

Progressive Legal Implementation in Agrarian Conflict Resolution

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Abstract:- Writing this article aims to analyze agrarian disputes and conflicts which are still ongoing, through a progressive legal approach so as to provide recommendations on paradigms related to community rights to be protected. This writing uses a normative juridical approach by taking several approaches, namely the statutory approach and the conceptual approach to various unresolved agrarian disputes and conflicts. The main finding is the high level of agrarian disputes and conflicts which are increasingly expanding to agrarian disputes and conflicts which are not easy to resolve. Settlement of agrarian disputes and conflicts can be resolved if the law can work as the purpose of the law. So that the focal point for understanding the resolution of agrarian disputes and conflicts is the level of awareness that access or people's ownership of land is a basic right of every human being, which must be fulfilled by the state according to the constitutional mandate. The implementation of progressive law is expected to become a recommendation for efforts to resolve agrarian disputes and conflicts that prioritize human rights, especially in aspects of life that rely on the environment in the form of land as a support for increasing the welfare and prosperity of the people.

Keywords:- Agrarian Conflict, Agrarian Reform, Progressive Law.

I. INTRODUCTION

Speaking of regulations in the land sector in Indonesia, principally regulated in Law Number 5 of 1960. the condition of agrarian law in Indonesia is in a situation of dualism of agrarian law. The dualism of agrarian law is marked by the enactment of colonial law (Dutch) in the field of land and customary law as the original law of the Indonesian nation. This condition lasted for 15 years, this was the background for the government to enact Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

UUPA eliminates the dualism of agrarian law in Indonesia, one of the main principles of which is the unity of agrarian law for the entire territory of the country (AP. Parlindungan, 2008). This was marked by revoking all provisions of the Dutch Agrarian Law and making Customary Law the material foundation. That the formulation of the UUPA was based on noble ideals so that the UUPA would become a means of achieving the prosperity of the Indonesian people (Ida Nurlinda, 2016).

After the UUPA was passed, it was called the Basic Law, because the UUPA was the mother of all regulations in the Agrarian sector (Emmy Solina et al, 2019). It is understood that one of the objectives of the UUPA is to provide legal certainty for all people regarding their land rights. In connection with the importance of legal certainty over land tenure, especially in the life of the state, the agrarian law in Indonesia regulates land registration in the context of guaranteeing legal certainty for the holders of the said land rights. In order to guarantee legal certainty for holders of land rights, according to the law "certificate" is a strong means of proof so that the owner is given legal certainty and legal protection. With this certificate, the existence of land rights holders will be guaranteed (Harris Yonatan Parmahan Sibuea, 2011).

In connection with the third objective of the promulgation of the UUPA, namely to lay the foundation for legal certainty, then article 19 of the UUPA concerning land registration. This land registration is held to regulate the legal relationship between the subject and object of the land parcel (Prama Widyanugraha, 2019). Injustice in land ownership for the community will provide loopholes for certain groups to take unrepresentative actions to obtain land from the community. The emergence of conflict departs from the condition of the plurality of social structures and conflict is a phenomenon that often occurs throughout the process of human life. From whatever angle we see conflict, that conflict cannot be separated from social life (Dedi Sumanto, 2020).

One way to reduce agrarian conflicts, the government has carried out accelerated agrarian reform by managing assets and access. The implementation of agrarian reform is of course for the welfare of a more just society in land ownership evenly. The condition of the limited availability of land is not balanced with human needs. This condition triggers agrarian conflicts in Indonesia.

So important is the position of land for humans, it often causes disputes about land. Land disputes that have emerged lately are increasingly complex. The trigger is not limited to the economic aspect, but social and cultural and even religious. The emergence of legal disputes regarding land begins with complaints from a party (person or legal entity) containing objections and demands for land rights, both regarding land status, priority and ownership in the hope of obtaining an administrative settlement in accordance with applicable regulatory provisions (Rusmadi Murad, 1991).

In fact, in the last four decades, the phenomenon of land disputes that have surfaced is extraordinary. These disputes occur between the community and the government, the community and investors, the community and the community itself, and even occur between the government and the government. It is undeniable that land issues, seen from a juridical perspective, are not simple to solve and in one case, it is not uncommon for several agencies directly or indirectly related to the problem/dispute brought to court to be involved. A common understanding of the concept is necessary so that there is a common perception which will result in a solid and fair decision for the parties asking for justice. In the development of land disputes involving a group of community members, based on a pessimistic attitude towards the courts, the idea arose to form a Land Court within the scope of general justice.

Theoretically, dispute resolution can be done in 2 (two) ways. The first way of resolving disputes is through a litigation process in court, then developing a dispute resolution process through cooperation (cooperative) outside the court. The litigation process results in decisions that are contradictory (adversarial) which have not been able to embrace common interests, and even tend to create new problems, are slow to resolve, require expensive fees, are unresponsive, and cause hostility between disputing parties (Rachmadi Usman, 2003). Some land issues can be resolved properly by the Land Office (National Land Agency) through "mediation" (Herwandi, 2010). Mediation is an effort to resolve disputes through negotiations with the help of a neutral third party (mediator) in order to find a form of settlement that can be agreed upon by the parties (Suparto Wijoyo, 2003).

Disputes or conflicts are a form of actualization of differences in interests between two or more parties (Sutiyo, 2006). A situation where two or more parties are faced with different interests, will not develop into a dispute if the party who feels aggrieved only harbors feelings of dissatisfaction or concern. A situation changes or develops into a dispute if the party who feels aggrieved expresses dissatisfaction or concern, directly or indirectly to the party causing the loss or another party (Usman, 2002).

Land problems are an issue that is a priority scale to be resolved. The inability of the judiciary to handle various land disputes has resulted in reduced public trust. Therefore, an alternative is needed to overcome defense disputes. Until now, land issues are a phenomenon that often arises and is actual from time to time. Along with population growth, development development, and wider access to various parties who obtain land as basic capital in various interests (Pahlefi, 2014). Problems in the land sector are influenced by various factors, the need for land is something that cannot be avoided. This fact causes problems in the land sector to escalate.

One alternative solution for resolving land disputes through mediation, which is facilitated by the land office, the purpose of settlement through this mediation is that in addition to land dispute problems can be resolved, on the other hand mediation was chosen because it is considered

more effective to overcome large litigation financing problems, delays protracted cases and inefficient litigation, short time, with a condition that the parties to the land dispute can accept it with a sense of justice (Gautama, 1996).

Based on the background above, this conceptual idea research certainly looks at developments that occur in society based on previous research related to the distribution of agrarian conflicts between communities, companies to the government itself, this agrarian conflict also originates from a structural context, namely several land policies implemented by the Government .

Policies that continue to increase regardless of the social conditions of this community will provide inequality on these policies so that a more humane approach is needed. So this research tries to provide conceptual ideas with a progressive legal approach in resolving unresolved agrarian conflicts. The problems discussed in this article are: 1). What is the background to the emergence of agrarian disputes and conflicts in Indonesia?, 2). How is the implementation of progressive law in resolving agrarian disputes and conflicts?

II. METHODOLOGY

This research is analytical descriptive in nature (Ronny Hanitijo Soemitro, 1988), and this article uses normative legal research methods (Mukti Fajar and Yulianto Achmad, 2019). The sources of legal materials used are primary legal materials, secondary legal materials, and non-legal materials. This study uses a deductive approach, namely a way of analyzing general events and then drawing specific conclusions or generalizations which are described into concrete examples or facts to explain the conclusions. The deductive method departs from a theory which is then proven by fact finding (Zainal Asikin and Amiruddin, 2016).

III. LITERATURE REVIEWS

A. Definition of Agrarian Dispute and Conflict

Land disputes are disputes that have existed for a long time, from the Old Order era, the New Order era, the reform era and up to now. Land disputes in terms of quality and quantity are problems that always exist in the order of people's lives. Disputes or conflicts over land have become a chronic and classic problem and have lasted for years or even decades and are always present everywhere. Land disputes and conflicts are forms of problems that are complex and multi-dimensional (Sumarto, 2012). In connection with the notion of land disputes, it can be seen from two forms of understanding, namely the understanding given by legal experts and that which is confirmed by laws and regulations.

B. Typology of Agrarian Disputes and Conflicts

According to the National Land Agency of the Republic of Indonesia (BPN RI) the typology of land cases/conflicts is a type of dispute, conflict and or land case submitted or complained about and handled by the National Land Agency (BPN, 2013). Clarify the typology of land disputes, there are three forms, namely: 1. Horizontal disputes, namely: between communities and other communities. 2. Vertical disputes,

namely: between the community and the government, and 3. Horizontal - vertical disputes, namely: between the community and entrepreneurs (investors) who are backed up by the government (officials) and thugs (Hasim Purba, 2013).

According to Maria S.W. Sumardjono, broadly divides the typology of land disputes into five groups, namely: 1. Cases relating to people's cultivation of plantation areas, forestry and others. 2. Cases relating to violations of land reform regulations. 3. Cases relating to excesses in the provision of land for development. 4. Civil disputes relating to land issues, and 5. Disputes relating to Ulayat Rights (Sholih Mua'di, 2008).

C. Factors in the occurrence of Agrarian Disputes and Conflicts

In human life that land will not be separated from all the actions of the human horn itself because land is a place for humans to live and continue their life. Therefore, land is needed by every member of society so that disputes often occur among themselves, especially those concerning land (Syafiq Azam, 2003). Land conflicts have been rooted from ancient times until now, the roots of land conflicts are the fundamental factors that cause land conflicts. It is important to identify and inventory the root causes of land conflicts in order to find a solution or the form of settlement that will be carried out.

One of the fields that regulates the life of citizens who are also subject to the law is the land sector. Article 33 paragraph (3) of the 1945 Constitution and is spelled out in the UUPA which regulates agrarian/land issues in Indonesia as a regulation that must be obeyed. One of the objectives of establishing the UUPA is to lay the foundations to provide legal certainty regarding land rights for the people as a whole (Elfachri Budiman, 2013). If we look at it factually, the juridical basis governing agrarian/land issues has not been fully implemented consistently for various reasons which have caused problems.

The current sources of land problems/conflicts include (Maria S.W. Sumardjono, 2008): 1. Unbalanced and unequal land ownership/control 2. Inconsistency in the use of agricultural land and non-agricultural land. 3. Lack of alignment with people whose economic groups are weak. 4. Lack of recognition of the rights of indigenous peoples over land such as customary rights. 5. The weak bargaining position of the community holding land rights in land acquisition.

D. Agrarian Dispute and Conflict Resolution

Like disputes in other fields, land can be resolved in 3 (three) ways: a. Settlement directly by way of deliberation. b. Settlement through the Judicial Body, namely submitted to the general court in a civil or criminal manner, if the dispute concerns illegal land settlement which is made possible by Law No. 51/Prp/1960 concerning the prohibition of land use without permission of the right or proxy or through the state administrative court. In general, all land disputes can be brought to court, both within the scope of general courts and state administrative courts. However, it is no longer a secret

that there are relatively many land disputes whose settlement through the courts is felt to be ineffective in addition to being time consuming and costly.

In addition, from the results of an analysis of several cases related to land disputes that have been decided by courts, both at first level, appeal, and cassation; without intending to generalize, it appears that it is necessary to increase understanding of the substance of the problem with regard to the underlying concept so that decisions taken can truly provide justice and legal certainty, so that it is beneficial for justice seekers.

IV. DISCUSSION

A. Background to the Arise of Agrarian Disputes and Conflicts in Indonesia

Land is a very basic need for human life. Humans live and carry out activities on land so that at any time humans are always in contact with land, it can be said that almost all activities of human life, both directly and indirectly, always require land. Land ownership begins with occupying an area that the indigenous people call communal land (commonly owned). Particularly in rural areas, this land is recognized by unwritten customary law both based on heredity and territory (Mujadi, Kartini and Gunawan Widjaja, 2004).

Disputes related to the control of agrarian resources in general have occurred since decades ago and occurred in almost all corners of Indonesia. The dispute is a dispute involving tenure issues (a system of tenure that is recognized by the government nationally, as well as by the local system) which results in the creation of conditions that are not ideal, which are referred to as tenurial uncertainty problems and imbalances in the structure of control over agrarian resources. The origin of all these disputes is the emergence of social insecurity in the daily life of various community groups, and the decline in the level of the number of citizens involved in the said dispute.

The agrarian conflicts that occurred in Indonesia ultimately had a lasting impact both socially and economically. The various polemics for resolving agrarian conflicts that have occurred in the field have never been resolved, causing small communities to always take actions that give rise to a sense of injustice. Agrarian conflicts that occur always increase and provide a narrative that the state has not been able to manage agrarian conflicts so that they can be resolved in a timely manner. In fact, discriminatory acts against society often occur, so there must be legal protection efforts for agrarian fighters to get justice.

The emergence of land cases normatively is due to welfare problems, which generally arise and develop in locations where the conditions of the people are not economically prosperous (Maharani Nurdin, 2018). The community's limited access to land resources as the only source of the economy often causes many disputes. The emergence of struggles over ownership/control over land in locations with less or less prosperous communities over legal land (with proof of ownership) or illegal

(occupation/expropriation) (Armida S. Alisjahbana, 2013). Physically, the limited amount of undeveloped and static land area, while the ever-increasing population is a factor that supports many land use, control and ownership conflicts which lead to land disputes and land conflicts (Diyani Isnaeni, 2017).

The progress of a country is of course also accompanied by the development of long-term development planning so that there is a need for ideas that provide protection for the people affected by such development progress. As quoted from some of the data summarized by WALHI, there are several agrarian conflict disputes that have occurred to date in 2020, namely (Walhi, 2020):

- Agrarian Conflict in the Criminalization of the people of Penyang Village and the people of Tanah Putih Village, Central Kalimantan and PT. Hampan Masawit Bangun Persada Guna The conflict between the residents and the company has been going on since 2006. The company confiscated 117 hectares of the residents' land. This land is outside the company's HGU and IUP;
- The agrarian conflict in Genteng Village, Sukasari District, Sumedang Regency occurred due to different interests in land use between the local community and Perum Perhutani (Wandi Adiansah et al, 2019);
- Conflict cases between PT. Hevea Indonesia (Hevindo) located in Nanggung District, Bogor Regency, West Java with the surrounding community, especially farming communities. The conflict is due to the limited amount of land owned by the community, while the community's needs are increasing, both the function and benefits of the land for the community. In the end, the community took action to occupy these lands in various HGU locations. Although most of the methods used have not led to radical actions (Meiliani Puji Suharto, 2019).

Of course, the agrarian conflicts that occurred in 2020 have not been fully recorded nationally, but agrarian conflicts can be seen in the cases that occurred in 2019 as in the end of 2019 records summarized by the Consortium for Agrarian Reform (KPA) that there have been 279 eruptions of agrarian conflicts with the total area of the conflict reached 734,239.3 hectares.

The number of people affected by agrarian conflicts this year is 109,042 families spread across 420 villages in all provinces in the country. Compared to last year's agrarian conflict situation, namely 410 conflict eruptions, there has been a decrease in the number of agrarian conflict eruptions this year. However, when viewed from the escalation of violence in the handling of agrarian conflicts, the number of victims and people who were arrested for defending their rights to land, the KPA noted that this year there had been an alarming increase in terms of apparatus brutality in areas of agrarian conflict (KPA, 2018).

The occurrence of several criminalizations against people who are in dispute with several companies with pocketed business licenses always prioritizes actions that do not provide direction from a human rights perspective. The development of agrarian conflicts that have never been

resolved will certainly affect the presence of law in Indonesia which provides justice for the community. In every policy given by the government to the community, of course, it must be able to apply effectively which provides justice. Settlement of agrarian conflicts that prioritize formal legality must also be seen from the social perspective that exists in society.

The government's efforts to resolve agrarian conflicts that occur in society always lead to disappointment with the government because it takes a long time for the community to be able to obtain certainty, but the community still has high trust in the government. As far as possible the government seeks to resolve conflicts in a peaceful manner rather than forcing people to submit conflicts to court. This is to promote deliberation and consensus without damaging the social order and relations with the government (Senmei Wardhatul Nur et al, 2020).

The community has taken various conflict resolution processes, starting with political or non-litigation routes by conducting hearings, negotiations and mediation (Muhammad Busyrol Fuad, 2017). The settlement process in the litigation route often causes small communities to feel that they are not being unfairly treated, this is because the settlement always prioritizes the rules in the article alone so that it is necessary to consider that every decision issued is capable and must have the courage to show progressive law enforcement. Agrarian conflicts always encounter injustice in terms of land ownership and management controlled by the owners of capital rather than for the welfare of society.

Settlement of agrarian conflicts must be encouraged within the framework that the process and results of their settlement do not merely resolve conflicts, but lead to and contribute to the agrarian reform agenda to improve the structure of tenure, ownership, use and utilization of land and natural resources which has so far been very unequal. For this reason, the review of various cases of agrarian conflicts must be in line with the legal objectives that humanize humans, not the other way around. Progressive law enforcement efforts certainly prioritize the rights that exist in society because law is actually born from the social scope that exists in society. An approach to humanitarian principles will certainly produce justice and social welfare that are in the middle to lower scale. Firm action and the government's efforts to reduce the rate of decline in agrarian conflicts from year to year are eagerly awaited by agrarian fighters who only rely on cultivated land for just prosperity.

B. Implementation of Progressive Law in Resolving Agrarian Disputes and Conflicts

Resolving unresolved agrarian conflicts is a piling up task for the government to provide a sense of justice and people's welfare. People's rights to get a decent life in various scopes certainly give responsibility that there are human rights that must be upheld by a government as the implementation of every policy. For this reason, there are legal remedies that prioritize humanity and do not rely solely on formal law.

In das sollen terms, the arrangement of tenure rights over land has been regulated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 2 Paragraph (1) of the UUPA. HMN is very important in relation to the life of the state and in accelerating development, especially in the land sector. However, fundamentally, the implementation of HMN on land is not always in accordance with the ideals of prosperity, prosperity and even justice. HMN, namely the practice of taking over community-owned land in the name of public interest and or prioritizing state control rights often occurs and is even a triggering factor for land disputes and land conflicts, causing prolonged land problems (Sumral Buru Manoe, 2014).

In the UUPA, the limitations of authority originating from HMN are Article 2 paragraph (2), Article 4 paragraph (1), and Article 8. General explanation number II of the UUPA emphasizes that the state's power regarding land that is already owned by a person with a right is limited by the contents of the right. that. It implies how much the state gives power or authority to those who have the right to exercise their rights, and that is where the limit of state power is (Muhammad Bakri, 2006).

UUPA as a reflection of national land politics or agrarian politics is also an implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and obliges the state to lead the control and use of land, water and natural resources contained therein to achieve people's prosperity and welfare. In realizing the prosperity and welfare of the people, UUPA contains the principles of land tenure and use to encourage a change in society that is advanced in the economy, industry and other fields, but does not ignore community groups that were weak and marginalized by previous land policies, with the principles of this principle UUPA can be placed as a progressive law (Satjipto Rahardjo, 2005).

Progressive Legal Thought is a thought that wants to find ways to overcome legal downturns in a more meaningful way, in the sense of faster changes, fundamental reversals, liberation, breakthroughs and so on. This method is carried out by emphasizing "law for humans and not vice versa humans for law", "law is substantially not artificial", "law is holistic, not skeletal" (M Zulfa Aulia, 2018)

The ultimate goal of progressive law is to move in a better direction, especially in the process of resolving agrarian conflicts, to provide a conclusion on conflicts that intersect with society so that (progressive) policies are more just and provide welfare for the community. In the application of progressive law as in the Theory of Law As A Tool Of Social Engineering put forward by Roscoe Pound states that in reality the law that occurs in society is about what happens, to measure whether it is in accordance with existing rules so that this theory is more directed to reality that exists rather than the function of law and the position of law in society.

So that this theory can be linked to the theory of the Working of Law in Society, where the results of a policy system in resolving agrarian conflicts are influenced by

several factors, namely social, economic and cultural as well as other factors from the operation of law starting from the stages of the process of resolving agrarian conflicts.

The operation of law in society regarding the status of dispute resolution provides justice for people of all groups. The emergence of agrarian conflicts caused by overlapping land distribution policies in the past, where state lands that were given permission to manage, turned out to be not all state lands that were free of ownership. Agrarian conflicts occurred due to unclear land status and overlapping regulations. in the field. Settlement of agrarian conflicts is one of the agendas of agrarian reform but in its implementation there are several problems encountered, namely: inequality of state land tenure resulting from historical factors in the past.

In the application of Law As Of Tool Of Social Engineering Theory which looks at the elements of legal reality regarding the workings of law in society as well as a tool for reform in terms of engineering society as in resolving agrarian conflicts must be carried out thoroughly. Government policies in resolving agrarian conflicts should be able to examine agrarian conflicts structurally related to the main issues of these agrarian conflicts. So that there is a settlement of agrarian conflicts to get results of studies that are just for the community. Therefore, in carrying out the approach used, it is not only normative, but in this case an inventory of elements of law enforcement is required, so that the social environmental factors in which law enforcement is carried out cannot be ignored.

In terms of the process of providing recommendations for law enforcement without mentioning the human aspect of carrying out its enforcement, this is a sterile discussion, so that law enforcement becomes meaningful if it is linked to concrete implementation by humans. Law enforcement essentially contains a substantial value of justice. However, in reality, modern law used by courts in deciding cases of agrarian conflicts is no longer a place for seeking justice and providing justice. The progressive legal approach implements the law not only according to the words contained in the regulations, but with a deeper spirit and meaning. If law enforcement wants to produce good law, spiritual intelligence is needed, in other words, the resolution of agrarian conflicts must find another way than the usual way. The implementation of progressive law will of course be seen from a humanitarian point of view which prioritizes justice evenly for society.

Recommendations for the implementation of this progressive law are also part of a study of the government in resolving agrarian conflicts that prioritize human rights (HAM). Progressive legal implementation can be used as a legal consideration for agrarian conflict cases as the implementation of progressive law aims at substantial justice without prejudice to the provisions of positive law in Indonesia, so that agrarian conflicts that occur between communities, companies and the government are resolved with a sustainable sense of justice.

V. CONCLUSION

The implementation of the agrarian reform agenda is part of improving the structure of tenure, ownership, use and use of land, but the settlement of agrarian conflicts has not been fully resolved. There is no regulatory arrangement in the settlement of agrarian reform that provides justice for people who are in dispute, be it between the community and companies, as well as the community and the government. Progressive law implementation is expected to be able to provide recommendations for the resolution of agrarian conflicts in Indonesia so that progress from year to year in resolving agrarian conflicts must be actively resolved by the government.

The results of the study in the perspective of progressive law provide legal considerations for agrarian conflict cases as progressive law aims for substantial justice without setting aside positive legal provisions. This is in accordance with the function of law, namely to protect the interests that exist in society as the theory of law as a tool of social engineering which looks at the elements of legal reality regarding the operation of law in society and as a tool to renew (engineer) society towards the complete resolution of agrarian conflicts. Progressive legal studies by prioritizing the rights of people who are intimidated create an opportunity for law enforcers to resolve agrarian conflicts that prioritize benefits for society.

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