. The conclusion of this paper is that transforming land rights to domestic legal relations is also a progressive action that must be done by state managers, as also described in the International Covenant on Economic, Social and Cultural Rights (1966). Efforts to progressive realization of land rights should be done consistently by the Government of Indonesia.

Keywords: protection guarantee, land rights, social justice.

Introduction

True national development can encourage equity of social justice for the fulfillment of people's rights to manage all natural resources for the welfare of all social layers of society. Social justice can be interpreted as a state's ability to provide access and public needs, which involves a fair and equitable sharing system; including access to natural resources, opportunities for individuals and social groups to develop the interests and talents they desire. The concept of social justice will only be felt effectively if there are social relationships supported by the function of mutual relations, solidarity, trust, etc.

In the context of Indonesia, the constitution of the 1945 Constitution of the State of the Republic of Indonesia in its opening affirms the state's obligation to "... bring about a social justice for all the people of Indonesia." Interest in social justice is also recognized in Pancasila, the symbol of the nation's foundation and state. In the Fifth Precept as quoted, "Social justice for all the people of Indonesia" becomes a space of state recognition of the value of social justice. In this context, social justice is therefore important, not only reinforcing the collectivity of the people within it, but also opening the door to a broader understanding of the importance of giving space for the

recognition of the right to development aimed at the guarantee of social justice within it.

Every development which is conducted by the countries of the world, including Indonesia, greatly links its agenda by providing space and/or arena that can ensure continuous development continuously. In this case, development has a significant relationship with the provision of access to land. Land is the main source of life and livelihood, where the land has not only economic functions, but there are a number of accompanying values, such as social values, politics, law and even in some degree also closely related to defense and security.

Establishing access to land on the development agenda becomes a necessity; and this inevitability is also a source of tremendous contestation in recent decades from the era of global development that often puts citizen individuals to face the exploitative regime in the name of development. In Indonesia, the conflict and violence that often occur on the development agenda is not a new topic. We can refer to several classic examples, such as Kedung Ombo dam disputes in 1985, to several actual conflicts and violence as in the case of land dispute between Rumpin people and Indonesia National Air force (TNI AURI), the mining land dispute that occurred in Bima Sape in 2011, has not found the bright point.

The Agrarian Reform Consortium (KPA) in the 2014 final note explains the number of disputes, conflicts and accompanying violence on the issue of land access continues to increase. The report also explains that an increase in conflicts in the land sector shows some indications such as the loss of control and access of rural and inland residents to manage the land and natural resources they manage so far. In addition there is a significant shift in professions that are directly related to access to land resources, such as farmers including the accompanying settlements. It is not surprising that there is constant rejection by the public on the realization of the Masterplan project for the Acceleration and Expansion of Indonesian Economic Development (MP3EI) which is dominated by strengthening the infrastructure aspect rather than involving the community as the subject entity of the development itself. It can be further explained that there is a strong tendency when the people who are primarily the collective entities on the development agenda are then structurally removed from the agenda itself. The policy to resolve land conflicts often forgets the most basic issue of recognition of the right to land that can be enjoyed by all the people. It is well known that the exploitation of the land and the natural resources that accompany it are always justified in the name of development. Whereas the government is obliged to reform and prioritize policy instruments to guarantee the coherent management of land and natural resources with the development agenda in Indonesia. Added to the massive practice of violence and criminalization in many parts of Indonesia aimed at groups of farmers, laborers, poor people who want to continue to fight for their rights to the source of land and natural resources that can promote their lives and livelihoods.

In this Reformation period there was indeed a certain amount of political momentum that could be used as a gap for the strengthening of land rights. The latest such as Jokowi-Kalla's pledge on Nawacita's political platform that explains the distribution plan of 9 hectares of land for the poor.

Followed by the establishment of the Ministry of Agrarian Affairs and Spatial Planning/BPN-RI, the establishment of a Joint Regulation between 4 Ministries regulating the resolution of conflicts in the forestry sector and the guarantee of indigenous and tribal peoples, to a small victory through legal procedural channels when Indonesian civil society won its lawsuit over the act of Invite Farmers Protection

and Empowerment. However, there has been no widespread discourse about the protection of citizens about land rights.

This guarantee of land rights protection will have a significant impact in providing a solid space of recognition to the collective rights of citizens to gain access to the land and natural resources that go with it. The guarantee of land rights can also reduce the criminalization space often experienced by social and economic minority groups, especially women and indigenous peoples due to the lack of legal recognition space over these two social entities. Acknowledgment of land rights will also provide legal certainty, if conflict-prone practices that result in violence occur and cannot be avoided. Those who often commit terror and intimidation, whether committed by institution security forces, corporate security services and thugs can be dealt with as well as possible.

In its recognition space, rights and access to land have a very strong relationship with the fulfillment of other human rights. The right to adequate food fulfillment, the right to water, the right to work, the right to health which are all directly connected with the existence of land rights. Many international agency bodies specifically address the dynamics of land rights, establish working groups, monitoring functions to international human rights legal instruments that can explain the position of land rights in other human rights dynamics. Without access to the land, many people are certain to experience the crisis and the difficulties of continuing life and tying themselves to a certain social identity.

Literature Review

Guarantees for the protection of land rights do not yet have a specific space in many international arenas, however the absence of discourse references does not cover the protection spaces that can still be found in many international human rights legal instruments. Interestingly the concept of land rights meets the dimensions of equality, universality and the linkage between land rights and other rights. This indicates that there is an opportunity to strengthen the discourse on the protection of land rights, as well as increased occupational practices and land grabs that often involve state actors, both security apparatus and apparatus. Several studies launched by the United Nations (UN) agency provide a space for commentary that allows the guarantee of this right. Reports issued by many UN special rapporteurs, particularly those relating to progressive realization of economic, social and cultural rights, also explain the importance of recognition space and guarantee of state protection for the promotion of land rights.

In the closer spaces, the practice of the promotion and recognition of land rights still faces obstacles when the reference to legislation such as Law No. 5 of 1960 on Basic Agrarian Basic Rules is still very limited and cannot be used as the main reference in strengthening advocacy and implementation of land rights policy. Coupled with the number of policy packages that are directed at the current development agenda which seems to be building a lot of stress with the community in the arena of land use and function in Indonesia. This voltage signal should be captured by the government by building sensitive policy spaces on the conflict resolution agenda.

Research Methods

This writing will use qualitative analysis. The analysis will then be emphasized on the constructed discourse on land rights and the laws and regulations with examples of cases that have been and still occur today. Some success stories as well as the research team enter as part of an advocacy learning space that can be used in the future. Furthermore, in the collection of accurate data and information, the authors used two data collection techniques, the literature study and limited group discussion.

The literature study is an attempt to collect accurate data and information through key documents, such as the Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and several other international human rights instruments which are non-binding. The literature study will also use many other domestic regulatory reviews, starting from the Constitution year 1945 of the State of the Republic of Indonesia and many laws and regulations that can enrich the analysis space. Several important reports issued by civil society organizations (CSOs) that are particularly active in assisting citizens for land and environmental rights can be used to enrich the content of this research report.

Limited group discussion is a directed discussion that will be used to gather further information related to the collection of information (both literature studies, primary data-from advocacy data and secondary data-from monitoring data). The limited group discussion will be used as a reference to test whether the literature study combined with primary and secondary data has synergy.

Results and Discussion

Land Rights Guarantee in Indonesia: A Normative Framework

Widely known that Indonesia is a sovereign state based on respect and law enforcement. This is strongly implied in the amendment of the 1945 Constitution of the State of the Republic of Indonesia, Article 1 (2) stating that, "The State of Indonesia is a state of law". Fundamental thing that then strengthen the function of state law is relation between state with society and or fellow individual society must be based on written rule of law or not.

In the 1945 Constitution, Article 33 (3) concludes that "the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Even related to the concept of the fulfillment of the people's prosperity, the fifth principle of Pancasila also affirms the concept of social justice which is also close to the fulfillment of people's prosperity namely, "Social Justice for all Indonesian people".

Furthermore, in the human rights dimension, particularly Act No. 39/1999 on Human Rights, several provisions describing the state's responsibility to ensure the protection of the human rights of Indonesians, especially those related to land rights issues, are explained. Part Two of the Basic Principles, particularly Article 6 (2) of Act No. 39/1999 explains: "The cultural identity of indigenous and tribal peoples, including the right to ulayat lands is protected in harmony with the times."

This article expressly and emphatically provides a space of recognition to indigenous and tribal peoples for the protection of ulayat lands inherent in their social, political and economic identities. Part Four of the Right to Obtain Justice, in particular Article 19 (1) of Law no. 39/1999 explains: "No offense or any crime shall be punished with the punishment of the seizure of all the property of the guilty." While this article does not directly guarantee the sustainability of land rights, there is an atmosphere that affirms the space of justice, attached to each individual to retain the 'wealth' that can be associated with the existence of access to the land. Part Seven of the Right to Welfare, in particular Article 36 (1) of Law no. 39/1999 explains: "The dispossession of property on an object in the public interest shall be permitted only by recourse to reasonable and immediate damages and its performance in accordance with the provisions of legislation."

This Article places the state's obligation in ensuring a recovery mechanism (including compensation) for any deprivation of property-including the dispossession of property rights-that is very close and can be associated with the guarantee of the protection of

land rights. The Ninth section of Women's Rights, in particular Article 51 (1) of Act No.39 / 1999, states: "A wife while in marriage has the same rights and responsibilities as her husband for all matters concerning her marital life, and the right of ownership and management of joint property."

In particular, there is room for recognition of the right to women-including gender equality-to be able to access ownership, which is closely associated with land rights. The four articles mentioned above, though not specific to the right to land, provide hope, space and recognition of the discourse of land rights in Indonesia. In its dynamics, the guarantee of the protection of land rights can be seen from the presence of various policies - in the form of laws and regulations - issued by the state. These laws and regulations have several characteristics, such as universal and sectoral policy products. Some regulations will then authorize certain agencies to take a role in providing guarantees for the protection of land rights.

Highlighting the conflicts in the land sector that tend to strengthen lately, there are some issues that have intensified conflicts in the field, such as the lack of guaranteed community land rights in various legal and policy products. As a result open space of opportunity of many parties, including unscrupulous officers to do land grabs. In addition, conflicts can also arise as a result of sectoral regulations created to facilitate citizens' seizure of land for a particular interest. However, before we go to discuss the rules and regulations that serve as the basis for guaranteeing the protection of land rights and those who still have ambiguous interpretations in encouraging the protection room, it helps us to get closer to the history of land conflicts in Indonesia.

The Influence of Legacy of Pre-Independence on Land Rights Guarantee in Indonesia

Regulation of land in Indonesia is still nuanced Dutch colonial heritage complicate the fulfillment of land rights of the people of Indonesia to this day. The history of colonial law puts indigenous peoples unrecognized land ownership rights due to their status as cultivators of Dutch land. The form is seen in sectoral regulations even though the presence of UUPA 1960, with an example of unconverted understanding in the legal terms 'state land' inherited by Dutch colonial law.

Should be in accordance with the constitution of Article 33 of the 1945 Constitution, the ownership of land within the jurisdiction of the territory of Indonesia moves to its citizens. Here the ownership of colonial land moved to the state. The state should be seen not as the real owner of the land, but rather as an 'owner' with a 'owned' right which is controlled by a public obligation, to administer and regulate the use and utilization of land by the real owner of the Indonesian people. The State is in charge and has full authority in controlling the land with the obligation of public law to regulate, manage, guarantee and maintain the use and utilization of land by citizens with status as citizens of Indonesia. Act No. 5 of 1960 has actually tried to regulate land rights of customary law community by raising ulayat conception where the state has no property to the land and state only the governing institution only. However, there was a fraud in the New Order era where the State Owned Rights emerged making the state a stronger position than just a regulation or mastery.

Understanding derived from the colonial inheritance is suspected to be a problem in Act No. 1 of 2004 on State Treasury. The regulation provides validation or justification in a one-sided claim to the area that originated from the practice of land-grabbing since the colonial period, including the New Order. Land disputes of citizens or indigenous and tribal peoples with agencies such as the Indonesian national army (TNI) and PT. Perkebunan Nusantara (PTPN) here because of the claim of 'state property' in a unilateral way without re-verifying the ownership of citizens. The action causes consciously or unconsciously to occur the practice of land grabbing in some

areas. Not only is the regulation of colonial inheritance still preserved, the government still uses the legacy forest land map legitimized in Law No. 5 of 1967 on the Basic Provisions of Forestry Article 20 which directly perpetuates the practice of land grabbing that has been done in the colonial period. Even worse, this regulation continues through Act No. 41 of 1999 on Forestry Article 8. Here the government once again does not verify the timber-deforestation of the colonial period that has claimed many areas of indigenous and tribal peoples.

The fundamental problems seen above will also have much influence on the extent to which the state guarantees the livelihood space with the spirit of the protection of public rights - both in the civil and political sphere as well as economically, socially and culturally. Furthermore, the problem will be well portrayed in 7 sectors or 7 issues that will be discussed further below, particularly in relation to the space of accountability between actors (both state and non-state) in securing, respecting and protecting land rights; and the guarantee of public life in the use of land is not only an asset but also part of a social process that can bring together the public with its diverse interests. This section will also invite readers to get to know more state institutions working to oversee the policy chain and conflict resolution in agriculture in Indonesia. The next section will also address the governance of land policies in Indonesia along with the analysis of challenges in law enforcement in the land sector.

Conclusions

Land is not only synonymous with mere economic commodities. There are cultural dimensions and identities that are very much identical with land ownership for indigenous and tribal peoples in Indonesia. The soil becomes the support of their lives, characterizing the continuity of social and cultural ties between citizens. Even in the far-reaching universal dimension, the land also guarantees the continuity of the inherent human rights of each other, where the sustainability of these rights will have a significant positive impact if the survival guarantee is protected by law in a country that upholds accountability and accountability in case of abuse of authority in the use of access to land.

While land rights have not yet acquired an exclusive space within the structure of international human rights law, its links to the existence of other human rights cannot be ignored. There is a guarantee of the protection of access to land in many international human rights legal instruments, land rights with other rights, such as the right to adequate food, the right to access to water, the right to adequate housing, the right to work and to withdraw it the right to identity given to women and indigenous and tribal peoples. Transforming land rights to domestic legal relations is also a progressive measure that must be undertaken by state managers, as also described in the International Covenant on Economic, Social and Cultural Rights (1966). Efforts to progressive realization of land rights should be done consistently by the Government of Indonesia.

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