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HARMONIZATION BETWEEN LAWS NUMBER 56 OF 1960 AND NUMBER 41 OF 2009

Evy Indriasari (a)*, Tiyas Vika Widyastuti (b)
*Corresponding author

(a) Universitas Pancasakti, Jalan Halmahera Km. 01, Kota Tegal, Indonesia, indriasari.evy@gmail.com
(b) Universitas Pancasakti, Jalan Halmahera Km. 01 Kota Tegal, Indonesia, tiyasvikawidyastuti@gmail.com

Abstract

Harmonization is an alignment and conformity. Harmonization in the field of agricultural land law and urban planning is very necessary. The existence of harmonization in the field of agricultural land law will certainly have a positive impact on urban planning that is destined for development. If the arrangement of the rights to the farmland is well ordered, it will facilitate the planning, arrangement and implementation of urban planning. This harmonization will minimize land disputes between land holders (individuals or legal entities).

This research use the approach of library research as a technique of data collections. Its aims to collect data and information assistance of various materials contained in the library room. In essence the data obtained with this library research can be used as the basic foundation and the main tool for the implementation of field research. This research is also said as research to discuss secondary data.

This research aims to analyze the disharmony of legislation on the transfer of rights to agricultural land between Laws Number 56 Prp Year 1960 with Laws No. 41 of 2009, in order to realize the city planning synergies with the law of the land and can provide legal certainty, justice and benefit to the rights holders and other interested parties.

Keywords: Harmonization of law, transformation of land right, Spatial planning.

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1. Introduction

For the people of Indonesia, the land is a gift from The Almighty God. It is mentioned in article 1, paragraph 2 from the Basic Agrarian Law states that *"seluruh bumi, air dan ruang angkasa, termasuk kekayaan alam yang terkandung didalamnya dalam Wilayah Republik Indonesia, sebagai karunia Tuhan Yang Maha Esa adalah bumi, air dan ruang angkasa bangsa Indonesia dan merupakan kekayaan nasional"*. It is presents of the religion communalistic in national land law. It can also be interpreted that there is no inch of land in the State of Indonesia as a land of no man (res nullius), because the entire territory of Indonesia is a unity of the homeland of all the people of Indonesia.

Indonesia's relationship with the earth, water and space is so close that it is often called a lasting relationship. This means that as long as the people of Indonesia are united as a nation and as long as the earth, Indonesia's water and space still exist, however, no power will be able to destroy that relationship (Harsono, 2008).

The regulations on the allocation of land in practice are as follows first agricultural and non-agricultural land. Agricultural land serves to grow crops or gardening and ponds. While non-agricultural land is usually for housing or construction of shops or business premises and flats. According to the letter number 5b of the Joint Decree of the Minister of Home Affairs and Regional Autonomy and the Minister of Agriculture No. Sekra 9/12 of 1961, agricultural land is all land in the form of plantations, ponds or fisheries, land where grazing land, livelihood for the rightful. Agriculture according to Article 1 Number 4 of Law Number 19 Year 2013 is an activity of managing natural resources with the help of technology, capital, labour and management to produce agricultural commodities covering food crops, horticulture, plantation and animal hatchery in an agro- ecosystem.

The conversion of agricultural land to non-agricultural land is commonplace when the developers want to build houses. Businessmen in the field of industry, such as factories certainly require a very wide plot of land. The only option is the conversion of agricultural land. The transition of rights to agricultural land becomes inevitable when agricultural land is seen as the only land that can meet its needs. Only agricultural land has an area of more than 100 square meters. Indonesia, known as agriculture country, Indonesia has rules of agricultural land law such as: UU No. 5 in 1960; UU No. 56 Prp in 1960, UU No. 41 in 2009, PP No. 224 in 1961, PP No. 4 in 1977, PP No. 24 in 1997..

These regulations are deemed to be insufficient in reality to provide legal certainty, the sense of justice and benefit to the rights holders and other related to the plot of land, in this case the prospective buyer, the banking, other parties in the case of arrangement room. The disharmony is seen at the level of vertical regulation between UU Number 56 Prp Year 1960 Article 9 on Stipulation of Land Area of Agriculture and UU Number 41 Year 2009 Article 50 on Sustainable Land Farming Protection. Disharmony in the regulations for agricultural land has an impact on spatial planning. The need for land for building is increasing and the more limited space is an important issue in spatial policy. Therefore, land information becomes very important in making spatial planning as well as its development. The aspect of land tenure by the rightful holder becomes very important information for the Directorate General of Spatial Planning, Ministry of Public Works and its staff at the City / Regency level. Clarity on Rights holders and the status of land are expected to minimize conflicts of interest in determining who has the right to be used in the spatial plan.

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Harmonization in the field of agricultural land law and governance is very necessary this is due to the legal regulations of agricultural that prevailed since 1960 with the current regulation of agricultural laws from 2010 until now. The existence of harmonization in the field of agricultural land law will certainly have a positive impact on the spatial designated for development. If the arrangement of control over the rights to agricultural land is well ordered and there is information about who the right holder is, what rights are inherent in the plot of land, then it will simplify the planning, arrangement and implementation of spatial. This harmonization will minimize land disputes between land holders (individuals or legal institutions) or between the holders of land rights and the government if it comes to the public interest.

2. Problem Statement

Based on the description above, there are several important reasons for the research on harmonization of land rights transition laws in Indonesia. First, Relate to governance, information on planning and arrangement of granting of the Right to Land. Second, the rise of land rights disputes in Indonesia, both individuals and legal entities can cause horizontal and vertical conflicts in the community and then its use for the public interest.

3. Research Questions

From the background explained above, the research problem is how is the disharmony between Article 9 of Law Number 56 in Lieu of Law 1960 and Article 50 of Law Number 41/2009?

4. Purpose of the Study

Every study is certainly based on the main intent and purpose to be achieved on the discussion of the material. So the researcher formulates the purpose of this study is to analyse the disharmony between article 9 of UU Number 56 Prp Year 1960 with article 50 of UU No. 41 of 2009 in order to realize the city planning synergies with the law of the land and can provide legal certainty, justice and expediency for its rights holders and other interested parties.

5. Research Methods

This research is normative law research (Waluyo 2002:16). The science of law has characteristics as a descriptive and prescriptive science. Descriptive because it describes the phenomenon of legal issues or legal issues that arise in the community relating to the purpose of law, the values of justice, the validity of the rule of law, and the legal norms or as a discussion of the meaning of law in the life of the community. It is prescriptive because legal research is conducted to generate arguments, new theories or concepts as prescriptions in solving legal problems encountered (Waluyo, 2002). The approach method used in this research is normative juridical using Statutory Approach (Marzuki, 2010), which is done by reviewing the legislation product related to the Transition of Agricultural Land Rights either in the form of local regulations and implementing regulations which others.

The specification of this research is socio-legal research that is done by combining knowledge, expertise and experience from two or more (Interdisciplinary) to answer the legal problem (Hanityo,

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1988). The interdisciplinary developed method can explain the enormous legal phenomena such as power relations in the social, cultural and economic contexts in which the law resides and does not see the law as a social phenomenon. With an analytical descriptive, this study performs analysis only to the level of description, that is analysing and presenting facts systematically so that it can be easier to understand and concluded (Soekanto, 2012)

6. Findings

6.1. Harmony between Law Number 56 in Lieu of Law Year 1960 on Stipulation of the Size of Agricultural Land and Sectorial Law

People desperately need the land, because the land is a place to live, breed, make a living until death. So precious the value of the land for the people, it is natural that people will tend to defend the land and even control more in any way. To avoid this, the Soekarno government at that time felt the need to make a land policy needs to be completely re-arranged.

In order to support the implementation of the Law on the Establishment of Total Land of Agriculture, so it is necessary to identify not only laws that are closely related to the implementation of the law, but also analyse the gaps between the regulatory materials, especially in the Law on Land Size Establishment by Law Sustainable Land Protection of Food Agriculture.

6.2. Law Number 56 in Lieu of Law 1960 on Stipulation of the Size of Agricultural Land and Law Number 41/2009 on Protection of Sustainable Food Crops Farmland

UUPA is formed because the applicable agrarian law is structured based on the objectives of the colonial government, it is contrary to the interests of the country because of the colonial legal policy, so that the agrarian law has a duality of the nature of the enactment of regulations of customary law in addition to western legal regulations, so this raises various problems between tribes and groups that are difficult and also not in accordance with the ideals of national unity, agrarian law during the colonial period did not guarantee legal certainty for indigenous Indonesians. The present contemporary phenomenon indicates the still occurrence of land cultivation by certain parties, whereas Article 7 of the UUPA regulates the prohibition of controlling the land beyond certain limit, since this is detrimental to the public interest, due to the limited availability of agricultural land, especially in densely populated areas. The scarcity of land causes the land to have a very high economic value. The general explanation of Law No.56 Prp of 1960 stipulates that to enhance the standard of living of the people in general it is not sufficient to establish the maximum and minimum extent but must be followed by the division of land exceeding that maximum. Then the effort needs to be accompanied by other actions in order to achieve the results as expected. For example, land accounting, new farmland, industrialization, transmigration, efforts to enhance productivity, adequate and accessible supplies in time with ease and inexpensive and other actions.

The provision of Article 9 paragraph (1) of Law no. 56 of 1960 stating that : “the transfer of rights to agricultural land, except inheritance, is prohibited if the transfer of rights result in the occurrence or take place of land ownership of less than two hectares.” The prohibition does not apply if the seller only has a plot of land of less than two hectares and the land is sold at once. In fact it is difficult to do this due

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to the condition of agricultural land ownership in an average of less than 0.5 hectares due to the process of buying and selling in violation Article 9 paragraph (1) which is done illegally. The obstacles that arise in the implementation of the regulation is more due to the state of the territory, the change of agricultural land use into non-agricultural, the transfer of ownership rights to agricultural land through PPAT, illegal sale deed and land registration process at the Land Office. Inequality in land ownership and control is increasingly apparent as a result of the uneven distribution the lands accumulate in the hands of certain persons or entities.

Based on that, Indonesia's food sovereignty becomes difficult to be realized. The conversion of agricultural land has decrease the existing agricultural land, so that the farmers are unable to cultivate the land again. Based on the article 50 of Law Number 41 of 2009 on Sustainable Land Protection of Food Agriculture states as follows : "(1) Segala bentuk perizinan yang mengakibatkan alih fungsi Lahan Pertanian Pangan Berkelanjutan batal demi hukum kecuali kepentingan umum seabagaimana dimaksud dalam pasal 44 ayat (2); (2) Setiap orang yang melakukan alih fungsi tanah Lahan Pertanian Pangan Berkelanjutan di luar ketentuan sebagaimana dimaksud pada ayat (1) wajib mengembalikan keadaan tanah Lahan Pertanian Pangan Berkelanjutan ke keadaan semula; (3) Setiap orang yang memiliki lahan pertanian Pangan Berkelanjutan dapat mengalihkan kepemilikan lahannya kepada pihak lain dengan tidak mengubah fungsi lahan tersebut sebagai lahan pertanian pangan berkelanjutan."

The implementation of Sustainable Food Farming in the field is still in conflict with the condition of spatial layout and city / regency layout in Indonesia, not all regions have map of the area where the soils are functioning as agricultural land. Then, by reason of the public interest the productive lands have switched functions.

6.3.The Importance of Harmonizing Regulations of Laws on Agricultural Land

The huge of the potential disharmony of legislation in the field of agricultural land is due to so many laws and regulations in Indonesia that are either directly or indirectly related to agricultural land. In general, the efforts to reform the disharmony of legislation in the field of agricultural land can be divided into two steps they are; the revamping of existing laws and the harmonization of the draft law to adjust to the rules and spirit of the Land Law Agriculture. The prevailing legislation is indicating the presence of disharmony, so as not to cause any disincentive in its implementation should pay attention to the principles of legislation, according to (Soekanto, 2012), consists of six principles as follows:

Legislation is not retroactive (non retroactive);

Legislation made by a superior authority that has a higher position;

Legislation that has special rule excludes prevailing laws and regulations (lex posteriori derogate lex priori);

Legislation can't be challenged;

Legislation is a means to achieve spiritual and material welfare for society and individuals through renewal or preservation (welvaarstaat principle). (Purwacaraka: 7-11)

Second step is the harmonization of the draft legislation. According to the conclusion of the periodic meeting of Jaringan Dokumentasi dan Informasi Hukum (JDI) and Badan Pembinaan Hukum Nasional (BPHN), Harmonization of legislation can be interpreted as a process of aligning or

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harmonizing legislation that will be produced in accordance with the principles of law and regulations the good one. Harmonization is not only about things that are intended to avoid overlap or conflicting arrangements but more so that legislation is born and the law can perform its functions well in society. Based on the definition and intent of harmonization, the harmonization of draft legislation in the field of agricultural land can be interpreted as an attempt to harmonize the draft legislation related to disaster relief efforts that are interrelated and interdependent with the aim of realizing one whole round.

A factual condition in the field that indicates the number of laws and regulations that the domain of the regulation is on agricultural land that still exist, whether in the form of laws, government regulations, presidential regulations, ministerial regulations / decrees, local regulations of each legislation are related to each other. In addition, harmonization in legislation in relation to agricultural land is done to maintain harmony and to avoid overlapping and conflicting between other laws and regulations which may create legal uncertainty and ambiguity in its application.

The provisions of UU Number 10 Year 2004 regarding the Establishment of Laws and Regulations as defined in Article 18 paragraph (2) “Pengharmonisasian, pembulatan dan pemantapan konsepsi Rancangan Undang-Undang yang berasal dari Presiden dikoordinasikan oleh Menteri yang tugas dan tanggung jawabnya di bidang peraturan perundang-undangan”. Thus the actual harmonization burden is precisely in the initiator of ministers / heads of non-departmental government agencies proposing draft legislation, draft government regulation in lieu of law, draft government regulation or draft presidential regulation.

Harmonization related to Agricultural Land, whether carried out by the initiator or that has been coordinated by the relevant minister in the field of legislation must hold on to several matters. First, pay attention to the spirit and the provisions of the Law on Stipulation of Land Area of Agriculture. Secondly, the initiator needs to pay attention to the meaning of good legislation that is legislation that does not contradict vertically and horizontally so as to realize the harmony of the draft conception of legislation with the state philosophy, the national objectives and the surrounding aspirations, UUD NKRI 1945, other existing laws and their implementing regulations and other policies. Third, the harmonization of draft laws should also be given to the principles of legislation. These principles are used in order to achieve legal certainty.

7. Conclusion

Before the enactment of UU No. 41 of 2009 (Undang-Undang Nomor 41 Tahun 2009) (on Sustainable Land Sustainability of Food Agriculture there have been various legislation whose material content is also related to agricultural land as UU Number 56 Prp Year 1960 (Undang-Undang Nomor 56,Tahun 1960) on Stipulation of Land Area of Agriculture. With the existence of UU No. 41 of 2009 is an effort of the ministry of agriculture to maintain productive agricultural land behind the reasons of public interest. However, behind the law the foundation of the law still shows the potential for unconformity, conflict, multiple interpretations and inconsistencies. Thus, an effort is needed to align the law with the paradigm of productive agricultural land existing in UU no. 56 Prp Year 1960 (Undang-Undang Nomor 56,Tahun *1960)* with the aim that the enactment of these laws mutually support and not overlap.

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