

**POLITICS OF LAW LIMITATION OF OWNERSHIP RIGHTS
TO LAND AGRICULTURE IN NATIONAL AGRARIAN LAW**

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ABSTRACT : Agricultural Land is a land that is intended or suitable for farming land to produce agricultural or livestock. The history of regulations on the limitation of ownership of agricultural land rights includes 2 periods, namely the limitation of ownership of land rights during the colonial period and the period after independence. The political and legal factors of the government greatly influence the operation of law in society, including in the implementation of land reform, especially the ownership of agricultural land rights, including restrictions on ownership of agricultural land rights. The politics of law applied in a government affects the implementation and enforcement of laws and regulations, changes in government that have occurred in Indonesia from the days of President Soekarno, President Soeharto, and Susilo Bambang Yudhoyono to President Joko Widodo affect the implementation of restrictions on ownership of agricultural land rights. The politics of land law are related to limiting ownership of rights to agriculture. It is hoped that the government will take sides by regulating the focus of ownership of agricultural land rights for the benefit of all Indonesian people, especially for farmers to own agricultural land. Ownership and control of agricultural land are not owned and controlled by certain groups or individuals.

Keywords : Ownership Rights; Land Agriculture, National Agrarian Law

INTRODUCTION

The land is a part of the earth which is called the surface of the earth, so land is only one part of the natural resources that exist on earth. Law Number 5 of 1960 concerning Basic Agrarian Principles, the articles do not define the land, but in the General Elucidation Part II (1) states that "In that case only the surface of the earth, namely the so-called land, which can be hijacked by someone ". Meanwhile, the expansion of the definition of "earth" and "water" with space is related to current technical progress and future advances. (paragraph 2). Furthermore, Government Regulation No. 24 of 1997 concerning Land Registration, in article 1 point 2 states that "Land parcels are parts of the earth's surface". The meaning of land in the Big Indonesian Dictionary is as follows:

1. Earth, in the sense of the surface of the earth or the layer of the earth on top of it, the state of the earth, the earth's surface that is bounded, the land.
 2. The bordering surface of the earth is occupied by a nation or which is ruled by a country.
 3. The ingredients of the earth or the earth as the material of something.
 4. Basic.
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Land concerns rights, so the existence of land concerns rights over land. Understanding of land rights cannot be separated from understanding the rights themselves. Rights according to Satjipto Rahardjo¹ as quoting Patton: rights cannot be separated from power, besides that right not only contain protection and interests but also will. It goes on to say: If I own a piece of land, then the law gives me rights, in the sense that my interests in the land are protected. This protection was not only aimed at my interests but also against my will regarding the land. I can give or inherit the land to someone else and that is also my right. In this case, it is not only my interests that are protected but also my will.²

The regulation of agricultural land ownership was issued by the government after the issuance of the Basic Agrarian Law of 1960, namely Law No. 56 Prp of 1960 concerning the Determination of Agricultural Land Areas which later became Law No. 1 of 1961. Regulation of agricultural land ownership cannot be separated from the launch of the land reform program in Indonesia which was born almost simultaneously with the issuance of the Basic Agrarian Law with the following objectives:³

- a. To carry out a just distribution of the livelihoods of the peasants in the form of land, with the aim that there is also a fair distribution of results, by completely revolutionizing the land structure to realize social justice.
- b. To implement the principle: land for farming, so that land does not occur again as an object of speculation and an object (meaning: a means of extortion).
- c. To strengthen and expand land ownership rights for every citizen of Indonesia, both men and women, who function socially. Recognition and protection of private bezit, namely property rights as the strongest rights, are individual and hereditary but function socially
- d. To end the landlord system and abolish massive ownership and control of land indefinitely, by setting maximum and minimum limits for each family. As the head of the family can be a man or a woman. Thus, it also erodes the system of liberalism and capitalism on land and protects the economically weak.
- e. To increase national production and encourage the implementation of intensive agriculture in other cooperation, for equitable and just welfare, coupled with a credit system specifically aimed at farmer groups. Encouraging the implementation of intensive agriculture in other cooperation, to achieve equitable and just prosperity.

The declaration of Land reform in Indonesia was accompanied by the issuance of the Land reform program which must be implemented by the government including limitation of the maximum area of land ownership, the prohibition of absent land ownership, redistribution of lands that are beyond the maximum limit, self-governing lands and State lands, regulation the

¹ Satjipto Rahardjo, 2010, *Law Science*, Alumni, Bandung, 250

² *Ibid*, pp. 54-55

³ Budi Harsono, 1999, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaanya*. Djambatan, Jakarta

matter of returning and redemption of pawned agricultural lands, rearranging the agreement for the sharing of agricultural land and determining the minimum area of ownership of agricultural land, accompanied by prohibitions from committing actions that result in the division of ownership of agricultural lands into too small a part. These land reform programs are then regulated by several laws and their implementing regulations. Land reform programs related to agricultural land include: limiting the control of the maximum area of land, prohibiting absent land ownership, customary pawning land ownership, division of agricultural land ownership is regulated in Law No. 56 Prp 1960, while the production sharing agreement is regulated in Law No. 2 of 1960. The Land reform program implemented by many countries is to make changes in the land ownership process after decades of being controlled, owned, and utilized for the interests of other countries. It is hoped that the change in the land ownership process, especially in Indonesia, will provide more benefits for the owner of the State land, in this case, Indonesia. The division of agricultural land ownership is regulated in Law No. 56 Prp 1960, while the production sharing agreement is regulated in Law No. 2 of 1960. The Land reform program implemented by many countries to make changes in the process of land ownership after decades of control is owned and used for the interests of other countries. Changes in the process of land ownership, especially in Indonesia, are of course expected to provide more benefits for the owner of the State land, in this case, Indonesia. The division of agricultural land ownership is regulated in Law No. 56 Prp 1960, while the production sharing agreement is regulated in Law No. 2 of 1960. The Land reform program implemented by many countries to make changes in the process of land ownership after decades of control is owned and used for the interests of other countries. It is hoped that the change in the land ownership process, especially in Indonesia, will provide more benefits for the owner of the State land, in this case, Indonesia. owned and utilized for the interests of other countries. Changes in the process of land ownership, especially in Indonesia, are of course expected to provide more benefits for the owner of the State land, in this case, Indonesia. owned and utilized for the interests of other countries. Changes in the process of land ownership, especially in Indonesia, are of course expected to provide more benefits for the owner of the State land, in this case, Indonesia.

However, these laws and regulations are not implemented as expected, as well as the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 18 of 2016, because in 2018 Presidential Regulation Number 86 on Agrarian Reform still appears the term mention of labor farmers, smallholders. and smallholders get 5 hectares of land rights. Law No. 56 Prp of 1960 aims to eliminate labor farmers, tenants, and smallholders from owning agricultural land evenly without gaps in ownership of agricultural land rights.

Several factors influence law enforcement according to Lawrence M. Friedman's system theory.⁴ Explained that the effectiveness and success of law enforcement depend on three elements of the legal system, namely the legal structure concerning law enforcement officials, the substance of the law includes statutory instruments, and legal culture or legal culture which is a living law adhered to in a society. These three elements cannot be separated from one another, because the enactment of the law cannot be separated from law enforcement officials, applicable laws as legal substances, and legal culture which are values that live and apply in society. However, in addition to the law enforcement system theories of Lawrence M. Friedman, there are important factors that influence the enactment or implementation of a government, namely the political law factor of the government.

In connection with the above background, related to the legal politics of limiting ownership of agricultural land rights, it can be stated that the formulation of the problem is as follows:

1. How about the legal politics of limiting ownership of agricultural land in the framework of the national Agrarian law?
2. How the politics of national land law affect the implementation of restrictions on ownership of agricultural land rights in Indonesia.

RESEARCH METHOD

A study of the Legal Politics of Restricting Ownership of Agricultural Land in National Agrarian Law using the normative juridical method, by looking for, analyzing, and analyzing laws and regulations that regulate the limitation of ownership of agricultural land from the time of foreign occupation and after independence, precisely after the issuance of the UUPA in 1960.

The identifier of each of the regulations issued by the government, especially after the enactment of the UUPA of 1960 which regulates the limitation of ownership of agricultural land rights, is related to the politics of law implemented by the holders of government power. After the identification of the regulations is analyzed in depth so that it can be concluded that there is significantly related to the relationship between rule enforcement and the politics of law carried out by government power holders.

These conclusions can be verified through the policies issued by the respective power holders about regulations on limiting ownership of land over agricultural land or land reform in general.

⁴ Lawrence Friedman, 1975, *The Legal System: A Social Science Perspective*, New York, Russell Sage Foundation.

DISCUSSION

Legal Politics of Limiting Ownership of Agricultural Land Rights in the Framework of National Agrarian Law

Ownership of land rights cannot create an equal distribution of ownership of land rights; this can only be done with an impartial arrangement and strict law enforcement in addition to the government's legal politics that support the implementation of these regulations. Equity is defined as the absence of gaps in ownership of land rights, gaps in the strong economy, and the weak.

Land law in Indonesia is inseparable from the history of the Indonesian state itself, as well as the legal politics of limiting ownership of land rights that cannot be separated from the land law system in the Dutch colonial era. In this case, the discussion of legal politics limiting ownership of land rights is divided into two periods, namely :

- A. Limitation of ownership of land rights during the Colonial Period and
- B. Period of ownership of land rights during the period of the Independence Age or after the issuance of the UUPA in 1960.

A. Restrictions on ownership of land rights during the Colonial Period.

The land system in the Dutch colonial era was inseparable from the system of the Dutch East Indies at that time which was divided into three population groups, namely European, Foreign Eastern, and indigenous groups. The land law system is divided into two laws, namely western law for European groups and customary law for indigenous groups, from these two laws emerge between groups so that there is legal pluralism in the land law system in the Dutch colonial era. The land law system in the Dutch era began with the issuance of Agrarics' Wet 1870, which is a western legal system intended for European groups including Eigendom rights, Opstal rights, and Erfpact rights, concession rights, and ownership of land rights for indigenous groups without written regulations or customary law applies, for example, the land of Yasan, Norowito.

In connection with the regulation of limiting ownership of land rights during the Dutch colonial era, it was limited to land rights for European groups and did not differentiate between agricultural and non-agricultural land, which included:

1. Eigendom rights

Eigendom rights are land rights granted to Europeans in perpetuity (the most powerful right among other rights for Europeans) which can be required for urban expansion or for establishing companies. Eigendom rights which are only found in the city environment and places deemed necessary (strategic) for foreigners according to the regulations, the area cannot exceed 10 shouldered / cultivated (7,000 m² to 8,000 m²). However, the limitation is not strictly

enforced, it can be said that the limitation does not apply because it can always be requested any expansion by dividing the request into several divisions each of which does not exceed 10 shoulders. The restrictions in the city environment are practically meaningless.

There are differences in the ownership of eigendom rights according to private law and public law. Restrictions under private law include arrangements regarding rights and obligations that must be obeyed by holders of land rights.⁵ The regulations, among others, are listed in articles 625-672 BW and 674-710 BW, articles 625-672 BW regulating rights and obligations between neighbors, for example, land boundaries by obeying stakes, closing borders, prohibiting making windows/holes at stone fence boundaries, mandatory receiving water that flows from a higher place, the prohibition of pouring rainwater or dirty water into neighboring yards and so on.

The restriction of eigendom rights according to public law concerns several things, namely regarding buildings such as borderline regulations, house yards, hygiene regulations, livestock slaughtering regulations, company regulations, regulations prohibiting disturbance. Besides that, article 571 of the Civil Code stipulates that the owner of the land right has the power overland on the surface of the land as well as in outer space and the land below it reaches the center of the earth. Based on this arrangement, it gives rise to the effect that the owner of eigendom rights will be able to prohibit the installation of wires for telephones, flights on ships flying above their land. However, Indische Miynwet S.1899 No.214 prohibits someone who owns land to control the mine without permission.

2. Erfpacht Rights.

Erfpacht rights were held by the Dutch government to promote agricultural companies, which then arranged to the Jambi Resident that the Erfpacht Rights were allowed to be allocated for livestock, fisheries, and other types of companies including other companies such as mining concessions. The requirements for the ownership of Erfpacht rights are not allowed to build buildings or carry out other work than for agricultural companies or to process agricultural products planted on the erfpacht rights land and may not establish bases without prior permission from the naval commander.

Erfpacht land ownership rights are limited following the types of Erfpacht rights; there are 4 types, namely:

- a. Erfpacht rights to large farms and large plantations, the land area limit is 500 shoulders (350 ha) with a maximum period of 75 years. Erfpacht rights holders are required to pay a maximum rental of 5 guilders per shoulder per year. This rental fee starts to be paid in the 6th year, but if for 5 (five) consecutive years you do not get any results from the land, and then the

⁵ R. Roestandi Ardiwilaga, 1960, *Indonesian Agrarian Law, Masa Baru*, Jakarta, pp. 171-172

obligation to pay is waived. The implementation is not following the regulations, which is of course beneficial for foreign entrepreneurs. For example, the limit of 500 should be interpreted for each one permit, so that an erfpacht rights holder who has several permits can control land more than 500 should, likewise, the amount of rent can be lower than the regulation.

The limitation of ownership rights for individuals designated for “underprivileged” Europeans and the legal body under Indonesian law is 25 should and 500 should for the legal entities. The maximum period is 25 years, while the amount of rent is .1.2.

b. Erfpacht rights to plantations and small farms.

Erfpacht rights for small farms are a maximum of one guilder per should per year. Irregularities occur in the implementation, namely, the land granted small erfpacht rights is not limited to waste ground (illegal land) but also Indonesian people's land, for example, pangonan land and other village lands can be given as long as the person has the right to voluntarily leave the land and relinquish his rights which sometimes by force. Although the erfpacht rights for small plantations can be declared null and void by BB (now the Minister of Agrarian Affairs), if the erfpacht rights are transferred to someone else without the permission of the Minister of Agrarian Affairs, the land is distributed and does not fulfill obligations regarding government loan support.

c. Erfpacht's right to build yards or rest houses, the maximum area of 50 should, this erfpacht right to the best of our knowledge does not exist and is rare, but is regulated and permitted.

d. Erfpacht rights to customary rights.

- The Dutch Government's instruction regarding the implementation of erfpacht for Ulayat rights should be pursued in such a way:
- Trudent actions from the civil service include holding discussions with the head of the association, tribe, or family concerned.
- Giving retribution to the head of the people for the transfer of people's rights (compensation for assistance);

3. Option Rights

Opstal right is a material right to own a building, work, or plant on another person's land (article 711 of the Civil Code). The arrangement in the opstal rights is not regulated by restrictions on the ownership of the opstal rights related to the land owned. The duration of the Opstal rights can be terminated after 30 years have passed (art. 719).

4. Concession Rights.

Concession rights are only given to Dutch people, or trade partnerships in the Netherlands or the Dutch East Indies, while for easterners foreigners can have concession rights except for regional officials who refuse because of political considerations or other reasons. The term has a concession right of 75 years with an area of 3500 ha. The implementation of this concession system is very detrimental to the indigenous people, namely by using the road

system made by onderneming entrepreneurs with their residents (people) to avoid the obligation to provide land for residents whose residence in the concession area according to the terms of the 1878 contract is 4 shouldered (2.84 ha.) for each resident. Road land is simply not enough to survive.

B. The period of ownership of land rights in the period of the Independence Age and after the issuance of the UUPA in 1960.

The period of the independence era until the issuance of the UUPA in 1960 related to the Land Law, prioritized the return of lands controlled by the Dutch and Japanese governments. The interests of the nation, state, and people regarding the control and ownership of land rights are a priority, so in the period 1945 to 1960, the government issued several regulations in the form of control, determination, and supervision of land owned by the State, for example, plantation land, private land and private lands (lands controlled by landlords) which were taken over to the State of Indonesia. Government (political law) policies show the takeover of European lands, land belonging to the controlled landowners; this is manifested through the following regulations:

1. UU no. 13 of 1946 concerning the Abolition of Perdikan villages. This regulation concerns the existence of Perdikan villages, namely lands half of which is controlled by the Village Heads and their families, because they are not following the democratic ideals for the Indonesian revolution, they are taken over by the State and distributed to the cultivating peasants and workers.

2. Law No. 13 of 1948 which revokes the provisions of VGR (Vorstenlandsch Grondhuur Reglement) which regulates conversion rights, namely provisions for entrepreneurs to acquire land including:

- On the provisions of "beschikking on the king's decision"
- By renting from the people
- And on a lease basis from the king.

3. The government decree dated April 8 No. I year 1949 to return 48 private plots of land totaling 469,506 ha located in the Cimanuk area.

4. The issuance of Emergency Law No. I of 1952 concerning the supervision of the transfer of land and other fixed assets subject to European law, basically requires permission from the Minister.

5. Regarding the supervision of the transfer of rights to plantation land, Law no. 28 of 1956 and Government Regulation No. 35 of 1957 as amended by Government Regulation No. 21 of 1959, which means that any transfer of rights to European lands, for example, eigendom land, and other property rights must be approved by the Minister of Agriculture.

6. Law No. 1 of 1958 was issued which regulates the return of 12,000 ha of private land covering 29,000 ha in Java, 2,500 ha in Sulawesi. Besides, it was returned to the State in Greater Jakarta 1,360 ha, Semarang 355 ha, Surabaya 786 ha, if a total of 2,501 ha.

7. In the case of transfer of rights due to sale and purchase of land, the village head must be included as a witness and know based on the Supreme Court Decree (Jurisprudence) No 4 / K / RUP / 1958.⁶

The limitation of ownership of land rights after the issuance of the Basic Agrarian Law (UUPA) 1960 regulates non-agricultural and agricultural land in the form of paddy fields and dry land (moor, yard).

1. Restrictions on non-agricultural land rights.

The determination of the maximum limit of ownership of non-agricultural land rights is confirmed in article 17 paragraphs 2 and paragraph 3 of the UUPA, as follows:

- (1) The determination of the maximum limit as meant in paragraph (1) of this article is carried out using statutory regulations within a short period.
- (2) The land which is more than the maximum limit as referred to in paragraph (2) of this article shall be taken by the government with compensation.

Regulations on the restriction of non-agricultural land rights are regulated implicitly, in the Decree of the Minister of Home Affairs No 59 / DDA / 1970 concerning the simplification of the Permit Regulations for the Transfer of land rights, which are amendments to the provisions of the Regulation of the Minister of Agrarian Affairs No. 14 of 1961. The implicit statement means that This regulation does not explicitly regulate the limitations on ownership of non-agricultural land rights in a comprehensive and intact manner. This is because this regulation also regulates ownership of Building Use Rights and Business Use Rights, in addition to Ownership Rights over land. Article 2 paragraph (2) Decree No. 59 / DDA / 1970 states that a person (family of bati) can only own 5 plots of land and if he wants to own the sixth parcel and so on, then he must ask the Land Office for permission, both ownership rights, right to build, as well as right to cultivate. This decree intends to limit the ownership of non-agricultural land, but the provision "if there is a permit from the Head of the Land Office", creates an interpretation that if there is a permit from the Head of the Office Land to acquire the sixth land title and so on, the limitation of ownership of land rights becomes invalid. The Land Agency is a body that is included in the executive branch under the President, which means that BPN does not independently have full authority in determining the ownership of land rights if the President wishes it will become the full authority of the President. Regulations restricting non-agricultural land ownership are also implicitly regulated in the Decree of the State

⁶ R. Ardiwilaga, 1960, Indonesian Agrarian Law, Masa Baru, Jakarta pp. 76-97.

Minister for Agrarian Affairs / Head of the National Land Agency No. soil. Article 4 paragraph (2) states that the application for ownership rights as referred to in Article 4 paragraph (1): limited to a maximum area of 2,000 m². Whereas in Article 4 paragraph (3) there is a provision regarding the processing of the application for ownership rights, a statement from the applicant must be attached, that with the acquisition of the right to be applied for, there are no more than 5 (five) plots of land for a residential house. More than 5,000 m² (five thousand square meters).

The regulation of the Head of the National Land Agency No.6 of 1998 concerning the Granting of Ownership Rights to Land for Dwelling and Occupancy is an arrangement for granting rights to ex-Building Utilization Rights with an area of no more than 600 m². Then in the Regulation of the Head of BPN No.2 of 2013 concerning the Delegation of Authority to Grant Rights to Land and Land Registration Activities regulated in article 3 letters a, b, it regulates restrictions on ownership of land rights, namely:

- a. Granting of ownership rights to individuals over agricultural land which is not more than 50,000 m² (fifty thousand square meters).
- b. Giver of ownership rights to individuals over non-agricultural land whose area is not more than 3,000 m² (three thousand square meters).

This regulation has not provided a comprehensive restriction of ownership of land rights accompanied by strict sanctions, the regulations are more overlapping with general regulations. One of the considerations for the regulation of limiting ownership of land rights in the form of a Minister of Agrarian Regulation is that the process and procedure for issuing regulations are simpler than in the form of Law which requires a long period and is a more detailed process. The Regulation of the Minister of Agrarian Affairs is binding on parties who will own non-agricultural land, but it cannot be used as a legal umbrella if there are community members who have non-agricultural land that exceeds the limit, especially in determining sanctions, especially if they have obtained permission from the Head of the Minister of Agrarian Affairs.

Some of the above regulations indicate that the provisions on the maximum limit of ownership of non-agricultural land rights until now there are no explicit implementing regulations as referred to in Article 17 paragraph (2) of the UUPA, namely in the form of a Law that regulates comprehensively. This results in land tenure that exceeds the maximum limit that can occur in the community, which can lead to gaps and injustices in the community.

2. Restrictions on ownership of agricultural land rights

Restrictions on ownership of agricultural land rights are included in the arrangement of one of the Land reform programs in Indonesia. Restrictions on ownership of land rights over agricultural land are regulated in Law No. 56 Prp 1960 which has been replaced by Law No. 1 of 1961 concerning the Determination of Agricultural Land Areas. Article 1 paragraph (1) Law

no. 56 Prp of 1960 states that:

A person or persons who in their livelihood constitute one family, together are only allowed to control agricultural land, either their own or that of others, whose total area cannot exceed the maximum.

This law distinguishes between wetland and dry land, including the maximum and minimum ownership limits and is based on the level of population density, with the following details: Paddy soil and dry land (moor) are divided into non-dense soils and dense soils, while dense soils are divided into less dense, moderately dense, and very dense soils. In areas that are not dense, a maximum of someone has 15 ha of wetland, 20 ha of dry land. As for the densely populated areas, it is divided into a. In less dense areas, the maximum is 10 ha of paddy soil, and 12 ha of dry land, b. in densely dense areas the maximum is 7.5 ha of rice fields and 9 ha of dry land, c. in very dense areas, the maximum number of paddy fields is 5 ha, and 6 ha of dry land.

According to Article 8 of Law Number 56 Prp of 1960, the minimum limit of ownership of agricultural land rights states: The government undertakes efforts so that each farmer as a family owns a minimum of 2 ha of agricultural land.

The maximum regulation of agricultural land is then re-regulated in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Agricultural Land without distinguishing agricultural land and dry land, the minimum limit is not regulated in this regulation. Article 2 paragraph (3) of this Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the Land Agency states:

Limitation of agricultural land ownership for individuals as intended in paragraph (2) letter a, with the following conditions:

- a. Not dense, at most 20 ha
- b. Less dense, at most 12 ha
- c. Quite dense, the largest area is 9 ha
- d. Very dense, at most 6 ha

Regulations regarding agricultural land ownership are not explicitly re-stipulated in Presidential Regulation No. 86/2018 concerning Agrarian Reform in articles 8,9,11 and 12 paragraphs (1), (2), (3). The regulation regulates Land Objects for Agrarian Reform (TORA), namely land controlled by the State and/or that is already owned by the community to be redistributed or legalized to the Subject of Agrarian Reform. As for the subject of Agrarian Reform is determined in PerPres RI to 86 2018, whose subjects include various professions: farmers, fishermen, farmers, honorary teachers, laborers, traders, private / state employees, soldiers, including workers appointed by the Minister later. The land which is the object of land for agrarian reform is State land originating from various reasons, for example, HGU.

The granting of the most 5 ha of land that is submitted to the Subject of Agrarian Reform is regulated in Article 9 paragraph (1) of Presidential Regulation Number 86 of 2018, which is a difficult regulation to implement about current regional conditions, especially in Java Island.

The politics of National Land Law influence the Implementation of Restrictions on Ownership of Agricultural Land in Indonesia.

The objectives of the Indonesian State as stated in the Preamble to the 1945 Constitution include protecting the entire nation and all the blood of Indonesia, advancing public welfare, educating the nation's life, participating in implementing world order based on eternal independence and social justice which ultimately creates a just and prosperous society. Various kinds of government activities to achieve national goals are called the term Political Law.

There are several opinions regarding legal politics, including Moh. Mahfud MD defines legal politics with the term Legal policy or official line (policy) regarding the law that will be enforced either by new legal acts or by replacing old laws, to achieve the goals of the State.⁷ Teuku Mohamad Radhie defines Political Law as a statement of the will of the State authorities regarding the laws that apply in their territory and regarding the direction of development of the law that is built. As for Satjipto Rahardjo⁸, states:

Political law as an activity of choosing and the means to be used to achieve a social goal with certain laws in a society whose scope includes answers to several basic questions, namely:

- a. What objectives are to be achieved through the existing system;
- b. What methods do you feel will be best used to achieve this goal;
- c. When is the time and using how the law needs to be changed;
- d. Can a standardized and established pattern be formulated to assist in deciding on the process of selecting goals and the means for achieving the goals well?

The formulation of legal politics must be in line with the aspects of policies in the fields of politics, economy, society, technology, culture, and law. This is related to the fact that for Indonesia the objectives of legal politics are:

1. As a tool (tool) or means that can be used by the government to create an Indonesian national legal system;
2. As a means to engineer developments and changes that occur in state life;
3. The direction to be realized in the development of the legal field.

National legal politics is the basic policy of state administrators in the field of law that will be, is being, and has been implemented which originates from the values prevailing in society to achieve the desired goals of the State. However, in realizing the ideals of the State's goals, several factors influence the realization of the formation of national law, as follows:

⁷ Mahfud MD, 2009, Indonesian Law Politics, Revised Edition, Jakarta, Rajawali Pers, p. 1.

⁸ Satjipto Rahardjo, 2009, Law, Bandung, Aditya Bakti, p. 235

1. Penetration of the interests of developed countries;

The influence of the superpowers can influence and even dominate the political-legal role of the government in developing Indonesian national law. Penetration occurs usually in the fields of economy, finance (fiscal), military equipment, and military cooperation. Bargaining positions will occur between the Indonesian government and the governments of developed countries; this will affect policies in the field of law that will be enforced in Indonesia. Therefore, the role of government legal politics in issuing legislation products related to people's welfare must see the aspect of the greatest benefit to improve people's welfare. The economic analytical concept of law/law formation (utilitarianism) is based on three principles, namely maximization, balance, and efficiency.

2. Government political interests

The government as the holder of the power of the State is the party that governs (the ruler), while the people who are in the power of the government are the ruled. Power is the ability of a person or group of humans to influence the behaviour of someone or another group in such a way that the behaviour is following the wishes and goals of the person who has that power.⁹ Meanwhile, Robert M. MacIver provides an understanding of the meaning of power, namely Social power is the ability to control the behaviour of others, either directly by giving orders, or indirectly by using all available tools and methods (social power is the capacity to control the behaviour of others either directly by fiat or indirectly by manipulation of available means)¹⁰ Decisions made in a parliament by decision-makers (decision making) as having a role in government legal politics to develop national law are often influenced by interests. These interests originate from the interests put forward by certain political parties and pressure groups (pressure groups) that are members of party coalitions. The political interests of the government are often used as reasons and considerations for making laws and regulations. The existence of these various political interests, often the decisions made in the formation of statutory regulations are contrary to the ideal conditions for legal or juridical validity, philosophical validity, and sociological validity.

3. Community culture;

The State of Indonesia is a country consisting of several regions with various tribes that have their characteristics. This is a cause for concern in the life of the nation and state with the diversity of applicable laws based on political legal considerations of the government for certain regions. Some several laws and regulations give the impression of special/special treatment for certain areas in Indonesia. For example, Law Number 11 of 2006 concerns Aceh Government, Law Number 18 of 2001 of Special Autonomy for Aceh Province as Nangroe Aceh Darussalam Province, Law Number 21 concerning Special Autonomy for Papua Province.

⁹ Miriam Budiardjo, *Basic-Basic Political Science*, Jakarta, PT Gramedia Pustaka Utama, 2000, p. 35

¹⁰ Miriam Budiardjo, *ibid* p. 35

In the framework of forming a national law, related to the politics of land law cannot be separated from the politics of national law. Land reform/reform, which includes land reform and agrarian reform, must not conflict with the grand design of the national law development, namely that it should not contradict Pancasila and the 1945 Constitution. However, the government's political interests are very influential in the formation of national land law, especially in land reform.

The government has responded to the politics of land law on the protection of land ownership rights for the community, especially for farmers, with the issuance of policies that regulate land reform. Land reform means reforming and restructuring rules and procedures to create a land tenure system consistent with the overall requirements of economic development. The goal of Land reform is to increase the distribution of agricultural income so that farming communities can improve their standard of living and create prosperity for farmers.

Land reform not only a solid and stable basis for economic and social development, but also a basis for the development of a democratic society. This program provides an opportunity for the capital formation process in rural areas to become the basis for a solid industrialization process. Land reform will also give power to poor farmer groups in rural areas in social ties to their communities. Land reform implemented by almost all Asian countries, especially countries experiencing foreign occupation, it is necessary to rearrange the land system. According to Lipton, that Land reform includes two things, namely the mandatory takeover of land from large landowners by the state with compensation and land management in such a way by the state from the acquired land, thus spreading benefits that are wider than just humans with the land than before the expropriation.¹³ Land reform also has socio-economic, socio-political, and psychological goals, Adrian Sutedi¹⁴ explains:

1. Socio-economic objectives.

- a. Improving the socio-economic condition of the people by strengthening property rights and giving the contents of the social function of property rights.
- b. Improving national production, especially the agricultural sector, to increase the income and standard of living of the people by using modern technology.

2. Socio-political goals

- a. End the landlord system and abolish widespread ownership of land
- b. Carry out a fair distribution of the source of livelihood for the peasants in the form of land with the aim that there is a fair distribution of the results. This means that everyone has the same opportunity to gain welfare and progress and escape from dependence on others.

¹³ Bernhard Limbong, 2012, *Agrarian Reform*, Op cit, p. 4.

¹⁴ Adrian Sutedi in Urip Santoso, 2012, *Agrarian Law, Comprehensive Study*, Jakarta: Kencana Prenada Media Group, pp 211-212

3. Psychological social goals

- a. Increasing the enthusiasm of working peasants by granting official rights regarding land ownership.
- b. Improve working relations between landowners and tenants;
- c. Increase the trust and self-esteem of the peasants following human dignity.

Socio-political motives are often considered as a last resort but the most beneficial, socio-psychological motives are concerned with social equality or social justice while socio-economic motives are based on efficiency issues.¹⁵

In connection with the legal politics of limiting agricultural land ownership in particular and the regulations regarding Land reform in general which are regulated in Law Number 56 Prp of 1960, the implementation was very much influenced by the political law of the government at that time.

The political and legal factors of the government greatly influence the operation of law in the community, including in the implementation of land reform, especially ownership of agricultural land rights. This was evident in the 1st (one) President era. Soekarno up to the 6th (six) President Susilo Bambang Yudhoyono regarding the politics of Agrarian law as follows:¹⁶

Indonesia in the Sukarno era had land reform policies and programs (1960-1965), but that ended when Suharto's authoritarian regime came to power in 1966 through a bloody coup. Hundreds of thousands of people classified as communists were killed by the military and anti-communist civilian militias (Cribb) 1990, 2001a, 2001b, 2002). Hundreds of thousands of others were thrown in prisons without trial. All leftist parties and organizations are also banned by the government. With an anti-communist platform, President Soeharto built an authoritarian-militaristic regime dubbed the "New Order", with the support of local elites, right-wing Islamic groups, western-oriented technocrats, and international financial institutions. The New Order regime consolidated its political allies,

Supported by such a regime, plantation and forestry companies easily regained control of their control over land and the poor; landlords also took back lands that had previously been redistributed under the land redistribution program (1962-1965). The freezing and removal of land reform from government policies and programs enabled the Suharto regime to strengthen its political alliance with local elites who controlled land and the poor. The main objective of the Soeharto regime in the early decades of his reign (1966-1974) was to maintain political stability (Mas'oed 1989: 59-61).

Changes in legal politics from the Sukarno Era towards legal politics towards the Suharto era resulted in the implementation of land reform being hampered because the Sukarno era was considered socialist and the Suharto era was said to be capitalist based on foreign investment,

¹⁵ See Russel King's opinion in Benhard Limbong, 2012, *Agrarian Reform*, Op cit, p. 49.

¹⁶ Noor Fauzi Rachman, *Landreform and Indonesian Agrarian Movement*, INSISTPRESS 2017 pp. 11-12

large-scale development, and the centralization of state power over natural resources. After the end of the Soeharto government, the land law politics of policy changed until President Susilo Bambang Yudhoyono's administration as follows:¹⁷

Since the resignation of President Soeharto in 1998, many changes have occurred especially when SBY made a speech on January 31, 2007, when launching a new land redistribution program coupled with the land certificate program as part of the government's strategy to eradicate poverty. Joko Winoto was the main initiator behind the speech, President SBY announced that 8.15 million hectares of state forest land under the jurisdiction of the Ministry of Forestry will be provided for a new land redistribution program, in addition to the 1.1 million hectares of state land that are under the authority of BPN. BPN will also redistribute 7.3 hectares "of abandoned lands under its jurisdiction including unused state land, misused or used by private companies but against government regulations (Winoto) quoted by Noo Fauzi Rachman.

Government policies are implemented about the politics of law that will be directed to where the government will run, which concerns political, social, economic, and cultural interests. SBY's policies have not been implemented optimally, but there have been changes in legal politics, this shows that legal politics have a very big influence on the policies to be taken by a leader of the country and the officials who accompany him.

The politics of land law are related to limiting ownership of rights to agriculture. It is hoped that the government will take sides by regulating the focus of ownership of agricultural land rights for the benefit of all Indonesian people, especially for farmers to own agricultural land. Ownership and control of agricultural land are not owned and controlled by certain groups or individuals.

Legal development which includes policies on the formation of statutory regulations / written law and law enforcement policies cannot be separated, but both are a system which is a unitary and interconnected as a totality, namely:

1. The success of a statutory regulation depends on its application. If law enforcement is unable to function properly, laws and regulations however perfect do not or do not give the meaning suitable for their purpose;
2. Decisions in the framework of law enforcement are a control instrument for the accuracy and deficiencies of a statutory regulation;
3. Decisions in the context of enforcing laws and regulations are brought to life and implemented according to the needs and development of society;
4. The formation of law and law enforcement involves human resources, work procedures, organizations, facilities, and infrastructure. Reliable human resources, effective and efficient organization, adequate facilities, and infrastructure will also determine the success of the formation and enforcement of the law.

¹⁷Ibid, p. 14.

5. The politics of establishing and enforcing the law must also be accompanied by the politics of fostering the organizing human resources and facilities/infrastructure.¹⁸

The conclusion regarding the five importance of implementing laws and regulations in national legal politics is that there are complementarity and influence between good laws, apparatus, and public awareness as executors of laws. Law is good, officials or apparatus are not good, then the results will be not good, laws are not good, the officials/apparatus are corrupt, public awareness is low (often bribes) of course the results are not good. In this regard, law enforcement (law enforcement) must be strict no selective/legal discrimination, law enforcers must have integrity (exemplary), close supervision by the community (through NGOs), the press, institutions/agencies on duty, jointly commit.

CONCLUSION

I. Legal Politics of Limiting Ownership of Agricultural Land Rights in the Framework of National Agrarian Law

Land law in Indonesia is inseparable from the history of the Indonesian state itself, as well as the legal politics of limiting ownership of land rights that cannot be separated from the land law system in the Dutch colonial era. In this case, the discussion of legal politics limiting ownership of land rights is divided into two periods, namely:

1. Limitation of ownership of land rights during the Colonial Period and
 2. The period of ownership of land rights during the period of the Independence Age or after the issuance of the UUPA in 1960.
-
1. Restrictions on ownership of land rights existed in the colonial era, but their implementation was not following the regulations. The limitation of ownership of land rights only applies to land rights for European groups including eigendom rights, erfpackt rights which consist of public and individual erfpackt rights, erfpackt rights, opstal rights, concession rights.
 2. Restrictions on ownership of land rights after independence, differentiated between non-agricultural and agricultural land.
 - a. Restrictions on non-agricultural land have not been regulated comprehensively and are strictly sanctioned if there is a violation. The settings are set in: Decree of the Minister of Home Affairs No 59 / DDA / 1970 concerning the simplification of the Permit Regulations for Transferring land rights, the Regulation of the Head of the National Land Agency No.6 of 1998 concerning the Granting of Ownership Rights to Land for Residential and Residential and in the Regulation of the Head of BPN No.2 2013 concerning the Delegation of Authority to Grant Land Rights and land registration activities is regulated in article 3 letters a, b, which regulates restrictions on ownership of land rights.

¹⁸ Ibid, downloaded 8/5-2018

b. Restrictions on agricultural land have been regulated since 1960, but their implementation is not implemented according to the regulations, even overlaps, and is difficult to implement. The regulations include: Law No. 56 Prp of 1960 on Determination of Agricultural Land Areas, Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 18 of 2016 concerning Control of Control over Agricultural Land, Presidential Regulation of the Republic of Indonesia Number 86 of 2018 concerning Agrarian Reform

II. The politics of National Land Law influence the Implementation of Restrictions on Ownership of Agricultural Land in Indonesia

The politics of law applied in a government affects the implementation and enforcement of laws and regulations, changes in government that have occurred in Indonesia from the days of President Soekarno, President Soeharto, and Susilo Bambang Yudhoyono to President Joko Widodo affect the implementation of restrictions on ownership of agricultural land rights.

In connection with the implementation of restrictions on ownership of agricultural land rights, affecting Law No. 56 Prp of 1960 concerning the Determination of Agricultural Land Areas which was issued and promulgated during the reign of President Soekarno, was not implemented during the reign of President Soeharto because it was considered Socialist-Communist. During the reign of President Susilo Bambang Yudhoyono, there were changes in the politics of land law by adding 8.15 million hectares of new agricultural land, but this was not implemented optimally. During the reign of President Joko Widodo, there were changes in the arrangement of agricultural land, the arrangement of agricultural land was not regulated in a focus for the interests of farmers, but was combined with the Agrarian Reform Subject outside the farmers, for example, laborers, TNI, fishermen and so on.

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