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GOVERNMENT ROLE IN AGRICULTURAL MANAGEMENT AS AGRARIAN RESOURCE

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Abstract

Agriculture is a one of land resources called agrarian which brings strategic functions and roles for Indonesia as agrarian country. It is identified as being strategic due to a great number of Indonesian people who rely their lives on agricultural sector. Thus, farms do not only have economic value but also social value, and even religious one. Besides, farms are also subjected for agricultural investment activities involving huge-capital companies through which a large-scale extensification of farms will increase over time. This paper focused on the state control over agrarian resources. Starting from farms as agrarian resources, the governance rights of land by a country is based on both UUPA and the exegesis of Constitutional Court. Findings showed that there were 4 (four) models of The state control over agrarian resources based on Article 2 UUPA. However, as Constitutional Court verdict Number 002/PUU-I/2003 testing toward the Law Number 22, 2001 on oil and gas toward the Constitution 1945 was established, the state control over farms could be broadly defined as public rights for all people of Indonesia over its agrarian resources.

Keywords

agrarian resources, governance rights of land, farms

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Introduction

Natural resources refer to something from nature which has benefit and value in terms of its utilization. It could not be considered as a natural resource if it has no identified usage –thus, the value is not identified either- or it is considered useful but lack in its amount which could not cover all demands –thus, make it unvaluable (Muhammad Amir Solihin and Rija Sudirja, 2007).

Something is considered as a natural resource if it meets 3 conditions: 1) exist; 2) reachable; and 3) beneficial. Therefore, natural resources have a dynamic definition in terms of its opportunity to be a resource. The understanding of natural resources will come to be clearer when we see on its types. Based on the physical aspect, natural resources could be classified into four categories including agriculture, forest, water, and mineral (Muhammad Amir Solihin and Rija Sudirja, 2007).

Farms are one of agricultural resources called as agrarian that has strategic functions and roles for the people of Indonesia as an agrarian country. It is considered strategic due to the fact that Indonesian people mostly depend their lives on agricultural sector. Therefore, farms do not only have economic value but also social value, and even religious one.

As an agrarian country, agriculture is found significant in terms of its contribution to Indonesia economic growth. When Indonesia had economic crisis some years ago, export-oriented superior agriculture was found to be a powerful sector that survived from such crisis. However, although its role for economic growth had been found significant, the sustainable activities on agriculture should have more attention, particularly due to the limited field that farmers could utilize.

Agriculture also becomes the target of investment which involved big companies through which a large-scale extensification of farms would increase over time. Issues of food and energy crisis are ones that boost foreign investors to invest their capital on agriculture. Besides several countries in Africa, Middle Europe, and Latin Amerika; Indonesia is one of developing countries in Asia which becomes a target of large-scale agricultural investment due to its potential farms. A number of international contracts, such as *Agreement on Agriculture* (AoA), and various policies of World Bank along with Food and Agriculture Organization (FAO), *International Fund for Agricultural Development* (IFAD), *the U.N. Conference on Trade and Development* (UNCTAD) and

World Trade Center (WTO) had effected national regulations and policies in various ways (Olivier De Schutter, 2011).

As a production tool or farming media in an agricultural activity, land was considered as the part of natural resources which management and utilization should be philosophically based on Article 33 act (3) the Constitution of Indonesia 1945 mentioning that land and water and any natural wealth within were governed by the State and utilized for the prosperity of all people.

This paper focused on the State's governance rights over agrarian resources (agriculture). The discussion here would describe farms as an agrarian resource, the state control based on UUPA and the state control over the land based on the exegesis of Constitutional Court.

Farms as an Agrarian Resources

Agrarian resources is judicially defined under the Law Number 5, year 1960 on basic regulations of agrarian subjects (subsequently known as UUPA, Indonesia gazette Number 104 / 1960); the provision of People's Consultative Assembly No. IX/MPR/2001 on Agrarian Modernity and Management of Natural Resources; and other legal regulations. UUPA used the term "agrarian", however, it did not provide any definition of it. UUPA had a systematization which was different –generally in initial stage- from the existing laws. Thus, defining the term "agrarian" could only be done by tracking the scope of "agrarian" mentioned in UUPA (Kurnia Warman, 2010).

Referring to UUPA, the term "agrarian" comprised land, water, space, and any natural wealth within. Nevertheless, in practical manner, the term "agrarian" was more likely for anything related to land, hence, many assumed that Agrarian Law was similar to Land Law. In defining Agrarian Law, Subekti Tjitrosudibjo stated about the definition as follows (Boedi Harsono, 1999).

> *The overall provision of law, both civil law and state administrative law (staatrecht) and state business management law (administrative recht) which set the relationships between people – including corporation – and land, water, and space across the States. It also set the authorities derived from those relationships.*

In defining Land Law, on the other hand, Boedi Harsono had bordered that Land Law referred to the definition of Agrarian Law in narrow manner which became an independent branch of the law (Boedi Harsono, 1999).

The utilization of the term "agrarian" historically derived from a terminology in Roman Law that took from the Latin word "ager". This term was then disseminated by European countries which followed *Civil Law*, including Dutch, and it was spread out into colonialized regions, which included Indonesia. This could be seen from several products of law implemented in the East Indies, such as *Agrarische Wet* (Stb.1870 No. 55), *Agrarische Besluit* (1870 N0.118) and the implementing rules. Independently utilizing the term "agrarian" was for clarifying any matter related to agriculture or farms. In the context of agrarian law, the definition would refer to the enactment on land allotment for justice. Thus, agrarian law constituted the Public Law, not Civil Law (Kurnia Warman, 2010).

The definition of farms area could be found in Collective Instruction of the Minister for Internal Affairs and Regional Autonomy with the Minister of Agrarian on 5th January 1961, Number Sekra 9/1/12. The definition of farms was as follows.

Farms comprises any plantation fields, fishponds for fishery, fields for animal husbandry, ex-farming fields, and forests that become a livelihood for eligible people. In general, farms are any areas that belong to eligible people, and others are for housing and enterprises. If a residential house was built on a piece of particular area, the local opinion will determine on how wide will be considered as yard and how wide is for the farms.

In terms of spatial planning as set under the Law Number 26 / 2007 on spatial planning (Indonesian gazette number 115 / 1992, and subsidiary gazette number 3501) that agricultural area was a part of the scope of spatial planning. Distribution for space should be conducted in an area which included a spatial allotment for preservation and a spatial allotment for cultivation. Rural areas are areas which primary livelihood activity is farming, that involved managements of natural resources with functional regional arrangement for rural residence, government services, public social service, and economic activities (Article 1, Number 23).

In juridical manner, both UUPA and Law Number 56, Prp 1960 on agriculture areas (Indonesia gazette Number 171, in 1960) did not mention any definition of farms. However, the Law Number 41 in 2009 about the protection of sustainable food agricultural area (latterly known as UU No. 41/2009, Indonesia gazette in 2009, Number 149), mentioned the term 'farming area'. Area is a part of land in the earth that is considered as a physical domain yang comprises land along with all factors that influence its utilization such as climate, relief, geological and hydrological aspects that

is naturally emerged or due to humankind (Article 1, number 1). And farming area is an area for farming activities (Article 1, Number 2). The Law, Number 18 in 2014 on plantation, mentioned that plantation was any activities that carried on particular plants on the ground and/or any planting media in an appropriate ecosystem, cultivated and promoted goods and services of those plantation products using useful science, technology, capital, and management in order to reach the entrepreneur and public welfare.

The State Control Based on UUPA

Establishing the Law Number 5, in 1960 on basic rules of agrarian subjects (Indonesia gazette Number 104, in 1960, which was latterly stand for UUPA) aimed to end any circumstances against the aim for people welfare and asserted that the governance of land was assigned to the States as a governing organization of all people. The intended governance, however, was not for possession as *Domein Verklaring* statement in Article 1, Agrarisch Besluit Staatsblad 1870 No. 118 prevailing in Java and Madura which was then prevailed outside Java and Madura as well under Staatsblaad 1875 No.119a, *Domein Verklaring* mentioning that the land belonged to the States (Boedi Harsono, 1999).

The states' governance over the intended areas was based on the Article 2 UUPA which implementation rules was under the Article 33 act (3), Indonesia Constitution 1945, providing an authentic definition of the term 'governed by the states' as follows.

(1) *Under the Article 33 act (3) The Constitution 1945, and any notions as intended in Article 1, that earth, water, and space including any natural resources beneath in a supreme level were all governed by the state as an organization of all people.*

(2) *A governing right by the states mentioned in act (1) gave an authority for:*

   a. *Govern and enforce land allotment, utilization, supply, and cultivation.*

   b. *Establish and organize legal relationships between people and the area.*

   c. *Establish and organize legal relationships between people and any legal acts dealing with land.*

(3) *Authority derived from the state control relied under act (2) of this article was used to reach as much as people welfare in terms of nationality, prosperity, and independence for all people and Indonesia as a constitutional country which is independent, sovereign, fair and prosperous.*

(4) The implementation of the state control could be delegated to autonomous regions and customary law community, if necessary and not conflicted with any national interests based on the provision of government regulation.

Furthermore, the general explanation of II/2 UUPA was mentioned as follows.

The intended state control was over all areas, water, and space both already belonged by individuals or not. The states control over individuals' areas was limited by the content of the state control, indicating which extend the country delegated its governance to the owners in order to use their rights. That was the boundaries of the state control.

Defining the state control over the land, Muhammad Bakri characterized it into two:

(1) The full control was over the uncertified areas of a legal subject. These areas were identified as 'free land/state land' or "areas with state direct control." The state was able to delegate these areas to a legal subject with a given right.

(2) The limited or partial control was over the certified areas owned by a legal subject. These areas were identified as "under-rights land" or "areas with state indirect control."

Specifically, there were several notes for the state control over the land based on the Article 2 UUPA, as follows.

First, the stat*e* control derived from the rights of the nation. It could be seen from the provision of the article 1 UUPA, mentioning:

(1) The entire territory of Indonesia is the unity of the homeland for all Indonesians, united as Indonesia.

(2) The entire land, water, space, and the natural wealth beneath in Indonesia territory as a gift from the Only Almighty God constitute Indonesian land, water, and space dan considered as national wealth.

(3) The legal relationship between Indonesia as nation and land, water, and space as mentioned in act (2) within this article is an eternal relationship.

Following Eman Ramelan, the state right was defined as a controlling relationship, not an ownership relationship, between a state and its agrarian resources reflected from the relationship model of the implementation of customary rights under the customary

rules (artice 5 UUPA). It was as drawn on the article 1 UUPA that the state rights was religiously communalistic showing that the land, water, space, along with all the natural resources beneath were the national wealth (act [2]). Besides, it was eternal which indicated that it would always be attached as long as Indonesia alive (Eman Ramelan, 2005).

Second, the state control was an authority to control (*regelendaad*) and enforce. Under the article 2 act (2) UUPA, there were 3 types of the state control. In regard to the agricultural areas, it included (1) organizing, enforcing allotment, utilizing, supplying, and cultivating the agricultural areas; (2) establishing and organizing the legal relationships between citizen and the agricultural areas; and (3) establishing and organizing the legal relationships between citizens and legal acts on agricultural areas. There were 3 keywords there which included organizing (*regelendaad*), enforcing, and establishing. These three authorities were implemented by the state through bodies, organizations or state institutions.

In legislative context, such authority was through regulatory bodies such as the government with House of Representative (legislator bodies). The government was based on the article 5 act (2) or the article 22 of Indonesia Constitution 1945, and also the minister was based on the delegation of legislation power. In executive context, it was conducted by the president (the government) or the minister (Eddy Ruchiyat, 2006). In regard to the draft law, the regional representatives had also an authority dealing with regional autonomy, the central-regional relationship, the regional establishment, expansion, and unification, management of natural resources and other economic resources, and central-regional financial balance.

From the types and hierarchies of the legislation on the article 7 act (1) the Law Number 12, in 2011 about the establishment of legislation (subsequently identified as the Law Number 12/2011, the national gazette Number 82/2011), the legal product that the state could established was Indonesia Constitution 1945 which organized the basic rights of Indonesian people, the provision of people's consultative assembly, Regulation in Lieu of Law, government regulation, president regulation, provincial regulation, and local regulation.

In addition to the types of regulation intended in the article 7, there were other types of regulation which prevailed as well, such as regulation established by People's Consultative Assembly, by House of Representatives, Regional Representatives, The Supreme Court, Constitutional Court, State Audit Agency, Judicial Committee, Bank

Indonesia, other similar minister, bodies, agencies, and committee which were established under the Law or by the government under the regulation of House of provincial Representatives, the governor, regional representatives, local government, the head of villagers or other similar bodies (article 8 act [1]). The existence of these regulations was legitimate and had a legal power to give order under the higher rules or established based on the authority (article 8 act [2]).

Following Eddy Ruchiyat, the implementation of UUPA in terms of the authority to control (*regelendaad*) could be categorized into some sector for its regulation including land use, land rights, land assignment, and other regulations that should be established. However, there were several regulations which implementation was no longer relevant (Eddy Ruchiyat, 2006).

In regard to the regulation dealing with farming area, there were 2 primary aspects that included: 1) allotment and use, and 2) control and ownership. The former one, under the provision of UUPA, was classified into 'land use', as mentioned in article 14 UUPA as follows.

> *(1) Given the article 2 act (2) and (3), article 9 act (2), and article 10 act (1) and (2), the government in Indonesia socialism established a general planning on supply, allotment, and usage of land, water, and space along with the natural resources beneath for:*
>
> *a. The national needs,*
>
> *b. Liturgy and other holy custom needs in accordance to the Only Almighty God,*
>
> *c. The center livelihood of community, social, cultural and other needs for welfare.*
>
> *d. The needs of developing farming, planting, and fishery, and other related production,*
>
> *e. The needs of developing industry, transmigration, and mining.*
>
> *(2) Based on that general planning mentioned in act (1) and given the related regulation, the local government settled supplies, allotment, and usage of land, water, and spaces for his region in accordance to each regional circumstance.*
>
> *(3) Regional regulations intended in act (2) would prevailed after having legitimation from president in first-level regional authority, from governor in 2nd-level regional authority/other related regional government, and from the local regent in 3rd-level region authority.*

In land use for farming, it had been set in Law Number 26/2007 on spatial planning which was subsequently set in regional regulation and local regulation in more specific manner as regional spatial planning. Without any planning, the land use for farming would only relied on incidental interests of certain plants. Planning was useful for reaching a good equilibrium between the areas and the necessary plants for people and nation. Land allocation was also set in planning which corresponded to the needs of people and nation in terms of necessary plants for clothing and food, both for comestibles and trade (Samun Ismaya, 2013).

In the context of land use, it included as one project of the Ministry of agriculture and other related ministries. The Law number 41/2009, for instance, was one fundamental base for the use of agricultural areas, as well as the Law Number 18/2014 on plantation. In the context of controlling and ownership, it referred to UUPA, the Law Number 56/Prp/1960 on agricultural areas, the Law Number 2/1960 on profit sharing agreement, the government regulation Number 224/1961 on the implementation of area allotment and indemnity allotment, and other subordinate regulations.

In addition to the authority of controlling, UUPA was considered to have enforcement. This related to the technically field implementation. Currently, there were 2 state bodies which dealt with agricultural areas. Those were the Ministry of Agrarian and spatial planning, cq BPN and the Ministry of Agriculture corresponding to the tasks and the function of BPN. The former body had an authority to legitimate agricultural areas for those entitled, and the later one would establish various programs related to agricultural policies in order to attract or promote agricultural activities to be evolved.

Third, the state control was bind to the aim and ideals of the nation. Article 2 act (2) UUPA asserted the state control by mentioning that in order to reach as much as prosperity for all people as nation, prosperity and independence in society and Indonesia as a legitimate, sovereign, fair, and prosperous country. One ideal of the nation as mentioned in The Constitution 1945 was to promote a general welfare for all people. This implied that welfare was one of fundamental pillars to establish NKRI (Negara Kesatuan Republik Indonesia). One motivation for Indonesia to be independent was elevating Indonesia from any exploitation and misery due to very long period of colonialism (Mahkamah Kontitusi RI, 2008).

The state guarantee for societal prosperity and social welfare would commonly be linked to the concept of welfare state. However, such similar concept mentioned in article 33 act (3) The Constitution 1945 was different from the concept of welfare state

followed by western countries that even every individual, people with disabilities, the poor, jobless, and other communities the social security primarily concern on. Social welfare was defined as a manifestation of providing subsidy and facility (e.g. a subsidy for jobless people and vagrant) for individuals with social needs (Mahkamah Kontitusi RI, 2008).

The concept of welfare state set in article 33 act (3) The Constitution 1945 and as the base of UUPA was equity. For instance, article 17 UUPA regulated an ownership and control bans of agricultural areas which spilled over the borders (*groot grond beziter* atau *latifundia*). With this regulation, it was expected that the ownership of agricultural areas would be equitable, as well as the outcome allotment. Thus, it was expected that the motivation to work would increase for the farmers and, as the result, the prosperity for them and their family would increase as well.

Forth, the state control could be delegated to regional government. Article 2 act (4) UUPA mentioned that the implementation of the state control could be delegated to autonomous regions and customary legal society when it was needed and not conflicted with national interests as mentioned by the provision of government regulations. Boedi Harsono defined that the state control would remain on the state and could not be assigned to other parties. The implementation, however, could be delegated to regional governments and other customary legal societies as long as it was necessary and not conflicted with national interests. It was considered as co-tasks (*medebewind*), not autonomous in which all the stuff might be organized by regional regulations (Boedi Harsono, 1999).

This co-task assignment to the regional government was limited on authority to organize, establish, allot, use, supply, and cultivate the land. An authority to organize, for instance, dealt with regional development program and an authority to establish dealt with preparing areas for housing, industry, and other developments (Boedi Harsono, 1999).

Based on article 2 UUPA, it stated that dealing with the principle of autonomy and *medebewind* on the organization of regional government, agrarian issues were the task of central government in nature. Thus, delegating such authority over the land was *medebewind*. Any matter should be conducted in accordance to the needs and should not be in conflict with national interests. An authority on agrarian could become a financial source for particular region.

In fact, different interpretations of the term 'needs' frequently happened. What was considered necessary for the central government might sometimes not be necessary for the regional government, even brought a worse result, as well as the vice versa. Whereas, when talking about national interest, it should refer to the entire interests of both central and regional dimensions. A central government program on increasing national food production was one of the examples. This program required that productive agricultural areas in outlying district should be protected from any functional shifts which might transform them into housing areas. In fact, however, such functional shift did happen. The productive agricultural areas were decreased from what the central government had targeted (Jpnn, 2015).

Based on article 10 act (5), the Law Number 32/2004 on regional government (subsequently known as UU 32/2004) mentioned that delegating an authority from central government to regional government was in term of co-task (*medebewind*). And, with the government regulation Number 3/2007 on the governmental task allotment between provincial government and local regent/mayor (subsequently known as PP No.3/2007) in article 2 mentioned that the governmental tasks comprised government aspect:

1. Which was fully considered as the government authority, consisting of 7 task fields as mentioned in article 10 UU 32/2004;
2. Which shared between government levels and/or structure (central, provincial, regency/city), outside their internal concerns, consisting of 31 fields, which one of those was defense field (letter i).

Furthermore, based on an enclosure entitled: *Pembagian Urusan Pemerintah Bidang Pertahanan*, it noted that the government's concern on defense field which was delegated to the regional government consisted of 9 (nine) sub-fields which were all compulsory, including:

a. Location approval;
b. Land acquisition for public purposes;
c. Organizing arable land dispute;
d. Organizing indemnity and compensation of areas for construction;
e. Establishing the redistribution subject and object of land along with its indemnity of maximum exceeded and absentee areas;

f. Determining communal land;

g. Utilizing and problem-solving of wasteland;

h. Licensing to clear areas;

i. Utilization planning for district areas

Location approval assigned to the local government was frequently assumed as the starting gate of various defense issues to happen in a local region. Under the regulation of the Minister of Agraria/Head of National Land Number 2/1999 on location licensing (subsequently known as PMNA/Ka BPN No.2/1999), the local government had an authority to give his approval for a company or corporate to operate their business on a given location. Such approval was frequently based on the term of condition mentioned in article 2 UUPA that had been previously outlined as a financial resource of the local region. Hence, the identified motive was solely economy and the primary aim of a policy, referring to welfare for all people, was neglected. Thus, Achmad Sodiki argued that the policy concept on agrarian seemed sometimes interesting in abstract level and then the otherwise happened when it came to the implementation (Achmad Sodiki, 2013).

The State Control Based on Exegesis of Constitutional Court

In regard to the state control, the Constitutional Court had established an exegesis on article 33 The Constitution 1945. This could be observed in Constitutional Court ruling on test cases of regulations related to natural resources, including Constitutional Court verdict Number 002/PUU-I/2003 testing toward the regulation Number 22/2001 on oil and gas toward The Constitution 1945.

In its legal consideration, the Constitutional Court had an exegesis of "the state control" which was not solely considered as possession/ownership in civil sense (private), since it would be insufficient for the use of governance in reaching 'as much as prosperity for all people'. It indicated that the ideal of 'promoting a general welfare' and 'realizing social fairness for all people' as mentioned in the Constitution 1945 could not be realized.

However, the conception of civil ownership itself was recognized as one logical consequence of the state control which also involved the understanding of public ownership by societal collective over the intended wealth. The notion of 'being governed by the state' could neither be defined as solely a right to control, since it had

naturally embedded in the state functions without any other specific regulations mentioned.

Even if the article 33 was not mentioned in the Constitution 1945 -as other countries commonly followed liberal economy which was not mentioned in their constitutional basic economic norms-, it was by natural had the state an authority to do its governing function. Therefore, the notion "being governed by the state" was impossible to be reduced and translated into an authority for economic control. Thus, whether considering that the notion of being governed by the state was identic with ownership in civil conception or merely considering such notion as a governing authority by the state, both them were objected by the Court.

In a legal consideration of the Constitutional Court, the notion "being governed by the state" should comprise the sense of control by the state in a broad manner and should be rooted from the conception of sovereignty for all people of Indonesia over the resource wealth of "*the earth, water, and all natural wealth beneath*", including the sense of public ownership by societal collectives over the intended resources. The societal collective was constructed by the Constitution 1945 which mandated the state to establish policies (*beleid*), and to conduct management (*bestuursdaad*), regulation (*regelendaad*), execution (*beheersdaad*), and controlling (*toezichthoudensdaad*) for the purpose of as much as people welfare.

The state's management function was conducted by the government with its authority to establish and revoke any permission facilities (*vergunning*), license (*licentie*), and concession (*consessie*). Regulation function (*regelendaad*) was conducted through the legislative authority by the House of Representatives along with the government and the government regulations. Execution function was conducted through mechanism of shareholding and/or through a direct involvement in management of the state-owned corporations as an institutional instrument. The state, *c.q.* the government leveraged its control over the resource wealth in order for the purpose of as much as people welfare. Similarly, the controlling function (*toezichthoudensdaad*) was conducted by the state, c.q. the government in order to control and supervise the execution function to be appropriately done for as much as the people welfare.

Under such interpretation, the term 'governance' in civil ownership (private) was derived from the public ownership in regard to the subsidiaries of fundamental productions for the nation and the productions which dominated the livelihood of

many people, as mentioned under the article 33 act (2), was governed by the state, depending on the dynamic of wealth development for each production subsidiary.

Following the Constitutional Court, the state control included:

(i) Subsidiaries of production which were considered important for the nation and productions that dominate the livelihood of many people; or

(ii) Which were important for the nation but did not dominate the livelihood of many people; or

(iii) Which were not important for the nation but dominating the livelihood of many people.

Those three dimensions were governed by the state and utilized for as much as the people welfare. However, the government along with House of Representatives should also see which value and when a production subsidiary was considered important for the nation and/or dominate the livelihood of many people. One particular subsidiary might be important in one time, but then might be less important in another time. The subsequent question would refer to what was the base of the state consideration to see whether or not a particular production subsidiary was important?

George W. Paton, in a chapter entitled '' *Law as the protection of interest*" of his book "*A Text Book of Jurisprudence*', classified interests into 2 categories which each of them was also more specifically classified as follows (George Paton, 1953).

Social Interest

1. *The efficient working of the legal order;*
2. *National security;*
3. *The economic prosperity of society;*
4. *The protection of religious, moral, humatarian, and intelectual values;*
5. *Health and racial integrity*

Private Interest

1. *Personal Interest;*
2. *Family Interest;*
3. *Economic Interest;*

4. *Political Interest.*

Based on those two categories, social interest on the economic prosperity of society was identified best to relate with the state control and management of agricultural areas as agrarian resources. It was explained that social interest, as individual interest, required an economic prosperity. Besides, the stated should also have to develop, execute, and support the natural resource conservation (George Paton, 1953).

Among various interests that the state should govern and meet, particularly in the notion of governing and owning agricultural areas, when it referred to the article 11 act (2) UUPA, the priority of the interest would be "the difference between people condition and legal purposes of societal group which was considered important and not in conflict with national interests was concerned by ensuring the interest protection of the societal group with lower economy."

Execution function (*beheersdaad*) was a form of the state involvement in term of intervention on people live. However, what the Constitutional Court intended on such intervention seemed different from the concept of intervention revealed in the 20th decade that welfare state indicated that the state took over the responsibility of providing basic welfare for all the people.

Following Peter Machmud Marzuki, this concept of welfare state was no longer relevant in 21st decade since it was still insufficient for the third millennium people if it was only their basic needs to be fulfilled. More than all, they required a change of their life world from only minimal welfare to sustainable welfare (Sri Hajati, 2006).

In fact, the state intervention in increasing the people welfare tended to all aspects of life, however, the expected result in the form general welfare was not significant and equal to how much intervention the state had done which even seemed like restraining people to evolve (Sri Hajati, 2006).

Sri hajati proposed that the appropriate concept should refer to the state as empowerment of known as 'empowerment state'. This concept required the state to do empowerment of people potentials and focus on increasing the significant sustainable welfare. The state intervention was limited under several regulations and the people had chance to play their as much as roles to decide by themselves what would be the best for their society. The government was responsible to accommodate and facilitate the people interests for the purpose of their welfare (Sri Hajati, 2006).

Execution function (*beheersdaad*) modeled in a legal consideration of the Constitutional Court was through shareholding and/or a direct involvement in management of state-owned corporation as an institutional instrument, through which the state, c.q. the government leveraged its governance over the resource wealth for the purpose of as much as the people welfare. The question then would be 'Was the intended definition of the term '*beheer*' in accordance with its implementation?"

In Fockema Andreae Dutch-Indonesia legal dictionary, the term *Beheer*, in civil notion was identified as managing (*bewind*) wealth, goods, along with its execution and maintenance without any authority to shift the right. However, administrative law defined that (Algra, et al., 1983) :

1. The management of financial means, cash; the maintenance involved the responsibility and any deeds which related to the management matter.
2. The management of public work, water building; the maintenance could be done as its function with a responsibility to do and supervise the related job description.

Referring to the above definition of the term *beheers* that management was only limited on the notion of management and had no authority to shift and concern on what had modeled by the Constitutional Court, it would reveal a different definition then. The state involvement in natural resource management through shareholding and direct intervention through state-owned or regional-owned corporations indicated that the state had directly 'played' its role implying that the state was in the same position with the people and being competitive with them. State-owned/regional-owned corporations would do various civil activities as their common character as corporation.

In regard to the state control over the agricultural areas, state-owned/regional-owned corporation along with go-public enterprises had a special right for unlimited agricultural areas. This could be seen in the provision of the article 4 act (2) the regulation of the Minister of Agrarian/ Head of National Land Number 2/1999 on location approval as follows.

> *"….the article 4 on the maximum limits was not prevailing for the state-owned corporation in the form of public companies and regional-owned companies, corporations which all or most stocks was owned by the state -whether central or regional*

> *governments-, and corporations which all or most stocks was owned by society with go-public purposes."*

Following Nindyo Pramono, the policy of *go public* was due to an effort of the state to collect funding, particularly domestic funding, for national development. Besides, it could reduce the dependence of foreign fund. It also aimed to control the priority of the development which involved people aspiration and participation to be developed. Theoretically, go-public could be identified as a thorough educating and training process that involved the whole society.

Through go-public, the people with fund on their hands would be led to improve their habits in saving and investing their money on productive sectors, which also led them to recognize any possible business risks (Nindyo Pramono, 2013).

Although the state direct intervention was aimed to reach the people welfare that not only limited on their basic needs fulfillment but more about reaching a sustainable welfare, the western concept of welfare state with its individual assurance, as stated by Nani Soedarsono, might not be appropriate to Indonesia due to its limited fund. The unlimited governance of agricultural areas was not allowed although it referred to people welfare, since the agricultural area was a part of agrarian resources which was limited in nature and should be controlled in its utilization. There were other private rights on agricultural area which remained prevailed in current and future days. Therefore, the term *beheersdaad* should be further examined in order to prevent any misinterpretation.

Conclusion

Agricultural area was a part of agrarian resources. This definition referred to the scope of the article 33 act (3) the Constitution 1945 and UUPA, tracking the definition of the term agrarian in terms of historical and linguistic context. The state control over agrarian resources (agricultural area) based on the article 2 UUPA included: *first,* the state control was derived from the right of the nation. *Second,* the state control was an authority to govern (*regelendaad*) and establish. *Third*, the state control was related to the national aims and ideals. And *fourth,* the state control could be delegated to the local/regional government.

However, with Constitutional Court verdict Number 002/PUU-I/2003 testing toward the regulation Number 22/2001 on oil and gas toward The Constitution 1945, the state control over agricultural area was defined more broadly as a public right for all people

of Indonesia over the overall agrarian resources (in this case, it was agricultural area) and it was then collectively constructed based on the article 33 act (2) the Constitution 1945 mandating the state to establish policies (*beleid*), and to conduct management (*bestuursdaad*), regulation (*regelendaad*), execution (*beheersdaad*), and controlling (*toezichthoudensdaad*).

Although the aim was solely to bring the people welfare into reality, the implementation was frequently on the vice versa. Therefore, it was expected, particularly on execution function (*beheersdaad*) to be further examined in order to prevent any misinterpretation.

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