



Decentralization of land management and the challenges to the constitutionality of regional agrarian policy

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Abstract

This analyze connection between decentralization management land and challenges to constitutionality policy agrarian area in context system Indonesian law. With use method juridical normative, study This find that decentralization land post-reformation presents dilemma between Spirit autonomy region and supremacy constitution. Implementation Constitution Number 23 of 2014 has not been fully in line with the principle of Article 33 paragraph (3) of the 1945 Constitution concerning state control over source Power nature, because often happen overlapping overlap authority between government central and regional policies areas in the field agrarian often cause conflict normative and potential unconstitutionality consequence orientation an economy that ignores justice social and rights public custom. Research results confirm importance harmonization vertical between policy area and law national, improvement capacity institutional area, as well as confirmation role Court Constitution as guard integrity law agrarian national. Decentralization management effective and constitutional land only can realized through reconstruction law agrarian areas rooted in values justice social, solidarity national, and the principles of the rule of law.

Keywords: Decentralization, constitutionality, policy agrarian

Introduction

Decentralization management land in Indonesia is part from dynamics long governance reform government post collapse centralism New Order power. Ideas decentralization born as effort for realize more government responsive to need public area as well as management source Power more nature fair and just social. In the context of land as source life, decentralization present hope that management agrarian can more participatory and appropriate with reality social, economic, and culture of each region (FAO, 2003; World Bank, 2005) [3, 19].

Agrarian reform is emphasized through MPR Decree No. IX/MPR/2001 concerning Updates Agrarian and Management Natural Resources affirms importance the role of the state in ensure justice in access and control land. However, in implementation, politics decentralized law it turns out cause challenge Serious to consistency implementation principles constitutional as arranged in Article 33 paragraph (3) of the 1945 Constitution which states that earth, water and wealth natural controlled by the state and used for as much as possible people's prosperity (Sugina Hidayanti *et al.*, 2023) [4].

As it comes into effect Constitution Number 22 of 1999 concerning The Regional Government which then perfected through Constitution Number 32 of 2004, authority area in affairs land the more expanded. However, the expansion This No always followed with clarity distribution authority between government central and regional, especially in aspect licensing and redistribution land. Ambiguity This create gap frequent laws cause overlapping overlap policy and irregularity in management source Power agrarian (Hidayanti, 2023; Smeru Institute, 2002) [4, 13].

Presidential decree Number 34 of 2003 becomes point important in effort emphasize distribution authority in the field land between government central and regional. However, the implementation often faces obstacles, especially Because part big mechanism law related Not yet

balanced by change adequate institutional arrangements at the level area. Weakness capacity institutions and resources Power man complicate the synchronization process policy agrarian in various area (World Bank, 2005; UN-Habitat, 2010) [19].

Apart from the problem institutional, decentralization land also faces with fact that part big land in Indonesia has dimensions strong social and traditional traditions. In lots case, confession on right customary law public customs Not yet fully accommodated in policy area, even often collide with policy formal law of the state. This is show existence tension between principle law customs with law national in unitary state framework (Hidayanti, 2023; Volksgeist, 2022) [4].

Challenge to constitutionality policy agrarian area the more felt when various policy government area issued without notice principles that have been regulated by UUPA Number 5 of 1960 and MPR Decree No. IX/2001. Conditions This cause potential unconstitutionality policy area Because deviation from principle mastery land by the state for as much as possible prosperity of the people, as mandated by the constitution (Sujito, 2024; Journal of Constitutional Law Society, 2024) [15].

In context implementation autonomy area, policy decentralization land is also often infiltrated by interests political local government area in a number of case use authority management land for strengthen power political or as instrument economy term short, not for interest public term long. Phenomenon This weaken essence true decentralization aim for strengthen democracy economy and equality well-being (Ehlers *et al.*, 2021) [2].

More Far again, relationship between policy central and regional in governance land show existence tug-of-war between principle decentralization and spirit unitarism. When the area given authority big in arrangement land, arise concern will existence disintegration of national norms agrarian If No balanced by the mechanism coordination and

control strong constitutional (Hidayanti, 2023; UNDP, 2005) [4, 16].

Development law about authority land post-reformation made interpretation against Article 33 of the 1945 Constitution increasingly crucial. Some academics have an opinion that right controlling the country is delegative, meaning the state can delegate authority control and management to area throughout No delete principle togetherness national. However, another view confirms that decentralization kind of That potential cause fragmentation policy threatening public principle justice social (Hidayanti, 2023; Volksgeist, 2022) [4].

Other substantive constraints in decentralization land is weak data and systems information land at the level local. Unintegrated between BPN data and government data area make things difficult effort enforcement law and settlement dispute land. As a result, horizontal conflict over land increasing, especially in areas that have interest economy strategic like area industry, plantations, and mining (World Bank, 2005; Smeru Institute, 2002) [13, 19].

From the perspective constitutional law, questions fundamentals that emerge is to what extent autonomy area can organize and manage sector agrarian without violate principle centrality of the state in mastery source Power as arranged in constitution. Issues This become the more complex when policy area precisely contradictory with the agrarian reform program national coordinated by the government center (Volksgeist, 2022; JEL, 2024).

The gap interpretation law between central and regional often bring up dualism authority in implementation policy agrarian, especially related with licensing land and redistribution ownership. This is cause uncertainty law and hinder investment economy at the level area, while at the same time harm public local land dependent for their lives (Ehlers *et al.*, 2021; UNDP, 2005) [2, 16].

From the side normatively, UUPA 1960 should become umbrella law single in field agrarian. However in in practice, many policies sectoral at the level the area that is actually weaken UUPA position. Policy kind of This No only cause disharmony law, but also challenging legitimacy constitutional policy public area, because No Again stand on the basis law the same national (Hidayanti 2023; Smeru Institute, 2002) [4, 13].

With Thus, decentralization management land No only issue about distribution authority administrative, but also concerns legitimacy law and politics from policy agrarian areas that must be always is at in framework state constitution. Failure maintain continuity between decentralization with principle constitutionality can resulting in the disintegration of legal norms and injustice social at the level root grass (Sujito, 2024; Volksgeist, 2022) [15].

Therefore that, study about connection between decentralization management land and challenges to constitutionality policy agrarian area become important for formulated in a way in-depth approach This No only emphasize on aspects law administrative, but also examines dimensions ethical and humanistic from policy agrarian affairs that side with justice social and ecological. Reformulation system law agrarian in frame constitutional decentralization is a strategic agenda towards governance solidary, fair and sustainable land.

Research methods

Research methods used in study This is method juridical normative. Research juridical normative is study law that relies on materials literature or secondary data like regulation legislation, jurisprudence, doctrine law, as well as expert opinion. Approach objectives This is for identify rules law relevant positive, tracing principles and concepts applicable law, and evaluate suitability between legal norms and their application to the issue that became object research (Soerjono Soekanto & Mahmudji, 2003; Ibrahim, 2006) [5]. The approach used in method This covering approach statute approach, conceptual approach, and case approach, with analysis of a nature qualitative and deductive for find validity and coherence system law.

In its implementation, the method juridical normative base analysis of the legal norm system as One logical, hierarchical, and synchronous unity. Focus his research is in harmonization between law area and law national, interpretation to applicable regulations, as well evaluation to compliance with legal norms with principles constitutional and justice social research This No requires primary field data Because the goal No measure reality empirical, but rather examine substance law from aspect rules and regulations theoretical. Research results normative expected can give argumentation prescriptive and recommendatory for repair regulation legislation to be in harmony with values ethics law and the objectives of the rule of law (Juliardi B, 2023; Muhaimin, 2019) [8, 11].

Results and Discussion

Decentralization Land Management and Its Implications to Authority Constitutional

Implementation decentralization management land in Indonesia shows complex dynamics between Spirit autonomy areas and needs guard supremacy law national. Based on Constitution Number 23 of 2014 concerning Regional Government, decentralization interpreted as handover affairs government by government center to area autonomous for arrange interest public local in accordance with principle autonomy (Law No. 23 of 2014, Article 1 number 8). However in in practice, giving authority to area in field management land face limitation strict constitutional Because right state control over land as stated in Article 33 paragraph (3) of the 1945 Constitution it remains be in the country as holder mandate highest.

Ambiguity distribution authority between central and regional be one of source problem main. Government area get authority administrative like spatial planning and publishing permission utilization land, however No own authority strategic in determine policy agrarian national. According to Leleng (2021) [10], the form authority area in management the land basically nature administrative as extension hand government center. Therefore that, policy land that is of a nature national still be under control full government center so as not to happen distortion to integrity system law Indonesian agrarian.

Asynchrony between regulation legislation also becomes challenge Serious in implementation decentralization this. Regulation Government Number 18 of 2016 and Regulations President Number 86 of 2018 concerning Agrarian Reform give room for area for play a role in arrangement and redistribution land, but its implementation often collide with the authority of the Ministry of Agrarian Affairs and Spatial Planning/ National Land Agency

(ATR/BPN). This show existence potential violation to principle *lex superior derogat legem inferiori*, where the position more laws low No should contradictory with the norms above it (Siombo, 2024) ^[12].

At the level of praxis, dualism authority This cause tension between principle unity policy national and needs area for adapt policy agrarian with context socio-economic local government area argue that more authority wide needed for answer problem agrarian local, such as conflict land, needs relocation and alleviation poverty rural areas. However, the government center confirm that policy related ownership, classification, and distribution land is problem strategic matters concerning interest national.

Condition pull interesting this is the end implications to stability law agrarian national. In view of Mahmudji (2003), autonomy area without supervision adequate constitutional can result in fragmentation law and disunity system management source Power nature. Therefore that, the position of the 1945 Constitution becomes central as backrest normative for ensure balance between independence region and supremacy law national.

Problem authority law this is also reflected from implementation task regulated assistance (*medebewind*) in Article 11 of Law No. 23 of 2014. In practice, the delegation authority from government center to officials in the region often cause overlapping overlap Because difference interpretation between deconcentration and decentralization. This described by Siombo (2024) ^[12] as form transition that has not yet occurred ripe between models of government centralized and system autonomy the desired area post-reformation.

apart from legal aspects, issues structural also participates complicate implementation decentralization agrarian. Most of area Not yet own capacity institutions and resources Power adequate human for manage affairs land in a way efficient. This is cause Lots regulation area No capable balance complexity policy land national. In terms of this, the autonomy granted to area often only formal, without ability substantial for produce policy effective independence.

More in, transition authority from government district/city to government province as arranged in Law no. 23 of 2014 also gives rise to inefficiency administrative. Siombo (2024) ^[12] noted that diversion authority this, including permission business mining (IUP), resulting in confusion bureaucracy and prolong chain licensing. Conditions This potential lower effectiveness service public and enlarge gap abuse authority. From the side normative, decentralization management land cause consequence to harmony law between level central and regional. The principle of *lex specialis derogatory legem generali* and *lex superior derogat legem inferiori* into two principles important things that often tested in relation law agrarian national. When the regulations area about spatial planning or retribution land contradictory with regulation national, then happen violation to order hierarchy the law desired by the system law national.

In context constitutional, balance between right area for regulate and the state's right to control become a very fine normative boundary. This means that, even though decentralization intended for strengthen people's autonomy and effectiveness government, but all over action law area still must in line with objective national as mandated in Preamble and Article 33 of the 1945 Constitution. This is where importance control vertical to policy agrarian are,

good through coaching administrative and testing law in the Supreme Court and the Constitutional Court.

In practice empirically, there are cases where the government area emits permission utilization conflicting lands with policy national. As a result, it appears conflict laws that do not only hinder investment but also detrimental public local. Disharmony This show that decentralization without mechanism firm control can cause uncertainty legal uncertainty and weakens trust public to system law agrarian national.

On the other hand, demands to autonomy the stronger Because Lots area own need specific agrarian in accordance characteristics geographical and socio-cultural society. The law is too centralized considered No sensitive to diversity local. Therefore that, appears view that decentralization management land need directed at the asymmetric decentralization model, where regions certain given flexibility bigger within clear constitutional limits.

However, it is important for remember that decentralization is not delegation power without limits, but rather mechanism distribution not quite enough answer in framework of the Unitary State of the Republic of Indonesia. Therefore, integration system law and strengthening supervision constitutional absolute necessary for the policy area still devoted to ideals prosperity of the people as referred to in Article 33 of the 1945 Constitution. The Government center must operate function supervision No as form dominance, but as guard balance between justice local and interests national.

Finally, decentralization management land demand understanding deep will essence sovereignty law national. In the system democratic law, autonomy region and supremacy constitution should walk side by side each other strengthen, not contradictory. Therefore that, regulatory reform and harmonization are needed interlevel governance, and improvement capacity institutional regions for decentralization agrarian can functioning in a way effective and constitutional.

Challenge Constitutional to Policy Regional Agrarian

Challenge constitutional to policy agrarian area is complex problems in unitary state framework. Every policy related areas with management land No Can stand Alone as product autonomy, but rather must in line with principle state control over earth, water and wealth natural as arranged in Article 33 paragraph (3) of the 1945 Constitution. Principle the confirm that all policies concerning management source Power agrarian must goal-directed prosperity of the people, not solely interest economy area. In the context of this, decentralization need interpreted as mandate for strengthen welfare social, not liberalize mastery land.

Results of the study to a number of decision Court Constitution show that part policy areas in the field agrarian fail uphold principle constitutional Because profit- oriented fiscal area. Decision Number 62/PUU-XIII/2015 confirms that state control does not may broken down to in authority administrative area in a way excessive, because will cause fragmentation arrangement right on land and disturbing integration system law agrarian national (Court Constitution of the Republic of Indonesia, 2015). In cases certain policies area about permission utilization land and conversion land rejected Because contradictory with principle justice and sustainability environment.

On the contrary, the decision Court Constitution Number 78/PUU-XVI/2018 provides strengthening to paradigm justice social at the level local. Court evaluate that policy neglected areas role public customs in management land can considered unconstitutional Because violate rights constitutional public law customs guaranteed by Article 18B paragraph (2) of the 1945 Constitution. In this case this, the Constitutional Court's decision has put public customs as subject the law that has the right manage and utilize land in a way independent without must always tied to the mechanism formal licensing (MKRI, 2018) ^[21].

Phenomenon fragmentation policy area to the land is also reflected in implementation of reform programs agrarian in various district. Some area interprets policy redistribution land as instrument administrative solely, without update mark justice social. As a result, the implementation of policy often more prioritize interests of local elites and corporations compared to poor people. According to Siombo (2024) ^[12], condition the show decline Spirit constitutional as it should be making land as right state - protected social services.

Book Constitutionalism Agrarian (JDHI ITB, 2022) emphasized that all over policy agrarian at the level area must tested based on principle constitutionalism agrarian. This principle requires that every regulation regions and policies land submit to principle people's welfare and justice substantive. If the policy area only based on potential economy without pay attention mark justice, then legal norms the can tested and canceled through judicial review mechanism by the Constitutional Court.

In perspective constitutional, justice agrarian covers dimensions social, ecological, and cultural. Research by UMSurabaya (Anang, 2022) ^[1] shows that disharmony between law custom, laws positive, and policy area is root from tension constitutional in the field agrarian. Recognition to right public customs in mastery land often collide with policy areas that prioritize investment and exploitation source Power nature. Conditions This create dilemma between certainty law and justice substantive.

Decision Court Constitution latest 2025 regarding public customs that are not must request permission government for open gardens in the area forests (Kompas.com, 2025) ^[9] become milestone important in return supremacy constitution on policy area. The Constitutional Court affirmed that state control does not means monopoly administrative by bureaucracy center or area, but rather authority for ensure distribution justice and sustainability environment. Decision This put sovereignty public customs as part from state control in framework justice social.

Harmonization law become key in answer challenge constitutional policy agrarian area. Asynchrony between the Basic Laws Agrarian 1960, the 2023 Job Creation Law, and various regulation area show that coordination regulations Still weak. When the government area emits conflicting policies with national norms, then appear potential violation to principle of *lex superior derogat legioni inferiori*. In the context of here it is role Court Constitution and Supreme Court are needed for guard unity of legal norms agrarian throughout Indonesia (MKRI, 2016).

Apart from the factors law, orientation economy in policy the area also becomes source imbalance constitutional. Many areas develop policy conversion land agriculture become area industry to improve income, but ignore principle equality access land for farmers and poor

communities. According to Waspada.id (2025) ^[18], the practice the shift function land from the basis of people's lives to commodities investment, so that reduce mark justice constitutionally protected by Article 33 of the 1945 Constitution.

Error fundamental in implementation autonomy agrarian lies in the assumption that area own right full on the land that is located in its territory. In fact, the right mastery on land is not right individual area, but rather right collective state for arrange use land for prosperity together. When the government area interpret autonomy liberally and in violation principle state control, then expected decentralization bring welfare precisely change land become asset political vulnerable locales misused.

In perspective constitutional law, Court Constitution become institutions guard integrity meaning constitutionality agrarian. Decisions like Number 96/PUU-XIV/2016 confirms that management land must referring to the principle justice distributive and sustainable environment. The Constitutional Court reminded that ownership land in the state framework does not can released from function social and responsibility moral responsibility towards the people.

Apart from the aspect formal law, it is also important to see the moral and philosophical dimensions contained in Article 33 of the 1945 Constitution. State control over earth and water means management that is in favor of the people, not the entity corporation or oligarchy economy. Therefore that, every policy interpreting area autonomy without notice not quite enough answer social Actually deny mandate constitution that places welfare as objective the main rule of law.

Policy agrarian area should be intended for strengthen justice social and sustainability ecological. Reconstruction law agrarian area must base on paradigm constitutionalism that recognizes diversity local However still ensure unity of legal norms national. Constitutional decentralization will give birth to policy more land fair, participatory, and respectful right public customs as well as farmer small.

Therefore that, update law agrarian area needs done through two approaches simultaneous: harmonization vertical between regional and national norms, as well as horizontal harmonization between sectors, such as forestry, environment life and development economics. Principles basis of *lex superior derogat legioni inferiori* and *lex specialis derogat legioni generali* must internalized in a way substantive so as not to just become a dogmatic formula, but truly functioning guard justice structural.

Challenge constitutional to policy agrarian area demand recontextualization meaning decentralization in frame integrity law national. True decentralization No solution state authorities, but distribution not quite enough answer constitutional to level local for strengthen people's welfare. With Thus, decentralization agrarian must understand as instrument integrative that maintains morality constitution, justice social, and unity nation.

Conclusion

Effectiveness decentralization management land in Indonesia is still face fundamental obstacles in implementation and coordination interlevel government. Although Constitution Number 23 of 2014 has give framework law for delegation part authority center to area, its implementation Not yet running optimally because

existence overlapping overlap function between the National Land Agency and the government area. Authority area in affairs land more nature administrative as extension hand government center through mechanism deconcentration and tasks assistance (medebewind). Condition This make autonomy areas in the field agrarian more symbolic than substantive, because area Not yet own independence in determine direction policy land in a way strategic.

Effectiveness policy agrarian area new can come true if connection between central and regional placed in framework Work harmonious constitutional, with strengthen capacity institutional local and synchronization law. Decentralization should be No just move burden administrative from center to area, but rather expand access justice agrarian and involvement public in management land. Institutional reform and harmonization regulations that guarantee certainty law, justice social, as well as protection to public customs is prerequisite it is important that decentralization agrarian truly effective in realize objective constitutional namely prosperity of the people.

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