
The Existence Of The National Land Agency In Indonesia As A Drafter, Manager, And Executor Of National Land Policy

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Abstract

The existence of the National Land Agency began in 1988 with Presidential Decree Number 26 of 1988. Institutions dealing with land in Indonesia actually existed and started in 1951 under the State Ministry of Agrarian Affairs's name and subsequently changed its characters, but still use the word "Agrarian" within the institution. Only in 1988, the National Land Agency came up. In Presidential Decree No 26 of 1988, there are six functions of BPN (National Land Agency) that lead to policy formulation and planning of land tenure and use. The existence of the National Land Agency shall be regulated continuously following the development of the existing conditions in the amendment of a presidential decree in 1999, 2000, 2001, and 2006 and by presidential regulation in 2013. Presently, the National Land Agency's existence is based on Presidential Regulation No. 20 of 2015 Based. On Presidential Regulation No. 20 of 2015, BPN (National Land Agency) has ten functions covering as a drafter, regulator, and executive of land policy ex officio headed by Minister of Agrarian and Spatial.

Keyword: National Land Agency, Land Policy

1. INTRODUCTION

The Indonesian Constitution, in this case, the 1945 Constitution of the State of the Republic of Indonesia in Article 33 paragraph (3) states that "the earth, water and natural resources contained therein are controlled by the State for the greatest prosperity of the people". Mahfudz MD said from the background of such philosophy that the politics of agricultural law excavated from the 1945 Constitution at least has two interconnected: First, the earth, water, and natural resources are controlled (in the sense of arranging as well) by the State. Secondly, the control by the State is aimed to build people's prosperity. While

FirmanMuntaqo declared that Article 33 of the 1945 Constitution is known as the political ideology of the economist of Indonesia (paragraphs [1] and [2]), with the "right of state control" as its legal-political concept, while the formula of section [3] is the direction and objective of Indonesian's economic politics is for the greatest prosperity of the people.

The highest land tenure right in the country by far. According to Boedi Harsono, the government's right is a title bestowed by the land's legitimate scientists. The element of belonging and the element of authority to coordinate and lead the regulation and use of the common lands owned by the government are both present in the nation's independence. In a legal sense, the people's right to this common land is not a right of possession. There is a right of private property to the ground in the right of the country. The authority is responsible for governing the common land whose management has been assigned to the state.

The component of public law is, of course, the role of the State's management in controlling land tenure. It is clear that the State acts in its capacity as the Indonesian nation's power and officer in the field of property. The State is the people's highest authority in carrying out this mission. Since the State is a silent body, the government, as the State's organizer, would be in charge of carrying out its responsibilities. So it's only reasonable to wonder which government agencies are allowed to deal with this land area, what their authority is, and what functions this government agency can perform.

The National Land Agency, a Non-Departmental Government Institution, was established based on Presidential Decree Number 26 of 1988 on National Land Agency on July 19, 1988. In the previous Presidential Decree, the National Land Agency is a Directorate-General in the Ministry of Home Affairs, namely the Directorate General of Agrarian Affairs. The amendment or, in this case, the institutional improvement of the Directorate General to the Non-Departmental Government Institution as in consideration of the Presidential Decree was because, in the implementation of national development, the need, the dominion, and the use of land in general including for the sake of growth are felt to increase, and with the increase, it also increases the problems that arise in the field of land issues.

2. DISCUSSION

According to Article 2 of Presidential Decree 26 of 1988, the National Land Agency has the responsibility of assisting the President in the management and development of land administration, both on the basis of the Basic Agrarian Law and other laws and regulations covering the regulation of the use, control, and ownership of land, the management of land rights, land measurement and registration, and other matters relating to issues relating to land. According to Antje M. Ma'moen, the National Land Agency has been the appointed administrator in all matters relating to land issues in Indonesia since 1988, as mentioned in Article 2.

The National Land Agency, as specified in Article 3 of the Presidential Decree, has the following responsibilities: a. formulate policies and plans for land tenure and use; b. formulate policies and plans for land ownership arrangements based on the principles that land has a social role as stipulated in the Basic Agrarian Law; and c. carry out calculation and mapping. Prior to the establishment of the National Land Agency, the following agrarian institutions in Indonesia dealt with land issues: (1) State Ministry of Agrarian Affairs (1951-

1952), (2) Ministry of Agrarian Affairs (1954-1959), (3) Deputy Minister of Agrarian Affairs (1960-1963), (6) Ministry of Agrarian Affairs (1964-1966), and (7) Directorate General of Agrarian Affairs Ministry of Home Affairs (1967-1987).

The name of the National Land Agency did not appear until 1988. Deputy General Sector; Deputy for Land Arrangement, Control, and Arrangement; Deputy for Land Rights; Deputy for Measurement and Land Registration; and Deputy for Supervising the National Land Agency (BPN) were established in Presidential Decree No. 26 of 1988. In addition, the Center for Research and Development and the Center for Education and Training are two (two) centers. It may appoint expert staffs who are under and directly accountable to the Head of National Land Agency to meet expertise needs in certain fields and to assist in the execution of duties and functions of National Land Agency. Three (three) individuals make up the Expert Staff.

The provisions of Article 30 of Presidential Decree No. 26 of 1988 indicate that, while the Regional Office of the National Land Agency is a vertical agency, it is under the control of the Governor in the performance of its duties, especially operational tactical tasks. Similarly, the Land Affairs Office is coordinated by the Regent/Mayor when conducting tactically operational tasks. The Governor and Regent/Mayor are the Head of Region under Law No. 5 of 1974 on the Principles of Governance in the Regions, which was in effect at the time. After the reform era, the Governor as the Head of the First Level Region and the Regent of Walikotamadya as the Head of the Level II Region will be seen as extensions of the central government in the regions, which will be seen as distinct from the Presidential Decree on National Land Agency. In order to adjust the spirit of Law No. 22 of 1999, On December 7, 1999, Presidential Decree no. 154 of 1999 was issued on Amendment to Presidential Decree No. 26 of 1988 on the National Land Agency. The only thing changed is the position of the Head of National Land Agency held by the Minister of Home Affairs and the addition of the Deputy Head of National Land Agency. The important thing of the Presidential Decree is the order to the Minister of Home Affairs as Head of National Land Agency to immediately take steps to adjust the duties and functions of the National Land Agency in relation to the implementation of Law Number 22 Year 1999 on Regional Government.

The National Land Agency's roles and functions were modified in response to the decentralization of land affairs as established by Law Number 22 of 1999 and Government Regulation No. 25 of 2000. Presidential Decree Number 95 of 2000 on the National Land Agency, dated July 19, 2000, which replaced Presidential Decree Number 26 of 1988 on the basis of weighing the letter c, states that "in the context of implementing regional autonomy and facing the challenges of global competition, it is necessary to rearrange the role, duties, functions, organizational structure, and working practices."

When comparing the roles and functions of the National Land Agency before and after the enactment of Law Number 22 in 1999, it is clear that prior to the enactment of the Law, the National Land Agency was established by Presidential Decree Number 26 in 1988 as a central government agency responsible for land policy and implementation. On the other hand, according to Presidential Decree No. 95 of 2000, the National Land Agency is only responsible for "formulation and determination of strategy." This means that, with the

issuance of Presidential Decree Number 95 of 2000, other land affairs are handled by the Regional Government, despite the perception of a contrario.

The National Land Agency is headed by a Minister of Home Affairs, in compliance with Presidential Decree No. 154 of 1999 and in comparison to Presidential Decree No. 26 of 1988, as stipulated in Presidential Decree No. 95 of 2000. A Deputy Head of the National Land Agency assists the Head of the National Land Agency in carrying out his duties. The Head of National Land Agency is supported in policy formulation and coordination implementation by the Main Secretariat, 4 (four) Deputies (Deputy for Assessment and Land Law, Deputy of Land Information Sector, Deputy of Land Administration, and Deputy for Land Affairs and Community Empowerment); and the Main Inspectorate (in charge of supervising within Na).

The presence of Regional Offices and Land Offices is one of the issues posed by this Presidential Decree. The Regional Office of the Provincial National Land Office and the Regency/Municipal Land Office shall remain a professional, administratively vertical entity under the auspices of the Land Agency and shall continue to perform their duties and functions until further stipulations rule, as specified in Article 32 paragraph (2) of the Presidential Decree. According to Sarjita, the provision can still be recognized as an effort to fill the legal void during the transitional era (*rechtvacuum*). However, according to the researcher, it should be because the basis for weighing that is used in the sense of implementing regional autonomy and is linked to the National Land Agency's tasks and functions has changed. As a result, the region's vertical institutions are no longer connected to the field of property. To be consistent with such considerations, the Presidential Decree should specify that the Regional Office of the National Land Agency is a part of the Provincial Government in the context of autonomy, and the Land Office becomes a part of the Regency/City Government.

The National Land Agency is governed by Presidential Decree No. 103 of 2001 on the Role, Mission, Purpose, Authority, Organizational Structure, and Working Procedure of Non-Departmental Government Agencies, which was promulgated on September 13, 2001. The National Land Agency has the responsibility to carry out government duties in the field of land in compliance with the provisions of relevant legislation, according to Article 64 of Presidential Decree Number 103 Year 2001. Despite the fact that the affairs of land services were decentralized to the Regional Government as mandatory matters of Regional Government under Law No. 32 of 2004, the existence of the National Land Agency, which is responsible for carrying out government duties in the field of land on a national, regional, and sectorial basis, was maintained and strengthened by Presidential Regulation No. 10 of 2006 on NLA. One of the reasons why the President wants to keep the National Land Agency alive is that land is the glue that keeps the Unitary State of the Republic of Indonesia together. As a result, it must be governed and handled at the national level in order to ensure the long-term viability of national and state living systems.

The Government's policy of maintaining the National Land Agency by Presidential Decree suggests that the decentralization of land to the Regional Government mandated by Law Number 32 of 2004 regarding Regional Government has not been enforced or, to put it

another way, has remained a plan (das sollen). The government explicitly demands that the handover of land affairs to the regions not be based on the principle of decentralization as the essence of regional autonomy, but rather on the principle of deconcentration or the obligation of assistance (medebewind). This is in compliance with the provisions of the UUPA, as well as Presidential Regulation No. 10 of 2006 on the National Land Agency. The role of the National Land Agency in this Presidential Regulation is very different from the function of the National Land Agency in the Presidential Decree no. 95 of 2000 that replaced it. In Presidential Decree No. 95 of 2000, the National Land Agency's role was limited to "formulation and determination of policy," but in Presidential Regulation No. 10 of 2006, the National Land Agency's function was extended to include not only formulating and defining land policies, but also conducting land affairs.

The National Land Agency, as established by Presidential Decree 10 of 2006, was led by a Head who was assisted by the Main Secretariat and five Deputies, namely the Deputy of Survey, Measurement, and Mapping; Deputy for Land Rights and Land Registration; Deputy for Land Arrangement and Arrangement; and Deputy for Land Affairs and Community Empowerment. According to Article 28 of Presidential Regulation No. 10 of 2006, the Regional Office of the National Land Agency Province in Province and the Regency/City Land Office in Regency/City were created to carry out the duties and functions of the National Land Agency in the region. After obtaining approval from the Minister responsible for the use of the state apparatus, the Head of the National Land Agency shall further specify the structure and working procedures of the Provincial Land Office and the Land Affairs Office of the Regency/City.

The government continues to retain vertical institutions in the region based on this Decree. This means that the government has not enforced regional autonomy in the land sector since the National Land Agency's regional office and the Regency/Municipal Land Office are still allowed to carry out regional and sectorial tasks in the land sector. UsepSetiawan claimed in response to Presidential Decree No. 10 released in 2006: "This vertical structure should end the debate about whether land issues are decentralized or autonomous." The spirit of the Presidential Regulation suggests that land relations are a central matter that is supported by its regional workers, rather than matters that are (entirely) delegated to local governments. The most important thing, the centralization of this basic policy of land must be related to the national agrarian arrangement which must be ensured within the framework of the Republic of Indonesia which is still an integral whole. Centralization should be prioritized over decentralization for agrarian justice reform, but its implementation worsens agrarian conditions on the ground. The challenge is how this vertical coordination and synergy of National Land Agency with local governments whose agrarian issues must be diverse with political constellations that is also likely to be heterogenic. In this case, it is necessary a political expertise and willingness to share the role proportionally among fellow state organizers who care for the livelihood of the general public, let alone concerning the land as a basic affair.

Presidential Regulation No. 10 of 2006 is debatable because it is seen as reversing the decentralization process, which is currently mandated by the Constitution and Law No. 32 of

2004. There are a few that can be listed in relation to this: To begin with, the publication of this Presidential Regulation marks the end of the autonomy struggle. Second, this Presidential Regulation is in direct conflict with Article 18 paragraph (5) of the 1945 Constitution, which states that regions have wide autonomy in governing their own territories, with the exception of matters given to the central government by statute. Third, there is a saying that the land issue becomes the responsibility of the federal government because Article 33 paragraph (3) of the 1945 Constitution states that "the earth..... is controlled by the state." This viewpoint can be refuted, as the concept of "mastered" is basically "regulated." If this is linked to Article 18 paragraph (5) of the 1945 Constitution, the term "decentralized arrangement" should be used. Fourth, if the justification for the Presidential Regulation's issuance is to retain leverage over the regions in order to prevent land-related issues, the claim can be countered by arguing that collusion can occur both in the regions and at the middle. Fifth, if the Presidential Decree is founded on the premise that the land is the nation's glue, then all of the nation's elements should be considered the nation's bond. Not only the soil, but also the others, are what hold the country together.

Further changes will be made to the National Land Agency's structure and working procedures in order to facilitate the introduction of land acquisition for production in the public interest and the conservation of sustainable food crops, as well as to promote the acceleration of bureaucracy reform (BadanPertanahanNasional). In place of Presidential Regulation 10 of 2006, this is controlled by Presidential Regulation No. 63 of 2013. The National Land Agency function, previously composed of 21 functions, has been compressed into 14 functions in Presidential Regulation No. 63 Year 2013, namely: a. compilation and determination of national policies in the field of land; b. implementation of policy coordination, plans, programs, activities, and cooperation in the field of land; c. implementation of task coordination.

When compared to Presidential Regulation No. 10 Year 2006, the National Land Agency appears to have been decreased in terms of the number of functions as stated in Presidential Regulation No. 63 Year 2013. When it comes to the content of the controlled role, Presidential Regulation No. 63 of 2013 has more functions than the previous Presidential Regulation. These additional roles are linked to the public interest and the management of sustainable agricultural land information data in the field of land acquisition for production. Furthermore, the National Land Agency structure and role were restructured in 2015, along with the new cabinet for the period 2014-2019 under President Joko Widodo.

In contrast to President Soesilo Bambang Yudoyono's period, when land affairs were under the sole authority of the National Land Agency, President Joko Widodo's time saw land affairs fall under the authority of the Ministry of Agrarian and Spatial Planning in addition to the National Land Agency. As for the above-mentioned roles of land affairs in President Joko Widodo's cabinet, the National Land Agency maintains a considerable amount of authority. Meanwhile, the Ministry of Agrarian and Spatial Planning is responsible for the formulation, determination, and execution of policies in the fields of agriculture/land affairs, legal relationships of land/land, agrarian/land management, land acquisition, land regulation, handling of agrarian/land issues, and land use, as stated in Presidential Decree no. 15 Year

2015. In order to prevent conflicting authority and ensure effective cooperation between the National Land Agency and the Ministry of Agrarian and Spatial Planning, Presidential Decree 20 of 2015 mandates that the Minister of Agrarian and Spatial Planning serve as the Head of the National Land Agency. Similarly, the Echelon I National Land Agency uses the Echelon I organizational structure in the Ministry of Agrarian Affairs and Spatial, which has similar duties and functions.

The existing National Land Agency role is integrated into the framework of the Ministry of Agrarian and Spatial Planning and becomes part of the respective directorate's corresponding jurisdiction, as seen in the above structure of the Ministry of Agrarian and Spatial Planning. For example, the Directorate of Infrastructure is in charge of policy formulation and implementation in the field of survey, calculation, and mapping, while the Directorate General of Land Transportation, Land and Land Use is in charge of policy formulation and implementation in the field of control and handling of land disputes and matters. Other National Land Agency roles are delegated to the relevant ATR Ministry directorate.

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency is currently organized according to the Minister of Agrarian Affairs and Spatial Planning/Head of National Land Agency Regulation No. 8 of 2015 on the Organisation and Administration of the Ministry of Agriculture and Spatial Planning/National Land Agency. The organization's composition consists of one Secretariat General and Inspectorate General, seven Directorate General, three Specialist Personnel, and three Centers. Regulation of the Minister of Agrarian Affairs and Spatial/Head of National Land Agency Number 38 Year 2016 on Organization and Working Procedures of Regional Office of National Land Agency and Land Office shall be stipulated at the provincial and district/municipal levels.

3. CONCLUSION

Based on what is described above, it can be concluded that institutions dealing with land in Indonesia is already existed and started in 1951 under the name of the State Ministry of Agrarian Affairs and subsequently changed names, but still use the word "Agrarian" within the institution. Only in 1988 came up the National Land Agency. The existence of the National Land Agency began in 1988 with the issuance of Presidential Decree Number 26 of 1988. In Presidential Decree 26 of 1988 there are 6 Functions of National Land Agency which leads to the formulation of policy and planning of land tenure and use. The existence of the National Land Agency shall be regulated continuously in accordance with the development of existing conditions in the amendment of presidential decree in 1999, 2000, 2001, 2006 and by presidential regulation in 2013. Presently, the existence of the National Land Agency is based on Presidential Regulation No. 20 of 2015. Based on Presidential Regulation No. 20 of 2015, National Land Agency has 10 Functions covering as a drafter, regulator, and executive of land policy which is headed ex officio by Minister of Agrarian and Spatial.

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