

Vacant Land Policy in Supporting Agrarian Performance in Indonesia

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Abstract: Land is fundamental for human life. However, in fact, land management in Indonesia still fails to improve the prosperity of people and farmers. A field fact indicates that currently our farmers own only 0.2 ha of land on average. Thus, even though they work hard they still remain poor due to their too small land area and to the lack of capital. In addition, their family members are relatively large in number. On the other side, in Indonesia there are now approximately 7 million hectares vacant lands that are not used or the utilization of which is not according to their proper utility. The aforementioned essential condition led the author to assume that there was something wrong in the implementation of our national agrarian law or land law politic system. Therefore, in the reformation era nowadays, the government should be brave to initiate some breakthrough for accelerating an equal distribution of land ownership and control by agrarian reformation. The objective of the present research was to study and seek the solution of accelerating vacant land control and management, to be utilized for people welfare as well as for increasing agrarian reformation objects. The tentative results of the research showed that: 1) The definition of vacant land (*tanah terlantar*) was still ambiguous, giving a rise to multiple interpretations and leading to the lack of legal certainty and justice for both land buyers and farmers. 2) The criteria of vacant land still need to be elucidated more clearly by specifying its characteristics and elements. And 3) It needs to immediately prepare an academic draft of the regulation of vacant land control and management. To deal with the above, the government has to take the following measures: 1. Issues a proper, right regulation based on a legislation system in controlling and managing vacant lands, without violating human rights and based on fairness; 2. Maps vacant lands spreading across the state; 3. Utilizes the vacant lands, for them to be eligible as an agrarian reformation object. These have to be done as soon as possible in order to realize people and farmers welfare; and 4. Willingly and capably initiates some breakthroughs in distributing the lands to those farmers who have a right under a proper, right, and just regulation

Keywords: 1. Policy, Vacant Land, Agrarian Reformation

I. Introduction

The basic concept of vacant land is a social function principle as it is known in agrarian law literature. Indonesian Basic Agrarian Law (UUPA 1960) states that some land rights (titles) shall be revoked if the lands are abandoned. The owners of such lands have to use their lands according to their allocation and purpose. If the obligation is not fulfilled, the lands shall be supposed as being abandoned, and a further identification process is needed.

During the second term of Susilo Bambang Yodhoyono presidency, the government took some measures of identifying vacant lands, finding out around 9 million hectares. Why are there so much vacant lands in Indonesia? Whereas, the farmers are lacking of lands, having on average 0.17 ha per household². It means that even though they work hard they still remain poor due to their too small land area and to the lack of capital and

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² Republic of Indonesia Resident Staff Office, Agrarian Reformation National Strategy (Implementation of Agrarian Reformasi). Jakarta, 2016, p. 18.

technology. Why are farmers often used as the barometer of the even distribution of land control and ownership? The answer is that, seen from Indonesian history, farmers have always been the backbone in agrarian sector. From colonial era to nowadays, most farmers have not been benefitting from independence, i.e., free of oppression and poverty, though our founding fathers had put a priority on the improvement of their welfare. In line with it, nearly all formerly colonized states in the world, including Indonesia, chose landreform as part of their agrarian reformation, as an attempt to prosper their farmers.³

According to agrarian law theories on land-controlling state principle, governments are authorized to regulate the allocation, use, utilization, and maintenance of the quality of lands and their environment. Moreover, they have an authority of deciding what rights may be granted to legal subjects and how transfers of land rights can be made and what procedure to apply. State's land control right includes how the state supervises the implementation by stakeholders. If the control of land possession and ownership is not proceeding as expected, it may bring about an accumulation of land assets in certain groups and the lands maybe not utilized according to their allocation, which can be categorized as vacant lands. Therefore, it is necessary to study what are the causes of the still vast vacant lands, while discrepancy in land ownership among farmers is increasingly evident. Why does it take place and what is the solution? To carry out such study, references are needed as a material for revealing the meaning, characteristics, and elements of vacant lands, so there is a legal certainty and can finally be made as an object of agrarian reformation.

II. Land and Agrarian Law

Nowadays, land has multiple dimensions⁴, among others juridical, economical, sociological, magicreligious, politic, and strategic. Therefore, agrarian sector is more complex now. Though land can generally be made as a selling-buying object but, in the opinion of those Indonesians who are still not influenced by western thinking conception, land should not be made as a business object, given that the object is God's endowment to the nation and thus should be cultivated in the interest of public welfare.⁵In Simpronius era⁶, 133 BC, there was a motto: laws have to protect ignorant people (*lex succurit ingnoranti* principle). On the other side, according to our land law, lands have to be granted to proletarians.

Land is, according to law, defined as earth mass surface. It is understandable. The problem is, up to the depth of which does the owner has sovereignty? This is not specified in customary law, because commonly lands are only used for planting crops. Then, how does the government manage and utilize them? This is where agrarian law theories on land-controlling state apply. Thus, the government has authority to regulate comprehensively the utilizations of lands.

Natural resources, plus space above them, are broadly the scope that Agrarian Law deals with. That is, land objects and all their aspects are the substance of Agrarian Law.

National Agrarian Law is based on customary laws. It means that, as far as the customs are not in contradiction with national interests, they can be made as a sustainable source of law. Customary law allows both collective and individual land controls. In customary law, collective control of land is called *hak ulayat*. Individual interests have to be set aside if public interest demands so. It is in line with the Pancasila-based rule of law concept, where individual interests are protected as long as they are not in contradiction to public interests. That is meant by 'lands with social function.'

The concept is different from the land law conception adopted by continental European countries which adores ownership right, though there has been later a shift in its absoluteness value. On the other side, in communist countries individual rights are not recognized.⁶

Indonesia national agrarian law recognizes several principles that were dug up from customary law and synergized with the development of national law after the 1998 reformation, namely: nationality, democracy, even distribution, togetherness, legal certainty, and transparency.

Agrarian policies should be synergized with the policies in other sectors. This is a consequence of the rapidly growing development of land dimensions. As a result, land management approaches no longer use only economic aspect approach, but also pay attention to other aspects that are connected with lands as described in the introduction of this paper.

³ Achmad Sodiki, *Agrarian Law Politic*, Konstitusi Press, Jakarta, 2013, p. 130.

⁴ Darwin Ginting, *A Juridical Study of the Acceleration of Land Acquisition for Infrastructure Development*, Sinergi Mandiri, Bandung, 2016, p. 23.

⁵ TAP MPR RI No. IX/MPR/2001 concerning Agrarian Reformation and Natural Resources Management

⁶ *Loc. Cit*, Achmad Sodiki, p. 24.

III. Agrarian Reformation

According to Ida Nurlinda, agrarian reformation is an attempt of the government to rearrange the existence of agrarian resources relating to their legal subjects⁸. Therefore, its emphasis is on the sustainable regulation of the relations between agrarian subjects and all agrarian objects.

Thus, the reformation includes the substances of landreform in its broad meaning. Meanwhile, the essence of landreform is restructuring the control, ownership, and utilization of lands. In the current concept, reformation concept should pay attention to the development of direct and indirect aspects on the interest of development in a broad meaning.

According to Maria, agrarian reformation is essentially an instrument in realizing the provisions of the Constitution, especially article 33, paragraph (3). That is, as long as there is injustice in land asset controls, agrarian reformation must be continued. Therefore, for the goal of agrarian reformation to be successfully accomplished, the Pancasila values should affect the policies of agrarian reformation.

According to Joyo Winoto⁸, people have to afford a land asset or be aided by the government to own a land asset. Last but not the least, however, people ought to have capacity or access to optimizing the utilization of the land asset. In the future, the revitalization of the institution should involve the participation of local communities, so that they are not marginalized forever. It is very relevant with the Jokowi cabinet's NAWACITA agenda which makes agrarian reformation program as a priority in reducing poverty, especially in farmer communities.

From the description above, the goal or aspiration to accomplish in utilizing lands should be accelerating the improvement of welfare expected by modern state concept⁹.

It is here that cooperation between the central government and regional governments is needed in collecting data of those farmers who need lands and in realizing the mapping of vacant lands to be made as the objects of agrarian reformation.

In operating the agrarian reformation, it needs to heed its principles of honoring human rights, justice, social function, prevention of land conflicts-disputes, and transparency. Its implementation should be in line with the challenges encountered, so that the current challenges could be successfully responded, synergized with the requirement of reformation era. The agrarian reformation concept has actually been legally provided for in MPR Decree number IX/MPR/2001, and its derivative was contained in Government Regulation (PP) No. 11 of 2010. The arrangement of land assets that meet the criteria of vacant land has to apply distribution and redistribution norms¹⁰ currently being prepared by the government, because PP No. 224 of 1961 is already unsuitable with the demands of reformation era.

One of the realizations of land law politic is the control and utilization of vacant lands which are part of agrarian reformation. All policy in agrarian sector should consider economic aspect, closely relating to welfare. That is, in the current context, each policy should be able to recognize the existing realities of community, instead of looking back to the time of the law enactment. A weakness of our legislation policy is that it often does not take legal certainty, justice, and people welfare aspects into account. Agrarian reformation concept has to be capable of enhancing the welfare of people, particularly farmers. Therefore, vacant lands must soon be made as an object of agrarian reformation. The problem is that now the government should prepare its regulation as soon as possible, so that the measure of agrarian reformation can be successfully realized.

IV.

Barriers Faced in Regulating Vacant Lands for Supporting Agrarian Reformation and Their Solution

The philosophical basis of vacant lands regulation is justifiable because the state has a right on the lands, as declared in Article 1 paragraph (1) of UUPA and Article 1 paragraph (2) of UUPA. Thus, the government has authority to manage and utilize the lands provided that it is intended to prosper the people by taking human rights, justice, and legal certainty into account. That is, the government has an authority to optimize the utility and use of the lands.

In case there are vacant lands, the government may take necessary actions with regard to their controlling and utilization. In practicing its power, the government has some authorities for managing natural resources by an

⁷ Ida Nurlinda, *Agrarian Reformation Principle: Legal Perspective*, 1st Edition, Jakarta, PT. Raja Grafindo Persada, 2009, p. 77.

⁸ Joyo Winoto, *Agrarian Reformation and Social Justice*, a paper for 50th *Dies Natalis* of UNPAD, September 10th 2007, p. 7.

⁹ Rames Mishra, *The Welfare State in Crisis*, Helferster Whea Isheaf, 1984, p. 180.

¹⁰ Arie Sukanti Hutagalung, *Land Redistribution Program in Indonesia: A Facility toward Land Control and Ownership Problem Solving*, Jakarta, C.V. Rajawali, 1985, p. 57.

instrument of 'state's control of lands' theory. The theory in administrative law¹¹ is a derivative of the theory of sovereignty state developed by Jean Bodin. According to Bodin, state sovereignty contains the elements of being original, supreme, eternal, and indivisible.

The head of Regional Office has an authority to represent Minister of Agrarian and Layout Affairs in identifying and verifying whether a right of land meets the elements of vacant land. If it does, the Head of Regional Office of Agrarian and Layout Affairs (ATR) will issue a notification several times to the owner of the land. If the procedural stages have been applied to the owner or one who controls the land but the latter did not respond, Minister of ATR, representing the central government, will declare that the land is a vacant land.

The meaning of vacant lands as formulated in some legislations:

1. According to UUPA

In the literature of land law there is no found the definition of vacant lands. However, there are some articles in UUPA on the revocation of a land right because of being intentionally abandoned.

However, resulting from the 1998 monetary crisis, lots of developers' lands that had acquired a location permit were not worked at all. Due to the crisis, there was economic turmoil nationally, and thus the government, in a bid to overcome the crisis, pursued a policy of controlling the vacant lands by issuing Government Regulation (PP) Number 36 of 1998.

2. According to Government Regulation (PP) Number 36 of 1998

The regulation was made in the course of economic crisis that hit Indonesia and led to the collapse of people economy and massal employment termination, and hence uncontrollable unemployment. In such condition, lots of developers' lands had acquired a location permit but was not worked, particularly in Java Island. As a response, the government managed to utilize optimally the wastelands, particularly in Java Land, by giving them to the farmers and the unemployment to be cultivated. This is in line with the considerations of the Government Regulation.

According to the provisions of the Government Regulation, "the objects of vacant lands are right of ownership (hak milik—HM), Right of Cultivation (Hak Guna Usaha—HGU), and Right of Building (hak guna bangunan-HGB) as recognized in UUPA, and right of utilization as recognized in the Government Regulation number 40 of 1996. Its formulation is the same as intended by UUPA.

3. According to Government Regulation (PP) number 11 of 2010

This regulation replaces PP no 36 of 1998, because the latter could not be applied, whereas the impact of the 1998 monetary crisis has made social, economic, and people welfare discrepancies worsen. The scope of its objects was widened by adding those lands which were made as collateral in a legal institution, but its meaning is the same as one provided in UUPA.

Thus, the deliberateness factor is an absolute requirement, while the variables of economic incapacity and objects being made as collateral legally and being in dispute are exempted.

Broadly, the controlling actions were conducted as follows: 1. Stage One, identification and research was chaired by the Head of Agrarian Office; 2. Stage Two, notification was given three times in intervals of 1 year; and 3. Stage Three, declaration as vacant land, conducted by Minister of ATR.

There is neither literature that describes the substance of vacant lands, nor obvious juridical meaning of vacant lands. To understand vacant land, one should seek its characteristics morphologically as well as its elements and criteria. One of its characteristic is, for example, that it can be seen by bare eyes that the object has turned into being shrub. And the elements or criteria of an object (land) are, for example, there is a legal subject as the owner, the object and status is obvious, a time period of 3 years, and there is intentional action.

From the criteria above, the government can declare that the object is vacant land and then it can map quantitatively the amount of vacant lands.

The action of controlling vacant lands is a measure that the government took to optimize the use and utilization of lands, to support cultivating farmers (yeomen) for them to possess their own land, so that they are finally capable of enhancing their social and economic welfare, on condition that the land cannot be transferred to anyone, exempt for the reason of inheritance. This has to necessarily be regulated in the coming agrarian reformation regulation.

The result of data collection should be accessible for public in conformity with the provisions of Law of Public Openness¹², so as to prevent any deviation or misuse of the objects which may trigger new conflicts. The

¹¹ See: Yudha Bhakti Ardhiwisastra, *Immunity of State Sovereign in Foreign Court Forum*, Lumni, Bandung, 1999, p. 41.

¹² Maria S.W. Sumardjono, *Agrarian Regulation and Agrarian Justice Spirit*, STPN Press, Yogyakarta, 2018, p. 83.

material of the Government Regulation above is closely related to the substance of human rights and horizontally connected to other laws, so that its principles ideally should be accommodated in the coming Draft Agrarian Law.

Vacant lands should necessarily be handled, not only for the interest of farmers but also because they are closely related to land acquisitions for the construction of infrastructures, given the increasingly limited availability of land on one side and the progressive needs of land for development on the other side. This is particularly true for the construction of infrastructures seriously done by Jokowi administration that needs huge lands, being spreading across Indonesia. According to the author, for the vacant land data collection to undergo less barriers, the main objects of vacant lands should be the lands under control of the state or under control of or owned by ministries, provincial and regency/municipal regional governments and state/region-owned enterprises (BUMN/D). For if it is connected to private lands or legal persons' lands then there will potentially be legal resistance, consuming much time and energy. And even it may induce unrest in people and in those investors who have put direct investment. This should be considered in order for the implementation of the controlling and cultivation of vacant lands not to be contra-productive.

In juridical term, every right of land grants authority to the right holder to use the land, but the authority is limited so that it will not interrupt others' interest and public interest. This provision reminds us that all lands have a social function. That is, if a public interest demands, personal right should give way.

The measures of controlling vacant lands were faced with some constraints, namely: 1. Discrepancy in perceptions on vacant lands in the identification in the field, e.g., a land was planted with crops, not garden plants. It means that physically the land is not vacant but not in conformity with the characteristic and goal of the right; 2. Limited budget of identification, causing the identification was limited to simply recording, not achieving the stage of assessment; 3. Weak coordination with relevant agencies, e.g., coordination is still poor, so that the functions of controlling, guidance, and extension to the right holders have not been optimal; 4. Complicated mechanism. In achieving controlling mechanism, for example, the complicated mechanism is shown in the description of the impractical controlling stages; and 5. Too long time period of notification of a vacant land.

If reviewed further, the controlling actions above involve preventive and repressive actions. That is, if a land is supposed as a vacant land then the government will issue a notification for the land to be utilized in accordance with its allocation. After being notified by the government, the owner or one who controls the land should utilize it productively and according to its allocation, hence avoiding from being declared as a vacant land. However, if the owner fails to respond the summation by Minister of ATR, the land would be categorized as a vacant land and the right of the owner is revoked and the land becomes under control of the state. If the land turns to be vacant due to economic factor, then the government should proactively give a way out, e.g., by providing some fund needed for utilizing the land. In any case, a preventive measure is better than a repressive one.

V. Conclusion

In a bid to accelerate the realization of land law politics the government has, on a basis of the instrument of state's land controlling right, been determined to optimize land uses and utilizations. Therefore, it needs to issue the Government Regulation above. The Regulation is intended to seek both preventive and repressive measures on vacant lands that the owners are intentionally abandoning.

The objects of controlling are those lands that are controlled and owned by individuals and by BUMN/D. The scope of the objects of vacant lands is deemed as too wide, so the government should bravely prioritize identifying vacant lands under the control of the government, e.g., lands owned by ministries, provincial and regency/municipal governments, and BUMN/D, which are not potential to face a lawsuit, and thus the goal of determining some vacant lands will be achieved faster, which can be immediately made as the object of agrarian reformation in attempt to enhance the prosperity of farmers and general public.

The concept of vacant lands more appropriately used to clarify the physical condition of a parcel of land is: being not used according to its allocation, and not maintained well. The concept puts a greater emphasis on the act of the holder of land right (title) who intentionally wastes the land so it becomes wasted (vacant). In determining a vacant land, certain elements should be fulfilled by inspecting both its physical condition and criteria.

In answering or explaining the constraints faced with during controlling vacant lands there are juridical and non-juridical barriers. A barrier which is juridical in character is: non-applicable legislations, leading to the multiple perceptions particularly on the definition of vacant land, and thus it needs to determine the characteristics and elements or criteria of a vacant land.

Meanwhile, the solution of the non-juridical barriers described above should be sought, e.g., by simplifying procedures, etc.

The solution for overcoming the constraint in short term is that the government ought to prepare a detailed technical guidance, so it would not lead to multiple interpretations by public officers in doing their duties, and in the end there would be no conflict in the field.

In the future or in long term, the provision of the substance of vacant land principles should be regulated in Draft National Agrarian Law, so it can support the implementation of the mapping and utilization of vacant lands across Nusantara (Indonesia's Archipelago).

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Others:

TAP MPR RI No. IX/MPR/2001 concerning *Agrarian Reformation and Natural Resources Management* Basic Agrarian Law (UUPA) No. 5 of 1960