



## THE INFLUENCE OF GLOBALIZATION ON LAND OWNERSHIP IN INDONESIA IN TERMS OF PERSPECTIVE SOCIOLOGY OF LAW

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### Abstract

*The influence of globalization on land ownership in Indonesia, viewed from the perspective of legal sociology, is the difficulty for people to obtain land ownership in urban areas. This is not due to bureaucracy but rather the influence of urban and preeconomic progress in the city center so that the land for residential houses is getting narrower (exhausted) and left out. The challenge ahead for the Indonesian nation in terms of legal sociology in responding to the influence of globalization, especially economic globalization on land ownership is not to make land a business commodity because it is supported by easy land ownership registration services so that land with clear legal status becomes easy to trade and get economic benefits even though these benefits are only temporary.*

**Keywords:** *Globalization, Land, Land Ownership.*

### 1. INTRODUCTION

Indonesia today is in a modern realm that is largely determined by the development of modern science and technology, a democratic system that continues to grow, with the demands of an increasingly strong market economic system, and accompanied by the influence of globalization and very strong regional turmoil. All of this requires a response of a legal and constitutional system that can carry out the function of control and at the same time a driving function towards continuous renewal towards the progress of an increasingly intelligent, peaceful, prosperous, democratic, and just nation.<sup>1</sup>

Therefore, all past legal products, as long as they are still needed, must be seen as products of Indonesian law itself which are indeed necessary for the Indonesian legal state. As is the case in today's age of independence, there are quite a few products of legislation whose part or all of the material comes from examples of legal practice in other countries that are considered exemplary. For this reason, the implementation of legal products left over from the Dutch East Indies era can be justified, although it still does not close the necessity to make a major renewal of the legal products of the past adapted to the will of change of the times. One of the legal substances of the past that has been adapted to the will of change in the times and the influence of globalization is that which is related to land policy, especially in terms of land ownership.<sup>2</sup>

Current and future land ownership is still the most profitable investment option. The influence of globalization/modernization makes it difficult to obtain land ownership, not because of bureaucracy but rather the influence of urban and pre-economic progress in the city center so that land for residential houses is narrower (exhausted) and left out. Therefore, at this time many plots of land are offered that can be obtained by means of *cash* or credit to be able to be legally declared as a legal subject who has the right to control the land.

<sup>1</sup> Jimly Asshiddiqie, *Pengantar Hukum Tata Negara Jilid I*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, hlm. 23.

<sup>2</sup> *Ibid.*, hlm. 23-24.

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Related to public services in terms of land ownership, the Land Office functions to provide legal certainty guarantees for land ownership by issuing land deeds. In general, it is said that the Basic Agrarian Law Number 5 of 1960 does not recognize the existence of land ownership as it is known in the Civil Code.<sup>34</sup>

In general, the matter of land ownership also determines the poverty of farmer families. Theoretically, the smaller the arable land that peasant families have, the poorer they will be. Therefore, smallholder farmers cannot live on work on farmland alone, they must also have sources of livelihood from businesses in the non-agricultural sector. But the main problem is that not all non-agricultural sources of livelihood that are not infrequently casual or part-time can guarantee a steady, decent income and guarantee the adequacy of life. As a consequence, it must be thought of a decent job availability, sufficient wages, free from arbitrary technological treatment, and having access to cheap credit.<sup>5</sup>

From the description above, this paper specifically conducts a study of land ownership policies associated with the influence of globalization, with **the title "The Influence of Globalization on Land Ownership in Indonesia in terms of Legal Sociology Perspective"**. The problem with this paper is how does globalization affect land ownership in Indonesia from a legal sociological perspective? And what are the challenges ahead for the Indonesian nation in terms of legal sociology in responding to the influence of globalization on land ownership?

## 2. IMPLEMENTATION METHOD

The type of research used in this research is the normative legal research method, which is a scientific research procedure to find the truth based on scientific logic from the normative side. This research method is used to analyze various regulations, rules (norms) and legislation as its object. Normative legal research is a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The approaches used in this study are the statutory approach and the conceptual approach. According to Peter Mahmud Marzuki, the <sup>678</sup>*statute approach* is used to study and analyze all regulations related to the problem under study, because the law is the focal point of research with an approach using legislation and regulation.

## 3. RESULTS AND DISCUSSION

### 3.1 The Influence of Globalization on Land Ownership in Indonesia Reviewed from the Perspective of Legal Sociology

<sup>3</sup> Ratminto dan Atik Septi Winarsih, *Manajemen Pelayanan*, Pustaka Pelajar, Yogyakarta, 2012, hlm. 6.

<sup>4</sup> Kartini Muljadi dan Gunawan Widjaja, *Hak-hak Atas Tanah*, Prenada Media, Jakarta, 2004, hlm. 10.

<sup>5</sup> Francis Wahono, AB, Widyanta dan Titus O. Kusumajati (Penyunting/Editor), *Pangan, Kearifan Lokal dan Keanekaragaman Hayati: Pertaruhan Bangsa yang Terlupakan*, Cindelas Pustaka Rakyat Cerdas (CPRC), Yogyakarta, 2005, hlm. 96-97.

<sup>6</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, Bayu Media, Malang, 2007.

<sup>7</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Group, Jakarta, 2011.

<sup>8</sup> *Ibid.*



Before describing the influence of globalization on land ownership in Indonesia in terms of the perspective of legal sociology, below is first given the concept of sociology and sociology of law.

Sociology comes from the Latin word, *socius* meaning "comrade" and the Greek word, *logos* meaning "word" or "talk", so the definition of sociology means to talk about society. Meanwhile, according to Auguste Comte, sociology is a general social science which is the last result of the development of science.<sup>9</sup>

According to Gurvitch, the study of legal sociology arises immediately in historical and ethnographic investigations related to law, and also in investigations in the field of law that at the same time seek other goals, for example in terms of finding ideal solutions to social problems. According to Satjipto, legal sociology has an intellectual basis from understanding natural law (*lex naturalist*), that's why the achievement of understanding legal sociology is to solve the problems of human life and its environment. The philosophy of the theory of natural law is unity with environmental conditions. Therefore, legal sociology circles have always associated the rule of law with the conditions of society and the surrounding environment. Even the formation of a state based on the *theory of social contract* popularized by J.J. Rousseau must be recognized as a study of legal sociology, even when humans were still in small groups in the "wild". In relation to<sup>10</sup>the sociology of law, Max Weber writes: When *concerned* with law, the legal system, the rule of law, it must be strictly observed the difference between juristic and sociological views. Legal science questions ideally valid legal norms. Sociology seeks what really happens in society because there is a certain possibility that its members believe in the validity of a rule and adapt its behavior to this rule. Then in accordance with this definition, the object of legal sociology is a human deed that must be determined by the idea of valid rules.<sup>11</sup>

According to Achmad Ali, sociology of law as a branch of science that stands alone is a social science, that is, a science that studies human life with others, that is, the association of life, in other words studying society, especially the legal symptoms of that society.<sup>12</sup>

The sociology of law is the scientific study of social life. The sociology of law uses facts about the social environment in which the law applies. This study works to find the social principles that govern the legal system working concretely in practice. However, the sociology of law does not give an assessment of the facts of the law, but it does explain how the facts of the law actually happened and what caused them.<sup>13</sup>

The enactment of the UUPA has consequences for the necessity of *landreform* in Indonesia. *This landreform* is carried out by the state on the basis of the "right of control". What is the definition of *landreform*? Until now there has been no generally accepted definitive formulation of the notion of *landreform*. However, several things can be put forward to provide a general benchmark, namely:

- a. In simple terms *landreform* is an arrangement about the distribution of land ownership.
- b. According to Lipton, *landreforms* are activities that include the forcible taking of land that is usually carried out by the state from large landowners with partial compensation, and land cultivation is arranged in such a way that the benefits of human relations with land can be spread more evenly than before the expropriation. Michael Lipton says that the nature of *landreform* is equity.

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<sup>9</sup> Feri Amsari, *Satjipto Rahardjo dalam Jagat Ketertiban Hukum Progresif*, Jurnal Konstitusi, Volume 6, Nomor 2, Juli 2009, hlm. 169.

<sup>10</sup> *Ibid.*, hlm. 169.

<sup>11</sup> Jimly Asshiddiqie dan M. Ali Safa'at, *Teori Hans Kelsen tentang Hukum*, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta, 2006, hlm. 153.

<sup>12</sup> Muchtar Wahid, *Memaknai Kepastian Hukum Hak Milik Atas Tanah*, Republika, Jakarta, 2008, hlm. 96.

<sup>13</sup> *Ibid.*, hlm. 96.

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c. Law No. 56/PRP/1960 known as *the Landreform Law* is officially called the Law on "Determination of Agricultural Land Area".<sup>14</sup>

With the enactment of UUPA 5/1960, based on the provisions of Article 5, it is stated that customary law becomes the basis of Indonesian agrarian law. Therefore in the contract of sale and purchase of land and everything inherent thereon must be referred to the customary contract law. Based on the provisions of Article 19 of Government Regulation 10/1960, the transfer of land rights must be carried out based on a written (agreement) made by or before the Land Deed Making Officer (PPAT). Nevertheless, the validity of the transfer of rights, according to the Supreme Court's decision no. 123/K/Sip/1970 is not determined by Article 19 PP 10/1960, but is associated with the fulfillment of a number of substantive requirements as follows: the seller is authorized to sell land; the buyer is authorized to purchase and own the land; the land is legally available for sale; and the land is not in dispute for its control or ownership by a third party.<sup>15</sup>

In Suharnoko's view, the Supreme Court in the case has applied the principle of *nemo plus iuris* and followed the negative registration system that applies in land registration according to the UUPA. The provisions of Article 19 of the UUPA stipulate that the certificate of land rights is a strong proof of land ownership. That means that the original owner at any time can challenge the validity of the land rights certificate. However, with regard to the enactment of PP 24/1997 concerning Land Registration, it is stated that (Article 32(2)) after the lapse of 5 years since the certificate of land rights was established, the strength of proof of the validity of ownership of land rights becomes absolute. According to Suharnoko, the system of transferring and registering land rights in Indonesian land law (UUPA) has shifted from a negative and causal system to an abstract and positive system. In other words, today the system of transfer and registration of land rights uses a mixed system of causal-negative and abstract-positive.<sup>16</sup>

The mandate is from the provisions of Article 19 paragraph (1) of the UUPA, which states that "To ensure legal certainty by the Government according to the provisions regulated by a Government Regulation". The Government Regulation that regulates land registration is Government Regulation (PP) No. 10 of 1961 which subsequently underwent a change with PP No. 24 of 1997. The purpose of the registration is in the context of certainty of land rights, both certainty of ownership or its subjects and objects, with certainty that land rights will at least be prevented by land disputes. In addition to ensuring the certainty of rights, land registration also has the effect of improving the welfare of the people. In achieving this goal, the *government's* goal in managing land is to orderly land, namely orderly land law, orderly land administration, orderly use of land and orderly maintenance of land and the environment. The orderly land law, until now has not been implemented optimally, there are still many violations that occur in the community either on the control or ownership of land individually or by legal entities.<sup>17</sup>

### **3.2 Future Challenges for the Indonesian Nation in Terms of Legal Sociology in Responding to the Influence of Globalization on Land Ownership**

<sup>14</sup> SF. Marbun dan Moh. Mahfud, MD., *Pokok-pokok Hukum Administrasi Negara*, Liberty, Yogyakarta, 2009, hlm. 156.

<sup>15</sup> Rosa Agustina, Suharnoko, Hans Nieuwenhuis, Jaap Hijma, *Hukum Perikatan (Law of Obligations)*, Pustaka Larasan, Denpasar, Bali, 2012, hlm. 96.

<sup>16</sup> *Ibid.*, hlm. 96.

<sup>17</sup> Akh. Munif, *Perlindungan Hukum terhadap Petani yang Menguasai Tanah Pertanian Bekas Hak Barat*, Jurnal "Yustitia", Volume 10, No.1, Nop. 2010, hlm. 59-60.



To realize the provisions of Article 16 of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, which states that "land rights have a social function" it is in accordance with the provisions of Article 2 paragraph (3) that to guarantee the prosperity of the people of the state has the right to control there are two things that must be implemented:

- a. In the public interest, the state can revoke land rights (Article 18 uupa). Since 1975 with the issuance of PMDN No. 15 of 1975, it is also known as the institution of "acquisition (right to land)".
- b. In order not to harm the public interest, the ownership and control of land that exceeds the limit cannot be justified (Article 7). On that basis, there must be restrictions on land ownership as stated in Article 17 of the UUPA, both the minimum limit and the maximum limit that can be owned by a family or legal entity.<sup>18</sup>

In the New Order period, there were still many facts of land ownership exceeding the maximum permissible limit or the emergence of *absentee* lands, which although formally difficult to prove, were known to the people. The difficulty of formal proof of the exceeding of the maximum limit of ownership of the land, is mainly due to the way in which the transfer of rights is often carried out under the hand, so that formally the lands are still registered in the name of the original owner.<sup>19</sup>

As once written in the Kompas daily, Maria S.W. Sumardjono said, the effort to transition under the hand is oftentaken through the method of making absolute power, a method that is actually contrary to PP No. 10 of 1961 Article 19. By way of making this absolute power, the original landowner (the seller) gives irrevocable power of attorney to the beneficiary (who is actually the buyer) and the beneficiary of this power of attorney may do any act against the land which is the object of the power of attorney. In this way, materially the land has been fully controlled by the beneficiary of the power of attorney even though it is still formally owned by the original owner. The facts on this issue are not only contrary to the UUPA and the *Landreform* Law, but procedurally-administratively contrary to PP No. 10 of 1961 concerning Land Registration and Permendagri No. SK 59 / DDA / 1970 concerning Simplification of Land Rights Licensing Regulations, as well as other implementing regulations.<sup>20</sup>

The problem of agrarian resources including land redistribution in Indonesia, especially in Java, since the colonial era until now has not been resolved. Agrarian sources are not just land but also consist of water, air, and natural sources. The Basic Agrarian Law of 1960 was not free from debate about a land tenure system that heightened social justice and that empowered farmers.<sup>21</sup>

From the land tenure system, there are at least three alternatives. The first alternative is the capitalist way. The second alternative is the communist way whose collectivization is run by the state or by the Ricardian socialist way whose collectivization is carried out by a cooperative system. The third way can be called the populist way, that is, a combination of the first and second ways. This alternative thinking of populists is developing in Indonesia, despite differences among adherents of the sect. The populist way of Sajogyo suggests cooperative control and management of land by smallholders. The government purchased surplus land and distributed it to smallholder farmers through smallholder cooperatives. The funds generated from the sale of the surplus land are invested in agricultural supporting industries thus providing employment opportunities to groups that have not yet obtained land or to people who do not want to work in the agricultural sector.<sup>22</sup>

Land investment ranks highest in both profit and investment security. If investing by saving in a bank, buying stocks or gold is not much profitable, then saving in the form of land that will later

<sup>18</sup> SF. Marbun dan Moh. Mahfud, MD., *Op. Cit.*, hlm. 158.

<sup>19</sup> Moh. Mahfud MD, *Membangun Politik Hukum Menegakkan Konstitusi*, Rajawali Pers, Jakarta, 2011, hlm. 293-294.

<sup>20</sup> *Ibid.*, hlm. 294.

<sup>21</sup> Francis Wahono, AB, Widyanta dan Titus O. Kusumajati (Penyunting/Editor), *Op. Cit.*, hlm. 95.

<sup>22</sup> *Ibid.*, hlm. 95.

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be sold again, is no less interesting. For example, the price of land, which in the 1990s was still around tens of thousands of rupiah per meter, could now be hundreds of thousands of rupiah per meter, or even greater than that. The amount of land remained relatively fixed while the population growth was quite high, so that the ownership of land of people became narrower and narrower. If a few centuries ago where the ratio of land ownership to population was still high, then such people were free to own land by clearing existing forests. But now to own land requires more and more funds. In economics it is said that supply is relatively fixed, while demand increases sharply, so prices rise drastically. Starting from the point of view of the availability and profitability of investment, the land is then used as an economic commodity that is so important.<sup>23</sup>

Normatively land is not an economic commodity like the classical economic theories introduced by western countries. Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles, underlines that all land rights have a social function. That is, any land rights, including individual ownership, cannot place the use of the land solely for their own personal interests. Every use of land in Indonesia must bring about a social function, namely the prosperity of the people. The 1945 Constitution also contains a mandate that land is not a commodity, Article 33 of the 1945 Constitution outlines the necessity that land be controlled by the state and used as much as possible for the prosperity of the people. Normative rules are not a guarantee for the land not to be treated as an economic commodity. The abundance of petro dollars on the world market tempts policymakers to attract foreign investors. The injection of foreign funds from various donor agencies was not given voluntarily, but with various interventions in the formulation of national policies, including land policies, namely loosening land ownership rules in Indonesia.<sup>24</sup>

Policymakers opened the taps for land commodification through land privatization projects. In 1990, BPN introduced a land administration project financed by the world bank. In essence, this project aims to register land in order to clarify the status of individual land ownership. Once the ownership status of this land is clear, the land will be easily traded and thus the door to land commodification will be more open and attract investors. The policy of land privatization certainly positions land as a commodity, as an economic asset, a source of income and profit. The move by policymakers in opening land commodification faucets that received rave reviews from capital owners allowed the private sector, especially multinational corporations, to be involved in the control of productive lands in Indonesia. The factors of free trade and globalization, where the movement of people, goods and capital are so free today, resulted in fertile areas, large populations, and relatively safe being targeted by large capitalists. Not to mention, Indonesia's economic condition continues to grow while big countries such as the United States and Europe are still struggling with the crisis, then capitalists will come to a country rich in natural resources. The number of foreign companies established, which means that they need land and other infrastructure, so the provision of land is a priority.<sup>25</sup>

The practice of land privatization in Indonesia is increasingly massive. Land ownership and tenure are increasingly centralized and concentrated in private hands, both domestic and foreign. The head of the National Land Agency, Joyo Winoto, once revealed that only 0.2 percent of Indonesia's population currently controls 56 percent of national assets. Of the assets controlled, 87 percent are in the form of land. As a result, Indonesia is increasingly vulnerable to the impact of the global food

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<sup>23</sup> Zainal Abidin, Sesat Fikir Orang Indonesia Menjual Tanah, dalam: <http://m.kompasiana.com/post/hukum/2013/05/09/sesat-fikir-orang-indonesia-menjual-tanah/>, diakses tanggal 4 Maret 2022.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*



crisis. A data revealed that around 65% of domestic food needs are obtained through imports. This means that the Indonesian nation is no longer sovereign in terms of food production because food production continues to decline. One of the reasons is the diminishing availability of land. In fact, as a country that is still agrarian, land is an important factor of production.<sup>26</sup>

The causes of agrarian conflict in Indonesia do not lie mainly in the problem of the uneven distribution of land ownership, but in the issue of political flows from various political elites. This last problem leads to a conclusion that any agrarian reform effort in Indonesia should depart from initiatives that are little politically charged and most likely to be implemented by the people, such as starting by using public land owned by the village (village treasury) for smallholders and utilizing sleeping land not for the welfare of village officials but for the people.<sup>27</sup>

#### 4. CONCLUSION

The conclusion of this writing is as follows:

- a. The influence of globalization on land ownership in Indonesia, viewed from the perspective of legal sociology, is the difficulty for people to obtain land ownership in urban areas. This is not due to bureaucracy but rather the influence of urban and preeconomic progress in the city center so that the land for residential houses is getting narrower (exhausted) and left out.
- b. The challenge ahead for the Indonesian nation in terms of legal sociology in responding to the influence of globalization, especially economic globalization on land ownership is not to make land a business commodity because it is supported by easy land ownership registration services so that land with clear legal status becomes easy to trade and get economic benefits even though these benefits are only temporary.

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<sup>26</sup> *Ibid.*

<sup>27</sup> Francis Wahono, AB, Widyanta dan Titus O. Kusumajati (Penyunting/Editor), *Op. Cit.*, hlm. 96.

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