SOCIAL FUNCTION PRINCIPLE ON MANAGEMENT RIGHTS IN LAND RENEWAL

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ABSTRACT

This study aims to determine the Position of the Social Function Principle Against Management Rights in Land Renewal. The research method used is normative legal research with the statutory approach and conceptual approach. The results show that the renewal of the principle of social function is that there is a balance in the land between the interests of individuals and the public interest. Above all, the management rights are not land rights; hence, that management rights in renewing the principle of social function principle cannot be applied.

Keywords: Fundamental Social Function, Management Rights, Land

INTRODUCTION

Land is one of the important natural resources in ensuring welfare. Land in Indonesia is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). Land owned or managed by a person will be clung to a right that is recognized and guaranteed by the state status. National law recognizes land rights as not free rights, but rights that will be limited by the public interest.

Article 1 paragraph (1) of the Basic Agrarian Law (UUPA) states that, "all land within the territory of the State of Indonesia is the common land of all the people of Indonesia". Furthermore Article 6 UUPA states that, "All land rights have a social function". The article is further stated as one of the principles of land law which is termed the principle of the social function of land rights. The existence of the principle of social functions of land rights in land law becomes the fundamental foundation for the realization of land that is beneficial for the greatest prosperity of the people in the welfare state (Rejekiningsih, 2016).

The principle of the social function of land rights as one of the principles of agrarian law, has an important role to realize the goals of the state. In Indonesia the principle of social functions of land rights, implies the meaning of land rights there is the fulfillment of land rights for the greatest prosperity of the people as stipulated in the constitution. The Basic Agrarian Law regulates land tenure rights. The right of control of land contains a series of authority, obligations, and or prohibitions for the holder of his right to do something about the land which is his right. Something that is permissible, mandatory, or forbidden to be done, which is the content of the tenure rights becomes the criterion or benchmarks of differentiation between the tenure rights set out in the Land Law (Harsono, 2007). In general, control of land consists of 2 (two) aspects, namely juridical aspects and physical aspects. Juridically, land is based on rights protected by law and gives authority to the right holder to physically control land. However, physical control is not always inherent to those who control the land legally.

The right to land originates from the state's right to control the land. The right to control from the state is determined by the kinds of rights to the surface of the earth, called land, which can be given to and owned by people both alone and together with other people and legal entities. Land Rights are rights that give authority to the right holder to use and or take advantage of the land that is his right (Santoso, 2010).

Land Rights based on Article 4 paragraph (1) of the UUPA described in Article 16 paragraph (1) of the UUPA and Article 53 paragraph (1) of the UUPA. Article 16 paragraph (1) of the UUPA states that land rights consist of: Property Rights; Cultivation Rights; Building

rights; Right to Use; Lease Rights for Buildings; Right to Open Land; Right to Collect Forest Products; Land Rights to be determined by law. Whereas Article 53 paragraph (1) of the UUPA states temporary land rights, namely Business Rights; Profit Sharing, Renting Rights; and Agricultural Land Leases. Land Rights, in its development there is a Management Right (HPL) which is since 1965 through the Minister of Agrarian Regulation No. 9 of 1965 concerning the Implementation of Converting Rights of Control over State Land and Further Policies. The use of Management Rights is intended for the holder of his own rights and some are used by other parties with the approval of the holder of Management Rights. In its development, this management right has a big role in national development because on the land, the management right can be given a Right to Use, Right to Use, or Ownership Rights to third parties who need it. The principle of social function is inherently inherent in all land rights. The existence of management rights that appear outside the agrarian main law certainly raises legal issues on land granted management rights. The existence of the regulation of management rights is important to be regulated as a whole and integrated with the regulations governing land in this case the agrarian main law. The need for renewal of the regulation of the principle of social functions in management rights will provide legal certainty, justice and expediency, so that the objectives of the principle of social functions are fulfilled equally on land rights. Based on the description above, the problem that I want to examine in this paper is the position of the principle of social function of management rights in renewal of land.

METHOD

This research method uses normative legal research methods. The problem approach used is the statutory and conceptual approach (Marzuki, 2010).

RESULTS

The principle of the social function of land rights comes from the theory of the social function of land rights put forward by the French legal expert Leon Duguit. Initially this theory emerged due to an attempt to oppose the classical liberal concept that was developing at that time. The classical liberal concept dominates modern political and legal concepts (Rejekiningsih, 2016). Duguit argues that property or known ownership of land rights is not a right but rather a social function. The owner has obligations regarding his social functions so he cannot just do what he wants on his property. It was explained again that the owner is obliged to make his private land productive and placed for service to the community through economic activities (Rejekiningsih, 2016). According to this classical liberal concept, land rights are not rights but rather social functions.

According to this theory of social function, rights are social functions in the sense that the power possessed by a person is limited by the interests of the community (Rasjidi & Lili, et al.,) In Rejekiningsih (2002). In the concept of social functions there are no subjective rights (subject matter recht), but there are only social functions (Parlindungan, 1998). Notonagoro stressed that property rights that have social functions are actually based on individual self, have an individualistic basis and then affix it to the social nature, whereas if based on Pancasila our laws are not based on or individualistic style, but are single patterned (Notonagoro in Limbong Bernhard, 2011).

The existence of land as social assets and capital assets (Maria, 2007). Land social assets are a means of binding social unity among people to life and life, while capital assets, land is a capital factor in development and has grown as a very important economic object as well as a business material and an object of speculation (Rubaie, 2007). The social function in the conception of national land law shows that human beings are both personal and social creatures who seek the realization of harmony between personal interests and common interests (Shanan, 2016). So that the principle of social function implies that property rights to land are not only for personal gain but also for the common interest in public services. With the social function that

makes a person must waive land rights to prioritize the general interest of the individual's interests. The most important thing about land rights to do social tests is balance, fairness, benefits and the pattern of truth. All that exists can make a difference in social relations which provides harmonious and complementary harmonious relations in order to minimize the complexity of the various problems that may and will arise in social life, the nation and state. (Protection, 1998).

Article 6 of Law Number 5 of 1960 concerning Agrarian Principles (UUPA) states that "All land rights have a social function". Furthermore, the General Explanation of UUPA in letter A, Roman numeral II on the Basics of National Agrarian Law states "The fourth basis is laid in article 6, namely that" All land rights have a social function ". This means, that any land rights that exist on a person, cannot be justified, that the land will be used (or not used) solely for his personal interests, especially if it causes harm to the community. The use of land must be adapted to the conditions and nature of its rights, so that it benefits both the welfare and happiness that has it and benefits the community and the State. But in the meantime, this provision does not mean that individual interests will be pushed at all by the public interest (community). The Basic Agrarian Law takes into account individual interests. The interests of the community and the interests of individuals must balance each other, so that in the end the main goal: prosperity, justice and happiness for the whole people will be achieved (article 2 paragraph 3). In connection with its social function, it is a natural thing that the land must be maintained properly, in order to increase its fertility and prevent damage. The obligation to maintain this land is not only borne by the owner or the holder of the relevant rights, but also becomes a burden on every person, legal entity or agency that has a legal relationship with the land (article 15). In implementing this provision, the interests of those who are economically weak will be considered ".

In its development, Law No. 5/1960 concerning Basic Regulations on Agrarian Principles as a statutory regulation governing the land sector in its subjects needs to be supplemented in accordance with developments that occur to meet the needs of the community. currently the draft law on land is included in the national legislation program. In the draft land law states that one of the principles of regulation, management, management and supervision of land based on the principle of social function, what is meant by the "principle of social function" is that land rights must be used in accordance with the nature and purpose of granting land rights. Land should not be used, especially if it is detrimental to the interests of other parties and the community. Between individual interests and public interests in the use of land there must be a balance. Article 15 paragraph (1) All Land Rights which give authority to control, possess, use, or utilize have social and ecological functions. What is meant by "social functions of land rights" is that land rights must be used in accordance with the nature and purpose of granting land rights. Land should not be used, especially if it is detrimental to the interests of other parties and the community. Between individual interests and public interests in the use of land there must be a balance.

Referring to the formulation of the principle of social function in the draft land law, the fundamental difference with the agrarian basic law is the existence of balance. The balance in the application of social functions between individual interests and public interests is to realize the principle of justice. Act No. 11 year 2005 on the ratification of the International Covenant on Economic, Social and Cultural rights (International Covenants on Economic, social, and Cultural rights). Article 11 paragraph (1) mentions "the right of each person for the standard of living worthy of self and his or her family, including the right to acquire food, clothing and housing, and to continuously improve the living conditions". Further in subsection (2) affirmed about "recognition of the fundamental right of every person to be free from hunger, and to support the right of the State should take the necessary measures to improve the ways of production, consumption and distribution of food thereby achieving the development and utilization of efficient natural resources".

The term HPL is derived from the Dutch term "beheersrecht" with the translation to the Right to Control (Oloan, 2006). Management rights are the controlling rights of the state whose

authority is partially delegated to its holders (in this case the HPL holders) (Maria, 2008). Partial management rights are delegated to the holders (Harsono, 2007). The right to manage land or HPL was born outside the Basic Agrarian Law. HPL was born based on the Regulation of the Minister of Agrarian Number 9 of 1965 concerning the Implementation of the Conversion of the State's Right to Control and the Provisions concerning the next Policy. Article 2 of the Regulation of the Minister of Agrarian Number 9 of 1965 concerning the Implementation of the Conversion of the State's Right to Control and Provisions on Policy further states that "if state land as referred to in Article 1 is not only used for the interests of the agencies themselves, it is also intended to be granted with something rights to third parties, then the said control right is converted to management rights as referred to in Articles 5 and 6, which take place as long as the land is used for this purpose by the institution concerned ".

The Basic Agrarian Law does not explicitly regulate "Management Rights", but only mentions "management". Management in the UUPA can be seen in General Explanation II number (2) which states that by referring to the objectives stated above, the state can provide land that is not owned by a person or bodies with something rights according to their designation and needs, for example by ownership rights, usufructuary rights, building rights or usufructuary rights or granting them in management to a ruler's body (Department of, position, or district) to be used for the implementation of their duties (article 2 paragraph (4)).

Management rights are not only listed in the regulations made by the National Land Agency but can be found in several statutory regulations including Article 1 paragraph (4) Government Regulation Number 24 of 1997 concerning Land Registration states that management rights are the controlling rights of the state whose authority delegated to the holders; Article 1 paragraph (2) Government Regulation Number 40 of 1996 concerning business use rights, building rights and use rights on land, explains management rights, namely the right to control the State, the authority of which is partially delegated to its holders; Article 7 paragraph (1) of Law Number 16 Year 1985 stipulates that flats can only be built on ownership rights, usufruct rights, land use rights, and management rights in accordance with applicable laws and regulations; Management Rights are stated in the Elucidation of Article 2 paragraph (3) letter f of Law No. 20 of 2000 concerning Amendment to Law Number 21 of 1997 concerning the Obligation to Obtain Land and Building Rights, jo. Article 1 Government Regulation No. 112 of 2000 concerning Imposition of Fees for the Acquisition of Rights to Land and Buildings Due to Granting of Management Rights, namely the State's right to control land whose implementation authority is partially delegated to the right holder to plan the designation and use of land, use the land for the purposes of carrying out its duties, and hand over portions the land to a third party and/or in cooperation with a third party (Hussain, 2021).

From the definition of Management Rights above shows that Management Rights are the right to control the State over land as mentioned in Article 2 of the UUPA, not the right to land as mentioned in Article 4, Article 16 paragraph (1), and Article 53 of UUPA. Management rights are not purely the right to control the state over land, but rather the delegation of the right to control the state over land. Those who can have Management Rights are called subjects of Management Rights (Santoso, 2012).

In its development, there is a shifting nature of management rights which was initially public towards civil (private). Initially the HPL serves as a "maintainer" shifting towards the "rights" function. If it has become a right then it becomes something that is absolutely proprietary and its use depends on the owner. Land rights management that is controlled by the rightsholders can be used for the purpose of the implementation of its duties or efforts, can also be submitted to third parties for the approval of the management rights holders. In this case the holder/receiver of the HPL may submit the use of land which is part of this HPL with the rights of building or use rights (Hussain, 2021).

The rights that can be submitted to third parties are in various regulations, initially contained in article 6 paragraph (1) C of the regulation of the Minister of Agraia No. 9 year 1965 stating that: "The land parts management rights may be submitted to third parties with use rights that are 6 (six) years term." Furthermore, in Article 28 letter c of the Minister of Domestic

Regulation Number 5 of 1973. However, by Article 5 Paragraph (7) letter a of the Minister of Domestic Regulation Number 5 of 1974 stated that: "lands controlled by housing construction companies with management rights, on the proposal of the company by the competent authority referred to in Article 3 may be given to the parties who need it with ownership rights, building rights or use rights along with the houses and buildings thereon according to the terms and conditions of the agrarian regulations apply ".

Furthermore, in Article 2 of the Minister of Domestic Affairs Regulation No. 1 of 1977 stated that: "Parts of the land management rights granted to the Regional Government, Institutions, institution and/or Government Legal Entity for the development of residential areas, can be submitted to the parties third and proposed to the Minister of the Interior or the Governor of the Region concerned to be granted with Ownership Rights, Building Use Rights, or Use Rights, in accordance with the designation and use of land that has been prepared by the relevant Management Right holder. "In Article 5 of the Ministerial Regulation stated that: "Legal relations between institutions, agencies and or legal entities (ownership) of the Government of management rights, which are established or appointed to carry out the provision of land for various types of activities that are included in the field of settlement development in the form of the company, with the management right that has been granted to him, is not revoked by the registration of rights granted to third parties as referred to in Article 2 of this regulation at the local Office of the Sub-Directorate of Agrarian Affairs".

From the provisions of these various provisions it can be concluded, the land management rights can be handed over to third parties with Ownership Rights, Building Use Rights or Use Rights. By registering the Right to Build and the Right to Use at the Land Office, it does not make the legal relationship between the holder of the management right and the land of the management right become null and void in accordance with the nature of the management rights as part or "shaking" the controlling right from the State. Specifically for granting ownership rights on land management rights will make the management rights be erased because of the nature of the ownership rights as the strongest and most fully fulfilled, and not timed. All of these rights, both in terms of terms, conditions as well as the duration and termination, are subject to the basic agrarian law system (Hussain, 2020).

The basis for granting land rights by holders of management rights to third parties is stipulated in the land use agreement (SPPT). In practice, the SPPT can be referred to by another name, for example: Agreement on Submission, Use and Management of Land Rights. The making of the Agreement is carried out in the context of carrying out the Development, Ownership, Management, and Submission of Building Land and Supporting Facilities agreement, also called the Build Operate and Transfer (BOT) agreement (Maria, 2007). Article 1 number 8 of the The Land draft Act states that the Management Right is the Right to Control the State, the authority of which is to be partially delegated to the right holder. Article 5 paragraph 2 Management Rights as referred to in paragraph (1) give authority to: a. compile plans for the designation, use and utilization of land in accordance with the regional spatial plan; and b. submit the utilization of said portion of the Land Management Right to a third party. On top of the Management Right, the utilization of which is handed over to a third party, the application for a Right to Use or Right to Use can be submitted for a period of time. In the draft land law the elucidation section of article 6 paragraph (3) affirms that the Management Right is not the Right to Land, but the State's Right to Control, which is partially delegated to the right-holder. Because management rights have a public nature, legal entities that can become holders of management rights must meet certain requirements. Furthermore, article 7 paragraph (1) states that the handover of land use is done through a decision because the management right is not the right to land but is part of the state's right to control. Furthermore Article 7 paragraph (3) states that this provision confirms that the purpose of granting Management Rights is to support the main tasks and functions that constitute public services (Hussain, 2020).

The difference between the management rights between the Basic Agrarian Law and the Draft Law on Land is that the management rights in the agrarian main law have not been clearly and firmly regulated so as to cause legal uncertainty, whereas in the draft Law on Land has

regulated clear and unequivocal that management rights are not rights to land, but the right to control the state, which is partially delegated to the holders of rights, and management rights are public not private. In essence, the principle of social functions of land rights in national land law implies that whatever land rights exist in a person, it cannot be justified that the land will be used (or not used) solely for his personal interests, but also in his rights on the land there is a public interest with the principle of balance. Whereas management rights are not land rights, so the social function of management rights cannot be applied.

Essentially the basic social function of land in the law of the national land, containing the meaning that the right to any land that exists in a person, is not justified that the land will be used (or not used) solely for his own personal interests, but also in the right to the land there is a common interest with the principle of balance. As for right of management is not a right to land so that social functions on management rights cannot be applied.

CONCLUSION

The position of the social function principle of management rights in renewal of land is that there is a renewal of the principle of social function regarding the existence of a balance in the use of land between the interests of individuals and the public interest, and management rights are not rights to land so that management rights in the renewal of the principle of social functions are not can be applied.

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