

Research Article

Restrictions on Land Ownership For Citizens by States Adhering to Pancasila Ideology, Islamism and Communism

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Abstract.

Land is a necessity that cannot be separated in everyone's life. The need for land continues to increase, but its availability is very limited. Meanwhile, the number of human growth continues to increase. So that almost all countries place land property as part of private law, but the ownership provisions are regulated by the state in public law. The focus of this research is to find out how the legal comparison of the boundaries of ownership of land rights and that of a country, by assessing the ideological values applied to a country, especially countries that adhere to Pancasila, Communism and Islamism. The aim of this research is to find the comparison of land ownership limits for every citizen who adheres to the ideology of Pancasila, Islamism and Communism, which prevails in a country. The research method used is normative legal research, which is a doctrinal research that examines the opinions of experts and legal documents or is also known as legal research.

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1. Introduction

Principles of the Basic Agrarian Law (UUPA), as the juridical basis for land law in Indonesia which adheres to the Pancasila ideology prioritizing national interests by granting property rights to Indonesian citizens and providing opportunities for foreign parties to control and use land for the prosperity of the Indonesian nation and state. Article 9 paragraph (1) of Law no. 5 of 1960 UUPA which reads: only Indonesian citizens can have full contact with earth, water and space, in the provisions of articles 1 and 2. Article 9 paragraph (2) of Law no. 5 of 1960 UUPA which reads: Every Indonesian citizen, both men and women, has the same opportunity to get something on land to get benefits and results, both for himself and his family. However, the state's function to regulate land rights is manifested in the form of national land law politics as the basis of its value is Pancasila as the source of all sources of law and places Pancasila as a philosophy of groundslagh. Land control by the state is implemented by the Basic

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Agrarian Law, that control of land by the state is regulating rather than possessing in the sense that the word controls means having. However, the principle of communal land tenure in Indonesia is also known in customary law prior to the enactment of the Basic Agrarian Law and is still recognized by the state as long as it does not conflict with the public interest. Land control by the state is implemented by the Basic Agrarian Law, that control of land by the state is regulating rather than possessing in the sense that the word controls means having. However, the principle of communal land tenure in Indonesia is also known in customary law prior to the enactment of the Basic Agrarian Law and is still recognized by the state as long as it does not conflict with the public interest. The concept of justice for all Indonesian people is very much put forward in the formation of laws and regulations in Indonesia. Even the word fair is included in the 2 principles of Pancasila, namely in the 2nd and 5th principles of Pancasila "Social justice is one of the goals of forming the Indonesian state government as written in paragraph IV of the Preamble of the 1945 Constitution. This is explained in the last sentence in the paragraph, namely: "... and also by realizing social justice for all Indonesian people" which represents the fifth principle of Pancasila as the basic principle of the Indonesian State. In addition, the formulation of the importance of realizing social justice can be seen in Article 33 Article 4, the fourth Amendment of the 1945 Constitution emphasizes that "the national economy is carried out based on economic democracy ...". Other than that, in Article 34 Article 2 the fourth Amendment of the 1945 Constitution states that "the State develops a system of social security for all the people and is empowered from weak and incapable societies according to human dignity". Even the practical economic system of the national has not undergone a process of economic democratization and the social security system is not perfectly tied [1].

The main area of justice is the basic structure of society of all social, political, legal and economic institutions; because the structure of social institutions has a fundamental influence on the prospects for individual life. There are indeed various main problems in which the categories of fair and unfair can be applied. Not only legal and socio-political fields, but also behavior, decisions and individual judgments. Thus there are various problems of justice [2], The economic sector and the land sector constitute a unity that cannot be separated because speaking of land is actually talking about the economy. Humans cannot be separated from land issues. The concept of land justice is indeed a concern of all ideological concepts in the world, including in the Islamic view.

The basic law in Islam is the Qur'an which is a legal concept that regulates all areas of life, namely regulating the relationship between humans and humans, the relationship between humans and the surrounding environment and even regulating the relationship

between humans and God. In essence, the concept of ownership of what is on earth including space is the ownership of Allah. But humans are given the freedom to try and make ends meet.

The Qur'an defines human rights to manage, cultivate and own the products. "All Islamic scholars agree that the true owner of land is Allah SWT. As for the notion of property in humans is not essential but majazi and not absolute. So that during the time of the Prophet the main priority for ownership of a plot of land was in the hands of the government and then it was only reserved for individuals. Therefore the government can award, limit or withdraw ownership of a plot of land from a person in accordance with the benefit of the community [3] the development of views on the concept of justice, especially regarding the economy in the land sector, at that time continued to experience the development of thought, especially in western countries, with the birth of the ideology of communism as the antithesis of capitalism.

Capitalism has given birth to an affluent society like in the United States. However, in this society, humans become alienated. In the abundance of material, humans feel empty and poor, life dies, despair, anxiety, and the uncertainty of life peaks. Conditions like this are certainly contrary to Marx's premise that the condition of society gives birth to a pattern of life and a way of thinking in accordance with the conditions of that society. It should, according to Marcuse, in the abundance that America achieves enable the individual to find his full identity. Why didn't that happen? The answer is because in a society the abundance of individual potentials becomes sterile due to the systemic effect that is characteristic of post-capitalist society [4].

Since this Manifesto is the result of our collective work, I feel obliged to explain that the proposition at its heart comes from Marx. This proposition is this: that in every historical age, the prevailing mode of economic production and exchange and the social organization which must arise from it constitute the basis upon which it is built, and only from which it can be explained, the political and intellectual history of that age; that therefore the entire history of mankind (since the disappearance of primitive tribal societies, which owned land with common property rights) is a history of class struggle, the contest between exploiting and exploited classes, between the ruling class and the oppressed class; that this history of class struggle is a series of evolutions in which, at this time [5], the manifesto of Communism adheres to all the needs for the means of production including the land sector controlled by the state to create welfare for the people equally.

The policies of implementing the great ideology of Pancasila, Islamism and Communism that are implemented by the countries that adhere to are accumulated in various

regulations, legal policies and the history of their implementation in carrying out the politics of land law. With this research, it is hoped that it will be able to expand the comparison of the political concept of land law in each country in its implementation which is studied through the theory of justice approach.

2. Methods

This research uses normative legal research methods. In terms of This law is conceived as what is written in the laws and regulations (laws in books). In this paper, conveyed by Peter Mahmud Marzuki, conducted a study and an analysis using a statute approach, conceptual approach, analytical approach, historical approach [1].

3. Results and Discussion

3.1. Philosophy Concept of Pancasila, Islamism and Communism in Limiting Land Rights.

The conception of limitation on land by the state aims to create justice for all human beings. However, justice does not place all positions and places to be the same. The most important thing about limiting land rights or control of land by the state is a form of state participation in regulating and establishing justice to obtain land for its people. In principle, the acquisition of land obtained by the people is not merely obtained free of charge from the state, for example, the proceeds of war booty or gifts given by the state for one's services to the state. however, there are also obtaining land rights in competitive ways, for example by controlling land by cultivating forests by relying on labor or by purchasing from other parties.

Providing unlimited freedom to a person's ability to acquire land will have an impact on monopolistic control that can be exercised by individuals and even corporations, which results in social inequality. The state has a very important role in regulating legal policy in realizing a sense of justice in ownership of land rights. The state must be able to act as the commander in realizing land procedural justice.

According to Hans Kelsen, Therefore, to apply a purely procedural justice viewpoint on distributive distribution, it is necessary to create and regulate neutrally a fair institutional system. Only against the background of a just basic structure, including a just political constitution and a just order of social and economic institutions, can one say that there are fair procedures needed [6].

The regulation of the system of land institutions includes several aspects, including the philosophy of the applicable land law, basic norms and regulations that become implementing regulations covering regulation, management and distribution as well as legal relations of land with legal subjects (persons or legal entities). In the implementation of control over land in creating land justice in the concept of the state Pancasila, Islam and Communism, to the participation of the formation of the Political Land Constitution, land institutions.

3.2. Conception of Limitation of Land Ownership Rights in Indonesia as a Pancasila state

Indonesia as a follower of the Pancasila ideology, the direction and policy of land law in Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), then the government issued a Government Regulation in Lieu of Law Number 56 Prp of 1960 concerning the Stipulation of Agricultural Land Areas with Implementation of PP Number 224 of 1961 concerning Implementation of Land Distribution and Compensation, in Article 3 paragraph (1) of Government Regulation Number 224 of 1961 jo. Article 1 Government Regulation Number 41 Year 1964 regulates the prohibition of absentee/guntai ownership of land, which states that ownership of agricultural land by people who live outside the sub-district where the land is located is prohibited, namely so that farmers can be active and effective in working on their agricultural land, so that productivity can be more optimal [7].

The provisions of the prohibition of Landerform which are regulated in articles 7, 10, 17 of the UUPA and as an implementation, a Government Regulation in lieu of Law Number 56 of 1960 concerning Stipulation of Agricultural Land Areas and further regulated by a Regulation of the Minister of Agrarian and Spatial Planning / Head of the Land Agency National Number 18 Year 2016 concerning Control of Control over Agricultural Land, which aims to obtain legal certainty, does not harm the public interest, reduces social disparities, ensures food security and equalizes community welfare so that excessive land ownership is not allowed. Article 3 Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 18 of 2016 concerning Control of Control over Agricultural Land provide limits on control and ownership of agricultural land for individuals with the following conditions:

Not dense, with a maximum area of 20 (twenty) hectares.

Less dense, a maximum area of 12 (twelve) hectares.

Quite dense, with a maximum area of 9 (nine) hectares.

Very dense, with a maximum area of 6 (six) hectares [8].

3.3. Islamic perspective on Land Ownership Limitation

The concept of Islamic land law, actually what is on earth belongs to God. Humans are given the freedom to enjoy and utilize the land; in the form of control over land is the state authority. Islam regulates ownership of this land for the benefit of all. So if the landowner doesn't cultivate it and doesn't produce anything for three consecutive years, the land becomes redundant. In a situation like this, the land owner's rights will be void. To avoid "unemployed" land, there are several mutually beneficial cooperation in agriculture, including 1) muzara'ah or mukhabarah, namely cooperation in agriculture between landowners and cultivators. 2) Musaqah is a transaction between the owner of the garden / plant and the management to maintain and care for the garden / plant at a certain time until the plant bears fruit [9].

Land ownership in Islam does not recognize the term zamindari or landlord system or feudalism. Because, first, the system of ownership or control of zamindari land is in conflict with the principle of fair wealth distribution. Second, the zamara system avoids the proper use of the land, because unused land is redundant [10].

As a form of a state approach that applies Islamic law, for example, "Saudi Arabia has three categories of land: developing land (amir), undeveloped land (mawat), and "zone of protection" (harim). Developed land consists of the built environment of cities and villages and land that is developed agriculture, and can be bought, sold and inherited by individuals. Undeveloped land consists of coarse grazing, grasslands, and wilderness. Pasture and rough pasture are common property and everyone has the same right to use them. Wilderness is owned by the state and may be open to everyone unless special restrictions are put in place. Harim land is a protective buffer between owned land and undeveloped land [11].

Implicitly in Islamic law it does not provide written regulative restrictions on the limits for each person to own land with a certain area. As long as the person who controls / works on the land is still able to take care of the plot of land under work. However, if the land has been abandoned it can even interfere with the public interest. The state can revoke its rights.

3.4. Ownership of State Land in the Manifesto of Communism

The communist ideology that emerged in Western Europe was one of the responses and reactions to the situation and conditions of life of the people there, especially the fate of the workers or the proletariat. The cause was the oblique or one-sided assumption of the workers (proletariat) as well as inequality and social class differences in Western society at that time, giving rise to a liberation movement of the proletariat or working class from the bourgeoisie. The idea was born from a Karl Marx, better known as the 'Father of the Communists' and eventually the Communist party was formed as the sole ruler [12].

Modern Communist principles according to Marx are: abolition of land ownership and application of land leases for social purposes, imposition of multiple income taxes, abolition of inheritance rights, withdrawal of the wealth of all immigrant-criminal-rebels, centralization of credit by the state through national banks with capital and monopoly. exclusive, centralization of means of communication and transportation by the state, expansion of state-owned factories and means of production, cultivating and increasing land use rights according to general planning. The principle of human history according to Marx: initially mankind lived in a Feudalism system where the production factor in the form of agricultural land was controlled by landlords and experienced destruction [13]. The conception of limiting land rights by the state that applies in countries adhering to the ideology of Pancasila (Indonesia), Islam and Communism can be seen in the table as follows:

The conception of limiting land ownership rights for citizens who act in a country, is viewed from how countries that adhere to the ideology of Pancasila, Islam and Communism in implementing their land law, if it is related to the theory of justice, as presented by Jhon Rawl, where in Indonesia as adherents of the Pancasila ideology have formed a legal policy in the form of a constitutional regulating in realizing justice, especially in the field of limiting property rights in the land sector. The completeness of land institutions in Indonesia as a guarantee for one's openness to find justice in the land sector. It is also supported by an open land policy regulation in Indonesia. The land limitation that is carried out aims to create equal distribution of land for each individual.

4. Conclusions

Legal policies for countries adhering to the Pancasila Ideology (Indonesia), Islam and Communism in implementing land law policies, especially in limiting land ownership

TABLE 1: State Ideology.

No	State Ideology	Country	Restrictions on Property Rights
1	Pancasila	Indonesia	20 Hectares - Not densely populated 12 Hectares - Less Dense Population 9 Hectares - Quite Dense Population 6 Hectares - Very Dense Population Control over state land is regulatory
2	Islam	Saudi Arabia Iran	There are no restrictions as long as it can be cultivated and used. Land authority in the state/king
3	Communism	China Vietnamese North Korea	Although land ownership has been recognized, the ownership structure is based on property rights in Marxism, with an emphasis on property rights for the socialist and collective state. In the provisions of the Constitution, three forms of ownership are distinguished, namely: state property rights, collective property rights and private property rights. The first and second include land, natural resources and a portion of the means of production, while the individual eigendom includes consumer goods (houses, household utensils, savings) and means of production such as draft animals. and load carriers.

rights in the implementation of law, have the same principles, namely the creation of justice and abolishing monopolistic control over land by individuals or corporations. The role of the state as the ruler is optimized in order to curb individual domination to control land indefinitely. In the context of Indonesian legal policy as a state that places Pancasila as its ideology, in its application it has formed through state power constitutional institutions, legal instruments, law enforcement agencies in ensuring a sense of justice for every citizen in obtaining land rights. In a democratic manner it has been regulated through the prevailing laws and regulations. The conception of applying the concept of Islamic law, in land law, especially the limitation of land rights, in countries that are not structurally organized means that the concepts in the Qur'an and in the hadith are not followed up with more detailed regulations limiting ownership rights that can bind the state to become National law that applies to a country. Likewise for countries adhering to the ideology of communism because social development also does not purely restrict land rights into collective rights (Commune) In structurally unorganized countries it means that the concepts in the Qur'an and in the hadith are not followed up with more detailed regulations limiting ownership rights that can bind by the state into national law that applies to a country. Likewise for countries adhering to the ideology of communism because social development also does not purely restrict land rights into collective rights (Commune) In structurally unorganized countries it means that the concepts in the Qur'an and in the hadith are not followed up with more detailed

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