

The Dynamics of Agrarian Reform in Indonesia: Between Expectation and Reality

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Abstract: Agrarian reform as the realization of Article 33 Indonesian Constitutional Law 1945 is the expectation of Indonesian people. At the beginning, agrarian reform has socialist soul in which equalization of land ownership right by lifting the farmers. Yet, in the middle of the road, agrarian reform faces obstacle and tends to not have a clear orientation. Agrarian reform is the problem which is not finished yet since Independence Day. This research will explain the law dynamics of agrarian reform in Indonesia. This research is socio legal research which compares law and social facts in society. Therefore, the used theory to analyse this issue is Law System Theory by Lawrence Meir Friedman which involve: (Structure of Law) Legal Structure, (Substance Law) Legal substance, (Culture Law) legal culture. This research gives example of the problems that arise during the implementation of agrarian reform in Indonesia. This research will identify the consistency between law policy and its implementation since Old Order Period until Reformation Era. As law research, the purpose of this research is to find the gap between *das sein* and *das sollen* so that can give recommendation to the enforcement of law policy in Agrarian reform that should be conducted.

1 INTRODUCTION

The definition of “land reform” is later known as “agrarian reform”. Even though both of them have different meaning in agrarian studies, but they have the same track on Indonesian Land Policy history. In Soekarno era, Indonesia has the policy and program of land reform in 1960-1965. Yet, it ended after Soeharto era since 1966 until 1998. At the first reformation in 2005, Joyo Winoto as the Chief of National Land Agency (BPN) introduces a new land reform conception which called as “Agrarian Reform”. The conception is an establishment policy to solve poverty, unemployment, land ownership discrepancy, and realize social justice through land redistribution which known as state land for poor people especially landless farmers, farm workers and sharecroppers. Also, the provision of agricultural credit and service in order to make the redistribution land more productive and sustainable. In fact, the term “Agrarian Reform” is introduced and continuously to be promoted by Gunawan Wiradi (Wiradi, 2009)

Land problem is one of the establishment sectors which need to be seriously handled by government

since land is a vital need for society, especially the people who depend their lives on land. In the government side, they have obligations to protect society and regulate order also prosperity. Yet, in other side, acceleration of economic development is needed to be increased, so that it requires land as the basic foundation of all economic activity (Fatimah, 2015). It is interesting to talk about Agrarian Reform, even more if it is related to the term agrarian. Is it only involving land aspect or it widely involves earth, water, space and natural wealth aspects? Prof. Boedi Harsono, as one of the land reform terminology user, states that land reform involves recast on land ownership and authorization also its relation with land ownership law (Harsono, 2008). Agrarian reform or land reform, even before 1960, has become the cause of the land structure change almost all over the world.

Its principle is the existence of land ownership and authorization limitation, agrarian lands must be actively use individually by the ownership. The principle is arranged clearly on Law Number 5 Year 1960 on Agrarian Basic Law (BAL). Since this law was enacted, there has been a reform in the control, ownership, and use of land in Indonesia. This has

included the conversion of a colonial model of land rights (land titles) to a national one (Sukaryanto, 2017) Thus, land reform formal legally called as Agrarian Reform in which the process of restructuring of ownership, authorization, and agrarian source use (especially land). In Article 2 Indonesian People Representative Decree (TAP MPR RI) Number IX/MPR/2001 on Agrarian Reform and Natural Resources Management, it explains that “agrarian reform, which encompassing continuous process on the reform of authorization, ownership, and agrarian source use, are conducted in order to achieve law certainty and protection also to realize social justice and prosperity for all Indonesian people”. As policy direction, TAP MPR desires to conduct reform on ownership, authorization, and use which based on justice or it is known as land reform; at a time to conduct land inventory and data collection for land reform interest.

Specific cases of public land redistribution have emerged in Indonesia in recent years that differ from those described in the literature on redistributive land reforms, which emphasize redistribution of private land holdings to small and landless farmers. By contrast, the land reform process in Indonesia has entailed redistribution of "state" land to tillers who, prior to the reform, were cultivating this land using traditional mixed farming methods (Sirait, 2016). The management of agrarian source during this time has caused environment quality decreases, ownership discrepancy, and other conflicts. Based on the explanation above, it is interesting to discuss further on Expectation and Reality of Agrarian Reform in Indonesia.

2 THEORY

Implementation of Agrarian Reform is not a stand-alone thing but related to different aspects/factors. The implementation of Agrarian Reform is not only related to the law itself, but also with humans and the community. So, the theory which is used to depict agrarian reform dynamics between expectation and reality is three elements of the system of law from Lawrence Meir Friedman which involves : (Structure of Law) Legal Structure, (Substance Law) Legal Substance, (Culture Law) Legal Culture. In its basic thesis concerning the relationship between law and society, and in the broad sweep of its interpretation. In Friedman's narrative, the legal system functions largely as a dependent variable, with lawmakers responding to underlying developments in science,

medicine, technology, economic organization, and shifting moral beliefs (Parris, 2003).

3 MATERIALS AND METHODS

To describe the law dynamics of agrarian reform in Indonesia, this research uses qualitative method through literature review on journals, books, regulations, newspapers and previous researches. The result of literature review are combined and compared to obtain the result of the research. This research will explain the law dynamics of agrarian reform in Indonesia. This research is socio legal research which compares law and social facts in society based on legal structure, legal substance and legal culture. As law research, the purpose of this research is to find the gap between *das sein* and *das sollen* so that can give recommendation to the enforcement of law policy in Agrarian reform that should be conducted.

4 RESULTS

4.1 Legal Structure

In Indonesia, talking about the structure of the legal system, including the structure or institutions that determine implementation of agrarian law are described as a machine (Handayani, 2012). In terms of agrarian reform management, that is managed by the Central Government and handled by Indonesian Land Agency, is changed becomes Agrarian Ministry and Spatial Space/National Land Agency based on President Regulation Number 17 Year 2015 on Agrarian Ministry as Spatial Space and President Regulation Number 20 Year 2015 on National Land Agency which is published on January 21, 2015 as well as Regional Government in Province or Regency. The implementation of agrarian reform in Land field is related to the authority to manage government in autonomous region. Article 9 Law 23 Year 2014 on Regional Government classify government's interests that consist of absolute, concurrent, and general government's interest (Wijayanti, 2016). Furthermore, land interest is included as concurrent government's interest which means it is a joint interest between central and regional government.

4.2 Legal Substance

As the implementation of Article 7 jo 17 BAL on minimum and maximum limitation of land ownership and authorization, government has issued Government Regulation in Lieu of Law (Perpu) Number 56 Year 1960 on December 29, 1960 and legally applied on January 1, 1960. Perpu Number 56/1960 is determined as Law Number 56 Prp Year 1960 (Gazetted 1960 Number 174, the explanation is on Additional Gazetted Number 5117 on agricultural land determination or known as Indonesian Land reform Law. This Law is followed by Government Regulation Number 224 Year 1961 (Gazetted 1961-280) on Implementation of Land Distribution and Compensation.

In brief, the purpose of agrarian reform in Indonesia is to increase farmers' income and living standard, also as the foundation and requirement to conduct economic development towards fair and prosperous society based on Pancasila. Meanwhile, if the purpose is seen from Tap MPR Number IX year 2001 it is to give basic and direction for agrarian reform and natural resources management in order to give justice and sustainable law protection and certainty. All of them are our duties to realize social justice and prosperity for all Indonesian people. First step of agrarian reform is land reform. Land reform program includes:

- Maximum area of land ownership;
- Prohibition of "absentee" ownership;
- Land redistribution beyond maximum limitation, lands which prohibited as "absentee", ex-swapraja lands and state lands;
- Regulation on return and redemption of pawn agricultural land;
- Rearrangement of agricultural land profit sharing, limitation of land ownership area, and prohibition to do any actions which caused smallest agricultural land splitting.

Since Tap MPR Number IX Year 2001, obviously Agrarian Reform Program will increase according with stipulation on Article 5 of the decree. It involves program of agrarian regulation review, land authorization and ownership arrangement, land registration, and settlement of land conflicts etc.

The scope of agrarian object includes the element of land/water/air along with its nature wealth and managed through economics activities such as agriculture, fisheries, forestry, mining, and 'aerospace'. The parties which access agrarian object (hereafter becomes the scope of agrarian subject) are (1) Community (as the unit of household), (2)

Government (as State Representative), (3) Private sector. These three are the user of agrarian sources through tenure institution. The utilization relationship refers to the technical dimension or particularly work dimension in agrarian relationships. At a time the work dimension shows on each subject articulation of social economic interest related to the ownership and utilization of agrarian sources. The interest might be similar but different on each subject. That different interest may become the causal of the conflict in the same agrarian source. Nevertheless, it also becomes the source of cooperation if the subject can make a deal on the overlap ownership/utilization of agrarian sources (Sihalolo, 2010).

4.3 Legal Culture

Legal culture is a human attitude towards the law and legal systems, beliefs, judgments and expectations of the implementation of agrarian reform. So, in other words, culture is the atmosphere mind site and social forces that determine how agrarian reform is implemented, or not implemented. Legal culture is anything or anyone who decides to turn on and turn off the engine and determine how the machines are used. Culture of the society will be affected and influence agrarian reform implementation since Old Order until Reformation that also completed by several problems within the society.

Agrarian reform is a social movement, the integration of government and society involving all stakeholders in order to carry out land reform that aims to reduce poverty, create jobs, maintain economic resources, improve quality of life and improve food security. Land reform has effective strategies in accuracy, updating, integration of land records, identifying the number of land related object and subject of the recipient, the object land redistribution, forming a land bank, certifying, and formulating strategies for settlement, handling and reducing land disputes. (Sihombing, 2017).

Half of Indonesia's massive population still lives on farms, and for these tens of millions of people the revolutionary promise of land reform remains largely unfulfilled. The Basic Agrarian Law, enacted in the wake of the Indonesian Revolution, was supposed to provide access to land and equitable returns for peasant farmers. But fifty years later, the law's objectives of social justice have not been achieved. Land for the People provides a comprehensive look at land conflict and agrarian reform throughout Indonesia's recent history, from the roots of land conflicts in the prerevolutionary period, and the Sukarno and Suharto regimes, to the present day,

reformation era, in which democratization is creating new contexts for peoples' claims to the land (Lucas and Warren, 2013). This research describe dynamics of agrarian reform in three periods.

4.3.1 Old Order Period

Government in Soekarno era aims to use BAL 1960 as instrument to revolutionary recast on feudal and colonial agrarian structures through 5 type programs:

- Agrarian law renewal;
- Deletion of foreign rights and colonial concessions over land;
- Terminate feudal exploitation gradually;
- Recast on land ownership and authorization also the relation with related law;
- Supplies planning, the use of earth, water, and natural resources within the earth according to each capability.

In 1964, Indonesian Communist Party and their mass throw unilateral action to confiscate the lands which will be redistributed to farmers. They claim that this implementation run slowly since most of landlords are affiliated with Islamic and Nationalist parties that hinder the implementation of the regulation.

In January 1965, Agrarian Ministry reports that in fact land reform implementations are in troubles, which are:

- Lack of land inventory;
- Lack of understanding on the need of land reform;
- Lack of cooperation within committee;
- Farmers become the target of psychological and economical intimidation;
- Difficulty in making priority within land redistribution.

Land reform becomes class competition in village of Java, Bali, Sumatra and landlords that politically defend themselves because their social class threatened. Until surprisingly land reform program stop in the end of 1965. A maneuver which organized by military and political elite of Indonesian Communist Party (PKI) is started by kidnapping and killing several army generals on September 30, 1954. Hence, General Soeharto is appointed to be president. Under his government, Agrarian Ministry is specified into Directorate General under Ministry of Home Affairs.

4.3.2 New Order Period

New Order is a term for Soeharto government period in Indonesia. New Order replaces Old Order that refers to Soekarno era. In New Order period, land reform has conducted but it has a little concern from government. It happens because government is more focus on non-agricultural sector in which wide land management for capital owners to increase economic growth. Besides, political instability and abuse of power causes land reform is used for taking political advantages on land authorization.

In New Order period, government more focus on economic growth and development by starting its policy through Law Number 1 Year 1967 on Foreign Capital Investment to draw foreign investment in managing natural resources. During 1966-1997, at the beginning, New Order period government also put their concern on the effort to conduct agrarian reform. It is shown by its juridical products. Yet, if it is observed, during New Order regime, there are no significant changes on agrarian policies in Indonesia. Even many agrarian policies are not conducted in the context of revision land ownership but it tends to facilitate liberal capitalist to own society's agrarian assets (Sukardi, 2004).

National configuration on agrarian dispute is increasing sharply since the orientation of economic acceleration in Indonesia. Since 1990, the government with any policy formula starts to accelerate industrialization infrastructure establishment, doing agrarian modernization by opening the plantation in mass, new forest clearing, HTI, which all this program against the society. These efforts result in many conflicts between society and state. As it is recorded by National Commission of Human Rights during 1994, 1995 and 1996, there is significant increase in land cases. Even Legal Aid in Jakarta includes agrarian problems in a priority advocate agenda to avoid violence in society (Nasution, 1994).

Even during thirty years of New Order period, it can be said land reform is not implemented at all and its policy just hanging around and vanishes. This attitude can be defined as an attitude in taking political advantages on land authorization toward farmers and community. In autonomous region context, local government is strengthened but in land reform aspect generally it is still become central government authorization. Ironically, local government who stand on private investment tends to act as broker in providing land for them. Land reform policy is obviously not a profitable idea to draw investment, retribution and local income.

Nonetheless, New Order government in the next period claims that land reform is still implemented even though it is limited. During New Order period, to avoid big social politic vulnerability, land reform is implemented with completely different form. The fall of Suharto and the subsequent process of democratisation have removed key obstacles to organisation by poor and disadvantaged groups and their NGO allies, making it easier for them to engage in collective action aimed at achieving pro-poor policy change (Rosser, 2005).

4.3.2 Reformation Era

At the beginning of reformation era, in President Abdurahman Wahid era, there is statement which declares will distribute 40 percent of plantation lands. Because of the statement, people in droves take over the abandoned land. Along with political constellation change and passive democracy, Tap MPR Number IX/MPR/2001 on Agrarian Reform and Natural Resources Management is published. Wide range purpose of Agrarian reform can be quoted from stipulation on Article 6 of Tap MPR Number IX Year 2001 which states as policy direction it desires to:

- 1) Review on all of laws and regulations about agrarian field which all this time are sectoral, overlap, and do not contain the spirit to put forward people interest in authorization, utilization, and management of land as well as other natural resources;
- 2) Rearrangement of land authorization, ownership, use, and utilization which is fair and known as land reform, at once land inventory and data collection are done for this land reform interest;
- 3) Settlement of agrarian conflicts and natural resources management based on human rights principle, including intensify the institutions that job to settle all the disputes; and
- 4) Pay for agrarian reform program and agrarian conflicts settlement or even natural resources management.

By looking at the direction of policy in this Tap, it can be concluded that Agrarian Reform has wide purpose not only distribute land. In this reform, it is expected to have many agrarian programs which synergize in order to achieve our big purpose having state.

Afterward, during Susilo Bambang Yudhoyono era, land reform implementation is focused on land redistribution again. Distribution of 8,15 million hectares land has been conducted in 2007 until 2014.

It is estimated that 6 million hectares land are distributed to poor people, the rest 2,15 million hectares are distributed to businessman for productive business that involves farmers. These distributed lands are spread throughout Indonesia with priority in Java, Sumatra, and South Sulawesi. The lands are from critical land, conversion production forest, abandoned land, State land which its cultivation rights expired, or ex-swapraja land. Besides the redistribution, Susilo Bambang Yudhoyono era also conducts the program as follows:

1. Reduce the discrepancy of land ownership;
2. Reduce unemployed and poverty;
3. Reduce land dispute conflicts.

Agrarian Reform in Jokowi era which still runs for three years has not yet reduce discrepancy for poor people especially farmers. Secretary General of the Agrarian Reform Consortium, Dewi Kartika, says that it can be seen from less authorization land by general people. Only around six percent from all lands in Indonesia that owned by general people. The data of agrarian reform consortium records around 71 percent land is owned by Forest Corporation, 16 percent is owned by big plantation corporation, and 7 percent in the hand of rich people. Furthermore, among farmers, the average of land ownership in village is less than 0,5 hectare. In fact, the farmers are not having land since most of the lands become the object of investment and government or private business. Therefore, the poverty in village increase as well as the number of poor people which reach 17,1 million people on March, 2017. Other than that, the dull of agrarian reform in solving discrepancy can be seen from many dispute conflicts arises between people and big corporation. Farmer criminalization and seizure are likely to happen. At least, there are 72 agrarian conflicts over the 1,66 million hectares land which sacrifice around 195 head of family (KK) of farmers during 2015-2016 (Fauzi, 2017). During 2016, the government of Joko Widodo-Jusuf Kalla has not optimally encouraged the implementation of agrarian reform. In other side, various agrarian policies which give society the opportunity to clarify their rights on agrarian sources are not yet implemented (Agrarian Reform Consortium, 2016).

5 DISCUSSION

5.1 Expectation and Reality of Agrarian Reform

Along with the implementation of the program, the structure of bureaucratic administrative changes in which autonomous region implementation. Agrarian problem is one of the policies which given to local government. Through recent autonomous region, in fact, there is opportunity to conduct "local" agrarian reform. After the reformation and autonomous region applied the lively debate only a matter of land administration pull back. Land reform has not become serious attention for government, even though non-governmental organization and several farmer organizations have demanded for agrarian reform to be applied.

Conception of Old Order agrarian law which tends to populist likes in BAL is replaced with conception that oriented to economical establishment. Land reform is one of Old Order populist policy and considered as PKI product so that it totally stopped. Even seizure of the lands that become object redistribution is done by several landlords. Land reform as Old Order main program for levelling land ownership as much as possible for people prosperity become neglected.

Land reform implementations in New Order period are as follows:

1. The effort of privatization land is still implemented by New Order government through land certification;
2. Conducting transmigration program;
3. Program Cooperative Plantation which has big scale and land as wide as possible;
4. Concentration over land authorization and economic development;
5. The increasing of agricultural product so that self-sufficiency is achieved (through Green revolution);
6. The existence of PRONA (National Agrarian Operation Project) to accelerate land registration program.

As developing country, most of Indonesia's capitals for development are from foreign institution loan. The institution has authorization to control the use of the loan. Limited budget is one of the reasons why New Order government does not choose land reform program which needs big budget and the result is not seen yet in short-term. Whereas, due to capitalist economic pressure, land becomes the commodity to draw foreign investment.

Recently, in Reformation period there is argument which is delivered by representative of Indonesian Farmer Alliance (API), Slamet Nurhadi, he sees that discrepancy still happens because agrarian reform program only focuses on settling technical target according to National Medium Term Development Plan (RPJMN) 2015-2019. It is through redistribution land and asset legalization which reach nine million hectares for farmers. Unfortunately, that technical target is also predicted to be difficult to achieve due to government slow movement. Government more focuses on land legalization which has been owned for a long time by people, but there is no solution on discrepancy. Consequently, recent government is expected to immediately change the implementation structure and the meaning of agrarian reform which more concern on settle discrepancy and poverty. (Suara Merdeka Newspaper, 2017) However, there are another studies which states Agrarian Reform policy in Joko Widodo Government as a law product, strategy, and program that have accommodated the protection of Human Rights even though it is not maximal (Erlina, 2017).

Indonesian Constitutional Law 1945 on Article 33 Paragraph 3 has given mandatory for the country leader to manage earth, water, and natural resources within the state (including land in smaller understanding) to be used as much as possible for people prosperity. Based on the Article 33 Paragraph 3 of Indonesian Constitutional Law 1945, government has published Law Number 5 Year 1960 on Basic Agrarian Law (BAL) which basically stills a principle and need to be developed more in regulation of BAL implementation. The appearance of BAL, essentially is the instrument to revolutionary recast feudal and colonial agrarian structure through five programs which are called panca program agrarian reform. The last expectation for these programs is to realize "Indonesian socialist society" (Article 5 BAL) which a fair and prosperous society based on Pancasila. To realize this dream, so that Law Number 56 56 Prp 1960 on Agricultural land limitation or known as Indonesian Land reform law is published. It is understandable why the matter only limited on agricultural land, since most of Indonesian people at that time are farmers and mostly landless farmers. Hence, the initial idea of agrarian reform is to increase farmers' degree as the marginalized society through redistribution land of each family member in amount of minimally 2 hectares. By the existence of populist characteristic (concern on farmers' interest) it is expected to realize fair and prosperous society.

At the empirical level, the failure of land reform years ago in the sixties is due to unpreparedness of land reform committee, poor administration and unprepared land reform fund. Also, lack of commitment from the government to run land reform program. Meanwhile, in New Order period, land reform is not implemented due to land policy which against BAL. In this era, it starts to show that land reform basic idea in fact starting to be abandoned. As the replacement, there is agricultural modernization or known as Green Revolution and agro industry. Both result in agrarian law reform and land reform as not continued matter. Since reformation era until now there is a glorious development in which many parties concern on land reform problem, although it only a matter of discourse. Nonetheless, until now it has not been agreed on how the best land reform and agrarian reform for Indonesia. Several parties want agrarian reform revolutionary (simultaneously and thoroughly) but the other want the softer way. Besides, there are many question hanging in this context, for instance, the distribution of central and local government rule.

There are four main agrarian problems in Indonesia, as it is written in Tap MPR Number IX Year 2001, they are: overlap agrarian regulation, narrow land authorization and ownership and discrepancy, land conflict also natural resources damage. All of them need to be the main agenda to be solved before arriving at the formulation of land reform concept which is in line with expectations. Theoretically, there are four important factors as requirements of agrarian reform implementation, which are:

- a. Awareness and willingness from political elite;
- b. Strong organization of farmer and society;
- c. The availability of complete and accurate data;
- d. Adequate budget support (Abdurrahman, 2004).

If the four factors above is conditioned in Indonesia, so that it becomes big problem since it's hard to fulfill. Therefore, the spirit to achieve our main goal must be fight for tirelessly. Government must be able to act decisively, consistently and continuously to address gaps in the legal, social, economic, political and security aspect through agrarian reform policies. Agrarian reform is a social movement, the integration of government and community in order to carry out land reform (Sihombing, 2018).

6 CONCLUSIONS

From the discussion, it can be concluded that there is ownership discrepancy in Indonesia. The group which has more capital will has wider land, but in other side farmers as weaker group does not has their own land. The recommendation given is: the willingness and good intention from government to conduct agrarian reform with social-oriented. The government should immediately list the object of agrarian reforms to be distributed to farmers in order to re-achieve agrarian success. The government needs to follow up the land systemic registration program with the actual action of agrarian objects distribution. Agrarian Reform implementation needs to be preceded by agrarian reform conflict settlement through society participation, coordination between regional and central government to make regulation which takes society side, and limitation of companies' ownership to own community land, also mapping area based on its potency. By then, law structure and substance is really influenced by society culture.

7 CONFLICT OF INTEREST

Agrarian reform concept is so ideal and socialist but in reality it is not always like that. In agrarian field problem, the most visible problem is the agrarian conflict and farmers' sovereignty. Statistic data based on Indonesian Farmer Consortium (2013) shows a fantastic number in which 987 cases within 2004-2014. In 2014-2015 there are 374 cases of agrarian conflict in Indonesia, or it is increasing 60% from the previous year (Indonesian Farmer Union, 2015). The land conflict which related to Agrarian Reform has encouraged Human Rights National Commission to suggest Government to immediately form an agent which specially handles agrarian conflict. One of the problems which arise is related to land availability for company but it does not pay attention to community's rights. According to Ifdal, land availability for mining and plantation companies is generally neglecting customary land which is not has any certificates but owned by customary community (Wardah, 2012). It is obviously does not support agrarian reform implementation. Conflict of interest within agrarian reform implementation also appears when facing investors who will use agrarian reform object, but in other side the land or object needs to be restructured its ownership, authority, and use. Another conflict potentially appearing when the government distribute the land to the community is that they convert the land and sell them to business owners. The factors of land conversion which come from the private sector is the

farmers's low prosperity (Handayani, 2018). This is evidently an endless problem of land reform.

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