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THE RIGHT TO CONTROL THE STATE IN THE POLITICAL CONFIGURATION OF AGRARIAN LAW IN INDONESIA

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Abstract

This study analyzes the differences between the concept of social justice formulated by the Indonesian Independence Preparatory Business Investigation Agency (Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia/BPUPKI) and the concept of justice adopted by adherents of liberal democracy theory. The results showed that the framers of the 1945 Constitution (UUD 1945) saw social justice as a tool to create prosperity and general welfare for all Indonesian people. However, the implementation of the concept is often hindered by the dominant political factors in national agrarian law, which distance the political objectives of agrarian law from the spirit of Article 33, paragraph (3) of the 1945 Constitution. To overcome this, it is recommended that the establishment of national economic and social welfare laws be a priority, as well as review and reconstruct the basic meaning of the right to control the state over land by referring to the decisions of the Constitutional Court. In addition, the revision of Law Number 24 of 2003 concerning the Constitutional Court also needs to be carried out so that the Constitutional Court can strengthen judicial law politics in forming national law.

Keywords: Social Justice, Implementation of Agrarian Law, Constitutional Court.

INTRODUCTION

For fifteen years after the proclamation of Indonesian independence and the ratification of the 1945 Constitution as the first constitution of the Republic of Indonesia, precisely on September 12, 1960, the Government of Indonesia through Sadjarwo as Minister of Agrarian Affairs at that time, was finally able to complete the National Agrarian Law Bill which was very crucial and fundamental for the Indonesian people. The draft law was then submitted in the DPR-Gotong Royong (DPR-GR) session to be discussed and ratified by political party factions resulting from the 1955 election. It is said to be fundamental and crucial, because for three and a half centuries policies and arrangements regarding agrarian in Indonesia (Dutch East Indies) used Dutch colonial agrarian law. Therefore, twelve days after the submission of the National Agrarian Law Bill, the Government together with the DPR-GR on September 24 passed Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles contained in the State Sheet of the Republic of Indonesia number 104 of 1960 and Supplement to the State Sheet number 2043, hereinafter in writing this dissertation called UUPA 1960.

The 1960 UUPA is an umbrella law or basic regulation that is the source of the birth of other laws and regulations, which relate to the regulation of earth, water and natural resources contained therein, or also called agrarian (Wiradi, *Agrarian Reform for Beginners*, Secretariat of Village Development, Jakarta, 2005, p.11). The interpretation as a basic agrarian regulation is intended to reform and reform national agrarian law as a substitute for Dutch colonial

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agrarian law, thus the principles and norms of the new national agrarian law must refer to the 1960 Law, because the 1960 Law is the basis of the ideals of the basic law of the Republic of Indonesia, namely the 1945 Constitution. The common thread between the 1960 UUPA and the basis of state philosophy (*philosophische grondslag*) can be seen in the fourth paragraph of the Preamble to the 1945 Constitution, namely the establishment of the Indonesian state aimed at promoting general welfare and realizing social justice for all Indonesian people.

The relationship between the 1960 Law and Article 33 paragraph (3) of the 1945 Constitution is also mentioned in Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In the "opinion" section. Which is the rationale for the establishment of the 1960 UUPA explained that, national agrarian law is the implementation of Article 33 paragraph (3) of the 1945 Constitution. In addition, the Political Manifesto of the Republic of Indonesia delivered in President Soekarno's Speech on August 17, 1960 stated that the state has the obligation to regulate land ownership and lead its use, until all land in all sovereign territories of the nation and the Republic of Indonesia is used for the greatest prosperity of the people, both individually and in mutual cooperation (Boedi Harsono, 1991).

However, more than five decades since the issuance of the 1960 Law, inequality in agrarian control and natural resources still exists. Due to this inequality, agrarian conflict has always been a dominant issue, both at the local and national levels. The Agrarian Reform Consortium (KPA), recorded that throughout 2020 there were 241 conflicts affecting 135,332 farming households and covering 624,273 hectares. When viewed from the sector, the highest conflict with 122 cases was in the plantation sector, followed by the forestry sector with 41 cases, infrastructure with 30 cases, property with 20 cases, and mining with 12 cases. These conflicts are more vertical conflicts than horizontal conflicts between one community group and another community group. Vertical conflicts occur between the plantation, forestry and mining sectors vis-à-vis farmers or rural people. The source of conflict is mostly caused by land allocation policies by the state which have so far been considered by the community to be unfair, even though the land and natural resources are fully under state control (Agrarian Reform Consortium, 2021).

Departing from the agrarian conflict problem above, the state actually has an important role in reducing agrarian inequality and creating social justice. In realizing social justice and general welfare, the state is granted by the constitution the "Right of Control" to regulate the allocation and allocation of land and natural resources in the interest of the national economy. The provision is contained in Article 33 paragraph (3) of the 1945 Constitution, namely "*the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people*". The concept of granting tenure rights to the state is hereinafter known as the Right to Control the State. In a juridical legal perspective, the right to control the state is the main source of norms for the formation of the 1960 UUPA and other laws and regulations in the land and natural resources sectors, such as in the plantation, forestry and mining sectors.

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The meaning of the right to control the state according to Article 33 paragraph (3) of the 1945 Constitution is that the state as the highest power organization has the authority to act in its position as a recipient of the mandate of the Indonesian people to regulate the allocation and utilization of earth, water and natural resources in the territory of the Unitary State of the Republic of Indonesia (NKRI). The article makes it clear that the state has a very large role and power in the control and management of agrarian land. The birth of the concept of the right to control the state can be traced back, especially related to the choice of philosophy, form and system of the Indonesian economy which is considered in accordance with the reality of Indonesian society and Pancasila, as the basis and value system in the life of society, nation and state. The discussion of social justice and the prosperity of the people became an important part of the debate of the founding *fathers* during the trial at the Investigating Board for Preparatory Efforts for Independence (BPUPK), from April 29 to August 7, 1945. The results of the thought of the Indonesian economic concept compiled by BPUPK were then formulated in Article 33 paragraph (3) of the 1945 Constitution, and based on this article the basis of state control rights over the earth, water and natural resources contained therein, was constitutionally determined.

In the political history of agrarian law in Indonesia, the concept of the right to control the state was not something new when the 1945 Constitution was formulated. The concept of the right to control the state has existed since the Dutch colonial era, although the philosophy and principles are different from Article 33 paragraph (3) of the 1945 Constitution. The concept of the right to control the state in the Dutch colonial period was known as the *Domein* principle, and was formulated into land legislation in 1870, called *Domein Verklaring*. The principle of *domein verklaring* is listed *Agrarische Wet* in 1870, where the provisions for the implementation of *Agrarische Wet* promulgated with *Staatsblad* 1870 number 55 (*Agrarische Wet* S.1870-55) are regulated in various regulations and decrees, one of which is *Koninklijk Besluit* known as *Agrarisch Besluit* (AB) promulgated in S.1870-118. Article 1 of the *Agrarisch Besluit* contains a statement of principles that are very important for the development and implementation of the administrative land law of the Dutch East Indies known as the principle of *domein verklaring*. The principle states that lands in the administrative territory of the Dutch East Indies that cannot be proven ownership belong to the state (Boedi Harsono, 2003). The statement confirmed the relationship of complete control of the state over land (*staat ter bechikking van de landsoverheid*). Such a meaning of domein refers to the *eigendom* of the state or state as the owner (*eigenaar*) of a *privaattrechtelijk* (Mukmin Zakie, 2005). *This domein verklaring* contains the definition as absolute property rights of the state (Dutch colonial), thus the state has the authority to grant or allocate lands to legal subjects recognized by the state, especially Dutch and European plantation companies. *Agrarische Wet* S.1870-55 was born due to the failure of the Dutch East Indies colonial government in implementing the policy of the forced cultivation system (*cultuur stelsel*) in 1830. Because of this failure, businessmen through Dutch and European plantation companies urged the Dutch parliament to approve *Agrarische Wet* S.1870-55 as the entrance to liberalization of the land sector in the Dutch East Indies.

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Although the principle of *domein verklaring* has been abolished with the birth of Article 33 paragraph (3) of the 1945 Constitution (the first 1945 Constitution), there is no provision for its application in constitutional practice and agrarian law politics after the establishment of the government of the Republic of Indonesia.

A complete overhaul of the legacy of colonial agrarian law took a long time, while many land problems faced by the government had to be resolved until the establishment of a new national agrarian law. As an effort by the government to break the basic chain of *domein verklaring*, it was done by removing particle lands in 1945, removing the status of fief villages in 1946 and abolishing conversion rights in 1948 (Boedi Harsono, 2005).

The birth of the 1960 Law reaffirmed the relationship between the state and the people in the context of agrarian control and utilization. The philosophical basis of the 1960 UUPA is to put the concept of the right to control the state in the framework of achieving the original goal of the establishment of the Republic of Indonesia which was formulated in Pancasila and the 1945 Constitution. The 1960 UUPA became the legal basis for the overhaul and rearrangement of the agrarian tenure structure in post-colonial Indonesia.

There are four views underlying the formation of the 1960 UUPA: *First*, the economic pattern of Indonesian society is still agrarian, so that the regulation of the control and use of land and natural resources has an important role in building a just and prosperous society. *Second*, the agrarian law that prevailed before and after independence was still loaded and influenced by Dutch colonial legal norms, including the principle of *domein verklaring*. *Third*, the agrarian law inherited by the Dutch colonial government is still dualism, namely the enactment of western law, in addition to the recognition of customary law (customary rights). *Fourth*, Dutch colonial agrarian law did not guarantee legal certainty for the Indonesian people, especially after the establishment of the Republic of Indonesia, thus requiring the establishment of a new national agrarian law.

The concept of control by the state according to the 1960 Law is not in the sense that the state has absolute power over the earth, water and natural resources contained therein. The construction of the legal norm of the right to control the state according to Article 2 of the 1960 Law is that the people authorize the state as an organization of power of the whole people to: "*regulate and administer the allocation, use, supply, maintenance of the earth, water and the wealth contained therein,... aimed at the prosperity of the people*". Here it is very clear that the parameters and the ultimate goal is the prosperity of the people, not a handful of people, community groups or corporations. The authority of the state is to regulate the allocation of agrarian and natural resources so that they can be used as much as possible to achieve social justice and general welfare as stated in the Preamble to the 1945 Constitution.

However, due to the vacuum of interpretation or meaning of the right to control the state for fifteen years, so that the practice of state control over the earth, water and natural resources contained therein, always changes from one period of power to another, thus causing legal uncertainty and increasingly deviating from the original meaning of Article 33 paragraph (3) of the 1945 Constitution. During the Old Order era, Sukarno attempted to translate Article 33

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paragraph (3) through the 1960 UUPA by implementing a *land reform* program, which is now better known as *Agrarian Reform*. But unfortunately, this program failed halfway through due to turmoil and political dynamics that led to the change of power to the New Order government under President Suharto.

Under the New Order, the right to control the state was interpreted and practiced differently from previous governments. The 1960 Constitution is no longer used as the main source of interpretation regarding the right to control the state as a whole in accordance with the aims and objectives of Article 33 paragraph (3) of the 1945 Constitution.

There is one article, namely Article 6 of the 1960 Law which is always used as a reference for the New Order government, namely "*all land rights have a social function*". The article became the political legitimacy of the New Order law in land acquisition for development and investment purposes.

Unlike the previous government, the Suharto government was oriented towards accelerating economic development without going through land acquisition and redistribution programs for agricultural workers and smallholders. Suharto did not want radical structural changes to land ownership and tenure in Indonesia and rejected *land reform* or *agrarian reform* programs. Conversely, in that period the government invited foreign investment into the agriculture, plantation, forestry and mining sectors by issuing Law Number 1 of 1967 concerning Foreign Investment known later as *friently foreign investment policy*.

METHODS

This research will use a type of normative (doctrinal) legal research that focuses on the analysis of primary and secondary legal materials by collecting data through literature materials. Doctrinal research aims to provide a systematic exposition of the rule of law, analyze the relationship between legal rules, explain the elusive parts of a rule of law, and even predict the development of the rule of law in the future.

With this method, research focused on legal methods or norms related to the right to control the state, including the principle of domein and domein verklaring in Dutch colonial agrarian law. Data collection is carried out through library materials from various sources such as the National Library in Jakarta and the National Archives, by examining primary legal materials such as laws and decisions of the Constitutional Court, as well as secondary legal materials such as legal textbooks.

Data analysis in this study uses a statutory approach to produce new arguments or theories in accordance with the basic laws of the constitution, a historical approach to understand the context of the birth of Article 33 paragraph (3) of the 1945 Constitution, and a case approach to analyze Constitutional Court decisions related to the right to control the state. Thus, this study aims to provide a deeper understanding of the meaning of the right to control the state in various political and legal contexts in Indonesia.

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RESULTS

Political Development of the Law of the Right to Control the State over the Earth, Water and Natural Resources Contained Therein in Indonesia (Article 33 Paragraph 3 of the 1945 Constitution)

A. Legal Ideals (*Rechtsidee*) in the Formation of National Legal Politics

The legal system and order that develops in one country is basically a reflection of the legal ideal (*rechtsidee*) of society formulated in the constitution as basic legal norms used for the formation of national law. The mind of law means that in essence the law as a rule of behavior of society is rooted in the ideas, feelings, charities, and thoughts of the community itself. The ideal of law is directly related to the basic idea of state formation (*staatsidee*), namely the Republic of Indonesia[1].

The staatsidee which was later embodied with *rechtsidee* in the Indonesian context can be seen in the fourth paragraph of the Preamble to the 1945 Constitution, which states: "... establish an Indonesian State Government that protects the entire Indonesian nation and all Indonesian bloodshed and promotes general welfare, educates the life of the nation, and participates in implementing world order based on independence, lasting peace and social justice". The basic norms contained in the above sentence are as sources of national law. Therefore, this chapter discusses how the formation of national law, including national agrarian law, has reflected the legal ideals formulated in the 1945 Constitution.

B. The Historical Process of the Political Formation of Indonesian Agrarian Law

B.1. Political Objectives of Indonesian Agrarian Law in Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles

In this study, the author does not distinguish between the politics of agrarian law and the politics of land law, although the definition of agrarian law politics is broader in scope. The notion of agrarian comes from Latin, referring to land or a piece of land. In KBBI, agrarian is defined as agricultural affairs or agricultural land, including land ownership. The 1960 Law provides a broad agrarian meaning, covering earth, water, and natural resources, while land law is more specific about land rights and the relationship to land. The politics of agrarian law includes state policy in overhauling the agrarian structure towards social justice. The 1960 UUPA which is a milestone for Indonesia, covers various fields of agrarian related law. The goal is to create distributive justice and prosperity, and to update agrarian law with the principle of social justice. The fundamental reason for the regulation of land by the state is to achieve prosperity and social justice, which is reflected in the 1960 Law. Indonesia's agrarian law politics is in a system of ownership and control of a mixture of individuals and collectives, which is not extreme individualism or collectivism.

B.2. Individualism and Collectivism in Land Ownership and Tenure

The debate over individualism and collectivism in landownership has been going on since the XVIII century, which still continues today in search of a form that corresponds to the social reality in each country. Some thinkers such as J.J. Rousseau rejected individual property rights

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to land because they saw it as a source of social conflict, while other thinkers such as Henry George and Frans Oppenheimer criticized private property rights for causing inequality in society. However, thinkers such as Thomas Aquinas and Hugo Grotius reinforced the concept of private property rights as part of a natural development in society. In Indonesian customary law societies, individual property rights and communal rights are known, which during the Dutch colonial period were restricted by several regulations to prevent the sale of land to foreigners.

B.3. Land Law in the Era of Nusantara Kingdom

Agrarian development in Indonesia before the Dutch colonial era had its own uniqueness with land policy and agrarian law politics that had been known since the time of the archipelago kingdom. At that time, there was a separation between landowners (kings) and users (people), as well as the granting of land to royal officials and nobles to be managed by the people as tax tribute. However, land given to officials could not be privately owned and had to be returned to the king after his term of office ended, while for nobles, land could be inherited but with a significant decrease in degree with each generation. Although the concept of land belonging to the king prevailed in some areas, there have been no studies that confirm its universal spread. The strong influence of customary law continued in the Dutch colonial period, where Western law applied to non-indigenous populations while customary law applied to indigenous people. The concept of agrarian law politics has formed the philosophical basis for the formation of post-independence national agrarian law politics.

B.4. The Concept of State-Land Relations Before the Domeinverklaring Era in Agrarische Wet S.1870-55

The political concept of agrarian law in the past, especially in ancient Rome, provided a philosophical basis for the development of influential land tenure and tenure systems to this day. The division of land into categories such as res extra commercium, res commune, res publikcae, and res sancte formed the basis for the politics of agrarian law. After the collapse of the Roman empire, new kingdoms emerged in Europe that changed the dynamics of land ownership with the concepts of imperial rights and dominium rights. The period of feudalism also influenced the structure of land tenure, in which single and absolute power was concentrated in the king. The era of colonization brought changes in land tenure, where colonies were governed through dominium rights, even with the inclusion of the concept of res nuleius to control land that no one owned. This concept, embodied in domein verklaring, gives the state a position as a custodian or guardian of the land for the benefit of the community.

B.5. History of the Establishment of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles

The text describes the long journey of political formation of agrarian law in Indonesia from the period before independence to the formation of the Basic Agrarian Law (UUPA) in 1960. Starting from the legacy of the unjust Dutch colonial agrarian system, through the process of nationalization of Dutch companies and new agrarian conflicts, to the political dynamics in the formation of the 1960 UUPA Although marked by various challenges such as cabinet changes

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and government structure, the participation of universities and agrarian law experts, especially the UGM Agrarian Section, played a key role in drafting the draft bill that eventually became the 1960 UUPA creating an agrarian legal foundation in accordance with the spirit of agrarian independence and justice.

C. Political Policy of Agrarian Law and Interpretation of State Control Rights by Political Regimes from the Dutch Colonial Era to the Reformation Era

Agrarian law politics in Indonesia has been going on for 422 years since the presence of Dutch colonialism in the archipelago. With such a long periodization, of course, the formation of the political structure of agrarian law in Indonesia already has strong roots and at the same time has undergone fundamental changes along with political changes and changes in power. Agrarian relations with political regimes from one period to another became an attraction for the study of agrarian law politics, not only in Indonesia, but also in other countries.

In this section, we will show how for 422 years, although political regimes have changed from one period to another, the theme of agrarian affairs, especially regarding land tenure rights by the state has remained a central issue, and often even a trigger for socio-political tensions between the state and the people. The change of political regime does not necessarily dismantle and overhaul the inequality of the unjust agrarian structure, even though various laws and regulations are formed by political regimes that want a more just change in the agrarian structure. In this context, the domain of dogmatic law is incapable of answering why all that happens. From this research it will be seen how the structure of agrarian control hardly budges, despite changes in political regimes change.

D. Summary and Analysis

Interpreting the right to control the state from a normative or positive legal point of view cannot provide a complete understanding because the right is a political product of agrarian law, especially in Indonesia. Although the 1960 Law repealed the concept of state dominion over land, the term "state land" remained ambiguous in legislation, leading to a misinterpretation of land ownership. Article 33 paragraph (3) of the 1945 Constitution became the source of law, but different interpretations and conflicting legal declines often occurred. Hans Kelsen's theory of the hierarchy of legal norms complicates the understanding of law, because there is no consistency between the constitution and the legislation. Changes in legal politics and inconsistent formation of laws are caused by different interpretations of laws and changes in political orientation. Although laws are often imperfect, the politics of agrarian law have an important role to play in resolving conflicts and finding solutions to political change. The political history of agrarian law in Indonesia shows how state domination over land was influenced by dominant political-economic interests since the Dutch colonial period. In that history, the influence of the domein principle governing state rights to land has been very strong, although there have been some changes in agrarian policy. Despite efforts at agrarian reform, inequality in land tenure is still large and agrarian conflicts are increasing. Although the Joko Widodo administration showed political will for agrarian reform, its implementation was still limited, while the political orientation of agrarian law was increasingly liberal in its

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last era. Thus, politico-economics remains the main factor influencing agrarian legal politics, although the principle of positive law governing land tenure remains unchanged.

DISCUSSION

Interpreting the Right to Control the State in the Frame of Constitutional Law Perspective through the Approach of Law Testing Cases in the Constitutional Court

A. Reconstruction of the Meaning of State Control Rights through Legal Examination of the 1945 Constitution

By examining through a comparison of the interpretation or meaning of the right to control the state in the case study of the three decisions of the Constitutional Court, it can be seen how the interpretation of the right to control the state, which is reflected in the formation of legislation, is no longer dominated by the President and the DPR-RI as law-forming institutions. However, in this case with the presence of the Constitutional Court, the people and citizens have the right and space to exercise their constitutional rights in demanding justice in every formation of legislation. Thus, the use of legislation theory regarding the rights and obligations of the state in the formation of legislation becomes relevant in this study.

B. Constitutional Meaning of the Right to Control the State in Legal Examination of the 1945 Constitution in the Constitutional Court

Since the establishment of the Constitutional Court based on Article 24 C of the 1945 Constitution, requests for legal review in the Constitutional Court regarding the meaning of the right to control the state as stated in Article 33 paragraph (3) of the 1945 Constitution have continued to increase. Previously, the right to control the state was dominated by unilateral interpretation of the framers of the law. From several cases examined and decided by the Constitutional Court related to legislation containing legal principles and norms of the right to control the state, the Constitutional Court has given a permanent interpretation of the right to control the state, as in Article 33 paragraph (3) of the 1945 Constitution. The study in this chapter focuses on three decisions of the Constitutional Court that are directly related to the meaning of the right to control the state in the land, plantation, and forestry sectors, but there are still other rulings that examine the test of laws with the norms of the right to control the state. From these decisions, it can be seen how the construction of the meaning of the right to control the state by the Constitutional Court as a judicial institution authorized to check the constitutionality of laws.

C. Analysis of the Constitutional Meaning of the Right to Control the State by the Constitutional Court

C.1. Analysis of the Constitutional Court Decision Number 55/PUU-VIII/2010 concerning the Examination of Law Number 18 of 2004 concerning Plantations

Of the three Constitutional Court rulings related to examining laws governing the right to control the state, there has been a new breakthrough in interpreting this right as a positive legal norm. Previously, communities had difficulty challenging regulations that gave large states

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authority over land tenure, with norms dominated by a single interpretation of the government. The Constitutional Court provides a broader interpretation in terms of constitutionality and Indonesia's agrarian history, not just questioning criminal offenses. In Decision Number 55/PUU-VIII/2010 related to Law Number 18 of 2004 concerning Plantations, the Constitutional Court referred to Indonesia's agrarian history, criticized the use of Dutch colonial laws, and highlighted land conflicts in plantations. The Constitutional Court also highlighted the state's relationship with customary rights, considering the existence of customary law communities. Therefore, the Constitutional Court emphasized the need for legal protection for land based on customary rights, in line with Article 18 B paragraph (2) of the 1945 Constitution. This shows the importance of legal recognition and protection by the state of land rights arising from customary rights or ipso facto, as well as the need for formalization of these rights in positive law so that the rights of indigenous peoples are clearly protected.

C.2. Analysis of Constitutional Court Decision Number 35/PUU-X/212 Regarding the Examination of Law Number 41 of 1999 concerning Forestry

The document outlines the results of the examination of Law Number 41 of 1999 on Forestry before the Constitutional Court (MK), which highlights the complexity of legal relations between the state, customary law communities, and holders of land rights on which there is forest. The Constitutional Court stressed the importance of creating a balance between state rights and the traditional rights of indigenous peoples related to natural resource management, especially customary forests.

The document also highlights the need for coordination between government agencies and the establishment of new norms to create legal certainty related to indigenous peoples' rights and natural resource management. This shows that the issue of natural resource management and the rights of indigenous peoples is a complex one, requiring a careful legal approach, as well as the right balance between state rights and the traditional rights of indigenous peoples.

C.3. Analysis of the Constitutional Court Decision Number 50/PUU-X/2012 concerning the Examination of Law Number 2 of 2012 concerning Land Acquisition for Development for Public Interest

The Constitutional Court (MK) ruling on the Land Acquisition Law rejected the petitioner's application, affirming the principle of the right to control the state and the legal norms of the 1960 Law. The Constitutional Court highlighted the lack of a clear definition of "development" in the law. Issues related to the land acquisition process which is considered undemocratic are also debated. Land acquisition for development often creates conflict and socio-economic marginalization.

The change in terms from "exemption" to "procurement" raises questions regarding legal norms and procedures. An in-depth study is needed to review the institutional system of land acquisition to meet the principles of justice, participation, transparency, and accountability. Conflicts of legal norms related to consignment institutions also require attention in order to achieve justice for all parties.

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D. Summary and Analysis

The paragraph discusses the development of Indonesia's constitutional system after the reform, especially in the context of the role of the Constitutional Court. Before the Constitutional Court, the formation of laws and regulations often did not pay attention to the aspirations of the people and the basic principles of the 1945 Constitution. With the Constitutional Court, every citizen has the right to test laws that are judged to be constitutionally detrimental to them. The Constitutional Court has played an important role in reconstructing the meaning of the right to control the state, especially in the context of land, natural resources, and forestry. The Constitutional Court's ruling has created a new meaning that takes into account the individual and collective rights of the community and safeguards the principle of constitutional justice. Through its rulings, the Constitutional Court played a role in filling the void of constitutional interpretation and renewing the colonial legacy law.

CONCLUSION

The conclusion of this study shows that the concept of social justice formulated by BPUPK differs from the concept of justice adopted by adherents of liberal democratic theory, which emphasizes individualism. The framers of the 1945 Constitution viewed social justice as a means to create prosperity and general welfare for all Indonesians. However, implementing this concept is often hindered by political factors that predominantly influence national agrarian law, distancing the political objectives of agrarian law from the spirit of Article 33 paragraph (3) of the 1945 Constitution. To overcome this, it is recommended that the establishment of national economic and social welfare laws be a priority, as well as review and reconstruct the basic meaning of the right to control the state over land by referring to the decisions of the Constitutional Court. In addition, the revision of Law Number 24 of 2003 concerning the Constitutional Court also needs to be carried out so that the Constitutional Court can strengthen judicial law politics in forming national law.

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