

DEGRADATION OF THE RIGHT TO CONTROL THE STATE THROUGH THE RATING OF LAWS COPYING LAWS IN THE LAND SECTOR AS A FORM OF REIMPLEMENTING THE PRINCIPLE DOMEIN VERKLARING

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ABSTRACT

The Proclamation of Indonesian Independence on August 17, 1945 became the legal basis for the enactment of the law agraria through the implementation of the State's Right to Control Over Land which abolished the Dutch colonial rules known as the system domein verklaring. However, the development of Indonesia's national economy which prioritizes investment interests has been facilitated by the government by passing Law no. 11 of 2020 concerning Job Creation which regulates issues of land rights is seen as a form of reviving the application of the principle domein verklaring that violates rights community land rights. Research identification is focused on the study of: (1) Policy on Ratification of Law No. 11 of 2020 in the land sector as a form of degradation of the State's Controlling Rights over Land; and (2) Pros and Cons of Application of the Concept of State Controlling Rights (HMN) in Law no. 11 of 2020 as a reflection of reviving the principle domein verklaring. The approach method used in this research is normative juridical, the research specifications are descriptive analysis, the types and sources of data come from secondary data, especially primary legal materials, supported by secondary legal materials and tertiary legal materials. Qualitative data analysis. Research results: (1) Law No. Policy. 11 of 2020 concerning Job Ambition in the land sector is a form of deviation from the state's right to control land in facilitating capital owners participate in supporting national development, but ignoring community rights to land. (2) Job creation is the state's effort to realize the welfare of the Indonesian people, but adjustments to various aspects of land parcel arrangements in enhancing the investment ecosystem and demands for economic globalization are a form of reviving the principle domein verklaring through strengthening aspects of the state's right to control.

Keywords: Create Jobs, Domein Verklaring, The Right to Rule the Country

INTRODUCTION

Achieving Indonesia's vision in 2045 to become the top 5 (five) world economic powers and have high incomes in 2040, encourages the government to accelerate the transformation and growth of the national economy through various strategies, one of which is facility investing with the support of legal certainty guarantees including legal protection (Tenrisau, Andi. 2020). This is done considering investment increase have that position very strategic inside increasing productivity, increasing people's income, reducing unemployment and reducing poverty, and encourage

development the economy of a country so that it has great benefits for increasing welfare the people, and the Indonesian government through various laws and regulations has seriousness in opening wide access in improvement invest (Rahmawati and Kharisma, Bayu. 2019).

According to a US News & World Report survey which conducted interviews with 21,000 respondents in various countries and selected 6,000 decision-making executive respondents, Indonesia is ranked as the second most attractive country in the world for investment. Indonesia's ease of investment rating in the country in 2017-2018 is still in 72nd place, so it needs to be increased to be below 50th position (DPM, 2023).

Additionally, based on Report *EoDB* (2020) and Report IMD World Competitiveness Center (2019), The level of business facilities in Indonesia has improved, but is still far behind compared to Malaysia and Thailand. Based on facility level attempt (*EoDB*) in 2020, Indonesia is ranked 73rd, far below Malaysia which is ranked 12th and Thailand is ranked 21st. In terms of competitiveness based Global Competitiveness Index (GCI) in 2019, Indonesia is ranked 50 (fifty) while Malaysia is ranked 27th and Thailand is ranked 40th, which can be seen from the graph and table below:



Source :
EoDB Report (2020) and IMD World Competitiveness Center Report (2019)

Table 1
EoDB Rankings 2019/2020

Indikator EoDB	DB 2020 Rank	DB 2019 Rank	Change	DB 2020 Score	DB 2019 Score	Change
Starting a Business	140	134	-6	81,2	79,4	+1,8
Dealing with Construction Permits	110	112	+2	66,8	65,9	+0,9
Getting Electricity	33	33	0	87,3	86,4	+0,9
Registering Property	106	100	-6	60	60,1	-0,1
Getting Credit	48	44	-4	70	70	0
Protecting Minority Investors	37	51	+14	70	70	0
Paying Taxes	81	112	+31	75,8	68,4	+7,4
Trading across Borders	116	116	0	67,5	66,5	+1,0
Enforcing Contracts	139	146	+7	49,1	47,2	+1,9
Resolving Insolvency	38	36	-2	68,1	67,9	+0,2
TOTAL	73	73	0	69,6	67,96	+1,64

Source : *EoDB*, 2020

The problem with the low ease of doing business rating is caused by several indicators,

including the complexity of licensing in starting a business, as well as the existence of rigid land acquisition constraints, so that serious efforts need to be made to improve the investment climate.

Seeing the important role of investment in enhancing national development, encourage the government to issue a number of policies, one of which is through ratification Job Creation Law No. 11 of 2020 which regulates land issues which had previously been regulated in Law no. 5 of 1960 About the Basic Rules of Agrarian Trees. The enactment of Law Number 11 of 2020 concerning Job Creation has caused the legal policy of land rights to change drastically, causing legal conflicts of agricultural conflict law (Kamil, Irfan. 2022). According to the UUPA HGB is a type of land right that gives the right to construct and own buildings on the surface of the earth, but by All Legislation HGB has been changed in concept to be given to the above ground space (RAT) and basement space (RBT). Then, the HGB period that was originally granted was a maximum of 30 years later by all legislation can be given for 50 years if on state land, while for HGB on HPL land for flats can be given 80 years. Likewise according to Article 127 paragraph (3) management rights granted for 90 years. This management right can be given a usufructuary right (HGU), a building use right (HGB) and usufructuary rights (HP) (Kamil, Irfan. 2022).

This arrangement is considered a form of deviation from the State's Controlling Rights (HMN) as well as reviving the application of principles *domein verklaring* which is Dutch agrarian law politics as stipulated in Article 1 Agricultural Decree, which tends to open monopoly practices of agrarian resources to investors as a body private law, concentration of economic power by one or more business actors (holding company) resulting in the control of the production and/or marketing of certain goods and/or services inherent including agrarian resources to the detriment of community rights to land (Sumarab, Mariani 2021).

Against this background, it is interesting to conduct a study in the form of research that is focused on the following issues: (1) Policy on the ratification of Law No. 11 of 2020 concerning Job Creation in the land sector as a form of degradation of the State's Control over Land; and (2) Pros and cons of applying the concept of State Control Rights (HMN) in Law no. 11 of 2020 as a reflection of reviving the principle *domein verklaring*.

METHOD

This study uses a normative juridical approach, namely research on legal principles, especially provisions that are related to the problems studied. The statutory approach (the statute approach), conceptual approach (conceptual approach) is done by utilizing the views and thoughts of experts concerned with the concept of the rule of law and the historical approach (historical approach). The specifications of the research are analytical descriptive in nature, namely providing a general and comprehensive picture of the issues discussed, especially related to the ratification of the Job Creation Law in the land sector as a form of degradation of the state's right to control through efforts to revive the application of the principle *domein verklaring*. The collection technique is sourced from secondary data, especially from primary legal materials, in the form of laws and regulations that are related to the research object (Hartono, C. F. G. 1994). Then, it is supported by secondary legal materials obtained through research results, study results, scientific books and journals related to the issues studied, as well as tertiary legal materials. Data analysis was carried out qualitatively, where the written legal materials that had been collected were classified according to the problems that had been identified, then carried out content analysis systematically against legal material documents and compared with the existence so that they can answer the problems

raised.

RESULTS

Indonesian national legal politics as regulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a legal state (Ashwandi, Bobi. and Roisah, Kholis. 2019), and the concept of rule of law that is adhered to is an active and dynamic rule of law state, in which the state is not only tasked with maintaining public order and security, but bears the primary responsibility for realizing social justice, general welfare, and the greatest possible prosperity of the people (Elviandri, Dimyati, Khudzaifah. and Absori. 2019), known as the term welfare state, and one of its manifestations is carried out through national development (Ridwan, Z. 2012).

National development is a series of sustainable development efforts that cover the entire life of the community, nation and state to carry out the task of realizing the national goals set out in the Preamble to the 1945 Constitution, namely protecting the entire nation and all of Indonesia's bloodshed, promoting general welfare, educating life. nation, and participate in carrying out world order based on freedom, eternal peace, and social justice. Indonesia, which is building a national economic system, faces the challenges of global competition. It is in this situation that it is necessary to create a climate of ease of investing/doing business (ease of doing business/(EODB).

Investment is a form of investing company or individual assets or funds for a certain amount of time to achieve a higher return in the future, that is needed to support one of them with the availability of land (Everything, the House. 2010). Therefore, Article 33 of the 1945 Constitution was drafted as the main cornerstone of the republic's economic policy in Indonesia, where paragraph (3) reads as follows: "...Earth and water and wealth The nature contained in it is controlled by the state and used for as much as the prosperity of the people..."(Proposal, Nelly. 2015). Then based on Article 33 paragraph (3) of the 1945 Constitution, on September 24, 1960, the Government confirmed Law No. 5 of 1960 on the Policy Regulation of Agrarian Trees.

Agrarian comes from the Latin word "ager" which can be interpreted as land or a piece of land, whereas according to the Big Indonesian Dictionary, agrarian is a matter of agriculture or agricultural land, as well as a matter of land ownership. Even designations agrarian laws in (Black's Law Dictionary) often used to refer to a set of legal regulations aimed at dividing land broad in order to more even out mastery and ownership (Santoso, Urip. 2012).

Law No. 5 of 1960 concerning the Basic Regulations on Agrarian Principles, commonly called the BAL, does not provide a direct explanation of agrarian matters. However, it can be seen in Article 1 paragraph (2) of the UUPA that the scope of agrarian affairs is earth, water, space, and the natural resources contained therein. Based on these provisions, agrarian policy in Indonesia cannot be separated from the history of the Indonesian nation, starting from the colonial period Dutch in Indonesia, the UUPA era, even the period after the UUPA.

During the Dutch colonial period the regulations related to the land sector were "Agricultural Law" (Staatsblad 1870 No. 55), in particular Article 51 "Dutch State Organization Act In the" (Official Gazette 1925 No. 447) and provisions in other verses of that article namely "Domein verklaring" in Article 1 "Agricultural Decree" (Official Gazette 1870 No. 118) (Zainuddin and Ulya, Zaki. 2018), which was later repealed by the UUPA, due to the principle Domein Verklaring contrary to the legal awareness of the Indonesian people and the principle of an independent and modern state, especially in the 1945 constitution which regulates state control over all agrarian resources which are essentially intended for the greatest prosperity of the people

(Article 33 paragraph (3)) (Article 33 paragraph (3)) (Sari, Ni Luh Ariningsih. 2021).

Based on the right to dominate the country, November 2, 2020 President Joko Widodo confirm Law No. 11 of 2020 about Job Creation, where one of the scope relates to land aimed at facilitating the entry of investment into Indonesia, which is considered to have the potential to revive the incident domein verklaring which once took place during the Dutch colonial era (Prabowo, Daniel. 2023).

DISCUSSION.

Policy on Ratification of Law No. 11 of 2020 in the Land Sector as a Form of Degradation of State Control over Land.

In various foreign terminology, land is called land (English) is one asset: The very basic Indonesian state, which philosophically has a multidimensional meaning, namely: (1) From an economic standpoint, land is a means of production that can bring prosperity. (2) Politically land can determine a person's position in community decision-making. (3) As a culture that can determine the level of the owner's social status, and (4) Land has a sacred meaning because it deals with inheritance and other problems transcendental (Nugroho, Heru. 2002)(Trick, Bernhard. 2014).

From a legal point of view, land rights can be viewed from various perspectives, namely aspects of administrative law, aspects of private law, and aspects of agrarian law. As for the legal perspective of the administration of land rights, it is a government stipulation that regulates the legal relationship between the state and land, the legal relationship between people and land, and regulates legal actions between people and people over land, including the provision of legal certainty, legal guarantees, legal protection by regulation of rights, obligations and restrictions on land rights holders. In this perspective, the state not only regulates people's rights to land but also regulates state rights to land. Land rights in the perspective of civil law, are the legal relationship between the ownership of people and land or the civil law relationship between people and land, both for land that has been registered (certified) and land that has not been registered (not certified), including rights that are born out of agreements or because of law including aspects of proving legal relations and people's ownership of land. Land rights in this perspective, provide civil rights for their owners such as selling, renting, inheriting, granting, donating, releasing, using, utilizing, guaranteeing, combining-separating land, reaping the results and other civil rights that are similar to that's what in textbooks is called bundle of rights.

In the concept of Dutch colonial agrarian law, land rights in the perspective of administrative (public) law are regulated in "Agricultural Law" (Official Gazette 1870 No. 55), with one of its principles known as the principle Domein verklaring"as regulated in Article 1 "Agricultural Decree" (Official Gazette 1870 No. 118), where as in the concept of private law land rights are regulated separately in Book II of the Indonesian Civil Code concerning Objects (Of Business) Article 499-1232 (Zainuddin and Ulya, Zaki. 2018).

Domein verklaring (statement of ownership), is a principle whereby all land that other parties cannot prove as rights property is domain (belong to) the state. Domein verklaring Was born as a result of pressure from plantation entrepreneurs in the Dutch East Indies to meet the political aspirations of the liberals in the Dutch parliament who wanted participate in working on land rights, through the granting of rights ground lease with a period of 75 years, thus changing the orientation of conservative colonial political economy policies in the monarchy towards liberalism (Caldwell, M., then Utrecht. E. 2011).

Bearing in mind that colonial agrarian law was partly composed based on the goals and principles of the Dutch colonial government and was not an important tool for the realization of the prosperity of the Indonesian people, therefore it is based on the Indonesian state as a rule of law as stipulated in Article 1 paragraph (3) of the 1945 Constitution, as well as the country that based on on well-being (welfare state) as mandated in the Preamble to the 4th paragraph of the 1945 Constitution, the Indonesian national constitution through Article 33 paragraph (3) of the 1945 Constitution stipulates that: "Earth and water and natural wealth contained in it is controlled by the state and used for the greatest prosperity people (Sari, Ni Luh Ariningsih. 2021).

As a follow-up, on September 24, 1960 the Government passed Law No. 5 of 1960 concerning the Basic Agrarian Regulations, where according to Article 2 paragraph (1) it stipulates that "the word controlled" has a different meaning from the word "owned" as the concept "domein verklaring", which means giving authority to the state as an organization of power for all the people to: (a) regulate and administer the allotment, use, supply and maintenance of the earth, water and space; (b) determine and regulate the legal relations between people and the earth, water and space, (c) determine and regulate the relationship legal relations between people and legal actions concerning earth, water and space, with the aim of achieving the greatest possible prosperity for the people, in the sense of happiness, prosperity and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous (Rahangiar, 2022).

The Big Indonesian Dictionary formulates the word "master" to mean a position of power over something or holding power over something. Thus the right to control the state if it is interpreted according to the definition of the dictionary is the power of the state over Indonesia's natural resources, so that when connected with the elucidation of Article 2 paragraph (1) of the UUPA which specifically gives the meaning of the right to control over land it is stated: in accordance with the basis of the establishment mentioned above However, the word "controlled", in this article is the meaning, which gives authority to the state as the power organization of the Indonesian nation.

The right to control the state is a formal authority or authority that exists in the state and gives the right to the state to act both actively and passively in addition to administering the field of state government, also includes all powers in the framework of carrying out their duties as stipulated in the constitution or the Constitution.

The authority which originates from the right to control from this State, is definitively limited by ethical obligations, namely to be used to achieve the greatest possible prosperity for the people, in the sense of nationality, prosperity and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous (Art. 2 paragraph (3) UUPA). Therefore, control by the State is accompanied by certain requirements, so that it cannot be used arbitrarily which can result in violations of the law against the community.

Basically the granting of power can be divided into two kinds, namely:

- a. The granting of power that is "attributive" in nature, namely the authority obtained by attribution is original (original/original) originates from statutory regulations. In terms of attribution, the recipient of authority can create new authority or expand existing authority.
- b. The granting of powers that are "derivative" in nature, where the granting of powers is also referred to as "delegation of powers", because existing powers are transferred to other public legal entities. Therefore it is derivative in nature (distracted) (Sari, Ni Luh Ariningsih 2021).

On the basis of the state's right to control, according to Article 16 of the BAL, various types of land rights are regulated, one of which is the Cultivation Right. According to Article 28, the usufructuary right is the right to cultivate land that is directly controlled by the state, for a maximum period of 25 years, and for companies that require a longer period of time, a usufructuary right can be granted for a maximum period of 35 years, and can be extended for a maximum period of 25 years.

In an effort to attract investors to support Indonesia's national development, realizing Indonesia's vision in 2045 to become the top 5 (five) world economic powers, through the method All LaworTo all Bill, government confirms Law Number 11 of 2020 concerning Job Creation where one of the scopes regulates land sector (agrarian). Omnibus word comes from the Latin meaning everything or everything (for everything), which is the formation of a legal product that works for consolidate various themes, materials, subjects, and laws and regulations in each different sector to become a large and holistic legal product, by collaborating on methods of forming model law common law on method civil law or include legal concepts common law on legal concepts civil law (Mayasari, Ima. 2020). (Anggoro, Syahrizal khoir. 2021).

In the field of land Law Number 11 of 2020 concerning Job Creation, carry out extension of the term of land rights, For example, during the HGB period, which was originally granted no later than 30 years later by all legislation can be given for 50 years if on state land, while for HGB on HPL land for flats can be given 80 years. This is the case with HP's arrangement, which originally had a maximum term of 25 years but all legislation can be given for 50 years. It is the same with the HGU which was originally granted for a maximum period of 35 years by all legislation but can be granted for a maximum of 60 years.

There are two arrangements of land rights previously regulated in Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA), then conceptually amended by the Job Creation Law which regulates the same issue, giving birth to legal conflicts of agricultural conflict law. The Job Creation Law seems to have become a legal umbrella for legitimating the investment aggression of capital owners by degrading Article 33 of the 1945 Constitution concerning State Control Rights and TAP MPR RI Number IX of 2001 concerning Agrarian Reform and Natural Resource Management (SDA)(Sari, Ria Maya. 2020).

The regulation of land rights in the Job Creation Law, specifically related to the extension of HGU to 90 years, is considered an attempt to revive the application of State Controlling Rights through the principle domein verklaring the politics of agrarian law during the colonial era which was exploitative and detrimental to the land rights of the Indonesian people (Sari, Ria Maya. 2020). In addition, it shows the degradation of the State Controlling Rights (HMN) which shows the configuration of political economy interests which give different meanings regarding the State Controlling Rights as seen in the provisions of Article 33 of the 1945 Constitution, Provisions of Law No. 5 of 1960 concerning Basic Agrarian Regulations, as well as the meaning of HMN in Law no. 11 The year 2020 is about Job Creation.

Pros and Cons of Application of the Concept of State Control Rights (HMN) in Law no. 11 of 2020 as a Reflection of Reviving Principles Domein Verklaring.

The ratification of Law no. 11 of 2020 concerning Job Creation raises pros and cons from various parties. The Job Creation Law has enormous benefits in driving national economic recovery,

bringing Indonesia into a new era of the global economy. Therefore, the government made adjustments to various regulatory aspects related to increasing investment, one of the scopes of which relates to land issues.

However, in his journey, sometimes it seems that he is not in favor of the people and far away from them principle-basic principles management SDA is based on the UUPA that has been stipulated, by making conflicting regulations in order to realize the acceleration of economic development in the agrarian sources sector by presenting foreign investors as partners in carrying out development in Indonesia. There is nothing wrong with the presence of both foreign and domestic investment to help accelerate the development of a country, but the policy of managing control and ownership of existing land rights should not be neglected.

Because Meanwhile, on the other hand there is criticism of the passage of the Job Creation Law as a reflection of reviving the principle Domein verklaring In state control over land. Application of principles Domein verklaring Cannot be separated from a situation where the Dutch Government (the kingdom of the Netherlands) faced financial limitations due to a dispute with Belgium, which was still under Dutch royal rule, as well as the post-bankruptcy debt burden of the VOC to the Government which reached 170 million guilders in 1800. These conditions prompted the colonial government to enact cultuurstelsel the forced cultivation system which required Javanese farmers to give at least 1/5 or 20% of their land space for export commodities such as coffee, sugar cane and indigo and the yields were handed over to the colonial government (Rahangiar, Moh. Ali.2022).

At the insistence of private plantation companies who are dissatisfied with the limited area of land control and a maximum period of only 20 years, they are pushing government enforce Agricultural Law 1870 (Official Gazette 1870 No. 55) with guarantee law to private entrepreneurs to acquire land with shop leasehold which the time period can reach 75 years, The following is the derivative rule Agricultural Decision 1870. Article 1 Agricultural Decision Governs a declarative provision which came to be known as domein verklaring which is also known as the "state domain" which states: "Without prejudice to the provisions in Article 2 and Article 3 Agricultural Law, still maintained the principle that all land that other parties can not prove a property, is the property of (domain) country" (Soewargono, 2013).

The Indonesian national constitution through Article 33 paragraph (3) of the 1945 Constitution which is further elaborated by the passing of Law no. 5 of 1960 concerning the Basic Agrarian Regulations, repealed the colonial agrarian politics which exploitative and contrary to the legal awareness of the Indonesian people and the principles of an independent and modern state. The concept of the right to control the state is not the same as the concept domein verklaring.

According to legal theory, "mastery" and "mastery" in the legal literature have equivalent meanings and can be used interchangeably with reference to two things at once: physical control and juridical control; and has civil aspects as well as public (legal) aspects). Even so, the notion of 'control' in the concept of 'right to control the state' as stated in Article 2 of the BAL only has a public aspect. So legally, or at least conceptually, HMN does not give any authority to the state to control land and natural resources directly and treat them with a number of actions as attached to civil rights owned by individuals or civil legal entities. That is, such mastery only legitimates the state in the utilization of land and natural resources in so far as it is intended to achieve general welfare or in the constitution and UUPA it is called 'for the greatest prosperity of the people'. Therefore, all acts of state control that appear to be direct are like legal subjects or civil legal

entities as well as utilization outside of this orientation is by itself illegitimate so that it must be seen as contrary to the concept of the state's right to control.

Presence of Omnibus Law No.11 of 2020 about Job Creation One of them relates to land rights in supporting economic development Indonesia to provide broad access to investors or financiers recalls the application of the principle *domain verklaring* Dutch colonial government in facilitating importance owners of capital (investors) in Dutch economic activity which has an impact on: First, uncertainty in mastery and ownership Resource Agrarian; Second, inequality in mastery and ownership Resource Agrarian; Third, injustice in the relations of production and distribution of agrarian resources; and Fourth, uncertainty, inequality and discrepancy in the allocation of space and utilization of Agrarian Resources. Management of Agrarian Resources by the State which is carried out by means of confiscation, annexation, eviction which often occurs in the implementation of the concept of State Controlling Rights, has the impact of causing conflicts to fight over Agrarian Resources from legal subjects (People, Indigenous Peoples, State, Religious Institutions, Capital Owners, Corporations and Political Parties). Therefore, Law no.11 of 2020 about creating necessary jobs correctly interprets the concept of the State's Right to Control and implements it perfectly as mandated in Article 33 of the 1945 Constitution and Law no. 5 of 1960 to realize and achieve an Indonesian society that is just in prosperity and prosperous in justice.

CONCLUSION

Arrangement of land rights in Law No.11 of 2020 about Job Creation previously regulated in Law no. 5 of 1960 concerning Basic Agrarian Regulations gave rise to legal conflicts of agricultural conflict law, and degrading Article 33 of the 1945 Constitution concerning the Right to Control the State because the Job Creation Law seems to work out to become a legal umbrella for the legitimacy of investment aggression by capital owners. Presence To all Law No.11 of 2020 about Creating Jobs in provide broad access to investors or financiers to recall the application the Dutch colonial government's *domain verklaring* principle in facilitating importance owners of capital (investors) in economic activities whose impact is miserable landowning community.

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