



Progressive legal perspective on building use rights in the tanah merah community in the PT Pertamina (Persero) safety zone area

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Abstract

Indonesia is a rule-of-law country based on the 1945 Constitution. Apart from the 1945 Constitution, there is a hierarchy of regulations that serve as a guide for everyone to be able to view an incident broadly. These regulations consist of the sequence of laws and regulations of the Republic of Indonesia, namely the 1945 Constitution, MPR Assembly Decrees, Laws, Government Regulations in Lieu of Laws, Government Regulations, Presidential Decrees, and Regional Regulations. Government will see and make decisions based on the hierarchy of regulations. One of the controversial decisions is the decision of the DKI Jakarta Provincial Government in 2021 under the leadership of Mr. Anies Rasyid Baswedan, S.E., M.P.P., Ph.D. as Governor of DKI Jakarta for the 2017 – 2022 period in the form of a Building Construction Permit (IMB) for the Tanah Merah community in the Plumpang area, North Jakarta. The background to the issuance of this policy is the implementation of progressive law. The research method uses an empirical normative approach by looking at field conditions and conducting descriptive analysis. The data sources used are primary data in the form of relevant regulations, secondary data in the state of news and general information related to research. The research results show indications of misunderstanding of the policies that have been issued.

Keywords: Progressive law, tanah merah, PT Pertamina (Persero)

Introduction

Social life continues to develop following human relations within it, making it necessary for each individual to have a mutual agreement which becomes a limitation in acting. These limits are called rules. The rules are explained in detail in the regulations so that people know the limits of behavior in their social life. In wider social life or what is called the state, rules are often juxtaposed and end up becoming formal rules that apply, namely legal regulations. It is hoped that the establishment of legal regulations will be able to resolve problems in the past, resolve current problems, and act as a protective fence against future problems. The application of the law is also socialized to all individuals in the country, supervised by law enforcers. As time went by, it was discovered that not every problem in social life between individuals could be resolved with existing rules. The absence of regulations that can uphold a sense of justice for each individual creates inequality in social life.

Concrete evidence that shows that legal reform must proceed in harmony with individual movements is legal regulations that can accommodate all possibilities resulting from the increase in population in the DKI Jakarta area. Based on data from the Central Statistics Agency in 2022, DKI Jakarta occupies the first position in Indonesia with a population of 10,679,951 people in 2022 and the 29th largest in the world. This social data makes the need for clothing, food, and shelter a special concern for the government to ensure a good social life. The first need that a migrant in DKI Jakarta must have is a place to live. To support the fulfillment of these needs, habitable land must be available. Various government programs to regulate people's living patterns have been implemented, starting from providing cheap interest for Home Ownership Credit (KPR) applications, subsidizing flats, providing tax breaks,

and many more. Each of these efforts has produced results, although it is not optimal because the population continues to increase from time to time. This was seen in the 1980s, when people began to live and carry out activities in red zone PT Pertamina (Persero), especially in the Tanah Merah area which includes three subdistricts, namely Rawa Badak Selatan, Tugu Selatan in Koja District, and Kelapa Gading Barat in Kelapa Gading District due to limited land and the economic capacity of the community.

The government has made various efforts to relocate people to avoid unwanted incidents in the future. Various regulations and decisions were also taken to ensure the smooth running of PT Pertamina (Persero) business processes and maintain public safety by considering various aspects ranging from legal aspects, health aspects, environmental aspects, city planning aspects, and many more. However, this does not make people move to safer areas. Administrative records at the land office regarding the ownership of PT Pertamina (Persero) as the owner of Tanah Merah used for the company's operational activities is a strong reason to sterilize the area from community activities. The Tanah Merah area which was purchased covered an area of 153 hectares in 1971 as evidenced by a Letter of Determination of Granting Rights intended for the oil and gas industry issued through the Department of Home Affairs. The land use of 72 hectares are used for operations while the remaining land is used for commercial purposes buffer zone (buffer land). The 153-hectare land is divided into four areas with the following details: land A is the depot area, land B is 11 hectares, land C is 12.5 hectares and Land D is 58 hectares. The Tanah Merah area inhabited by the community is land D. Their nomadic status and not being registered in government administrative records have given rise to community demands for the DKI Jakarta Government to recognize their existence.

On the one hand, government activities continued until one of the election years, namely 2017. The results of the general election for Governor of DKI Jakarta stated that the pair Anies Baswedan, Ph. and Sandiaga Salahuddin Uno^[5] as Governor and Deputy Governor of DKI Jakarta for the 2017-2022 period. One of the factors that determined the victory of the pair Anies and Sandiaga was the political promises made during the election. One of the controversial promises is to legalize illegal settlements, namely Tanah Merah, Plumpang, North Jakarta. Fulfilling the promise to provide legalization is seen as fulfilling the state's obligation, in this case represented by the Governor of DKI Jakarta, to ensure the welfare of everyone. To achieve the fulfillment of this promise, a dynamic perspective is applied using progressive law. Progressive law is a law that has a broad meaning, not fixated on written rules but on the spirit of implementing laws that provide a sense of justice for all parties. The impact of decision-making based on the implementation of progressive law is the occurrence of fires in the area zone PT Pertamina (Persero) which has an impact on public safety and the smooth running of PT Pertamina (Persero) business processes. Based on the background above, it is necessary to explore the point of view in implementing progressive laws that have been implemented and managing the consequences received in making these decisions.

Problem Formulation

Based on the background of the problem that has been presented, in this paper the formulation of the problem is how to apply ideal progressive law in responding to illegal settlements in the Tanah Merah area and the application of progressive law in responding to the impact of the decision of the former Governor of DKI Jakarta regarding building use rights in the Tanah Merah community in PT Pertamina (Persero) safety zone area.

Research Purposes

Reflecting on the problem formulation that has been presented, the purpose of this writing is to find out a progressive legal perspective in responding to the decision of the former Governor of DKI Jakarta regarding building use rights in the Tanah Merah community in the PT Pertamina (Persero) safety zone area.

Newest Research Results

Journal writing is the work of the author and is not the result of plagiarism of the work of other authors. This also refers to the application and perspective of progressive law in various cases that have been written about by other authors before, including:

1 Writer's name: Yanto Sufriadi

University: Hazairin University Faculty of Law

Journal Title: Application of Progressive Law in Law Enforcement in the Midst of a Democratic Crisis

Journal Name: Law Journal No. 2 Vol. 17 April 2010: 233-248 Problem formulation:

- a. What is the impact of globalization on justice, prosperity and democracy?
- b. What kind of legal concept is more likely to create justice and the well-being of the people in the midst of a democratic crisis;
- c. How is it implemented in court practice in Indonesia?

Research result

- a. Globalization has resulted in economic inequality and widespread poverty. Poverty will have a negative impact on democracy. Bad democracy tends to produce elitist legal products, ignoring justice and the welfare of the people at large.
- b. In a situation of elitist legislative products, the application of laws based on the legal-positivist tradition will further expand injustice and poverty. Therefore, during a situation of elitist legislative products, progressive application of the law is an alternative way that is more likely to realize justice and people's welfare. The presence of legal actors who are visionary, sensitive to moral values and justice, honest and trustworthy will be able to produce legal decisions that are more in favor of justice and the welfare of the people at large, even though the legal products produced by the democratic process tend to be elitist.
- c. Court practice in Indonesia shows that progressive ways of applying the law are beginning to develop, but the legal-positivist tradition is still the mainstream for judges.

2 Writer's name: Rufaidah dan Nanik Prasetyoningsi

University: Yogyakarta Muhammadiyah University

Journal Title: Enforcement of Human Rights Law in a Progressive Legal Frame Based on the Paniai Case in Papua
Journal Name: Media of Law and Haria, volume 4, Issue 2, 2023, 171-183P-ISSN:2721-1967,

E-ISSN:27162192 Problem formulation:

- a. How is human rights law enforced in Indonesia?
- b. How is human rights law enforced from a progressive legal perspective based on the Paniai case in Papua?

Research result

In practice, human rights in Indonesia experience serious problems, this is indicated by the many issues involving law enforcement officials, including police, prosecutors, judges and members of the TNI. Where these cases do not provide a sense of justice because if the authorities violate the punishment imposed is not insignificant for what they have done. As a result, legal life becomes directionless and experiences decline. Efforts to enforce human rights law and protect human rights in Indonesia, apart from being regulated through regulations, can also be processed legally through human rights courts. The existence of a human rights court is a form of the Indonesian government's seriousness in its efforts to enforce human rights law and protect human rights. Enforcement of human rights law often experiences difficulties, due to the many requirements and regulations as well as political dynamics that hinder the legal process of enforcing human rights law. Komnas HAM as an institution that has responsibility for the implementation of human rights law enforcement, preferably in the process of resolving human rights law, or seeking human rights justice, should not only build a legal rationale based solely on the positivistic paradigm. What needs to be emphasized and underlined is that progressive law is different from other laws which prioritize strict procedures rather than prioritizing the objectives of the law itself. Where there is a need for progressive law is to create justice for the Papuan people. Where responsibility for the Paniai case in Papua is uneven because not all receive criminal sanctions. So the Papuan people ask judges to make legal decisions progressively, with the aim of getting

justice for the Papuan people. Progressive law is a thought on legal development initiated by Prof. Satjipto Rahardjo, is of the view that law is formed for humans, not humans for the law. Progressive law is also seen as law that provides liberation, both in the way of thinking and acting in law, so that it can let the law flow to complete its task of serving humans and humanity. So, there is no engineering or partiality in enforcing the law.

3 Writer's name: Mukhidin

University: PancaSakti Tegal Faculty of Law

Journal Title: Progressive Law as a Legal Solution that Improves

People's Welfare

Journal Name: Journal of Legal Reform Volume I No.3 September –

December 2014 Problem formulation:

How does legal theory answer legal solutions that improve the welfare of the people?

Research result

To get out of the situation of legal decline in Indonesia, there must be an effort to free oneself from the conventional way of working inherited by the positive legal school with all its completely formal procedural doctrines and procedures which give rise to formal justice rather than substantial justice. Enlightenment and liberation from formal procedural shackles can of course only be achieved through a progressive legal paradigm that really cares about truth, humanity and justice. Isn't the existence of law in society not only limited to achieving certainty, but what is much greater than that is to achieve true justice for the welfare of the people. This can only be realized and achieved through progressive law enforcement.

Research Methods

The research method used in writing this journal is a qualitative research method using a normative juridical approach. Qualitative research is based on field conditions with descriptive explanations that are sharpened with in-depth analysis. Qualitative research was chosen by the author to present facts and knowledge that are widely understood by the general public, in order to present detailed information according to existing field facts. The normative juridical approach is implemented by examining library materials in the form of theories, concepts, regulations, implementation of progressive law and using secondary data. Normative data refers to legal norms contained in various laws and regulations, court decisions. Secondary data comes from census or statistical data, electronic news, scientific articles. The results of the analysis are presented in complex writing that can be understood systematically.

Results and Discussion

The impact of policy-making errors by the government is a massive violation of the law and has widespread impacts on aspects of people's lives. One example of the massive impact resulting from errors in policy making is the PT Pertamina (Persero) depot fire that occurred in Plumpang, North Jakarta. The incident which occurred on Friday 3 March 2023 affected 300 residents and claimed the lives of 33 people. This incident reopened people's memories of the Pertamina Plumpang Depot fire which occurred on January

18 2009. The incident which was caused by friction between the measuring slot and the fuel sampling device resulted in one fatality. All mitigation measures have been taken to prevent repeated incidents, but disaster cannot be avoided. The massive fire that occurred because life between the community and the PT Pertamina (Persero) depot was only limited by a concrete wall is proof of the indecisive attitude of the DKI Jakarta Provincial Government.

The Tanah Merah area includes three sub-districts, namely Rawa Badak Selatan, Tugu Selatan in Koja District, and Kelapa Gading Barat in Kelapa Gading District. Starting from 1971, PT Pertamina (Persero) was registered as the owner of the Plumpang area with a land area of 153 hectares from a company called PT Mastraco. After that, in 1976 a letter was issued determining the granting of rights by the Ministry of Home Affairs for the construction of oil installations. As time goes by, there is an unstoppable increase in population in DKI Jakarta, especially in North Jakarta. It was recorded that in 2017 the location around the Depo was inhabited by 34,700 residents with 9,234 Family Cards and this will continue to increase until 2023. Ownership of clear land data should not be an obstacle for PT Pertamina (Persero) to be able to re-sterilize safety zone areas that are illegally occupied by the community. Based on the Decree of the Minister of Home Affairs Number 190/HGB/DA/76 dated April 5, 1976, Tanah Merah is state property with building use rights (HGB) status in the name of Pertamina. However, most residents who live in this illegal area are not cooperative and turn to blame PT Pertamina (Persero) which is activating a depot which has a high level of danger to the lives of the people there. The community considers that the depot is no longer suitable in the middle of residential areas. The existence of this illegal community is a contribution from the government which is not firm in taking a stance to bring order to society. This is proven by the mindset of the people who live in the arrearage zone wrong PT Pertamina (Persero) depot.

Judging from the situation that occurred, one of the aspects contributing to the chaos was the lack of orderly administration within the government. Misappropriations and violations of state administrative law can be seen in the decision making of the Governor of DKI Jakarta. In 2012, Jokowi, who at that time served as Governor of DKI Jakarta, gave KTPs to residents around the Plumpang area so that their existence in DKI Jakarta could be recognized. After the change of leadership to Basuki Tjahaja Purnama (Ahok), he directed the residents of Tanah Merah to immediately move for security and safety reasons as well as the smooth business processes of the PT Pertamina (Persero) Plumpang Depot, however this direction was not heeded until the leadership changed to Anies Baswedan. Facilities that initially only provided KTPs were expanded with the issuance of Building Construction Permits (IMB) to assist in arranging public services for residents whose residency had been registered based on KTPs issued during the Jokowi era. The IMB is a regional IMB covering six RWs in three sub-districts. The reason why Anies Baswedan took this decision was because he considered the application of the general principles of good governance in state administrative law, including:

1. Recognition of the human rights of citizens in this case is the Tanah Merah community in the surrounding areasafety zone PT Pertamina (Persero) for good governance and administrative behavior;

2. The diversity of public services that must be guaranteed by the government for the benefit of citizens.

From these actions, it is clear that there are violations and deviations from the application of state administrative law. Recording of administrative documents should be implemented strictly to protect citizens against dangerous situations. The actions taken are certainly not far from fulfilling the political promises that Anies made to the residents of Tanah Merah, including:

1. Legalize villages that are considered illegal by implementing the condition that village areas that have been occupied by residents for 20 years and whose land has no problems will have their rights recognized in the form of ownership rights certification.
2. Arrangements were carried out in slum areas

State administrative law as operational law is very important for the implementation of the duties of state administrative officials in dealing with society and the people, as well as resolving their requests and needs. Apart from being operational law and procedural law, state administrative law is a disciplinary law for administrative officials in carrying out or fulfilling their duties, obligations and use of authority. This is very important because government and administrative officials can be divided between decisions that have legal force or legal force. Seeing political promises that are not in accordance with the ownership status of documents registered with the government is a form of misuse of state administration.

Violations of state administrative law can also be triggered by various bureaucratic triggers, including:

1. Abuse of official power that is contrary to general principles. Good government is a government that has thoroughness or thoroughness which requires the existence and completeness of information data used by officials or state administrative bodies in issuing written decisions and principles. This is reflected in Anies' attitude which prioritizes political promises to obtain a seat of power without considering safety, security and environmental aspects in the Tanah Merah area.
2. The existence of law has the possibility of having a positive side regarding the general principles of good governance, especially as a test tool or indicator of the validity of a written decision by a government administrative official before the law and judicial bodies in the country, or at least functions as legal jurisprudence itself.
3. Violation of the basic state law that the legal provisions regarding the General Principles of Good Government (AUPB) become constitutional in legislation, but requires socialization and review of ordinary law before the Supreme Court and before the Constitutional Court.

Responding to the existing situation, Anies Baswedan as the official who has the authorization to provide IMB to the public stated that this decision was born because of circumstances that forced the government to be dynamic. The meaning of this dynamic word refers to the enactment of progressive law. Drawing from the legal revolution process, law was originally understood as a rulerigid or stiff. Stick to the concept legal positivism which views the law as a guardrail that fences off individual behavior in accordance with contextual laws and regulations while ignoring social values that emerge in social life. The application of laws

that stick to book sentences creates the impression that law enforcement is only a mouthpiece for the law because the decisions given often cause injustice to individuals who need them because law enforcers do not pay attention to the causes of violations or the conditions on Reflecting on the above phenomenon, a new breakthrough has emerged in the view of law in society. This breakthrough is a progressive legal view. Progressive law was initiated in 2002 against a background of dissatisfaction with the implementation of Indonesian law that existed at that time. The closeness of the implementation of progressive law to humans has led to the theory that progressive law is also close to natural law as stated by Hans Kelsen with the term *metajurisprudence*. Satjipto Rahardjo, as the proponent of this progressive legal view, believes that law exists because of humans, not humans for the law. Humans are seen as active and dynamic subjects, not just as rigid objects or as guinea pigs in the application of the law. The success of Law Enforcement in providing decisions is proven by decisions that support shared justice. This shared justice is the orientation and ultimate goal of legal administration.

The implementation of progressive law in Indonesia is in line with the mandate contained in the preamble to the 1945 Constitution of the Republic of Indonesia, the body of the 1945 Constitution of the Republic of Indonesia, and Pancasila which is the foundation and legal ideals in national and state life:

1. In the fourth paragraph of the Preamble to the 1945 Constitution, it is stated that the aim of establishing the Indonesian government was "(...) to form an Indonesian state government that protects the entire Indonesian nation (...)" This phrase mandates the Government to provide protection to the entire Indonesian nation. without exception. The goals to be achieved by the Government are in line with the goals of Progressive Law to provide justice and happiness to society.
2. Pancasila, the second precept "Just and civilized humanity", and the fifth precept "Social justice for all Indonesians". In the second precept, it is required to place people in a place that suits their natural dignity, as a noble being, in a fair and civilized way. Placing all human beings in an equally honorable place and no one marginalizes others. Justice is the right of every human being.
3. Likewise, the fifth principle shows that the Indonesian people must have and have a view of creating social justice. The spirit of the second and fifth principles of Pancasila is in accordance with what progressive law aims to achieve, namely providing justice to society.
4. Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates equality of position under the law for all Indonesian citizens. With this article, different legal treatment is not justified. All citizens receive the same legal treatment even though they have different backgrounds. This article will guide a judge to give a legal decision that provides a sense of justice to the applicant for justice which is something that is desired in progressive law;
5. The articles contained in Chapter XA on Human Rights regulate basic human rights which include to obtain happiness in life, free from pressure from other parties, feel a sense of justice and other natural rights, which rights are the government's obligation to protect and advance it. The law obligates the government to

provide rights that make the people happy, something that is the goal of progressive law.

The characteristics of progressive law include several things, including:

1. Progressive law is a responsive and dynamic legal perspective.
2. Progressive law prioritizes shared justice.
3. Progressive law assesses the law from the social goals and consequences of implementing the law.
4. Progressive law reflects on "completeness, adequacy, fact, action, and powers". This is what has become a pioneer for Law Enforcement to get out of the sight of the law.
5. Progressive law is complex and focuses on the stages of creation, implementation to law enforcement
6. Progressive law prioritizes human justice and field facts.
7. Progressive law applies progressivism to accommodate all aspects related to humans and the law. This view emphasizes that this law is full of morals.

One of the abilities that a progressive legal applicator must have is the ability to see globally and not take sides with anyone. This ability is proven by the applicator's ability to position himself using "helicopter goggles". So that something that is not in the written regulations can still be processed without waiting for lengthy changes to the rules. The implementation of progressive law is proven by the issuance of a letter by the DKI Jakarta Provincial Investment and One-Stop Integrated Services Service (DPMPTSP). The IMB letter reads "Stipulates the decision of the head of the DPMPTSP regarding the building permit temporary building (IMB) in the Kampung Tanah Merah area, RT 10 RW 09, Rawa Badak Selatan Village, Koja District, North Jakarta City. Meanwhile, permission to construct a temporary building for village and community planning was given to Rosidi CS (61 people). In October 2021, Anies Baswedan also built and inaugurated the infrastructure for the development of Kampung Tanah Merah, North Jakarta based on Governor Regulation Number 118 of 2020 concerning Space Utilization Permits. However, the Building Construction Permit (IMB) used is still temporary.

Conclusion

The decision to provide IMB to the community can be seen as implementing progressive law. Circumstances that force decisions must be taken dynamically. The DKI Jakarta provincial government's initiative to provide IMB is a repressive step to deal with the increasing surge in population living illegally in the Pertamina depot operational area. Plans to tidy up illegal settlement areas until a location is built that can relocate the Tanah Merah community. However, apart from the progressive steps taken, there are misunderstandings taken by the community. The community understands that they have rights to the land and blames the location of the Pertamina depot which is close to residential areas. The IMB decision letter, which is a joint guide, does not necessarily become a mutual agreement. The unfortunate incident that occurred in the safety zone area of PT Pertamina (Persero)'s Plumpang depot is a form of difference in perception between legal idealism and the situation on the ground. Significant

increase in population, lack of available land for residence, lack of awareness of related understanding safety residence, and the lack of firm steps from the government to regulate illegal and dangerous residential areas means that the government must implement progressive laws on top of the existing administrative order. The issuance of building permits around red areas without ongoing supervision is a form of application of state administrative law and progressive law, which is only oriented towards politics, so this needs to be added as a note in the process of reforming the understanding of progressive law in Indonesia.

By issuing a decision on a temporary Building Permit to the people of Tanah Merah, the community should respect this decision by asking for a follow-up on the promise of Governor Anies Baswedan's program and not think backwards by forcing the PT Pertamina (Persero) depot to move to another area as a form of implementation of age were right there is a remedy and the law will always provide a remedy because the legal strength of ownership of land control documents and the history of the Tanah Merah area shows that when there are evidences of things, what is needed is word still happens.

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