

Agrarian Injustice and the Absence of a Maximum Limit of Land Ownership for Legal Entities

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Abstract. One of the indicators for the objective achievement of the national agrarian law is the equitable distribution of land ownership. Therefore, monopoly by legal entities is prohibited. However, until now, there has yet to be a regulation regarding the maximum limit of land ownership by legal entities in Indonesia. This article aims to determine the effect of regulation absence on the maximum limit of land ownership by legal entities on the inequality of land ownership and to review the absence of this regulation from the perspective of agrarian justice. This is normative research that uses statute and conceptual approaches. This research used primary and secondary legal materials obtained through literature studies. Data is based on content analysis. The results show an imbalance in land ownership between farmers and those controlled by legal entities because there is no maximum limit on land ownership for the latter, causing monopolies and land abandonment. The absence of a maximum land ownership limit differs from the value of justice and national agrarian law's objectives because it causes land ownership inequality. Therefore, it is necessary to precisely regulate the maximum limit of land ownership by legal entities based on the value of justice to achieve the welfare of all communities.

Keywords: Maximum Limit, Land, Legal Entity

1 Introduction

Colonial agrarian legal politics based on the nature of domination, dependency, exploitation, and discrimination cannot be separated from the orientation of the colonial state to control the spice trade as a commodity with a high selling value in the European market. This spice can only be controlled through a land policy that exploits the Indonesian population, imposes tax provisions in the land sector, holds a *cultuurstelsel* or forced cultivation, and also opens opportunities or chances for Dutch entrepreneurs to participate in enjoying the wealth owned by the colonialists. The practices of large-scale land tenure, such as private land, are large-scale lands on which lordship rights (*landheerlijke Rechten*) cover an area of 1,150,000 ha.

In the end, the Dutch East Indies government realized that land tenure on an extensive scale by business people and landlords and ownership rights over it was not excellent and profitable for the state. Therefore, in 1935, N.V. Javansche Particulere Landrijen, as a business entity in charge of buying back private land, purchased 13 private land parcels with an area of 80,713 hectares. This phenomenon shows how large the private land parcels were. If examined in more depth, this phenomenon was caused by the absence of restrictions on land ownership and the existence of lordship rights on it, which in turn caused losses to the state.

This private land also shows the gap in land ownership between the indigenous people and Chinese and European people in business then.

Opportunities for European and Chinese business people to control land on a large scale were also wide open when the Agrarische Wet was legalized in 1870, one of which was that the governor-general could grant erfpacht rights within 75 years. The enactment of Agrarische Wet in 70 years from 1870 to 1942 was facilitation for European companies. This has led to massive investment flows for leading commodities. Moreover, what was limited by Agrarische Wet was only 75 years, not the maximum land area. This condition causes investors to try to control the broadest possible land. The emergence of private land and the implementation of agrarische wet certainly created inequality in land ownership. The victims of this inequality were farmers who controlled very narrow lands, while entrepreneurs controlled extensive lands.

The founders of the nation also realized the inequality of land ownership. One of the five agrarian reform programs is an overhaul of the land ownership structure, especially for farmers. This is always contained in various statements of national leaders, both expressed in writing and orally. The will to improve the fate of the peasants was executed by establishing a minimum limit on agricultural land ownership as proposed by the first committee to draft the Basic Agrarian Law.

The maximum limit of land ownership was also one of the topics that the makers of the LoGA widely discussed. Sadjarwo, a Minister of Agrarian Affairs, in his speech before the People's Representative Council (DPR) Meeting on September 1, 1960, stated that the maximum limit was essential to prevent exploitation among living beings. It was also meant to prevent the practice of liberalism and capitalism in the land sector, which resulted in land ownership on a large scale which in Dutch is called *Groot grond bezit*.

The intention to prevent the occurrence of *Groot grond bezit* was conducted by limiting the minimum and maximum land ownership. The regulation regarding this minimum limit in the LoGA is spread out in several articles, including Article 7 of the LoGA, which states that to harm the public interest, ownership, and control of land that exceeds the limit is not allowed. Therefore, the maximum and/or minimum land ownership limits that can be owned by one family/legal entity are determined. The explanation section of Article 17 of the LoGA states that the maximum land ownership limit will be determined as soon as possible in the legislation.

Currently, there are only regulations regarding the minimum land area controlled by one family, namely Law no. 56 PRP of 1960 on Determination of Agricultural Land Area. Article 1 of this Law states that a person or a family in his life only has permission to control agricultural land, either owned or borrowed or controlled entirely, not more than 20 hectares, either rice fields, dry land, or paddy fields and dry land. Regarding the substance of this article, the first thing that must be understood is the subject—one family. The meaning of a family is a husband, wife, and children who are not married and are their dependents, the number of which is around seven people.

In the RUUPA, Asmu, a representative from the agrarian group, suggested that the excess agricultural land obtained from the maximum excess land be distributed to the peasants, especially to the landless peasants. This law also stipulates the minimum land ownership limit of 2 hectares. In this case, the transfer of agricultural land rights, except for the distribution of inheritance, is prohibited if it causes land ownership of fewer than 2 hectares to prevent versplintering.

There is a new regulation regarding the maximum limit of land ownership to land owned by farmers so that the owner becomes limited. Meanwhile, large companies have no maximum

land ownership limit to control vast land. If you refer to various data, it can be seen that the expansive land tenure by companies/legal entities creates an imbalance in land ownership compared to the land area controlled by farmers. On the other hand, suppose there is a legal entity that controls an extensive area of land without a maximum limit. In that case, the land ownership inequality in Indonesia in 2021 will reach 0.79 or 1% of people who own 79% of the land. This is due to the vast amount of land owned by entrepreneurs. Based on this concept, there is an imbalance in land ownership between those controlled by companies (legal entities) and farmers. Therefore, this article will discuss the relationship between inequality in land ownership and the absence of restrictions regarding land ownership within the maximum limit controlled by legal entities/entrepreneurs.

This paper will begin with a discussion of the urgency of regulation regarding the importance of limiting the maximum land area owned and controlled by legal entities and conducting a theoretical analysis of the absence of a maximum limit of land ownership in terms of the philosophy of national land law.

This paper differs from Nathanael Dwi Reki's 2018 article, which discusses the general limitation of ownership and control of the land. Thus it does not explicitly discuss the absence of a limit on the maximum area of land that can be controlled and owned by legal entities [1]. This paper also differs from Listyowati Sumanto's article, which discusses the limitation of land rights ownership by foreigners and foreign legal entities by comparing the provisions in Indonesia and Turkey. The difference is that Listyowati's writing uses a comparative approach, while this article uses a conceptual and legislative approach. In addition, Listyowati's article discusses the limitation of ownership of land rights for foreign legal entities, which of course, has different rules from the restrictions on ownership of land rights for legal entities in general, which is the focus of this article [2].

2 Method

This doctrinal-based research focuses on the weakness of the legislation substance in Indonesia and its impact on justice, which in this case is the equal distribution of land ownership. This normative research uses primary and secondary legal materials. Primary legal materials consist of relevant laws and regulations starting from the 1945 Constitution of the Republic of Indonesia, Law no. 5 of 1960 on Basic Regulations on Agrarian Principles, Law no. 56 PRP 1960 on Determination of Agricultural Land Areas, and other relevant regulations.

The secondary legal materials consist of books, journals, and other relevant data. The two legal materials were obtained through library research. In the final stage, experts analyzed and interpreted data by focusing on text through several stages: coding, interpretation, data display, and conclusion [3].

3 Result

The spirit to dismantle the unjust agrarian structure was one of the main drivers underlying Indonesia's independence. Justice in Sadurski's view can be measured from two things: by comparing the treatment between two parties. In this discussion, the treatment of farmers and legal entities in accessing land is compared. This comparison will show that the two have no

justice in the treatment. This is because the maximum limit for land ownership is determined only for farmers, not for legal entities.

One family only has permission to have a maximum of 20 hectares of agricultural land. Meanwhile, for legal entities, there needs to be a regulation regarding the maximum land ownership limit, including for companies. In fact, in Indonesia, many companies control land on an immense scale, for example, lands with usufructuary rights (used for agriculture, fisheries, animal husbandry, and plantations) owned by large companies.

The amount of land in Indonesia controlled with usufructuary rights is 10,198,000 ha. Private companies control it out of the total land area of Indonesia, which is 1,919,440 km² (191,944.00 ha) [4]. The ownership of land by the private sector is undoubtedly vast compared to the control of land by the community. This is because the land controlled by the private sector is vast and different from that of the community. For example, in 1997, the Decree of the Right to Cultivate was issued on behalf of P.T. Barat Selatan Makmur Indonesia (SBMI), covering an area of 9,513 hectares which was later expanded to 2,500 hectares.

P.T. Sumber Wangi Abadi, in 2001 also issued a certificate of use rights covering an area of 3,193.90 ha for oil palm plantations. This is not to mention the area of land controlled by large-scale companies in Indonesia, which is certainly more expansive. The author understands that providing detailed data on land tenure in Indonesia is complicated. This is due to the closedness of data from the government and entrepreneurs regarding this matter. This condition is inseparable from the issuance of the Circular of the Coordinating Ministry for Economic Affairs No. TAN.03.01/265/D.II.M.EKON/05/2019 requires the Indonesian Palm Oil Council (DMSI), the Indonesian Palm Oil Association, and all palm oil companies to keep data and information of a strategic nature related to the right to cultivate coconuts secret palm.

One thing that deserves attention is the existence of liberalization, marked by increasing investment flows causing Indonesia's lack of rice fields. This phenomenon can be seen from the data from the Ministry of Agriculture, which states that Indonesia's rice fields continue to decline. In 2017, the area of paddy fields reached 8,164,045 ha. This area then decreased significantly in 2018 to 7,105,145 ha or decreased to 1,058,900 ha. However, it increased in 2019 to 7,463,948 ha or only increased by 358,803 ha. This increase is insignificant compared to the decrease in the rice field area in 2018 [5]. This is also in line with the number of smallholder farmer households or farmers who control less than 0.5 hectares of land in Indonesia; in 2018, this number reached 16,257,430 people. This number is around 56% of the number of Indonesian agricultural business households in 2018, which reached 27,222,773 people, with the number of farmers reaching 33,487,806 people consisting of 25,436,478 men and 8,051,328 women. The average area of irrigated rice fields controlled by farmers only reached 927.07 m², and the average area of non-irrigated rice fields controlled by farmers was an average of 860.8 m² [6]. This amount is lower than the ideal limit of 2 ha or 2,000 m².

The area of land controlled by these farmers is inversely proportional to the land in Indonesia, which is controlled with cultivation rights—10,198,000—ha, which private companies control. For example, in Riau Province, the area of land use rights controlled by legal entities is 495 parcels with an area of about 1,001,809 hectares, and the private sector controls 80% of the land area for cultivation rights with a total of 806,416 hectares which is divided into 416 land parcels [7].

In the midst of the vast land controlled by business entities, it seems that there are still many lands that are still neglected by the holders of these rights, including land P.T. Alfa Glory Indah covering an area of 726,252 Ha. This land is designated as abandoned land in the Decree of the Head of the Regional Office of the Riau Province National Land Office (BPN)

Number 176/SK-14.NP.02.03/VIII/2020 dated August 31, 2020. In addition, there is also land with Cultivation Rights covering an area of 48,798, 97 Ha, which is indicated as abandoned land [7]. The high level of land use rights owned by plantation companies indicated to be abandoned also occurs in East Kalimantan Province, which reaches 226,203.25 ha [8].

The high statistics above show two things: the inequality of land ownership. On the one hand, there are Agricultural Business Households (RTUP) which control very narrow land, even when smallholders reach 58.9%. On the other hand, community groups, such as legal entities, mainly large companies, control an extensive land area. Moreover, some of the lands controlled by the company were neglected.

4 Discussion

The extent of the right to use the business controlled by this entrepreneur certainly requires restrictions. This is because the land is limited while the people who need it continue to grow. Therefore, the state with the authority to regulate, manage and make policies must ensure that land is correctly distributed so everyone can benefit from it or the land can be distributed equally. In order to ensure that every individual and group can benefit, the government must impose restrictions on land ownership.

This land ownership limitation must be applied to individuals and legal entities. This is based on the will to realize social justice, including agrarian justice. According to Maria S.W. Sumardjono, the proper benchmark in making a fair land policy is to provide justice based on needs, not capabilities. This is because, in the map of land tenure and use in Indonesia, attention must be paid to those who need it more [9] The government policy does not limit the maximum excess of land controlled by the entrepreneur and only limits the one for the farmer. This happens because the strong parties who control large-scale land are entrepreneurs, not farmers. Moreover, many lands controlled by the company were abandoned.

This also contradicts the philosophy of the state's right to control. The philosophy emphasizes that the management of the state's authority over natural resources must be aimed at achieving the greatest prosperity for the people. In the decision of the Constitutional Court, it is stated that one indicator of the realization of the greatest prosperity of the people is the creation of equal distribution of land ownership. The concentration of land ownership by the company is not allowed because it will hinder the achievement of the greatest prosperity of the people. In his speech before the DPR GR Meeting on September 1, 1960, Sadjarwo, Minister of Agrarian Affairs, stated that the maximum limit was essential to prevent exploitation between human beings/groups and to prevent the implementation of liberalism and capitalism systems.

The existence of inequality in land ownership due to the absence of a maximum land ownership limit is clearly in contrast to the principles of economic democracy. Jimly Ashshiddiqie explained that economic democracy in the 1945 Constitution of the Republic of Indonesia could be seen from several aspects, including placing economic resources as the main points of people's prosperity and making economic actors the subject of joint prosperity efforts. The absence of a maximum land ownership limit for companies differs from the aspect of economic democracy above, apart from the fact that legal entities with significant capital only enjoy economic resources (in this case, land). On the other hand, farmers only control the land, resulting in inequality of access [10].

This is another aspect of economic democracy—business actors are the subject of mutual prosperity. It is because the capitalist from large corporations with legal entities is trying to control the broadest possible land to advance their business without paying attention to the farmers who need land. Thus, the principle of togetherness and balance of progress in economic democracy is not achieved. Article 12, paragraph (1) of the LoGA stipulates that all efforts in the agricultural field must be based on the common interest of the national one.

Normatively, the absence of a maximum limit of land ownership by legal entities is not following Article 13 (2) of the LoGA, which requires the government to prevent private monopolies, whether carried out by organizations or per agricultural field from organizations (including legal entities) and individuals who create a monopoly. This also contradicts the government's obligation in Article 17 of the LoGA, which requires the government to determine the maximum and/or minimum area of land that legal entities can own.

The non-implementation of the obligation to determine the maximum limit of land that can be owned/controlled by legal entities also means that the substance of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia on the right to control the state still needs to be implemented. Jimly Asshiddiqie argued that three things could be the cause of the non-execution of the substance of the state's right to control, including the unawareness of state administrators or misunderstanding of the existence of binding and mandatory economic constitutional policies that must be implemented [11]. In addition, this can also happen because there is no common perception and view among state administrators regarding the operationalization of constitutional policies. In addition, Imam Koeswahyono also viewed that one of the factors causing the non-execution of the right to control the state is the misorientation of the government in implementing national development. They only want to achieve a high target/rate/quantity of economic growth (economic growth development) [12].

5 Closing

The land ownership inequality between farmers and legal entities in Indonesia is very high. This is because, until now, the maximum land ownership limit has only been applied to farmers rather than legal entities (including companies). As a result, the land controlled by the legal entity is vast, and even large plots of land are neglected. On the other hand, the majority of farming families in Indonesia are smallholders who only control less than 0.5 hectares of land. The absence of a maximum limit on land ownership is not in line with the value of justice, the principle of the right to control the state, the goal of the greatest prosperity of the people, the principle of economic democracy, and the substance of the Basic Agrarian Law.

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