

CONSTRUCTION OF ECONOMIC LAW DEVELOPMENT IN THE CONCEPT OF ARTICLE 33 OF THE 1945 CONSTITUTION TO A PROSPEROUS STATE

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ABSTRACT

State as an organization of power that has been given the authority to regulate natural resources must use its authority as well as possible. The 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) states "The Land, Space and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people" This article clearly stipulates that the state has the right to control natural resources (land, water and natural resources contained therein). State control over natural resources contains the consequences of the responsibility of the state to use natural resources as well as possible for the realization of prosperity and welfare of the people. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly positions the state as a party that controls, not owns. The right to control by the state according to the 1945 Constitution of the Republic of Indonesia must be seen in the context of the rights and obligations of the state as a ruler which means that the state has the authority as a "regulator", "planner", "executor" and also at the same time as a "supervisor" for the management, use and also the utilization of the country's natural resources. It has an obligation to use its authority for the realization of the prosperity and welfare of its people. The government has experienced many obstacles facing land acquisition and provision for development for public purposes so that improvements were made with Presidential Regulation Number 65 of 2006 dated July 5, 2006 concerning Amendment to presidential regulation Number 36 of 2005.

Keywords: Economic Law Development, Concept Article 33 Of The 1945 Constitution , Prosperous State

INTRODUCTION

In Indonesia, constitutionally the regulation of land law (as part of natural resources) is affirmed in article 33 of the 1945 Constitution of the Republic of Indonesia. There are two decisive words, namely the words "controlled" and "used", said controlled "as the basis of state authority, the state is a legal entity public who can have rights and obligations like ordinary people.

The word "intended" contains an order to a country to make the best use of the people's prosperity, the order as mandated in the 1945 Constitution contains a state of doing, desiring to be in accordance with its objectives. Lack of understanding of the meaning, substance of the intent and purpose of dominating the state over land is not impossible to be easily misused and misinterpreted that the state is an independent organ of power regardless of the intended purpose and purpose of its formation, with the view that the state alienates the community from its formation, namely a just society and prosperous which should be explained by nature every time, policy and policy as follows: The

1. 1945 Constitution of the Republic of Indonesia does not create a nation's right to natural resources whose authority is delegated to the nation.
2. Amendments to the Constitution through Article 18B of the 1945 Constitution provide a new direction of decentralization in the system of state government by providing as much autonomy as possible.
3. Article 33 paragraph (3) of the 1945 Constitution has not shown clear norms.

The natural resources given by God to the Indonesian Nation is an extraordinary blessing and must be grateful for all the Indonesian Nation. As a means that can be used to achieve the goals of the state in providing welfare and prosperity for the people, naturally natural resources must be managed and utilized as well as possible so that they can truly benefit the people and the country.

The state as an organization of power of all people who have been given the authority to regulate natural resources, must use the existing authority as well as possible. The 1945 Constitution of the Republic of Indonesia in Article 33 paragraph (3) states "Earth, Space Water and Natural Resources contained therein are controlled by the state and used for the greatest prosperity of the people" This article clearly stipulates that the state has the right to control natural resources (earth, water and natural resources contained therein). State control over natural resources contains the consequences of the responsibility of the state to use natural resources as well as possible for the realization of prosperity and welfare of the people.

The right to control by the State (HMN) is a reflection of the state's public responsibility to the community. the role of the state as the party that controls the natural resources is very necessary so that the natural resources in the territory of the Republic of Indonesia can truly bring prosperity and prosperity to the people.

With this controlling right, the State has the authority to regulate everything regarding the use, designation, and also the supply and control of natural resources.

Land as one of the important elements in the implementation of development must be managed and used optimally in order to provide maximum benefits for the prosperity of the people. On the basis of the right to control from the state¹, various types of

¹ Article 2 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles

land rights can be determined by the state to the people, both alone and together with others. However, among the various land rights held by individual or group interests there is a higher interest which can eliminate these rights, namely the public interest. Then the land rights holders should voluntarily agree or disagree should be willing to release the land to the state.

The state as one of the holders of land rights has authority over all existing land in Indonesia, including in terms of revocation of rights. As the highest power organization, the state in terms of the right to control from the state has the authority to:

1. Arrange and administer the allocation, use, supply and maintenance of the earth, water and space.
2. Determine and regulate legal relations between people and earth, water and space.
3. Determine and regulate legal relationships between people and legal actions concerning earth, water and space.

State power over land that is not owned by the rights of one person or other party is wider and fuller. By referring to the authority of the state, the state can give such land to a person and a legal entity with certain rights according to their designation and needs². However, state power to grant these rights is also accompanied by state power to revoke these rights.

There are various bitter experiences that must be experienced by the people of Indonesia, one of which is during the new order. Evictions often occur on land rights that are carried out by force, intimidation, and even easily labeling a landowner as a PKI member only because they defend their rights as legitimate owners and are not willing to give away their land in the public interest. This happens, due to irregularities in the process of land acquisition, where the *bargaining position* of landowners is on the weak side to face the authorities and entrepreneurs who have greater power. One of the most horrendous cases is the clash between residents and the civil service police unit in Tanjung Priok over the release and eviction of the Grand Priest's grave for road construction. In the incident made a number of people seriously injured due to sharp weapons angry residents. That was caused by the lack of information and deliberation by the government and the community. All of this was based on the lack of clarity in the implementation of presidential regulation number 36 of 2005 which was later updated with presidential regulation number 65 of 2006.

In late 2010 the government submitted a draft law on land acquisition for development to the DPR for approval. There are various controversies about this draft law, some agree and some reject. Various problems which cannot be agreed are:

1. That this bill will legitimize the seizure and eviction of people's lands in the name of development and public interest. This bill does not explain the interests and criteria regarding the public interest, so that it has the potential to be interpreted and enforced arbitrarily if the government wants to carry out development on people's lands.
2. This bill will increase the number of poor people, increase the number of landless farmers and increase the number of small farmers in Indonesia, and further eliminate the existence of indigenous peoples. That means that this bill is counter-productive to the government's efforts to reduce the number of poor people. This means that with this bill, the land held by entrepreneurs is far more than the small people. While on the other hand none of the regulations issued to give land to landless people.
3. This bill will increase the number of agrarian conflicts in Indonesia accompanied by acts of violence and human rights violations. At present, land conflicts caused by development projects reach thousands of cases, but to date there has been no mechanism for resolving conflicts in a fair and democratic manner.
4. That the position and position of victims and potential victims whose lands will be used as objects of development are very weak. This bill does not regulate the mechanism of objection to landowners if they do not agree with the development project. Besides that, the restitution mechanism regulated in this bill is only compensation to show that the bill is not responsible for the continuation and survival of the victims.
5. That this bill accommodates private interests more than the interests of the people. Through this bill, the government opens more space for entrepreneurs to be involved in development. This means that private interests are veiled in the public interest.
6. The absence of urgency and relevance of the presence of the Land Acquisition Bill for Development, because the presence of this bill will actually add to the agrarian problem in Indonesia, especially related to overlapping policies.

Rejection of the bill can be justified, based on article 4 letter b of the bill³, land acquisition for public use can also be done for the benefit of private businesses. Thus, the seizure of people's land rights can easily be carried out on the pretext of public interest thereby increasing the level of social inequality in society and will also increase poverty in Indonesia.

For this reason it is necessary to know the extent of the state's right to control the land so that the limitations of his authority become clear so that there is no absolute treatment by the state.

DISCUSSION

1. Construction of Economic Law Development in Indonesia

To see whether the law is in line with the constitution or not, it is very difficult to do. Because the Basic Law only determines the testing of the laws and regulations that are under it. But after the Amendment to the 1945 Constitution of the Republic of

² Aminuddin Salle et.al., *Hukum Agraria*. (Makassar, 2010) p. 98

³ Article 4 states "land acquisition for development includes:
a. Land acquisition for public use
b. Land acquisition for private business interests "

Indonesia, namely the birth of the Constitutional Court (MK) which, among others, was given the authority by the Constitutional Court as a result of the amendment to conduct aof the Constitution or *judicial review* *judicial review*. The constitutional court has conducted judicial review of the 1945 Constitution of the Republic of Indonesia, including the following:

- a. Testing of Law Number 20 of 2002 concerning electricity Against the 1945 Constitution of the Republic of Indonesia
- b. Testing of Law Number 22 of 2001 concerning Oil and Gas Earth Against the 1945 Constitution of the Republic of Indonesia
- c. Testing of Law Number 25 of 2007 concerning Investment Against the 1945 Constitution of the Republic of Indonesia

The Constitution of the Republic of Indonesia regulate the right to control the state in the constitution (Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 2 paragraph (2) of the actual LoGA declarative in nature, so there is not enough reason to suspect the existence of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and Article 2 paragraph (2) of the LoGA as the cause of state power is hegemonial in the New Order era. the right to control the state is spared and is not trapped in the authority that damages him, strictly speaking, restrictions on the right to control the state is certainly needed because every authority has the potential to be distorted. However, the limitation should not be intended to dwarf the power of the state itself. The state should have great power to organize its territory, including arranging government tasks in the land sector. What is important is that the State's Right to Control (HMNAT) is certain to be directed seriously for the realization of the greatest prosperity of the people.

The purpose of the right to control the state is to achieve the greatest prosperity of the people in the framework of a just and prosperous society (Article 2 paragraph (2) of the LoGA). The right to control the state is not allowed to be used to fulfill the interests of certain groups, such as the ruler as the State Domein in the days of the Dutch Indies Government. In addition, what is meant by the people of Indonesia in this case covers the present and the future. In the meantime, the exercise of state control of rights must be in the perspective of transgeneration.

Utilization of the right to control the populist state today should not reduce the ability of the Indonesian people in the future to enjoy the objectives of the state's right to control. If during the New Order government (especially around 10 years before the end), it appeared that the right to control the state was used to spur economic growth so that it seemed more biased towards entrepreneurs, which was actually a deviation from the goal of the country's right to control itself. The determination of the reform government to carry out economic empowerment is precisely the attitude that returns to the objective of establishing the LoGA which is laden with popular spirit. The purpose of the populist state's right to control becomes a limitation for the actions of the state administrators in making land development policies and development.

To build a national economy means building a strong cooperative business entity, growing a strong private business entity and developing a solid SOE simultaneously and integrated by relying on the Development Trilogy to realize the greatest prosperity of the people. Because understanding and thinking of cooperatives in the broad and basic sense as intended in Article 33 of the 1945 Constitution along with their explanations, is indeed very necessary, particularly, in facing various changes and challenges of our development in the future.

As we have come to realize together that in the era of take-off later, to realize an economy based on the Development Trilogy there are at least three major challenges that need to be anticipated by the three platforms of economic actors, namely⁴:

- a. Maintaining economic growth in the context of an increasingly widespread process of economic globalization.
- b. Accelerating more equitable distribution.
- c. Maintaining the continuity of stable and dynamic development activities in order to anticipate the possibility of various obstacles that hamper our efforts to answer the two challenges above.

2. Concept of Article 33 of the 1945 Constitution towards a welfare state

The explanation of article 33 states that "in article 33 there is a basis for economic democracy, production is carried out by all, for all under the leadership or surveillance of members of the community. It is the prosperity of the people that comes first, not the prosperity of individuals. Furthermore it is said that "The earth and water and the natural wealth contained in the earth are the main points of people's prosperity. Because it must be controlled by the State and used for the maximum prosperity of the people".

Therefore, in fact explicitly Article 33 of the 1945 Constitution along with its explanation, prohibits the control of natural resources in the hands of individuals. In other words, monopoly, oligopoly and cartel practices in the field of natural resource management are contrary to the principle of article 33.

The authority to control from the State in Article 33 paragraph (2) is used to achieve the greatest prosperity of the people, in the sense of happiness, welfare and independence in a free, sovereign, just and prosperous Indonesian society and state of law. The exercise of control over the State can be delegated above the autonomous regions and customary law communities, only as necessary and not in conflict with national interests, according to the provisions of government regulations.

⁴ <http://wartawarga.gunadarma.ac.id/2010/09/pasal-33-uud-45-ekonomi-koperasi>, 17 February 2013

Understanding Article 33 of the 1945 Constitution of the Republic of Indonesia N paragraph (1), namely: "... The economy is structured as a joint effort based on the principle of kinship ...". What is meant by joint ventures based on the principle of kinship is cooperative. It should be noted that the cooperative according to Moh. Hatta is not an economic sector, but a social life, which concerns values, souls or spirits based on a sense of brotherhood, kinship, togetherness, mutual cooperation and so on, namely the soul, spirit or life of a cooperative⁵.

In accordance with Article 33 Paragraph (1) that the economy is structured as a joint effort on the principle of kinship. The statement must be interpreted that what is meant by the economy is not only cooperatives, but includes State-Owned and Private Enterprises (Limited Liability Companies, Firms and CVs).

Article 33 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states: "Production branches which are important for the state and which control the livelihoods of the public are controlled by the state".

The phrase "which is important for the state" can be interpreted with the responsibility of the state, namely "... to protect the Indonesian nation and all of Indonesia's blood and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, eternal peace and social justice ...".

In short it is said that "important for the state" are strategic production branches. The interpretation that "controlled" by the state does not necessarily mean "owned" by the state (meaning that it can be owned by private or foreign businesses) can only be accepted in the context of the soul of Article 33 of the 1945 Constitution of the Republic of Indonesia. Meaning that the government is truly in control, so paragraph (3) Article 33 of the 1945 Constitution of the Republic of Indonesia can be implemented.

Regarding the provisions of the 1945 Constitution of the Republic of Indonesia which gives authority to the state to control "... the branches of production which are important to the state and to control the livelihoods of many people ..." are not intended for the sole authority of the state, but have the intention that the state can fulfill its obligations as stated in The Preamble to the 1945 Constitution of the Republic of Indonesia, namely: "... protect all Indonesians and all Indonesian blood and to promote public welfare ..." and also "... realize a social justice for all Indonesian people ...". The meaning contained in the control of the state is meant that the state must make control of the branches of production under its control to fulfill three things that are of public interest, namely: adequate availability, equitable distribution and affordability for many people.

Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states: "Earth, water, space and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The earth and water and the natural resources contained in the earth are the main points of people's prosperity. Because it must be controlled by the State and used as much as possible for the prosperity of the people. The formulation of the constitution shows that the state has sovereignty over its natural resources, therefore foreign investment that has the intention to manage natural resources must be in line with the laws and regulations implemented by regulators.

The 1945 Constitution of the Republic of Indonesia does not specify in detail what is meant by the state's right to control. The right to control by the state according to the Law of the Republic of Indonesia of 1945 must be seen in the context of the rights and obligations of the state as a ruler which means that the State has the authority as "regulator", "planner", "executor" and also at the same time as "supervisor" of management, use and also utilization of natural resources. The state also has an obligation to use its authority to realize the prosperity and welfare of its people.

The right to control by the state stated in Article 33 of the 1945 Constitution of the Republic of Indonesia positions the state as a regulator and guarantor of people's welfare. The functions of the state cannot be separated from one another, which means releasing a business field on natural resources to cooperatives, the private sector must be accompanied by special forms of regulation and supervision, therefore the obligation to realize the greatest prosperity of the people can still be controlled by the state .

The right to control by the state over natural resources was devolved from the nation's tasks which were delivered by the country's founders at that time. The delegation of tasks gives the role of the state as:

- a. The highest power organization of all people, the state acts as the ruler.
- b. As a ruling body, the state is authorized by law to carry out its duties which can be imposed on holders of control over natural resources based on the rule of law system adopted in accordance with the 1945 Constitution of the Republic of Indonesia. The
- c. state is the holder of sovereignty over resources in all regions of the country because of its nature as a "State".⁶

In managing natural resources, the Government should refer to the provisions of Article 33 paragraph (3) of the 1945 NRI Constitution which expressly mandates the earth and water and the natural resources contained therein to be controlled by the state and used as much as possible for the prosperity of the people. Returning to the mandate of the 1945 Constitution of the Republic of Indonesia NRI Article 33 paragraph (3), the Constitutional Court provides an interpretation of the clause "controlled by the

⁵ ED, Damanik, p.118. Cooperatives in the sense of Article 33 of the 1945 Constitution of the Republic of Indonesia, 1945, are more emphasized in the spirit of cooperative spirit on the basis of understanding togetherness and the principle of kinship. On that basis, that the Indonesian economy is not only cooperatives, including private companies, state companies. All of that must have a spirit of togetherness and the principle of kinship.

⁶ Winahyu Erwiningsih, op cit. p 206

state" which includes the meaning of control by the state in the broad sense derived from the conception of the sovereignty of the Indonesian people over all sources of wealth "land and water and natural resources contained therein, including the notion of public ownership by the people's collectivity of the intended sources of wealth. The people collectively constructed by the 1945 Constitution of the Republic of Indonesia gave the state the mandate to carry out its functions in conducting policies (*regulations*) and management measures (*bestuurdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) by the state⁷.

The interpretation of the Constitutional Court is in line with the principle of the right to control the state as regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (Law No. 5 of 1960). Article 2 of Law No. 5 of 1960 provides the basis for the concept of state control rights which can also be derived from the concept of state control rights over natural resources. Based on the right to control the country, the state should be authorized to:

- a. regulate and carry out the designation, use, supply and maintenance of the earth, water and space; \
- b. determine and regulate legal relations between people and the land, water and space .
- c. Determine and regulate legal relations between people and legal actions concerning earth, water and space.

Regarding paragraph (4) Article 33 of the 1945 Constitution states "... the National Economy is based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining the balance of progress and national economic unity ...".

The existence of the words "equitable efficiency" has changed the whole veiled intention to incorporate views of economic neoliberalism (which paved the way for capitalism and new imperialism) into Article 33 of the 1945 Constitution as a result of the amendment in 2002. because the words "efficiency in the economy is oriented to the maximum gain (in economic enterprises) and maximum satisfaction (in individual economic transactions). That is to say neoclassical economic understanding as a form of economic liberalism / neoliberalism which operates from free-market (*laissez-faire*). Free markets open the way for market sovereignty to displace the people's sovereignty, free markets will displace the poor, not displace poverty⁸.

By changing it into the words "fair efficiency", the interests of the people they represent change into the interests of society, individual preferences are changed to social preferences. This is an economic transformation from an economic system based on individual principles to an economic system based on togetherness and family principles.

Based on some of the meanings contained in Article 33 of the 1945 Constitution of the Republic of Indonesia as described above, the article 33 contains a very essential meaning that is reflected in the existence of democracy. The meaning of democracy has relevance to the meaning of democracy in Indonesia. Democracy in this case is social democracy, based on togetherness (collectives), not liberal democracy based on individualism (not western democracy)⁹.

The right to control by the state in Article 33 Paragraph (3) of the 1945 Law of the Republic of Indonesia, allows the state to exploit natural resources related to *public utilities* and *public services*. On the basis of philosophical considerations (the basic spirit of the economy is joint effort and kinship), strategic (public interest), political (preventing monopolies and oligopolies that harm the country's economy), economy (efficiency and effectiveness), and for the sake of general prosperity and prosperity as much as possible the people¹⁰.

The right to control by the state is the task of the authority of the Indonesian people carried out by the people's representatives at the time of drafting the 1945 Constitution of the Republic of Indonesia and forming the Republic of Indonesia on August 18, 1945. The delegation of such tasks is set forth in Article 33 Paragraph (3) The Law of the Republic of Indonesia of 1945. The right to control by the state in the form of legal institutions and concrete legal relations is an inseparable unity. The right to control by the state as a legal institution was created when a concrete legal relationship was established between the state and the land of Indonesia on August 18, 1945.¹¹

Article 33 Paragraph (3) does not specify what authority the State has as the holder of authority over existing natural resources. Regarding the authority of the State with the right to control in the country, it can be seen from Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles or later came to be known as the Basic Agrarian Law (UUPA), as the implementation of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia in Article 2 paragraph 2 of the LoGA stated authority of the State's Right to Control, namely:

- a. To regulate and administer the allocation, use, supply and maintenance of the earth, water and space.
- b. To Determine and regulate legal relations between people and the earth, water and space.
- c. To Determine and regulate legal relations between people and legal actions concerning earth, water and space.

⁷ Decision of the Constitutional Court Number 01-021-022/PUU-I/2003

⁸ Sri-Edi Swasono, *ibid*, h. 24.

⁹ It is necessary to emphasize the difference between democracy in Indonesia (based on togetherness and family principles), and Western democracy (based on individual principles). Indonesian democracy is based on consensus (agreement) / called "vertrag", Western democracy is based on social contracts.

¹⁰ Pan Muhamad Faiz, *loc cit*

¹¹ Boedi Harsono, *op cit*. p 273

The details of the authority to regulate, determine and carry out various activities as stipulated in Article 2 of the LoGA, have been given an authentic interpretation of the right to control by the state referred to by the 1945 Constitution of the Republic of Indonesia, as a mere public legal relationship. Thus there will be no other interpretations of the understanding controlled in the 1945 Constitution of the Republic of Indonesia¹².

Granting a right to natural resources to a person or legal entity does not mean that the state relinquishes the right to control, the natural resources are still in the control of the state, only that the state's authority is limited, to the extent that the authority constitutes the content of the given rights. This limit must be respected by the state, the state must not interfere with the control and use that has been granted with a right to a person or legal entity. The control and use of land which is based on this right is protected by law, not only from interference from fellow citizens, but also from interference from the authorities. Nevertheless the state still oversees the utilization of these natural resources.

In its development, Article 33 of the 1945 Constitution of the Republic of Indonesia was amended by amendments to the Constitution in 2002. In the original text of the 1945 Constitution of the Republic of Indonesia, Article 33 was outlined in Chapter XIV with the title Social Welfare, while based on the 2002 Amendment, Article 33 is set forth in CHAPTER XIV with a change in title to the Indonesian Economy and Social Welfare.

The provisions of Article 33 of the 1945 Constitution of the Republic of Indonesia, the results of the 2002 amendment are as follows¹³ : the

- a. economy is structured as a joint effort based on the principle of kinship.
- b. the branches of production which are important for the state and control the lives of many people are controlled by the state.
- c. The earth, and the water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
- d. The national economy is organized based on economic democracy with the principles of togetherness, efficiency, being just, sustainable, environmentally friendly, independent, and by maintaining a balance of progress and national economic unity.
- e. Further provisions regarding the implementation of this article are regulated in the law.

CLOSING

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia clearly positions the state as a party that controls, not owns. The right to control by the state according to the 1945 Constitution of the Republic of Indonesia must be seen in the context of the rights and obligations of the state as a ruler which means that the state has authority as a "regulator", "planner", "executor" and also at the same time as a "supervisor" for the management, use and also the use of the country's natural resources has an obligation to use its authority for the realization of the prosperity and welfare of its people.

"Controlled" and "owned" in the context of the state's position on natural resources are two different things. with respect to natural resources, the position of the state is not the owner, but the state as the ruler. the state does not have the right of ownership but the state has the right to control the natural resources of the natural resources as referred to in Article 33 Paragraph (3) of the 1945 State Law of the Republic of Indonesia covering the earth, water and natural resources contained therein (inside the earth or water). The earth itself consists of the body of the earth and the surface of the earth (which is then called the land), while water includes sea water in the territory of Indonesia contained in the earth and in the water in the form of mining products, forest products, fish, animals.

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¹² Boedi Harsono, *op cit*, p 232

¹³ Article 33 of the 1945 Constitution of the Republic of Indonesia Paragraphs (1), (2) and (3) remain unchanged, while paragraphs (4) and (5) are the result of the amendment to the IV Amendment to the Republic of Indonesia in 2002.

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