

Administrative Land Conflicts and Reforming State- Owned Enterprises in Indonesia

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Administrative Land Conflicts and Reforming State-Owned Enterprises in Indonesia

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Abstract: Land control and ownership contain the emergence of legal norms including authority, rights, and obligations, as well as power. In juridical, it is a system aiming to protect and encourage values that are strongly embraced by the community. This study presents an up-to-date survey on the conflict between state-owned enterprises (SOEs) and the community in Indonesia. Normative and empirical approach were used in this study. The results showed that state-owned enterprises are more subject to institutional pressures that arise from a weak authority of "state ownership". This weak authority is developed through the combination of ideological conflicts, perceived threats to national security, and claimed unfair competitive advantage. The results not only extend the institutional theory to explain differential effects on entrants but also demonstrate how foreign investors of idiosyncratic origins proactively build authority in host countries.

Keywords: Administrative Law; Land Reform; Land Conflict; State-Owned Enterprises

1. Introduction

In host countries, state-owned enterprises are more subject to institutional pressures that arise from the weak authority of 'state ownership'.¹ This weak legitimacy is developed through a combination of ideological conflicts, perceived threats to national security, and claimed unfair competitive advantage. The State as a powerful organization has the authority to make arrangements regarding human and land relations.² Concerning land tenure, authority is categorized into two parts including general and special. The general part is the holder authorized to directly use their land in line with the legislation, while the special is the holder authorized to use the land for the interests of agriculture, plantations, fisheries, and husbandry.³

Land control and ownership contain the emergence of legal norms including authority, rights, and obligations, as well as power. In juridical, it is a system aiming to protect and

¹ Meyer, Klaus E., Yuan Ding, Jing Li, and Hua Zhang. "Overcoming distrust: How state-owned enterprises adapt their foreign entries to institutional pressures abroad." In *State-Owned Multinationals*, pp. 211-215. Palgrave Macmillan, Cham, 2018.

² Li, Tania Murray. "Commons, co-ops, and corporations: assembling Indonesia's twenty-first century land reform." *The Journal of Peasant Studies* 48, no. 3 (2021): 613-639.

³ Santoso, Urip. *Hukum Agraria dan Hak-hak atas Tanah*, (Jakarta: Kencana Prenada Media Group, 2010), p. 82.

encourage values that are strongly embraced by the community. Sociology views land control and ownership as the authority to use land which is limited by the public interest. Therefore, it is an authority that provides a person or group the right to manage land.

The non-fulfillment of these values tends to trigger problems such as inequality, perceptions, and conceptions of land, as well as incompatibility of legal products that arise due to pragmatism and sectoral policies.⁴ This is in line with Cohen's view⁵ that legal relations bring about cooperation and conflict. Cooperation occurs when the agrarian subject is willing to formulate an agreement regarding different interests and claims over the objects. Meanwhile, conflict occurs when there are overlapping claims regarding agrarian objects.⁶

Several efforts to avoid issues are carried out through the formation and renewal of laws that serve as a reference in organizing land control and ownership. State-owned enterprises have led to an imbalance or triggered the birth of conflicts that occurred in South Sulawesi Province, Indonesia. This includes;

- a. The conflict between PT. Perkebunan Nusantara (PTPN) XIV and Gowa & Takalar regencies.
- b. The conflict between PT. Perkebunan Nusantara (PTPN) XIV and East Luwu.
- c. The conflict between PT. Perkebunan Nusantara (PTPN) XIV and Wajo regency
- d. The conflict between PT. Perkebunan Nusantara (PTPN) XIV and Enrekang

Prolonged conflict between PT. PTPN IV with several districts in South Sulawesi, Indonesia shows that no resolution mechanism meets the principles of justice, legal certainty, and benefits for the parties to keep the land for agrarian purposes. In the Basic Agrarian Law, the affirmed legal substance is not capable of resolving the issue due to reality abandonment.⁷ Government Regulation No. 10 of 2010 strengthens state-owned enterprises to provide inequality related to land tenure that deviates from the people's greatest prosperity.⁸ The issue that later emerged was the inability of the legal substance, structure, and culture to protect Indonesian land.

Litigation and non-litigation which failed to provide resolution with legal certainty are other phenomena related to the state-owned enterprises' assets. However, conflict resolution creates uncertainty through the courts as the last action that is performed by the community.¹⁰ This is indicated from the Supreme Court Decision No. 4008 K/PDT/2001 in the case of PT. Pelabuhan Indonesia I Belawan against Sakdymah and colleagues. The

⁴ Collins, Ngan, Sari Sitalaksmi, and Russell Lansbury. "Transforming employment relations in Vietnam and Indonesia: case studies of state-owned enterprises." *Asia Pacific Journal of Human Resources* 51, no. 2 (2013): 5: 1-151.

⁵ Astami, Emita W., Greg Tower, Rusmin Rusmin, and John Neilson. "The effect of privatisation on performance of state-owned-enterprises in Indonesia." *Asian Review of Accounting*, 18 (1) (2010): 5-19.

⁶ Sitalaksmi, Sari, and Ying Zhu. "The transformation of human resource management in Indonesian state-owned enterprises since the Asian Crisis." *Asia Pacific Business Review* 16, no. 1-2 (2010): 37-57.

⁷ Assagaf, Aminullah, Ety Murwaningsari, Juniati Gunawan, and Sekar Mayangsari. "Estimates model of factors affecting financial distress: evidence from Indonesian state-owned enterprises." *Asian Journal of Economics, Business and Accounting* 11, no. 3 (2019): 1-19.

⁸ Sakai, Minako. "Land dispute resolution in the political reform at the time of decentralization in Indonesia." *Antropologi Indonesia* 68 (2002): 40-56.

case cannot be implemented by the District Court of Medan because the object to be executed is state-owned enterprises' assets. It is difficult to expect legal certainty in resolving land conflicts when the decision failed to be executed through mediation. There is an absence of a concept to resolve issues over the state-owned enterprises' asset that was controlled by the community. Therefore, this study aims to examine land conflicts over State and Regional-Owned Enterprises assets.

2. Method

This study is normative-legal because it uses statute, case, and conceptual approaches.⁹ Data were analyzed through a descriptive qualitative and content method. A qualitative method was used to generate words rather than numbers.¹⁰ An observation and interpretation approach was used to make these phenomena observable. Therefore, this study provides information on the latest trend.

3. Asset Status of State-Owned Enterprises: Record-Keeping and Legalization of State Assets

The State has two forms of wealth including separated and non-separated assets. The separate one is the use of money sourced from the State Revenue and Expenditure Budget as well as contracts grants/donations based on statutory regulations or court decisions. This form of asset is obtained through equity participation in State-Owned Enterprises or other Limited Liability Companies or Government Legal Entities. The separated one can come from the State budget or outside such as loan capitalization.¹¹

Based on the two forms of assets explained above, the State acts as regulator and executor. In Indonesia, the presence of state-owned enterprises cannot be separated from the long history of configuration and principles that have developed since the 20th century. There is a development of the welfare state due to the transition from *rechtsstaat* with the principle of *nachtwacherstaat* (night watch state) which uses *staatsonthouding* or restrictions on governmental roles in the political field. The less government becomes the best because of the principle of *laissez faire* and *laissez aller*, which prohibits the State from interfering in the economic life of the community.

This principle negatively affects people's lives in terms of misery and it triggers the development of a concept to enable the government to become fully responsible for the community's welfare. *Staatsbemoeinis* is the principle used because it requires the State to be actively involved in the economic and social life.¹² According to Friedmann, the

⁹ Irwansyah. *Penelitian Hukum: Pilihan Metode dan Praktik Penulisan Artikel*. (Yogyakarta: Mirra Buana Media, 2020), p. 162-164.

¹⁰ Patton, M.Q., and Cochran, M. (2007). *A Guide to Using Qualitative Research Methodology*, Medec Sans Frontieres, UK.

¹¹ Sihombing, B.F. *Evolusi Kebijakan Pertanahan dalam Hukum Tanah Indonesia*. (Djambatan: Jakarta, 2005).

¹² Kamal, Miko. "Corporate governance and state-owned enterprises: a study of Indonesia's code of corporate governance." *J. Int'l Com. L. & Tech.* 5 (2010): 206.

governmental role in promoting the community's welfare is closely related to four functions including the State as a provider, a regulator, an entrepreneur, and an umpire. The presence of state-owned enterprises becomes a concretization of the State's function as entrepreneurs. It shows that this enterprise serves as a means for the government in realizing social welfare. Therefore, the implementation of equity becomes an integral part of achieving goals such as justice and the Welfare State.¹³

The use of the State's assets through equity is one of the governmental efforts in achieving social welfare. This shows capital participation becomes an effort to realize social justice with a populist dimension when it is related to the theory of justice emanated by John Rawls. The role of the State as a regulator through equity shows that Indonesian land can truly realize the people's greatest prosperity. Furthermore, the separation of the State's assets affects the administrative changes in land control and ownership. The government becomes a shareholder through equity participation when it owned the property.¹⁴ Land abolition is the transfer of full authority to state-owned enterprises to manage the land and ensure it contributes to developmental goals. Asset legality through the issuance of land rights certificates to state-owned enterprises is one of the efforts to realize certain goals. This gives the enterprises the same obligations as humans as rights holders in land ownership and control. The true nature of legal certainty lies in the strength of these certificates as proof of ownership.

In Indonesia, there are several land statuses, including customary land rights, Swapraja, and ex. Swapraja, as well as State land. The Basic Agrarian Law specifies that land rights are granted to provide certain guarantees through registration performed on the status of the assets. To be granted a right, state-owned enterprises need to comply with the proper procedure and ensure their usage does not conflict with the National and Regional Spatial Plans. This is in line with the increase in the human population which causes a high demand for land.

The realization of legal certainty guarantees for land rights certificates is influenced by the subjects of rights.¹⁵ The certainty of the subject plays an important role in showing the party that has the land ownership control. Therefore, the elements to be investigated are related to the identity of the subject, domicile, occupation, citizenship, and others. From the aspect of legality, the holder of the rights listed in the certificate is a legal entity. This is different from the registration of land rights for the State's assets where the holder is the Indonesian government. The differences clearly show that the land is not an asset of the State. Furthermore, physical control is a determining factor in the relationship between land and the subject of its rights.

¹³ Kim, Kyunghoon. "Using partially state-owned enterprises for development in Indonesia." *Asia Pacific Business Review* 25, no. 3 (2019): 317-337.

¹⁴ Nurdin, Iwan. "Resolving agrarian conflicts through implementation of land reform by collaboration of CO and local government in Indonesia." In *World Bank Conference of Land and Poverty, Washington DC. 2014.*

¹⁵ McLeod, Ross H. "The struggle to regain effective government under democracy in Indonesia." *Bulletin of Indonesian Economic Studies* 41, no. 3 (2005): 367-386.

In terms of administrative, legality, and physical control, the state-owned enterprises' assets are not owned by the State. These types of assets can be used as an abandoned land subjects because they are confiscated by the court.

4. Mechanism of Land Conflict Resolution for State-Owned Enterprise Assets in Community Control

Conflict is an undeniable condition that has occurred in various forms. It is also a land dispute involving several parties and has the potential to have a wide impact.¹⁶ Stephen P. Robbins¹⁷ argued that conflicts arise because there are antecedent conditions. These conditions are categorized into 3 including communication, structure, and personal. Conflict is always centered on goals to be achieved, allocation of shared resources, decisions taken, and the behavior of each party involved.

In South Sulawesi Province, issues over state-owned enterprises' assets have occurred for years and are yet to reach a settlement that can provide a major role in achieving legal objectives. Several conflicts over land have occurred between the community and PTPN XIV. Examples are:

1. **Conflict asset of PTPN XIV in Wajo regency.** This conflict occurred in HGU No. 00001/Wajo due to an overlapping location of PTPN XIV with UPT Bekkae covering an area of 795 Ha. The Head of the Land Office of Wajo specified that the settlement failed to reach the common ground because the number of subjects that had changed made it difficult in identifying land control at the location of PTPN XIV. Currently, the steps being taken include the coordination of local governments, the Ministry of State-Owned Enterprises, the Ministry of Villages, and the Development of Underdeveloped Regions and Transmigration.
2. **Conflict asset of PTPN XIV in Jeneponto regency.** The conflict occurred in HGU No. 01 covering an area of 1,601.88 Ha.
3. **Conflict asset of PTPN XIV in Gowa regency.** This conflict covers an area of 1,601.88 Ha due to PTPN land control by the community. The Head of the Land Office of Gowa regency explained that the problem of PTPN XIV assets become the object of a case.
4. **Conflict asset of PTPN in Enrekang regency.** This conflict covers an area of 5,230 Ha due to the use of the land that belongs to the former HGU PTPN XIV based on the Regent Decree.

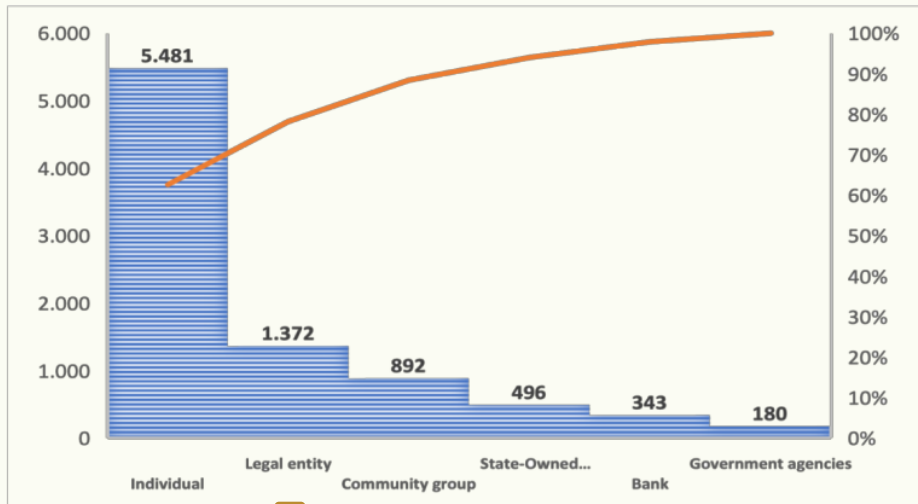
This study observes that there are several forms of conflict over state-owned enterprises' assets. First, ownership by the community for land whose certificate has been issued to state-owned enterprises, second, the control of the former State land, and third, control by the community on land that is yet to have a certificate.

¹⁶ Sumardjono, Maria W. *Reorientasi Kebijakan Pertanian*. (Jakarta: Kompas, 2011). p. 65

¹⁷ Limbong, Benhard. *Konflik Pertanian*. (Jakarta: Margaretha Pustaka, 2008). p. 10

Generally, several theories associated with conflicts between state-owned enterprises and the community in South Sulawesi were observed due to inconsistent positions. This inconsistency is referred to as the position of the community as a weak party against the PTPN XIV.

Chart 1. Data on Disputes, Conflicts, and Land Cases



Source: Ministry of Agrarian and Spatial Planning of the Republic of Indonesia, 2021

The community view land whose rights have expired and ceased to have a legal relationship with the rights holder. Meanwhile, the state-owned enterprises believe the land acquired will always remain under their control. These different views became more complicated because other parties explain the state asset cannot be released without the House of Representatives' approval. The land belonging to state-owned enterprises tends to lead to criminal law implications when a transfer is made.

Based on the land assessment, the main objective is to find out the factors causing the conflict and provide an idea as resolution.¹⁸ The first step is to examine and analyze data on the current issue. Based on the analysis result, the main issues can be mapped and this makes it easier to find the right format in the resolution stages. This assessment becomes the legal review of land conflicts based on juridical, physical, and other supporting data. The results of this study are reviewed for the implementation of the law to handle conflicts. In Indonesia, land issues over state-owned enterprises occur yearly. The following is data on disputes, conflicts, and land cases in the country from 2015-2020. Assets control is an integral part of the implementation and management of state-owned enterprises to achieve their objectives. Juridically, all forms of control are subject to laws and regulations in the land sector, State, and Limited Liability Companies.

¹⁸ Luke, Belinda. "Examining accountability dimensions in state-owned enterprises." *Financial Accountability & Management*, 26, no. 2 (2010): 134-162.

Recently, public finances are not only meant for the State's function but also extend to regular and continuous activities serving their needs. It is an architectural building consisting of state, regional, legal entity, and personal finances with each having different *rechtcharacter* and *rechtsstatues*. This shows the State's authority (authority, *gezag*) becomes high and less when there is an increase in public and private sectors respectively.¹⁹

In principle, the protection of state-owned enterprises' assets is a form of implementing regulations to enable the State to take direct action against the overall security. Therefore, the government's land still requires legal requirements that are more comprehensive and factual. This caused the law to become an important supporter of the state's good and integrated land. However, the government's position as a shareholder makes them control all assets of state-owned enterprises. This is indicated in several laws and regulations, providing uniqueness to these assets that cannot be confiscated. Moreover, actions detrimental to state-owned enterprises are categorized as criminal acts of corruption.

5. Conclusion

In host countries, state-owned enterprises are more subject to institutional pressures than private firms. Land status is not a State asset because its control is based on transfer with capital participation that is followed up through abolition. The following are the legal means to resolve land conflicts of state-owned enterprises controlled by the community. First, legal harmonization between the laws and regulations that make the assets belongs to the government, second, the regulation of customary law as a means of resolution, and third, through agrarian reform.

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