



# AGRARIAN REFORM IN INDONESIA: A JURIDICAL REVIEW

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## ABSTRACT

*This study seeks to describe the juridical and historical aspects of the implementation of agrarian reform in Indonesia. This study was conducted by descriptive and qualitative methods, through library research approach. The results shows that in terms of aspects juridical and historical, 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. Therefore, the government can form an ad hoc committee which is specifically assigned to oversee the implementation of agrarian reform.*

**Key words:** agrarian reform, juridical and historical aspects, Basic Agrarian Law, Indonesia

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## 1. INTRODUCTION

In the New Order era (1966-1998), the government and corporations collaborate in depriving the rights of the people, especially farmers on the land as a vital living object (Adaba, 2013). After the reform era (*era reformasi*), a hope emerged after the collapse of Soeharto's rule. In the reformation era, on November 9, 2001, the government issued the Decree of the People's Consultative Assembly which commissioned the Indonesian government to implement agrarian reform in order to achieve legal certainty, protection, justice and prosperity for all Indonesian people (Article 2 TAP MPR No.IX / 2001 ) (Opini, 2011). However, the penetration of the neo-liberal forces causes the message of this decree never to be fulfilled. Instead of implementing agrarian reforms, the government and parliament have produced laws that legalize 'robbery' of peasant lands by national and foreign investors, such as Law no. 41/1999 on Forestry, Law no. 18/2003 on Plantations, Law no. 7/2004 on Water Resources,

Law no. 27/2007 on the Management of Coastal Areas and Small Islands, Law no.4/2009 on Minerals and Coal and Law of the Land Acquisition. These laws are some of the legislation products issued to expedite the expansion of capital owners to control the agrarian sector of the country. The production of these various rules of law contributes to the increased repression of the state apparatus against the peasants as happened in Bima, West Nusa Tenggara.

According to Erizal Jamall (2016), the conflict is generally due to the acquisition of agricultural land belonging to indigenous peoples that have customary rights by investors. In the process of this takeover, community land is often priced very low, and is also related to the issue of rent of land. Then, the amount of agricultural land in Indonesia increasingly reduced, lost and increasingly limited. According to Arif Satria (2016), there are at least 50,000 to 100,000 hectares of rice fields are lost every year, either because of the switch function to residential and industrial purposes or no longer cultivated by farmers. The farming land by farmers is still very small and fragmented. In fact, the reality in the field of many agricultural land that had been converted by farmers because it is no longer promising.

Furthermore, according to Arif Satria, the Ministry of Agriculture, noted since 2010 until 2014, has scored new agricultural land area of 347,984 hectares. However, the productivity and quality of the land is far below the converted land. Meanwhile, according to Rosan P. Roslani, only 33 percent of land that could be used for agriculture. It causes the productivity of the agricultural sector is very minimal. Indonesia's land area per capita is only 0.25 hectares, while the land area in Vietnam, and Thailand is 3.5 hectares per capita.

This study attempts to describe the juridical and historical aspects of the implementation of agrarian reform in Indonesia. This study was conducted by descriptive and qualitative methods, through library research approach. The study is divided into sections. After beginning with introduction, the first part of this paper discusses the definition of agrarian reform. The second part discusses the importance of agrarian reform. The third section discusses the juridical aspects of the implementation of agrarian reform. The fourth part is a brief overview of history in the implementation of agrarian reform in Indonesia. The last part is the conclusion.

## 2. DEFINITION OF AGRARIAN REFORM

Etymologically, The Law Dictionary defines agrarian is anything relating to land, or to a division or distribution of land or as an agrarian law. From this definition, agrarian can be interpreted as distribution of land. The word "agrarian" according to Indonesian Dictionary (KBBI) is agricultural or agricultural land problems or anything related to land ownership. Black's Law Dictionary defines the notion of law of the land as the law in effect in a country and applicable to its members from, whether the law is statutory, administrative, or case made, and due process of law that also termed *lex terra; ley de terre*.

According to the National Land Agency, the definition of agrarian reform is the process of restructuring the rearrangement of ownership, control and use of agrarian resources, especially land. In Article 2 of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX / MPR / 2001 it is explained that the agrarian reform includes a continuous process with respect to the rearrangement of land ownership, use and utilization of agrarian resources, implemented in the framework of achieving legal certainty and protection and justice and prosperity for all people of Indonesia.

In regard of understanding the law of the land, the regulation is to regulate certain aspects of the land, which involves tenure on land and other features, such as how to use land based

on the law land, use as part of the Spatial and / or environmental law, and how to inherit the land which is guided by the law of inheritance. Therefore, according to Boedi Harsono (2003), each of the land law contains a provision on a variety of tenure of land. All of tenure of land (HPAT) contains a series of powers, duties, and / or restrictions for the rights holder to do something about the land which may be, shall be or is prohibited to do, which is the content of the right of dominion that becomes the criterion or the differentiator of the rights of control over the land in land law.

The agrarian is also defined as all matters relating to the division of the land or the distribution of land and a land law. Therefore, agrarian law is a legal science that actually has a very broad meaning, referring to land and ownership, cultivation, and ownership related to equal land distribution and its application and implementation. Agrarian law has a long history that already existed in the year 82 BC. The term of agrarian law that existed during that period is usually related to the equal distribution of land that is distributing the conquered state-owned public land. The ancient Roman politicians, such as Augustus Octavianus and Marc Antony in the year 43 BC enacted the law to seizure and re-place private land in the corridor of agrarian law. According to uslegal.com, agrarian reform is also associated with land and its ownership, cultivation, and tenure.

According to Merriam Webster Dictionary, the land reform is a measure designed to effect a more equitable distribution of agricultural land especially by governmental action and also related to the resulting redistribution. In a broad sense, the land reform can be found in a variety of formulations, either in the preamble, article or explanation of the Basic Agrarian Law (BAL) No. 5 of 1960. The land reform in the Basic Agrarian Law (BAL) and Law (UU) No. 56 / PRP/ 1960 refers to the implementation of renewal of agrarian law, namely by reforming the old joints of agrarian law that is not in accordance with the conditions and situations of modern times and replacing it with legal provisions that are more in line with the development of modern society; abolition of all kinds of foreign rights and colonial conceptions; ending the power of landlords and feudalists over land that has been extensively extorting the people through land tenure.; reform of land ownership and control over land and various relationships related to land tenure; planning of inventory, designation and use of land on a planned basis in accordance with the capabilities and progress of progress. This definitions can be traced in the Article 7, Article 10 and Article 17 paragraph 3 and Article 53 of the Basic Agrarian Law No. 5 of 1960, Law No. 7 of 1970, Law No. 2 of 1960, Article No. 8 of Government Regulation No. 224/1961, amended by Government Regulation Number 41 of 1964, amended by Guidelines of the Minister of Agriculture and Agrarian Affairs No. 3 of 1963, amended by Article 3 paragraph 1 of the Government Regulation (PP) No. 224 of 1961, amended by Article 39 paragraph (1) letter g and Article 62 of Government Regulation (PP) No. 24 of 1997.

The agrarian law has a meaning and a very large dimensions that cover the land, the water, and within certain limits also the space and natural riches contained in the land. According Wiradi in Erizal Jamal, agrarian reform term has more value than land reform. According to Erizal Jamal, the definition of agrarian reform is accompanied by supporting programs, including post-reform program. The essence of agrarian reform is to rearrange the ownership, tenure and land use structures for the benefit of the masses. With such restrictions above, the notion of agrarian reform is far more comprehensive than land reform. According to Eduardo Climaco Tadem (2015), the main principle in agrarian reform is the right of farmers who do not own land and small fishermen. Moreover, the manufacturers are also given the rights to own and control of agricultural land, by providing full access to other natural resources and benefit on production which is undertaken.

According to Noer Fauzi Rahman (2014), agrarian reform is not just a land reform that started with land redistribution. According to Michael Lipton (2009), land reforms is intended to cut poverty by raising the poor's share of land rights. This can be interpreted that the land reform is legislation that is intended, and really executed, to reduce poverty by improving the rights of the poor over land rights, or in other words land reform is legislation that is run to redistribute ownership of land and land rights to benefit the poor. Meanwhile, according to John Eaton (1963), a major issue in land reform is the procurement of land or land tenure in the form of seigniorial land (landlordism) and tenancy or land rent. Interestingly, these two forms of land tenure exist in the agrarian shift from feudalism to capitalism. The ownership of individual land arises only when humans have known the life of settling, farming, and raising. In particular, land ownership arises after the development of commodity production and exchange at a certain level.

### **3. THE IMPORTANCE OF AGRARIAN REFORM**

Agrarian reform is a land distribution policy by the government, run in several Asian countries. In the Philippines, according to Eduardo Climaco Tadem, the main issue relating to the importance of agrarian reform, is social justice and inequality, low produktivity, lack of control by the masses of rural life, industrialization, environmental degradation, and foreign domination. According to Susie Jacobs (2010), agrarian reform is just one example of the policy of development experts. The presumption is that in which the state is capable of providing support services, the redistribution of income and property in the form of land will provide social benefits to citizens.

According to the Food Agriculture Organization (FAO), quoted by Bonnie Setiawan (1997), "the rural areas of developing world continue to be marked by a dualism". In three levels of analysis on agrarian reform and rural development of (a) rural structure, (b) national development policy, and (c) international relations, FAO sees its interconnections based on dualism theory. The rural structure is described as a duality between those who have access to viable sources, with a large number of people who do not have it, as a consequence, between those who are able to take advantage of new technological opportunities and some who are incapable of anything. The explanation regarding national policy, is the dualism conflict between the objectives of macroeconomic strategy of rural development. This explanation of international relations is that "trade, foreign aid and foreign capital investment ... are contributors to the problems of dualism of rural agrarian reform and poverty."

In addition, the importance of agrarian reform can be analyzed from the demographic and geographical aspects of Indonesia. According to Adi Lumaksono, the number of people recorded on the Census of Agriculture in 2013 and worked in the agricultural sector about 38 million. It is based on the fact that Indonesia has a paddy field of more than 8,114,829 ha (Central Bureau of Statistics, 2014). Agriculture in Indonesia produces a variety of agriculture commodities, including plantation products, livestock, fisheries, and crop farming. Based on Indonesia's geographical conditions and potential wealth of natural resources held in particular in agriculture, Indonesia should have been categorized as developing countries that still faces various problems of agricultural land.

### **4. A JURIDICAL REVIEW OF THE AGRARIAN REFORM**

According to Boedi Harsono (2003), agrarian law in the Basic Agrarian Law (BAL) No. 5 of 1960 is not just a device of law, but a group of various areas of law, which respectively regulate the right of control over resources certain realms. The realms that are included as a

consequence of term of 'agrarian' as outlined in the Basic Agrarian Law No. 5 of 1960 include:

- Land Law, which regulates the rights of tenure within the meaning of the earth's surface ;.
- Water Law governing tenure rights over water;
- Mining Law, which regulates the rights of control over mineral deposits, which are intended by The Basic Law of Mining;
- Fisheries Law, which regulates the rights of control over natural resources contained in water;
- Legal Control Over Power and Elements in Space (instead of "Space Law"), which regulates the rights to power and elements in space referred to in Article 48 of the Basic Agrarian Law (UUPA).

Agrarian law has a purpose to give the right of control to the state to achieve the greatest prosperity of the people, in the sense of happiness, prosperity and independence in society and an independent Indonesian state, sovereign, just and prosperous. The right of the state to control essentially authorizes the state to organize and administer the designation, use, inventory and maintenance of the land, water, space. Whereas, the right to land in the agrarian law which is the right authorizing the use of the land, water and the space, is only necessary for the purposes directly related to the use of the land, in boundaries according to the Basic Agrarian Law (BAL) No. 5 of 1960 and other higher legal regulations. Land, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Land Law can be seen from the layout hierarchy level or tenure rights to land in our National Land Law, which includes right of the Indonesian referred to in Article 1 of the Basic Agrarian Law (UUPA) Number 5 of 1960 as the right to control the land of civil and public aspect, right to control states referred to in Article 2 of the Basic Agrarian Law (BAL) No. 5 of 1960 as ownership rights which comprises solely the public aspect; the customary right of indigenous peoples communities referred to in Article 3 of the Basic Agrarian Law which is civil and public aspect; the rights of individuals, which is derived from the civil element, comprising land rights as individual rights that are either directly or indirectly derived from the rights mentioned in Articles 16 and 53 of the Basic Agrarian Law (UUPA) Number 5 of 1960; *waqf* (land charity), that is the property right that has been represented, Article 49 of the Basic Agrarian Law; guarantee rights over land called Mortgages in Articles 25, 33, 39, and 51 Basic Agrarian Law and Law no. 4 of 1996, and right of ownership on housing.

Because the Right of the Nation is the Right The highest Land Tenure (HPAT) in Indonesia, then all other HPATs are sourced from Rights of the Nation as the common property of all Indonesian Nations. One implication is that all rights to land must also be socially functional. Then, the functions of the Land Law in National Development as was embodied in the General Explanation of the Basic Agrarian Law (BAL) No. 5 of 1960 are laying the groundwork for the preparation of national agrarian law, which will be a tool for bringing prosperity, happiness and justice to the State and people, especially the peasantry, in the context of a just and prosperous society, laying the groundwork for holding unity and simplicity in land law, laying the groundwork to provide legal certainty regarding the rights to the land for the people. The Basic Agrarian Law (BAL) No. 5 of 1960 deliberately are structured as a tool to bring prosperity, happiness and justice to the State and people, especially the peasants, in the framework of a just and prosperous society. Peasants are the first concern of the BAL because they are the most perceived poverty strain caused by the

unequal land ownership and ownership structure as the legacy of the Dutch colonial government.

According to Article 5 of Law Agrarian Law (BAL) No. 5 of 1960, the agrarian law that applies to the land, water and air space is the common law, to the extent not contrary to the national interest, which is based on the unity of the nation, with Indonesia's socialism and with the rules set forth in this law and with other laws and regulations, all with due regard to the elements of relying upon religious law. Further understanding of the agrarian laws governs land reform program, as a series of actions in the framework of the agrarian reform in Indonesia, which held a reshuffle of the ownership and control of land as well as relationships that are concerned with the exploitation of the land.

In a traditional economy that relies on agriculture, land remains an inseparable source of human livelihood, and becomes the backbone of the economy, especially in developing countries. As an agricultural country, geographical conditions make Indonesia one of the largest agricultural countries in the world, placing agriculture to have an important role both in the economic sector and the fulfillment of basic needs or food (Lumaksono, 2014). The growing population of food consumption is expected to increase the higher income for farmers.

## **5. A SHORT HISTORICAL REVIEW OF AGRARIAN REFORM**

After testing the agrarian reform Law No. 13/1946 in Banyumas, and emergency law no. 13/1948 on land reform in the area of Yogyakarta and Surakarta, the government in 1948 established a state committee tasked with developing thought in order to prepare the new agrarian law, to replace the 1870's colonial Agrarian Law. However, due to Dutch aggression in 1948-1949 the committee disbanded (Katjasungkana, 2007). According Rajagukguk in Iwan Nurdin, during President Sukarno the result of the division of land for land reform from the year 1963-1969 in Java amounted to 197,395.6531 hectares distributed to 307,904 family.

In the New Order, the government is focusing development on economic growth, and start with the economic development policy by issuing Law No.1 of 1967 on foreign investment to attract foreign investment in natural resources management. With the Law 1 of 1967 the escalation of the problem of agricultural land in Indonesia is increasing along with the expansion of foreign capital investment in many indigenous people areas in Indonesia (Simanjuntak, 2017). In order to launch its capitalist goal, Suharto first removed the non-capitalist forces that would hinder the expansion of capital.

New Order land labeling is oriented towards large-scale capitalist investments. Using the Act as a tool, the New Order State claimed the right to land and / or natural resources for the benefit of capitalism which clearly only benefited the owners of capital and on the other hand harmed many of the people. In this case, the state dominates the discourse, and the people who object to the seizure of their land will be considered anti-development or communist (Simanjuntak, 2017). Reversal of this agrarian policy orientation means to restore colonial patterns of land management. Wet Agrarische 1870 that opened the door for the private sector to invest in plantation sector is very detrimental to farmers. This regulation arises when the land ownership pattern in Indonesia is still feudal. This means that private plantation entrepreneurs only need to relate to the feudal rulers, not with the farmers, to lease the land which in practice can have a license to operate for 75 years (Jurnal Pembaruan Tani , 2007).

In the B.J. Habibie presidency (1998-1999) in fact, there are no intention to revisit the land reform policy. However, during the reform era, in the presidency of B.J Habibie there were 12 provisions of the Consultative Assembly of the Republic of Indonesia related to land

reform. According to B.F. Sihombing (2006) there were 6 provisions that are very basic and as soon as implemented by the government related to land issues because economic policy in provisions of the Consultative Assembly, which is to address inequities in land issues, should be continued at the level of institutional, regulatory and operational.

In the era of President Abdurrahman Wahid (1999-2000), there are a policy to distribute 40% of the plantation lands to be distributed to the people. As a form of euphoria of freedom as a result of the fall of the New Order, a variety of people's organizations (farmers unions and fishermen, trade unions, women's organizations and others, including the emergence of dozens of political parties), agrarian issues was lifted to the surface by the insistence of various organizations of farmers / fishermen and NGOs (Katjasungkana, 2007).

During Megawati's presidency, the Working Committee of the People's Consultative Assembly started to discuss in various dialogues with peasant organizations and Non Governmental Organization (NGO), followed by the implementation of two major workshops in Singapore in September / October 2001. The result was the enactment of The regulation of the People's Consultative Assembly No. IX / MPR / 2001 On Agrarian Reform And Management Of Natural Resources. This content of this regulation, according to Katjasungkana (2007), is ambiguous. However, it must be accepted that it is the maximum result that can be achieved as a result of the compromise of the struggles of various interests. The content is basically a kind of order, either to the President or to the Parliament, to take follow-up action. When there was no sign of a response from both the parliament and the president in 2003, the National Committee for Human Rights, along with several NGOs and peasant organizations, took another initiative, formulating a proposal to President Megawati to establish KNUPKA (National Committee for Combating Agrarian Conflict). The president's response was positive, but, once again, not yet had this concept realized. Meanwhile, at the end of her office term, President Megawati issued Presidential Decree no. 34/2003 whose contents give a mandate to the National Land Agency (BPN) to undertake the preparation of a bill on the improvement of BAL 1960.

In the administration of Susilo B. Yudhoyono, many aspects regarding the agrarian reform were stagnant and there are little conducive indication and positive direction as mandated by the 1945 Constitution and the Basic Agrarian Law (BAL) No. 5 of 1960. The mandate the National Land Agency (BPN) to make improvements BAL 1960 remains valid, and the refinement process is still ongoing. But the results are not improvements, but the total change of the BAL, by issuing the Presidential Decree No. 36/2005 (on infrastructure) that trigger the negative public reaction.

## 6. CONCLUSIONS

Agrarian reform is a social movement, government and community integration by involving all stakeholders in order to carry out land reform that aims to reduce poverty, create agrarian-based job opportunities, maintain economic resources, improve the quality of life and increase food security. and 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. Therefore, the government can form an ad hoc committee which is specifically assigned to oversee the implementation of agrarian reform.

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