

ADMINISTRATION OF ACCESS TO CAPITAL IN POST- REDISTRIBUTION OF LAND IN AN ISLAMIC VIEW

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Abstract: *Land issues are not only related to land disputes, conflicts and cases, but are also related to gaps in land tenure and land conversion which are considered to be inhibiting factors in achieving land as the greatest source of people's prosperity. Arranging access to capital after land redistribution within the framework of agrarian reform is one of the government's steps to address the issue of land management in Indonesia which will be studied from an Islamic perspective. This study uses a normative legal research method using secondary data which is analyzed through content analysis with a statua approach. The results showed that the aspect of post-land redistribution capital has a correlation with economic activity in the view of Islam as a whole, which aims to: meet one's basic needs, meet family needs, meet long-term needs, provide for the needs of abandoned families, provide social assistance and donations in the way of Allah SWT. The fundamental value of Islamic teachings regarding the post-land redistribution capital aspect as stated above is in line with the basic nature of agrarian reform activities in Indonesia which are characterized by democracy, social justice for land. Arrangement of access to capital after land redistribution is a form of continuity and equality between asset arrangement in the form of equal distribution of land ownership and access arrangement in the form of community empowerment to access capital based on land rights so as to realize community welfare.*

Keywords: *Arrangement, Access, Redistribution, Land, Islam.*

Introduction

Humans and land are essentially inseparable, as Allah SWT says in the Qur'an: And verily We have created man from an essence (derived) from the ground. Then We made the essence of semen (stored) in a firm place (womb). Then We made the semen a clot of blood, then We made the clot a lump of flesh, and We made the lump of flesh bones, then We covered the bones with flesh. Then We made him a different (form) creature. So Glory be to Allah, the Best Creator. Then, after that, you will really die (QS. Al-Mu'minun, 23: 12-15).

The verse explains that humans come from the ground and on the ground then humans are born, live, grow and develop even until then when they die they will return (buried) into the soil. That is, the existence of land is an important factor for human life as a source of livelihood, so there is no reason for humans to disobey the creator. Allah SWT says:

And (remember) when your Lord said to the angels: Verily I will create a man from dry clay (which originates) from black mud which is given a form. So when I have perfected

its occurrence, and have breathed into it my spirit (creation), then you submit to him by prostrating (QS. Al-Hijr, 15: 28-29).

(He) who made everything that He created the best and who started the creation of man from the ground. Then He made his offspring from the despicable essence of water (semen). Then He perfected and breathed into (his) His spirit (creation) and He made for you hearing, sight and hearts; (but) you are so little grateful (QS. As-Sajdah, 32: 7-9).

Land as a capital asset has grown as a very important economic object (Arba, 2015). The increasing need for land use by humans is often inversely proportional to the amount of available land, as if it is the justification for the skyrocketing number of land cases (Ramadhani, 2019). The possibility of the emergence of land disputes is not only for land parcels that have not been registered, even land that has been registered is still having problems (Lubis & Lubis, 2012). This means that the potential for conflict of interests may still arise over lands that have been certified, both concerning other parties (other rights subjects) and concerning themselves as rights holders (Ramadhani, 2018).

Other problems related to land issues in Indonesia today include; First, inequality of land ownership, the average Gini ratio of agricultural land ownership in Indonesia is 0.479, in Java Island it is 0.460 and outside Java Island it is 0.469.2. Second, land disputes totaled 8,959 cases, consisting of 56% of inter-community disputes in the form of boundary disputes between neighbors and neighbors, 15% of disputes between people and legal entities, disputes between individual communities and legal entities, 1% disputes between legal entities and legal entities. , 28% of other disputes, namely the community and the government and between communities. Third, the issue of land conversion, during 2013-2019 there was a reduction in the standard paddy field area of 287,000 hectares and the 2019 standard paddy area of 7.46 million hectares. Fourth, 5,217 abandoned land areas originating from 1,172 land use rights (HGU), 3,113 land use rights (HGB), 18 land use rights (HPL), 70 land rights without a term. fields, 160 fields of Management Rights (HPL), and 675 land Acquisition Data (DPAT) (Tenrisau, 2020).

The land problem as described above is considered to be an inhibiting factor in the realization of land as the greatest source of people's prosperity as mandated by Article 33 paragraph (3) of the 1945 Constitution which explicitly states: "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people", then gave birth to Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) as the legal basis for the management of land rights in Indonesia. The Decree of the People's Consultative Assembly (TAP MPR) as written in TAP MPR No. IX/MPR/2001 has also outlined the policy directions for reform and management of natural resources.

The land reform norms as contained in Articles 7, 10 and 17 of the UUPA are the legal basis for the government to implement agrarian reform policies through Presidential Regulation Number 86 of 2018 concerning Agrarian Reform (Perpres Number 86 of 2018). The meaning of agrarian reform based on the Presidential Decree is the rearrangement of the structure of tenure, ownership, use and utilization of land in a more just manner through asset management and accompanied by arrangement of access for the prosperity of the Indonesian people. Agrarian reform is considered capable of overcoming various common problems in the land sector, such as inequality in land tenure, ownership, use and utilization; agrarian disputes and conflicts; massive conversion of agricultural land; the decline in the quality of the environment; poverty and unemployment; and social welfare (Sulistyaningsih, 2021).

The focus of the study in this paper is related to the arrangement of access to capital after land redistribution within the framework of agrarian reform in Indonesia based on an Islamic perspective. The intended study correlates the values of prosperity and social welfare to be achieved from agrarian reform activities as one of the programs that apply constitutional orders. This will be analyzed based on Islamic studies originating from the Koran and Al-hadith as well

as the *ijtihad* of the scholars including legal theories that bring their concepts closer to Islamic thought. In the end, the study is expected to be able to contribute ideas based on an Islamic perspective in implementing arrangements for access to capital based on national law so as to realize land as the greatest possible source of prosperity for the Indonesian people.

Literature Review

There are three points that will be discussed in this paper, namely; Arrangement of Access to Capital, Land Redistribution and Islamic Law. First, structuring access to capital is taken from the term structuring access in agrarian reform activities as stipulated in Article 1 number 3 of Presidential Decree Number 86 of 2018 is: "providing opportunities for access to capital and other assistance to subjects of agrarian reform in order to improve welfare based on land use, which is also called community empowerment. The forms of arranging access to capital can be in the form of providing direct assistance by the government; cooperation between people who have property rights certificates and legal entities through a just partnership program; and/or cooperation between community groups that have joint ownership rights with legal entities through the land program as equity participation as stipulated in Article 15 paragraph (3) of Presidential Decree Number 86 of 2018. The pattern for structuring access to capital can be through facilitation of access to capital; facilitation of marketing access (offtaker); strengthening commodity data and information; and/or provision of supporting infrastructure. Implementation of agrarian reform can be successful only if it is carried out within a broader framework, namely offering not only access to land, but also access to credit, rural extension and other services (Ramdani & Sihaloho, 2020).

Second, land redistribution, which is one of the asset management activities within the framework of agrarian reform as stipulated in Article 6 of Presidential Decree Number 86 of 2018, can be carried out with two mechanisms, namely; through land redistribution activities or through asset legalization activities. Land redistribution is a series of activities carried out by the government in the context of distributing and/or granting land originating from the object of land redistribution to the subject of land redistribution by providing evidence of land rights/certificates (Tenrisau, 2020). Land redistribution for the people is carried out by providing land as an object of agrarian reform (TORA) to those who are entitled to own it (Doly, 2017). Furthermore, Article 6 of Presidential Decree Number 86 of 2018 orders that certificates of land rights issued either through a redistribution mechanism or through asset legalization must be made to arrange access to capital for assets (land rights). Arrangement of access in principle is an activity of providing assistance to subject rights holders (certificate holders) so that they can make optimal use of their land.

Third, Islamic law, namely thoughts based on Islamic law originating from the Koran, Al Hadith and *Ijtihad* of the scholars. In other words, the study of Islamic law in this paper is a study of structuring access to capital after land redistribution which is based on Islamic studies sourced from the Koran and Al-hadith as well as *ijtihad* from scholars including legal theories that bring their concepts closer to related Islamic thought. theme to be studied. The legal theories used to analyze the problems to be studied are the theory of the welfare state, the theory of legal certainty and the theory of legal benefits, all of which are discussed based on Islamic studies.

Method

The research method used is legal research as a process to provide solutions to existing legal issues by referring to normative juridical methods (Marzuki, 2021). In essence, normative juridical law research uses library research using various written literature, and the data sources used in this study include primary legal materials, secondary legal materials and tertiary materials. (Ramadhani, 2021a). This legal material will also serve as a literature review that draws and

evaluates a variety of different sources including academic articles, and professional journals, books, and web-based resources (Ramadhani, 2021c).

The procedure used to collect data in this study is in the form of documentation, namely: guidelines used in the form of notes or quotations, search for legal literature, books and other related matters for identification of problems in this study offline and online (Ramadhani, 2022b). Analysis of legal material is carried out using the content analysis method which is carried out by presenting material on legal events or legal products in detail in order to facilitate interpretation in the discussion (Ramadhani, 2021d) through a statutory approach (statute approach), namely formulating a legal definition based on legal principles from the results of a review of statutory regulations by looking at the various opinions of experts and writers relating to the issues discussed (Ramadhani, 2021b)

Result and Discussion

Redistribution of land as a means of carrying out asset management within the framework of agrarian reform activities is essentially a startup step in structuring access to capital for holders of land rights to achieve the goal of the philosophy of land as the greatest source of people's prosperity. Muchtar Wahid stated that the land redistribution activity is a means to equalize land ownership, especially for sharecroppers and small farmers who have not had access to land as a source of livelihood (Wahid, 2008).

The object of land redistribution is the Land of Agrarian Reform Objects (TORA) as referred to in Article 1 number 4 of Presidential Decree Number 86 of 2018, namely land that is directly controlled by the state and/or land that is already owned by the community for distribution, which are lands as referred to in Article 7 paragraph (1) Presidential Decree Number 86 of 2018, covering; HGU/HGB land that has expired; Land from the obligation to provide at least 20% of the HGU area when the process of extending or renewing the rights; Land originating from the release of state forest areas; State Land former abandoned land; Land resulting from settlement of Agrarian Disputes and Conflicts; Other State Lands.

The urgency of agrarian reform lies in the implementation of the concept of land reform (asset management) which is complemented by the concept of access reform (organization of access to capital) and is supported by the concept of legal/regulation reform (concept of legal legality). Limbong explains the two concepts, as follows;

The concept of access reform relates to the arrangement of more productive use or utilization of land accompanied by the arrangement of support for agricultural facilities and infrastructure, irrigation, farming roads, production marketing, farming cooperatives, and banking (people's business credit), while the concept of legal/regulation reform with regard to policy and legal arrangements that side with the people at large (Limbong, 2012).

The aspect of capital in Islamic teachings has a very important position to improve the welfare of the people. Allah SWT says:

And remember you when God made you successors (in power) after 'Ad and gave you a place on earth. You build palaces on its flat lands and you carve its mountains for homes; so remember the favors of Allah and do not be rampant in the face of the earth making mischief (QS. Al-A'raf, 7: 74).

So hopefully my Lord, will give me (garden) that is better than your (this) garden; and may He send provisions (lightning) from the sky to your garden; until (the garden) becomes slippery ground; or the water recedes into the ground, then you will never find it again (QS. Al-Kahfi, 18: 40-41).

The word of Allah SWT mentioned above explains land assets for a Muslim to be maintained, managed and utilized so that they become a source of livelihood. The management

referred to also means that there is a need for capital intake to be utilized optimally by the owner so as to achieve benefits in the form of welfare.

Farid Wajdi and Suhrawardi emphasized that wealth (material wealth) is an important part of a believer's life, so Islam does not want its people to live in backwardness and economic backwardness, conversely Islam also does not want its adherents to become hedonistic and materialistic human beings (Wajdi & Lubis, 2020). Islam also does not allow its adherents to take what is not rightfully theirs, including control, ownership and management of land that does not belong to them. Rasulullah SAW said:

Said bin Zaid bin Amr bin Nufail r.a. when complained to Marwan by Arwa regarding his rights, Said said: I was said to take part of his rights (his land), I testify that I heard the Messenger of Allah. said: Whoever takes even an inch of someone else's land by force (dhalim) then he will be covered with that land on the qiyamat day up to seven petals of the earth (HR. Bukhari. Muslim).

A'ishah r.a. said: When there was a quarrel between Abu Salamah and several people regarding land, then Abu Salamah complained to A'ishah, then A'ishah said: O Abu Salamah, avoid fighting over land, because the Prophet SAW said: Who takes the rights of people (by persecution/force) even if it's only an inch of land, it will be worn on it as far as seven petals of the earth (HR. Bukhari, Muslim).

The aspect of post-land redistribution capital has a correlation with economic activity in the view of Islam as a whole, which aims to: meet one's basic needs, meet family needs, meet long-term needs, provide for the needs of abandoned families, provide social assistance and donations according to God's way SWT (Wajdi & Lubis, 2019).

The fundamental value of Islamic teachings regarding the capital aspect after land redistribution as stated above is in line with the basic nature of agrarian reform activities in Indonesia which are characterized by democracy, social justice for land. Arrangement of access to capital post-land redistribution is a form of continuity and equality between asset arrangement in the form of equal distribution of land ownership and access arrangement in the form of community empowerment to access capital based on land rights so as to realize community welfare. This is also in line with the purpose of holding land redistribution, namely holding land distribution by providing a basis for land ownership as well as providing legal certainty of land rights to subjects who meet the requirements so that they can improve and improve the socio-economic conditions of the subject of land redistribution (Ramadhani, 2022a).

If it is related to the arrangement of post-land redistribution access to capital with the theory of the welfare state, then the social welfare variable which also includes social welfare requires the existence of social justice as the main element of the welfare state in an Islamic view different from the capitalist view. Islam teaches that socio-economic justice, equal distribution of income, and welfare are based on spiritual foundations and brotherhood (ukhuwah), so that everyone has the same turn to contribute to society and not be exploited by other communities (Fuadi, 2015), while the capitalist system is based on individual or group interests.

Structuring access to capital in the perspective of a welfare state based on an Islamic view is in principle a program related to macro policies in carrying out state functions aimed at creating the welfare of the people (Fuadi, 2015). Some things that must be considered for the state to realize a welfare state according to the Islamic conception, namely; First, trying to eradicate poverty and fulfill all basic human needs. Second, full and efficient utilization of all human and natural resources to achieve optimal levels of economic growth and improve human living standards. Third, avoid conditions that generate reduction or excess demand and lead to increased unemployment or inflation (Fuadi, 2015).

From a regulatory perspective, Presidential Decree No. 86 of 2018 is a legal standing that provides legal certainty for the implementation of arrangements for access to capital after land

redistribution within the framework of agrarian reform in Indonesia. Legal certainty is interpreted in a permanent rule, which can be used as a guide to solving problems (Huijbers, 1992). Islam teaches that the law that comes from Allah SWT as the highest authority that is applied in society must be conveyed as clearly as possible to the community to be guided and implemented in their lives (Halim, 2010). Allah SWT says: "And not is your Lord destroying the cities before He sent in the capital an apostle who read Our verses to them; and never (also) We destroy the cities except the inhabitants in a state of doing injustice" (QS. Al-Qasas, 28: 59).

This verse implies that the messenger who was sent to recite the verses of Allah SWT, means to explain clearly to the public so that the community knows for sure the law that applies and has legal certainty, the same is the case with national law that every law is declared effective since it is enacted (recorded in the State Gazette of the Republic of Indonesia) (Halim, 2010).

In another surah Allah SWT says: "And We will not punish before We send a messenger" (QS. Al-Isra', 17: 15). According to Mohammad Daud Ali, this verse means the enactment of a law aims to give the people legal certainty (M. D. Ali, 2000). The principle of legal certainty in Islam rests on a basic rule, namely; "There is no law for the actions of people who have common sense before there are texts or provisions".

The enactment of Presidential Decree No. 86 of 2018 should have a fundamental value in the form of benefits in realizing land as the greatest possible source of people's prosperity. The form of its benefit is the implementation of structuring access to capital after land redistribution within the framework of agrarian reform in Indonesia. In an Islamic perspective, expediency is interpreted as benefit. According to the Big Indonesian Dictionary, *masalah* in the plural *masalah* comes from Arabic which is then absorbed into *maslahat* in Indonesian which is a synonym for the word benefit and the opposite of damage (*mafsadah*) (Kebudayaan, 1995).

The theory of benefit was put forward and developed by Abu Ishaq al-Syaithibi with his theory known as the *Maqasid Al-Syari'ah* Theory, namely that the ultimate goal of law is *masalah* or the goodness and welfare of humans, so that none of the laws of Allah SWT have no purpose, because laws that do not have goals are the same as imposing something that cannot be carried out. This theory holds that it is Allah SWT who created humans and the laws as written in the Koran, only Allah SWT knows best regarding the laws that humans need so that it creates awareness that if you want the realization of benefit for human life then return to the law of Allah SWT (Z. Ali, 2019). According to Muhammad Arifin, benefit is incarnated into law so that it can create a happy and peaceful life according to Islam as *rahmatan lil alamin* (Arifin, 2016). This view is also in line with the concept that has been recognized by the scholars by formulating a fairly popular rule, namely: "Where there is benefit there is the law of Allah SWT" (Al-Buti, 1977).

Of the three aspects of legal theory studied based on Islamic law as stated above, the implementation of post-land redistribution capital access arrangements actually has implications for improving people's welfare because the policy program is based on regulations that make the welfare state aspect the basis of thought which has the value of legal certainty and benefits. law. In short, from an Islamic point of view, there is no reason for structuring access to capital after land redistribution within the framework of agrarian reform not to result in an increase in people's prosperity if it is carried out in a serious, trustworthy manner and hopes for the pleasure of Allah SWT.

Conclusion

The aspect of post-land redistribution capital has a correlation with economic activity in the view of Islam as a whole, which aims to: meet one's basic needs, meet family needs, meet long-term needs, provide for the needs of abandoned families, provide social assistance and donations according to God's way SWT. The fundamental value of Islamic teachings regarding the post-land

redistribution capital aspect as stated above is in line with the basic nature of agrarian reform activities in Indonesia which are characterized by democracy, social justice for land. Arrangement of access to capital after land redistribution is a form of continuity and equality between asset arrangement in the form of equal distribution of land ownership and access arrangement in the form of community empowerment to access capital based on land rights so as to realize community welfare.

References

- Al-Buti, M. S. R. (1977). *Dawabit al-Maslahah fi as-Syariah al Islamiyah*. Mu'assasah ar Risalah.
- Ali, M. D. (2000). *Hukum Islam*. PT. Raja Grafindo Persada.
- Ali, Z. (2019). *Metode Penelitian Hukum*. Sinar Grafika.
- Arba. (2015). *Hukum Agraria Indonesia*. Sinar Grafika.
- Arifin, M. (2016). *Arbitrase Syariah Sebagai Pilihan Forum Penyelesaian Sengketa Syariah*. Pustaka Pelajar.
- Doly, D. (2017). The Authority Of The State In Land Tenure: Redistribution Of Land To The People. *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan*, 8(2), 212.
- Fuadi, A. (2015). Negara Kesejahteraan (Welfare State) dalam Pandangan Islam dan Kapitalisme. *JESI; Jurnal Ekonomi Syariah Indonesia*, 5(1), 22.
- Halim, M. (2010). Asas-Asas Hukum Modern dalam Hukum Islam. *Jurnal Media Hukum*, 17(1), 156.
- Huijbers, T. (1992). *Filsafat Hukum Dalam Lintasan Sejarah*. Kanisius.
- Kebudayaan, D. P. dan. (1995). *Kamus Besar Bahasa Indonesia*. Balai Pustaka.
- Limbong, B. (2012). *Hukum Agraria Nasional*. Margaretha Pustaka.
- Lubis, M. Y., & Lubis, A. R. (2012). *Hukum Pendaftaran Tanah, Edisi Revisi*. Mandar Maju.
- Marzuki, P. M. (2021). *Penelitian Hukum, Edisi Revisi*. Kencana.
- Ramadhani, R. (2018). *Beda Nama dan Jaminan Kepastian Hukum Sertifikat Hak Atas Tanah (I. Nainggolan & Fajaruddin, Eds.)*. CV. Pustaka Prima.
- Ramadhani, R. (2019). *Dasar-Dasar Hukum Agraria*. CV. Pustaka Prima.
- Ramadhani, R. (2021a). Analisis Yuridis Penguasaan Tanah Garapan Eks Hak Guna Usaha PT. Perkebunan Nusantara II Oleh Para Penggarap. *Seminar Nasional Teknologi Edukasi Sosial Dan Humaniora*, 1(1), 859.
- Ramadhani, R. (2021b). Legal Protection For Land Rights Holders Who Are Victims Of The Land Mafia. *IJRS: Internasional Journal Reglement Society*, 2(2), 89.
- Ramadhani, R. (2021c). Legalisasi Aset Tanah Dan Asupan Modal Usaha Menengah Kecil Masyarakat. *Seminar Nasional Kewirausahaan*, 2(1), 280.
- Ramadhani, R, Lubis, U. M. (2021d). The Function of the Delimitation Contradictory Principle in the Settlement of Land Plot Boundary Disputes. *IJRS: Internasional Journal Reglement Society*, 2(3), 138.
- Ramadhani, R. (2022a). *Hukum Pertanahan Indonesia dan Perkembangannya*. UMSU Press.
- Ramadhani, R. (2022b). Peran Serta Masyarakat dalam Pemberantasan Mafia Tanah Pasca Pandemic Covid-19. *Seminar Nasional Hukum, Sosial Dan Ekonomi (SANKSI)*, 1(1), 3.
- Ramdani, M. F., & Sihaloho, M. (2020). Implementation of Agrarian Policy and Land Tenure Inequality (Case of Ex-HGU Land in Cipeuteuy Village, Kabandungan District, Sukabumi Regency, West Java Province). *Jurnal Sains Dan Pengembangan Masyarakat (SPKM)*, 4(6), 736.
- Sulistyaningsih, R. (2021). Reforma Agraria di Indonesia. *Perspektif: Kajian Masalah Hukum Dan Pembangunan*, 26(1), 59.

- Tenrisau, A. (2020). *Roadmap Reforma Agraria: 2020-2024*”, *Bahan Paparan Direktur Jendral Penataan Agraria*. Direktorat Jendral Penataan Agraria Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional.
- Wahid, M. (2008). *Memaknai Kepastian Hukum Hak Milik Atas Tanah; Suatu Analisis dengan Pendekatan Terpadu Secara Normatif dan Sosiologis*. Republika.
- Wajdi, F., & Lubis, S. K. (2019). *Etika Profesi Hukum*. Sinar Grafika.
- Wajdi, F., & Lubis, S. K. (2020). *Hukum Ekonomi Islam*. Sinar Grafika.