

Interpreting The State's Right to Control In the provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia

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Interpreting The State's Right to Control In the provisions of Article 33 Paragraph (3), The Constitution of 1945 Republic of Indonesia

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Abstract: Article 33 paragraph (3) of The Constitution Republic of Indonesia in 1945 stipulates that "Earth, water and natural resources contained therein controlled by the State and used for the people's welfare". Understanding of the earth (which is called land) according to the provisions of Article 1 paragraph (4) of Law Number 5 of 1960 concerning Basic Regulations on Basic Agrarian Issues is the surface of the earth and the body of the earth underneath it and which is under water. The meaning of the provisions of Article 33 paragraph (3) in The Constitution of 1945 is that the State as the highest power organization of all people (the nation) acts as the Governing Body. The right to control the State or be controlled by the State in this article does not mean "owned", but in the sense of giving authority to the State as the highest power organization of the Indonesian nation. The Constitutional Court elaborated State's Right to Control becomes 5 (five) authorities whose purpose is as much as possible for the prosperity of the people, including: (1). Formulate policy (beleid), (2). Make arrangements (regelendaad), (3). Carry out management (bestuur), (4). Carry out management (beheerdaad), and (5). Supervise (toeichhoudensdaad). The earth, water and natural resources contained in the earth are the main points of people's prosperity, therefore they must be controlled by the State and used for the greatest prosperity of the people.

Keywords: Earth, Water, Natural wealth, Right to rule, State

1. Introduction

Article 33 paragraph (3) of the Constitution of the Republic of Indonesia in 1945 stipulates that "Earth, water and natural resources contained therein controlled by the State and used for the people's welfare" (Indonesia, Constitution of 1945). Understanding of the earth (called the land) according to the provisions of Article 1 paragraph (4) of the Basic Agrarian Law is the surface of the earth and the body of the earth underneath it and which is under water (Indonesia, Law Number 5 of 1960).

The definition of space according to the provisions of Article 48 of the Basic Agrarian Law is space above the earth and water in the territory of Indonesia that contains energy and elements that can be used for efforts to maintain and develop the entire earth, water and natural resources contained therein and matters others concerned with it. Space is not a space within the airspace, but space exists within certain boundaries, that is, space that is located between and / or is directly related to plants and buildings embedded on the ground. While the definition of natural resources according to the provisions of Law Number 4 of 2009 concerning Mineral and Coal Mining, namely natural resources contained therein is natural resources contained in the earth which are referred to as

minerals, including ¹⁰ chemical elements, minerals, ores and all kinds of rocks, including precious rocks which are natural deposits. (Indonesia, Law Number 4 of 2009).

Article 23 paragraph (3) in the Constitution of 1945 contains an explanation that the earth, water and natural resources contained in the earth are the main points of people's prosperity, therefore these must be controlled by the State and used for the greatest prosperity of the people. Etymological mastery is a process, method, act of mastering or commercializing, so mastery is an action that covers in terms of the process to how to master it. In other words, control by the State is a process carried out by the State to control or try something that is in accordance with interests. Whereas the right to control the State over mineral or mining materials means that the State holds the power to control and exploit all mineral resources contained in the Indonesian mining jurisdiction (Zarqoni, 2015).

Another meaning of control by the State is the rights that are only owned by the State, so that agrarian affairs are understood as the affairs of the Central Government, even though their implementation can be delegated to the Regional Government (swatantra) or the customary law community is simply needed and not necessary and does not conflict with national interests or constitute rights which are at the highest level controlled by the State as an organization of power for all people (Santoso, 2010).

In terms of the economy, Indonesia Merdeka formulates the meaning of being controlled by the State, that is controlled by the State, does not mean that the State itself is an entrepreneur or businessman but the State must behave as follows:

1. The government must be a supervisor and regulator based on the people's safety;
2. The increasing number of companies and the increasing number of people who depend on the basis of their lives because the greater the participation of the government should be;
3. The motherland must be under State authority; and
4. Large mining companies are run as State businesses (Hatta, 1977).

Bagir Manan formulates the scope of understanding controlled by the State or the right to control the State, as follows:

1. Control of a kind of ownership by the State, which means that the State through the government is the sole authority to determine the authority over it, including here the earth, water and natural resources contained therein;
2. Regulate and supervise the use and utilization of the earth, water and natural resources contained therein;
3. Equity participation in the form of a State enterprise (BUMN) for certain businesses. (Manan, 1995).

The linkage of control by the State for the greatest prosperity of the people will realize the obligations of the State in the following matters:

1. All forms of utilization of natural resources and the results obtained from natural resources must significantly increase the prosperity and welfare of the people of Indonesia;

2. Protect and guarantee all the rights of the people contained in or on the earth, water and natural resources that can be produced directly or enjoyed directly by the people;
3. Prevent all actions from any party that will cause the people do not have the opportunity or will lose their rights to enjoy natural resources. (Harsono, 2000).

From the understanding of Article 33 paragraph (3) of the Constitution of 1945 mentioned above, it can be explained that:

1. The earth, water and natural resources contained therein are controlled by the State to achieve the prosperity of the people;
2. Management of the earth, water and natural resources contained therein shall be carried out by the State;
3. The purpose of managing the earth, water and natural resources contained therein is for the greatest prosperity of the people.

Based on the description, it will be discussed how the meaning of State's Right to Control in Article 33 Paragraph (3), the Constitution of 1945 The Republic of Indonesia.

2. Discussion

The philosophy contained in the State's right to control is to place the State as the center that regulates the country's wealth for the prosperity of the people with strong state prerequisites with a neutral State form free from other interests except the interests of the welfare of the people. Understanding the philosophical concept of the State's right to control the earth, water and natural resources contained therein is important to align the existing authority so far in the form of regulating, managing / managing and supervising to avoid confusion and abuse.

The philosophy about The State's Right to Control was initially explained in the Basic Agrarian Law, but the decision of the Constitutional Court Number 001-021-022 / PUU-I / 2003 regarding the application for a material test of Law Number 20 of 2002 concerning Electricity gave a new meaning to The State's Right to Control is contained in Article 33 paragraph (3) of the Constitution of 1945. The Constitutional Court elaborates The State's Right to Control into 5 (five) authorities whose purpose is as much as possible for the prosperity of the people, including: (a). Formulate policy (*beleid*); (2). Make arrangements (*regelendaad*); (3). Carried out (*bestuurdaad*); (4). Carry out management (*beheerdaad*), and; (5). Supervise (*toeichthoudensdaad*) (Indonesia, Constitutional Court Decision No.001-021-022 / PUU-I / 2003).

The purpose of the State's right to control the earth, water, space including natural resources contained therein is to achieve the greatest prosperity of the people in the sense of nationality, prosperity, and independence in society and the rule of law of Indonesia which is independent, sovereign, just and prosperous. The State's right to control in its implementation can be authorized to the autonomous regions (Regional Government) and customary law communities only as needed and not in conflict with national interests according to the provisions of government regulations (Arba, 2015).

According to Maria SW Sumardjono, the concept of the State's right to control actually contained authority. The authority based on the concept of controlling rights from the

State is understood in the framework of the relationship between the State and the earth, water, natural resources and so on in terms of ownership and not ownership. As for the principle underlying the authority of the State is the principle of delegation of authority from the community to the State which is universal. The state (the ruler) receives power from society with the aim of protecting his life and property, so that the State is obliged to account for the use of its power. The relationship between the community and the State is a relationship based on the trust and authority of the State limited by its purpose, namely to provide services to the community (Chomzah, 2002).

To realize what is stipulated in Article 33 paragraph (3) the Constitution of 1945, it is appropriate if the State as the highest power organization of all people (the nation) acts as the Governing Body. The State's right to control or be controlled by the State in this article does not mean "owned", but in the sense of giving authority to the State as the highest power organization of the Indonesian Nation at the highest level, namely:

1. Organize and carry out the designation, use, inventory and maintenance. The rights regarding allotment arrangements are spelled out in various products of regulations and other legislation, in areas such as land stewardship, spatial planning and land acquisition in the public interest.
2. Determine and regulate the rights that can be owned over (part of) earth, water, space including natural wealth. The rights regarding the regulation of legal relations are spelled out in various products of regulations and other legislation, in areas such as limiting the number of plots and the area of land that can be controlled (*landreform*) and regulating land management rights.
3. Determine and regulate legal relations between people and legal actions concerning the earth, water and space including natural wealth (Gautama, 1990). The rights regarding the regulation of legal relations and legal actions are spelled out in various products of regulations and other legislation, in areas such as:
 - a Land registration, which is a series of activities carried out by the Government continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and units flats, including the granting of proof of rights for plots of land for which there are rights and ownership rights over the unit of flats and certain rights which burden it (Indonesia, Government Regulation Number 24 of 1997).
 - b Underwriting rights, based on Law Number 4 of 1996 concerning Mortgage Rights and Land Related Items, mortgage rights are collateral rights imposed on land rights which include ownership rights, usufructuary rights and building usufructuary rights. Mortgage rights can be classified into legal relations between people and legal actions on land, because basically the mortgage is a follow-up (accessories) of a basic engagement, such as the relationship of debt and receivables guaranteed repayment with these mortgage rights (Indonesia, Law Number 4 of 1996).

Maria SW Sumardjono said that important limitations that must be kept in mind by the State in exercising control over the State, include:

1. Restrictions by the Constitution of 1945, that matters governed by the State may not result in violations of human rights guaranteed by the Constitution of 1945. Ordinary regulations against an interest and causing harm to others are one of the form of the violation. A person who relinquishes his rights must receive legal protection and a fair appreciation for the sacrifice.
2. Substantive restrictions in the sense of regulations made by the State must be relevant to the objectives to be achieved namely for the greatest prosperity of the people, and this authority cannot be delegated to the private sector because it involves public welfare laden with service missions. Delegation to the private sector which is part of the community will cause a conflict of interest, and therefore it is not possible (Chomzah, 2002).

The State's right to control the in the provision of Article 33 paragraph (3) the Constitution of 1945 is also implemented by Article 2 paragraph (1) of the Basic Agrarian Law, which contains the right to control the State over land that is public and originates from the Indonesian people's right to land . The right to control the State over land contains authority as contained in Article 2 paragraph (2) of the Basic Agrarian Law, including:

1. Arranging and carrying out the designation, use, supply and maintenance of earth, water, and space;
2. Determine and regulate legal relations between people and the earth, water, and space;
3. Determine and regulate legal relationships between people and legal actions concerning earth, water and space (Indonesia, Law Number 5 of 1960).

The State's right to control over land regulated in Article 2 paragraph (2) of the Basic Agrarian Law are sourced from the Indonesian people's right to land, which is essentially an assignment of the implementation of the duties of the authority of the Indonesian Nation which contains elements of public law. The task of managing the entire land together is not possible to be carried out by the Indonesian people themselves, so in its administration, the Indonesian Nation as the holder of the right and the bearer of the mandate, at the highest level is authorized to the Republic of Indonesia as the organization of power of the entire people.

The State's authority in the field of land ¹ as referred to in Article 2 paragraph (2) of the Basic Agrarian Law is the delegation of the duties of the nation to regulate the acquisition and lead the use of shared land which constitutes national wealth. Strictly speaking, that The State's right to control over land is the delegation of public authority from national rights. Consequently, this authority is only public (Sitorus and Dyawati, 1994).

The meaning of "controlling" and "control" in ³ Article 33 Paragraph (3) of the 1945 Constitution and Article 2 of the Basic Agrarian Law are used in the public aspect, namely:

1. That based on the provisions in ² Article 33 Paragraph (3) of the 1945 Constitution, the earth, water, and space, including the natural resources contained therein are

at the highest level controlled by the State, as an organization of power for all the people.

2. The authority derived from the right to control from the State is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity and independence in society and the law of Indonesia which is independent, sovereign, just and prosperous.
3. The controlling right of the State can be enforced to the autonomous regions and customary law communities, only necessary and not in conflict with national interests, according to the provisions of the prevailing laws and regulations.
4. The State's Right to control land contains a series of authorities, obligations, and / or prohibitions for the holders of their rights to do something about the land that is claimed, something that is permissible, obligatory, or prohibited to be made, which is the content of the control rights which is the benchmark of differentiation between tenure rights set out in land law (Gautama, 1990).

As for the provisions in the State's right to control land, are as follows:

1. Arranging matters regarding its creation into a concrete legal relationship, with the name or designation of certain land rights;
2. Regulate matters regarding the imposition of other rights;
3. Regulate matters regarding the transfer to another party;
4. Regulate matters concerning deletion;
5. Regulate matters regarding the proof (Harsono, 2000).

Sudikno Mertokusumo states that there are 3 (three) theories that discuss the nature of the legal relationship between the State and land, including:

1. State is given the same position as individual. Therefore, the relationship between the State and land is *Privaat-rechtlijk*. This means that the relationship is a property relationship. Giving a position to the State such as an individual is clearly contrary to the actual position of the State, namely as an organization of power from the community (a collection of individuals);
2. The state is given a position not as an individual. But as a *public-rechtelijk* body. On the basis of the relationship between the State and land is also a property rights relationship. But it must be remembered that the granting of these traits to the State as an organization of social beings will separate the State from its citizens. The consequences are that individual interests will be ignored;
3. The state is not given a status as a *Privat-rechtlijk* or *Public rechtteijk*, but the State is the personification / incarnation of all people. In such a position, the State becomes a supporter of the people's unity and is not separate or detached from its people. On the basis of such a position, the relationship between the State and the land is a relationship of control or the right of control, and the State has the authority to regulate the use and classification of land (Santoso, 2015).

In exercising ⁸ The State's Right to control the over land, the following limitations are set:

1. ⁸ The State's Right to control over land may not override the rights to land that are owned by Indonesian citizens, foreign nationals residing in Indonesia and legal entities.
2. For land that is not owned by a right by one person or another party, based on the state's controlling right over land, the State has full power to be able to give it with a right to an Indonesian citizen or legal entity according to its needs and designation (Harsono, 2000).

The existence of Article 33 paragraph (3) the Constitution of 1945 is expected to be controlled by the State over the earth, water, and natural resources contained therein which are used for the greatest prosperity of the people, which is equipped with provisions that important production factors that control the livelihood of many people is controlled by the State and makes the State a dominant player in the economic sector (Muljadi and Widjaja, 2008).

However, when the State is not able to improve the economy and subsequently join hands with foreign investors, then in fact there has been a substantive change in the contents of this article that the State and investors have unconsciously controlled the earth, water and natural resources contained therein used for the greatest prosperity of the people, equipped with the provisions of the important factors of production that control the lives of many people.

3. Conclusion

¹ The meaning of the provisions of Article 33 paragraph (3) the Constitution of 1945 is that the State as the highest power organization of all people (the nation) acts as the Governing Body. The State's Right to control the or be controlled by the State in this article does not mean "owned", but in the sense of giving authority to the State as the highest power organization of the Indonesian Nation. The Constitutional Court elaborates the Right to Control the State into 5 (five) authorities whose purpose is as much as possible for the prosperity of the people, including: (1). Formulate policy (*beleid*), (2). Make arrangements (*regelendaad*), (3). Carry out management (*bestuurdaad*), (4). Carry out management (*beheerdaad*), and (5). Supervise (*toeichthoudensdaad*).

Regarding The State's Right to control, in practice there have been a number of irregularities, this is because in the implementation of national development the orientation is merely to pursue the target of economic growth by ignoring the development process that is based on Article 33 of the 1945 Constitution. This condition eventually led to many disputes in the regions in particular, disputes between the government and / or business actors with indigenous communities, which are sometimes resolved using a security and repressive approach.

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