

Evaluation of Indonesian Transmigration Law According to Land Certification for Transmigrants

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Abstract

Implementation of transmigration in Indonesia is still done to date and refers to the normative framework of Law Number 15 Year 1997 on Transmigration. In addition to the lack of attention from the government and local governments towards transmigrants, another issue is that not all of local residents can accept transmigration presence with open hand. This paper aims to evaluate the law of transmigration of Indonesia and provide input for future improvement. Using the doctrinal approach and legal protection theory and rule of law type from Tamanaha, the following findings are found is: 1). The granting of land certification for transmigrants is not clearly defined as the specificity and process in its own section or section of Law No. 15 of 1997 on Transmigration and its amendment and does not contain preventive and repressive legal protections for both transmigrants and local communities in land certification to prevent future legal issues. 2). There are several crucial things that need to be regulated in the future of Indonesian transmigration law: Settlement of transmigration issues in the past; Criteria for transmigrant receiving areas; Timeline for accelerated land titling; Prohibitions for transmigrants related to land rights; Responsible management of land certificate; The cultural approach needs to be noticed in the Transmigration Act; Provision of land services to the local community in the vicinity of transmigrant areas or transmigration settlement units.

Keywords: Evaluation, law, transmigration, land, certification.

1. Introduction

Amartya Sen in his book *Development as Freedom* states that "development requires the removal of major sources of unfreedom: poverty as well as systematic social deprivation, neglect of public facilities as well as intolerance or overactivity of repressive states" (Amartya Sen, 2000). The argument illustrates the philosophical side of development which requires a condition that liberates for everyone, so that the sources that can block that freedom must be abolished. The State has an obligation to realize the conditions of development that can be enjoyed by every level of society.

Development seeks to place people as the center of attention, then economic development must be in line with social development so that economic growth can contribute directly to improving the quality of social welfare. This is important, because in the past the economic development has suffered a serious distortion, so that the growth is not achieved as well as improving people's welfare.

Distorted development has led to serious social problems, such as poverty, family disharmony, socioeconomic insecurity, injustice against women, and rising unemployment. These social problems can lead to dehumanization and weakening of values and relationships among human beings, thus all of these social problems become major obstacles to economic and social development. Referring to data from BPS, population development and urbanization estimated population in the year 2025 about 273.65 million people with life expectancy increased to 73.7 years from the current 69.0 years (BPS, Bappenas, and UNPF, 2015), so it takes concrete efforts of the government to parse the problem of poverty from the aspect of population and urbanization is one of them through the transmigration program whose implementation is based on the Law No. 15 of 1997 on Transmigration as amended by Law Number 29 of 2009 on Amendment to Law Number 15 Year 1997 on Transmigration and Government Regulation Number 3 Year 2014, concerning the implementation of Transmigration law.

Currently there are nearly 140 transmigration sites throughout Indonesia. However, the priority at this time is the border areas and areas close to the border. This is in line with the third *Nawa Cita*, building Indonesia from the periphery, namely, borders and villages that are expected to improve the welfare of the people. However, the sweet promise of transmigrants sometimes backfires on their own, the hopes placed too high end up inaccessible and if this happens, after aid supplies are no longer given, they will go from transmigration land, migrate to the city and there will be a population in the end gave birth to social jealousy that can be the problem lighter behind the day (Aldy M. Aripin, 2017).

The clear evidence of the government's perceived lack of attention to transmigrants from Central Java was placed in the Lampung area in 1959 (Wikipedia, 2017). The transmigrant area is located on the border of Lampung Province with South Sumatra Province, precisely in Sapto Renggo Village, Bahuga Sub-district, Way Kanan District. The Transmigrane just got proof of land ownership (certificate) in 2013, after struggling for so long. In 2009-2013, their struggle was facilitated by the Land Dispute Settlement Team of Lampung Province

(known as "TIM 13") to obtain evidence of land rights with an amendment with the Office of Manpower and Transmigration of Lampung Province and the Ministry of Transmigration. The socio-economic conditions of Sapto Renggo people were far from prosperous. They rely on rain-fed agriculture without technical irrigation, and without strong evidence of land ownership. Land reserved for agricultural land, claimed by the plantation company without being able to defend itself because the community has no evidence of land ownership. Meanwhile, their brothers who are stationed in South Sumatra (Blitang), his life is much more prosperous. Their transmigration area was built by technical irrigation, and it was supported by a land certificate shortly after occupying the transmigration area (after South Sumatra was split in 1964).

In addition to the lack of government and local government attention to transmigrants, the other problem is that not all local inhabitants can accept transmigration presence with open arms, sometimes they are forced to accept, this is because (Aldy M. Aripin, 2017):

- There is a presumption that transmigrants are treated privileged by the government with the various facilities they get. While local residents struggled with more apprehensive conditions. They as hosts in real conditions turn out to be poorer than outsiders who come and inhabit their territory.
- Traditional and cultural roots are another problem that is often a trigger, as the locals assume that the land given the heads of migrants is their land that should be maximized for the welfare of the local community. This land then becomes certified while local landowners are only aware of the recognition and mutual trust between them.
- Transmigrants almost certainly do not understand local customs and customs, these differences can then lead to antipathy because immigrants are deemed disrespectful to the local population.
- Culture Arrogance, the reality in the field can not be denied, the population from Java is very, very rarely willing to learn the local language, even if he is married to the locals his partner will be taught and "asked" using the Java language. This then ignites the sense of ego in some people, as a result immigrants are considered arrogant and do not want to merge with the local community, simple but can be catastrophic.

From the above description, it is understood that ultimately the role of government and local governments in bridging the transmigration process between transmigrants and local communities is so important that the urgency of this review will evaluate Law Number 15 Year 1997 on Transmigration as Amended -Indonesia Number 29 Year 2009 on Amendment to Law Number 15 Year 1997 regarding Transmigration and its derivative regulation relating to land certification for transmigrants.

2. Research Method

This research did with the corridor of normative legal research (*doctrinal research*) which only used secondary data. The model of it's legal research is comprehensive and analitical study towards legal primary and legal secondary materials. The approach of the issue used statute approach and conceptual approach (Peter Mahmud, 2005). Data being analysis in qualitative manner with describing the data resulted from the research into an explanation form systematically so can acquired a clear view about the issued which being researched, and the result of analysis data concluded deductively.

3. Discussion

3.1 Legal Protection Pattern in the Regulation of Transmigration in Indonesia Relevance with Land Certification

Implementation of Transmigration in Indonesia originated from the colonization era in 1905 marked with the first placement of 155 Head of Family (KK) from Kedu Central Java to Gedong Tataan Lampung Province. The term transmigration itself was first proposed by Bung Karno in 1927 in Soeloeh Indonesia, then in Economic Conference in Kaliurang Yogyakarta along with the Committee Meeting of Economic Plans on February 3, 1946 Vice President Bung Hatta mentioned the importance of transmigration to support industrialization development outside Java (Tim Penyusun, 2015).

Implementation of transmigration is still carried out to date and depends on the normative framework of the legal basis of its implementation which refers to the Law Number 15 Year 1997 on Transmigration as amended by Law Number 29 Year 2009 on Amendment to Law Number 15 Year 1997 on Transmigration . The existence of the legal basis is an orchestra that will determine what and how the transmigration system and legal protection aspects for its transmigrants.

Law Number 15 Year 1997 on Transmigration has affirmed one of the obligations for transmigrants to maintain and maintain land ownership and production assets. The regulation related to land certification as stated in Article 24 paragraph (3) is: Land intended for transmigrants is granted with the status of property rights, while Law Number 29 Year 2009 on Amendment to Law Number 15 Year 1997 on Transmigration, the same no mention of land certification.

Further regulation of land titling as stipulated in Government Regulation Number 3 of 2014 concerning

Implementation of Law Number 15 Year 1992 concerning Transmigration as amended by Act Number 29 of 2009 concerning Amendment to Law Number 15 Year 1997 concerning Transmigration, on Article 29 paragraph (8) stipulates that: The certificate of title to land as referred to in paragraph (7) shall be given no later than 5 (five) years since the placement of the SP concerned.

Article 31 Paragraph (1) regulates the period of prohibition of land alteration as follows: Land granted to Transmigrants and local residents who move to new settlements as part of SP-Pugar as referred to in Article 29 shall be non-transferable unless 15 (fifteen) years from the date of placement.

If the land certification scheme as set forth in the above provisions is analyzed using the legal protection theory of Philipus M. Hadjon, with transmigration policy as a form of "governmental action" and associated with legal protection for transmigrants, it would appear that its legal protection from the regulation.

According to Hadjon, on preventive legal protection, the people are given the opportunity to file their objections or opinions before a government decision gets a definitive form. Thus preventive legal protection aims to prevent the occurrence of disputes whereas on the contrary the repressive legal protection aims to resolve disputes (Philipus M. Hadjon, 1987).

Referring to Hadjon's theory of legal protection, the granting of land certification as stipulated in the provisions of Law Number 15 Year 1997 on Transmigration as amended by Law Number 29 Year 2009 regarding Amendment to Law Number 15 Year 1997 on Transmigration, does not contain legal protection that is preventive and repressive.

The absence of preventive legal protection in the provision of land certification can be seen from the absence of provisions of the norm of preventative legal protection in Law Number 15 Year 1997 on Transmigration as amended by Law Number 29 Year 2009 on Amendment to Law Number 15 Year 1997 on Transmigration. Ideally, there should be a formula governing the dialogical/consultative process between the government/local government, the prospective transmigrants and the local people who can substantively prevent the legal problem in the future.

As for the lack of protection of repressive law in the provision of land certification can be seen from the absence of provisions of the norms that are repressive law protection in Law Number 15 Year 1997 on Transmigration as amended by Law Number 29 Year 2009 on Amendment to Law Number 15 Year Year 1997 about transmigration. The law does not provide the most probable repressive legal protection channel on land titling. It is possible that there will be a conflict between the transmigrants and the local people in relation to the land, so special arrangements that are of the nature of the dispute are necessary.

Both preventive law protection and repressive law protection are important to be presented normatively in the future Transmigration Code changes. It is urgent to do so in order to provide legal protection for transmigrants and local communities. A good transmigration law is a transmigration law that can guarantee the needs of all stakeholders. Law in its optimal form of legislation should be able to provide protection to the public both preventively and repressively in its formulas including in the case of transmigration land.

3.2 Evaluation of Indonesian Transmigration Law Relevant to Land Certification

Tamanaha, based on the legal function of the instrument as proposed by Pound, also sees the instrumental side of the law as a tool for achieving certain goals, such as maximizing social welfare or balancing competition.

An instrumental view of law means that law – encompassing legal rules, legal institutions, and legal processes – is consciously viewed by people and groups as a tool or means with which to achieve ends. The supply of possible ends is open and limitless, ranging from personal (enrichment, harassment, or advancement), to ideological (furthering a cause), to social goals like maximizing social welfare or finding a balance of competing interests (Brian Z. Tamanaha, 2006).

Pound puts more emphasis on the law that can serve as a social engineering tool because he sees the slit that occurs in his country where conditions at that time of law science tend to deteriorate because the law is only a rule (Lawrence M. Friedman, 2013).

Pound claimed, was mired in this state: "[T]he jurisprudence of conceptions tends to decay. Conceptions are fixed. The premises are no longer to be examined. Everything is reduced to simple deduction from them.

Principles cease to have importance. The law becomes a body of rules (Brian Z. Tamanaha, 2010).

In line with Pound, Nonet and Selznick distinguish three basic modalities or "statements" concerning law and society: (1) law as servant of repressive power, (2) law as a separate institution capable of taming repression and protecting his integrity, and (3) the law as a facilitator of various responses to social needs and aspirations (Philippe Nonet dan Philip Selznick, 1978). Quoting Albert Von Dicey's opinion, Hawke & Parpworth disclose the content of the rule of law ie equality before the law, which essentially the actions of the government must be based on the law.

The Rule of Law requires the recognition of the predominance of the regular law (as opposed to arbitrary or wide discretionary powers), equality before the law and that the British constitution is the product of the ordinary law. In essence, therefore, the Rule of Law requires that there should be government according to

law and an avoidance of arbitrary action (Neil Hawke & Neil Parpworth, 1998).

Dicey's statement above, then elaborated by Tamanaha which divides the state of law revolves around three clusters of meaning: first, that the government is limited by law; second, the legal state is legally understood; third, rule-based arrangements, not people (rule of man) (Satjipto Rahardjo, 2009).

Furthermore Tamanaha divides the rule of law into "the thinnest" which is a formal version of the rule of law and "the thickest" which is a substantive version of the rule of law. Tamanaha explained that the thinnest version of the rule of law only requires that all the actions of the government should be based on the law. While the thickened version of the rule of law also includes formal legality, individual rights, democracy, and even add social welfare.

The thinnest formal version of the rule of law is the notion that law is the means by which the state conducts its affairs, "that whatever a government does, it should do through laws. The thickest substantive versions of the rule of law incorporate formal legality, individual rights, and democracy, but add a further qualitative dimension that might be roughly categorized under the label "social welfare rights (Brian Z. Tamanaha, 2004)."

In line with the Tamanaha theory, land certification arrangements, restrictions on the implementation of rights and obligations of transmigration participants are regulated in Government Regulation no. 3/2014 on the Implementation of Law no. 15/1997 on Transmigration as Has Been Amended By Law no. 29/2009 on Amendment to Law no. 15/1997 on Transmigration, namely Article 29, 30 and Article 31.

Based on the presentation of several articles in PP no. 3 of 2014 and in line with the provisions of Article 28J of the 1945 Constitution, paragraph (2), the regulation of Article 29 paragraph (3) and (4), and Article 31 is more appropriate if regulated in the transmigration law. In addition, the deadline for granting land title certificate no later than 5 (five) years since the placement in the Resettlement Unit (SP) concerned, needs to be accelerated, for example one to three years from the placement.

On the other hand, given the implementation of transmigration in the face of the application of the principle of decentralization and autonomy, so that the implementation of transmigration is not solely determined by the budget, but is determined by the commitment of officials in the region, it is also necessary to objectively regulate the criteria of transmigrants' transmigration laws. With an objective measure, there is no reason for a local government to refuse to accept and provide transmigration facilities from other regions. Nevertheless, the government and local governments must also pay attention to the local people. Including government attention related to budget availability.

From the theoretical and analytical descriptions made above, the current arrangement of transmigration can be said to be not yet progressive and still belongs to the thinnest version rule of law which tends to be formal legality, although it must be admitted that current arrangements are better than previous transmigration arrangements. Future transmigration laws are expected to lead to progressive law so that it is classified as "the thickest version of rule of law" which includes formal legality, individual rights, democracy, and even oriented to social welfare. To make transmigration law that leads to progressive law and "the thickest version rule of law" oriented social welfare, what still needs to be regulated in the Transmigration Law in the future are as follows:

- 1) Protection of preventive law and the protection of repressive law is important to be presented normatively in the amendment of the Transmigration Act;
- 2) Settlement of transmigration issues in the past (before Law No. 29/2009);
- 3) Criteria for transmigrant receiving areas;
- 4) Accelerated granting of land titles;
- 5) Prohibitions for transmigration related to land rights;
- 6) Responsible management of land certificate;
- 7) Cultural approaches need to be addressed in the Transmigration Act; and
- 8) Provision of land services to local communities around transmigrant areas or transmigration settlement units.

4. Conclusion

The evaluation of transmigration law of Indonesia is relevant to the provision of land titling for transmigrants, namely: Land titling for transmigrants is not clearly defined the specificity and process in its own section or article on Law Number 15 Year 1997 on Transmigration and its amendment, but only briefly mentioned in Article 24 paragraph (3), namely: Land intended for transmigrants is granted with the status of property rights. The lack of clarity on the specificity and process of land certification for transmigrants in Law No. 15 of 1997 on Transmigration and its amendment confirms that the regulation of transmigration does not contain preventative and repressive legal protections for both transmigrants and local communities in land titling to prevent legal issues which appear later on. There are several crucial things that need to be regulated in the future of Indonesian transmigration law, namely: Settlement of transmigration issues in the past (before Law No. 29/2009); Criteria for transmigrant receiving areas; Timeline for accelerated land titling; Prohibitions for transmigrants related to

land rights; Responsible management of land certificate; The cultural approach needs to be noticed in the Transmigration Act; Provision of land services to the local community in the vicinity of transmigrant areas or transmigration settlement units.

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