



Impact of Conversion in Law Number 5 Years 1960 Concerning Basic Rules on Agrarian Costs on the Rights of Indigenous People's Ownership in Bali

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Abstract

Agrarian development in Indonesia has experienced a long history, it is noted that the milestone in the development of agrarian law in Indonesia dates back to the Dutch colonial period in Indonesia. During the Dutch colonial period in Indonesia there was a dualism of agrarian arrangements in Indonesia, besides that the regulations made by the colonial government did not provide welfare for the people of Indonesia because it was far from a sense of justice. After Indonesia's independence in 1945, agrarian became one of the important concerns of the government and in the end after going through a long process Indonesia established the Basic Agrarian Law (UUPA). With the creation of UUPA providing fundamental changes to the agrarian in Indonesia, especially in the land sector, one of which is related with rules regarding the conversion of land rights. The existence of rules regarding conversion affects the rights of indigenous peoples' land, especially in Bali. This research was carried out using the approach of the statute (the statute approach) and the conceptual approach (conceptual approach). Land regulation in Indonesia by establishing a LoGA which is expected to be able to provide justice and prosperity for the people of Indonesia, while the conversion rules contained in the LoGA have a positive impact but also a negative impact on the rights to land ownership of indigenous peoples, especially in Bali.

Keywords: Agrarian; Conversion; Land Ownership Rights of Balinese Indigenous Peoples.

INTRODUCTION

Regulations regarding the control and ownership of land in Indonesia existed even before Indonesia proclaimed its independence, where the rules regarding this matter were regulated by customary law in force in society. History records that Indonesia was colonized by the Dutch and in the colonial period it was undeniable that the Dutch also applied the rules regarding land that prevailed in their country to the people of Indonesia. This led to the dualism of agrarian law in Indonesia, a regulation brought from the Netherlands with agrarian arrangements that had developed in Indonesia.

History records that the Dutch colonial government in Indonesia was unable to properly regulate land administration, only when the British administration took the lead in Indonesia, the administration of land was well managed. The leader at that time was Raffles who was the initiator of improving administration with the domain system, namely by implementing a land tax withdrawal system such as what was used by Britain in India (Supriadi, 2015). In 1811 Raffles formed a system of withdrawal of earth tax which in Dutch terms was called landrente. This Raffles theory turned out to influence agrarian politics during much of the 19th century (Supriadi, 2015). After 19 years Indonesia was under the British colonial government, in 1830 Indonesia again became a colony of the Dutch

government, this led to the development of agrarian law in Indonesia. At this time the Dutch government in Indonesia was led by Governor General Van den Bosch who popularized a concept of *Cultuurstelsel* land tenure or commonly called the forced planting system (Supriadi, 2015).

Agrarian development in Indonesia did not escape the rules of colonialism in Indonesia, finally after Indonesia's independence in 1945, agrarian development became a full concern for the Indonesian government, the government realized that the rules regarding agrarian inheritance from the previous government were very far from feeling justice for the Indonesian people. After a long process, the Indonesian government finally succeeded in enacting Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). Philosophically the establishment of this UUPA is intended to create prosperity for all Indonesians in a fair and equitable manner in accordance with the observations of Article 33 of the 1945 Constitution of the Republic of Indonesia (Suwitra, 2010a). After the enactment of the UUPA, the dualism that occurred in land regulation in Indonesia was abolished and then the national land law which was based on customary law and with the birth of the UUPA resulted in the conversion of rights born in the Dutch and British colonies which were adjusted according to benefits for the people of Indonesia.

Based on background, this research focus on the definition of conversion, the types of conversion and on the impact of conversion in Law Number 5 of 1960 concerning Basic Agrarian Basic Regulations on land ownership rights of indigenous peoples in Bali.

METHOD

According to Peter Mahmud Marzuki, legal research is a process to find the rule of law, legal principles, and legal doctrine to answer the legal issues faced, this is in accordance with the prescriptive character of law (Marzuki, 2005). This research was conducted by using a type of normative juridical research, namely research conducted by examining library material such as legislation, literature related to the issues at hand, as well as dictionaries and encyclopedias (Soekanto & Mamudji, 2009). There are several approaches that are known in conducting research, the approach is taken to obtain information from various aspects related to the issues at hand, while the approach used in this study is the Law approach (statue approach) that is by examining the relevant legislation and conceptual approaches (conseptual approach) which is to move from the views or doctrines that develop in law. In conducting this research using three sources of legal material, namely, sources of primary legal material, sources of secondary legal materials, and sources of tertiary legal materials. The source of primary legal material is legal material that is binding in nature such as legislation. The sources of primary legal material in this study include: 1945 Constitution of the Republic of Indonesia; Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043). Whereas secondary legal material is supporting legal material from primary legal materials such as books, scientific works, internet articles and expert opinions, as well as tertiary legal materials which are materials that can provide instructions and/or explanations regarding primary legal materials and secondary legal materials such as legal dictionaries and encyclopedias.

The legal material collection techniques used in this research, namely by conducting a search related to the issues being faced, then understanding and reviewing in depth so as to produce relevant information. Related to legal material analysis techniques used in this study are descriptions and interpretations.

RESULT AND DISCUSSION

Definition of Conversion

The conversion of land rights is the adjustment of old rights to land that are adjusted to new rights stipulated in the UUPA. According to A.P. Parlindungan of the conversion of land rights is how the arrangement of land rights that existed before the enactment of the UUPA to enter into the UUPA system (Parlindungan, 1990). So it can be concluded that the

conversion of land rights is a change in land rights with an old status, namely the status that existed before the enactment of the UUPA into a new status according to the regulation according to UUPA.

Indonesia as a follower of the material law (welfare state), where the state intervenes in various fields including land (Rahmi, 2010). Therefore the development of land in Indonesia continues to be a concern by the government to date. In the present, still in some cases land can still be found that has the right to form *eigendom verponding*. *Eigendom verponding* terdiri dari dua kata yakni *eigendom* which means that the permanent ownership rights to the land and correspondence are tax bills for said land or land and buildings. This time *verponding* it changes to the Land and Building Tax Tax Return (SPPT-PBB). While *eigendom* must be converted into a type of land right as regulated in the UUPA (Hajati, Winarsi, Sekarmadji, & Moechthar, 2017).

Types of Conversion

The conversion regulated in the UUPA can be divided into three types, namely:

Conversion of Rights to Former Land of Western Rights Land rights originating from western land rights consist of several types, namely:

eigendom right can be interpreted as the most perfect right compared to other rights because this right can be converted into ownership rights, building use rights or use rights. Different conditions when it comes to rights *eigendom* it is burdened with rights *opstal* or *erfpacht right*, then an agreement between rights holders is needed *eigendom* with rights holders *opstal* or *erfpacht* right if you want to do a conversioni.

Postal rights are regulated in article 711 of the Civil Code, where Postal rights are property rights to own buildings and plants on another person's land. Installation rights can be converted into building use rights.

Erfpacht rights are regulated in Article 820 of the Civil Code, where with this right, they can enjoy as much as possible from the land of others and cultivate it for a very long time. Erfpacht rights are divided into three types, namely:

Erfpacht rights for large plantation companies can be converted into business use rights.

Erfpacht rights for residential areas, can be converted into building use rights.

Erfpacht's rights to small farms are eliminated because conversion cannot be done.

Gebruik rights (recht van gebruik), are material rights for other people's objects for certain people to take their own objects and use them when there are results, just for their own needs and their families. Online rights are converted into usufructuary rights.

Bruikleen, is an agreement between parties, in which one party hands over objects free of charge to the other party to be able to use the object and is accompanied by an obligation to return the object in accordance with the agreed deadline. Bruikleen is converted to usufructuary rights.

Conversion of Rights to Ex-Land of Indonesian Rights

Land rights originating from former Indonesian rights land are divided into three types, namely:

Erfpacht's right, which is an addendum, is an erfpacht right granted as a substitute for business rights over the former private land according to St. 1913 - 702. This right can be converted into ownership rights, business use rights or building use rights, depending on the subject matter of the rights and designation.

agrarische eigendom right, is a right that gives the bumiputera a strong right to a piece of land. This right was made during the Dutch colonial period. *agrarische eigendom* right can be converted into ownership rights, business use rights or building usufructuary rights, in accordance with the subject matter of their rights and designation.

gogolan right or sanggao/pekulen risgth is the right is the right of a *gogol* (worker) over communal villages. *Gogolan* rights can be divided into two types, namely:

Fixed *gogolan* rights, if the *gogol* continuously owns the same land and the land can be inherited to his heirs. Logic rights are still can be converted into ownership rights.

Gogolan rights that are non-permanent, if the *gogol* does not continuously hold the same *gogolan* land and if he dies, the land will go back to the village. Non-permanent *gogolan* rights can be converted into use rights.

Conversion of Rights to Former Land Ownership Rights

The autonomous region was the area of kings during Dutch colonial rule. There are several types of self-rights over land:

Hanggaduh right, is a right granted to use or use land owned by the king. These rights can be converted into usufructuary rights.

grant right or it can also be called *geran datuk / geran sultan / geran raja* is a land right over the granting of the king's rights to a foreign nation. Grant rights consist of three types, namely:

Grant sultan, is the property rights to cultivate land given by the sultan to the self-governing governors. This right can be converted into ownership rights, business use rights or building usufructuary rights, in accordance with the subject matter of their rights and designation.

Grant controleur, given by the *sultan* to not the head of the self-government. This right is converted to usufructuary rights.

Grant deli maatschappy, given by the sultan to the *maatschappy deli* who is authorized to give parts of the land to other parties. Against conversion rights *grant deli maatschappy*, there are no provisions governing it. But according to Boediharsono, this right can be converted into usufructuary rights because it is the same as rights grant controleur.

Concession and lease rights for large plantation companies. The concession rights for large plantation companies are the rights to undertake self-government land granted by the head of the self-government. Whereas lease rights for large plantation companies are lease rights for state land, including former swapraja land to be used as plantations with an area of 25 ha or more. These rights can be converted into business use rights.

Impact of Conversion in Law Number 5 of 1960 concerning Basic Agrarian Principles concerning Land Rights of Indigenous Peoples in Bali

The Balinese indigenous people recognize the existence of two types of land rights, namely individual rights to land and the rights of indigenous peoples (Windia & Sudantra, 2006). Regulations concerning individual rights to land are fully subject to national law while land rights of customary law communities are subject to national law and are still bound by customary provisions as regulated through awig-awig. Indonesia recognizes and respects the existence of indigenous peoples and their traditional rights insofar as they are alive and in accordance with the development and principles of the Unitary State of the Republic of Indonesia, this is stated in Article 18B paragraph 2 of the Republic of Indonesia Constitution. the land rights of customary law communities especially in Bali still exist and are recognized by the state, in the system of legislation in Indonesia we can see the existence of this village land in Article 3 of the UUPA which states "keeping in mind the provisions in Article 1 and Article 2 implementation of customary rights and similar rights from customary law communities, insofar as they are in reality still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other laws and regulations.

In general, land tenure rights or land rights can also be interpreted as legal relationships that can give the right of the holder the right to do something about the land (Santoso, 2012). This land tenure right can be used in civil or public dimensions, where in the sense of civil mastery is defined as the authority to use the land in question, whereas in the public dimension it means that it gives authority to the holder to be able to manage and regulate the land under his control (Suwitra, 2010b). Customary lands in Bali are shared land which is controlled and owned communally by a traditional village. Communal

customary land control is seen as a gift from an occult power, so that all individual rights come from the common land (Suwitra, 2010a). Land rights of customary law communities including:

druwe desa land, This land right can be interpreted as land directly controlled by traditional village. As an example *druwe desa* namely *Setra* land, market land, fields, proof land, and land for village facilities

pekarangan desa (PKD) land namely the village land owned by the village that was given to village officials who could be designated as settlements. In addition to the rights obtained by village officials to occupy the PKD land, the obligation for the village manners to the village is also referred to as *ayahan*, both in the form of material and non-material.

ayahan Desa (AyDs) land, is the agricultural land owned by the village which is handed over to the village officials to be managed and can be enjoyed by the results, but just like the PKD land, village officials have an obligation in the form of *ayahan* to the village (Windia & Sudantra, 2006).

As for the general character of indigenous peoples' rights to land, namely:

Communities and their members can use land as a basis for their lives

People who are not citizens of customary law communities cannot use that right, unless they get permission from the customary law community concerned

Other people who use that right must pay something to the customary law community

The customary law community is responsible for all legal actions that occur on the land.

The relationship between communal rights and individual rights also seems to be urgent, thick and thinning, *mulur-mungkret*. Even more dominated by individual rights, especially in the utilization of village land and *telajakannya* (Suwitra, 2009). The process of thickening and thinning communal rights relations with individual rights seems to depend heavily on the sensitivity of village manners to customary lands which they control in determining whether individual property rights will not fully change their status to full individual property (Suwitra, 2010a).

The community's lack of understanding of the impact of the conversion of communal land rights into individual rights in full seems to be one of the factors in the conversion of village land into individual rights. The land area of the village and the land of the village has a very close relationship, this is because in general the materials produced by the village land will be made up of materials and religious ceremonies, even the activities related to traditional activities can be carried out at the location of the village land as *nista mandala*, based on the concept *tri mandala* (Suwitra, 2010a).

Article II Determining Provisions for UUPA Conversion:

Rights to land that authorize as or are similar to the rights referred to in Article 20 Paragraph (1) as referred to as under, which starts from the coming into force of this Law, namely: *agrarisches eigendom* right, ownership, *andarbeni*, *yaasan*, *druwe* right, *druwe desa*, *jeseeni*, *grant*, *Sultan*, *landerijenbezitrecht*, *altijddurende erfpacht*, business rights to former private land and other rights under any name which will be further confirmed by the Minister of Agrarian Affairs, since the entry into force of this Act becomes the property rights in Article 20 Paragraph (1), unless those who do not meet the requirements as mentioned in Article 21;

The rights in paragraph (1) belong to foreigners, citizens who in addition to Indonesian citizenship have foreign citizenship and legal entities that are not appointed by the Government as referred to in Article 21 Paragraph (2) become the right to use the business or right to use the building with the allotment of the land, as will be further confirmed by the Minister of Agrarian Affairs.

In accordance with the provisions of article II of the conversion of the LoGA, it can be seen that the rights to indigenous peoples' land can be converted into property rights. With this provision the consequences of individual rights will become stronger and the creation of legal certainty of ownership rights to land for everyone. It is undeniable that the UUPA

actually reflects the individualization of land rights compared to communal nature, while on the other hand this provision can weaken the communal rights of a traditional village to land rights, and over time communal rights can disappear completely.

So from this explanation it can be seen that there are positive and negative values of the conversion of indigenous peoples' land rights in Bali. Viewed from the positive side, the creation of legal certainty over land rights will create protection for the holders of power, while viewed from the negative side, the communal value of the rights to the land will be eroded by individual values and inevitably will damage the traditional and cultural systems that have exist long ago.

CONCLUSION

Conversion of land rights is the replacement or change of land rights from the old status, namely before the enactment of the UUPA becomes a new status, as regulated by the UUPA itself. The conversion of land rights can be divided into 3 (three) types, namely the conversion of rights to ex-western rights, conversion of rights to former Indonesian rights, and conversion of rights to former self-governing rights.

There is a negative impact and a positive impact of the conversion in the LoGA on the ownership rights of indigenous peoples' land in Bali. As a positive impact of the conversion in the LoGA on land ownership rights of the people in Bali, namely from the provision of conversion from the LoGA, it can guarantee the existence of legal certainty over land ownership and ownership rights, so that it also has an assurance of protection. Whereas the negative impact is the erosion of communal values of land rights by the individualism created by the conversion, so that it can cause changes or loss of customary and cultural systems, especially in Bali related to the rights to ownership of the indigenous peoples' land.

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