

# Analysis Management of Land through Land Political Laws: Reform

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## Analysis Management of Land through Land Political Laws: Reform

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### **Abstract.**

Land tenure and use stipulated in the Basic Agrarian Law Act, also referred to as UUPA (Undang-undang Pokok Agraria) are the goals of Indonesian political Land Law to ensure welfare acquisition for its entire citizens and its manifestation is reflected through the government's exceptional attention given to groups of low-socioeconomic society by means of land policy enactment. However, recently there have been shifts in land law politics under which land tenure and use can only be bestowed to a minority group of society; that is, big corporations. Articles discussing politics over the national land law and protection standing for the rights of public land ownership have been carried out with sociojudiciary research methods. This study revealed some efforts are being induced to revive land policy to restore its balance as exerted by UUPA. Actions have been offered to meet the purpose by applying prismatic land law politics based on numerous principles, that is, principles of expediency over legal certainty and integration principles on different functions.

**Keywords.** Management of Land, Politic of Law, Agrarian Reform, Land Reform.

2

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## **INTRODUCTION**

Farmers and fishermen in Indonesia possess an extremely strategic position regarding the fulfillment of food supplies for the Indonesian society; therefore, it is necessary that agricultural and fisheries commodity be improved. Despite the potential offered, farmers and fishermen encounter agrarian conflicts and land disputes. Consequently, activities on farming and fisheries are disturbed and less effective. There have been, at least, two factors triggering agrarian conflicts. First, the improper law and policy to manage agrarian issues involving perspectives toward land, land status and ownership, rights bestowed upon the land as well as methods practiced to acquire the land rights. Second, the lengthy and injustice process toward land dispute resolution which end up in conflicts to a great extent that a large number of farmers and fishermen are driven to be out of work. Inevitably, unemployment leads to the increase on the number of disadvantaged society in remote areas who are mostly farmers and fishermen in villages. (ATR/BPN, 2018).

Throughout 2011-2012 there were conflicts wherein disadvantaged people struggled for 29,000 hectares of plantation area. They no longer had land wide enough to grow their plants and had to fight for surviving their lives. There have been approximately 618 conflicts related to land disputes over 2.4 hectares of land since 2014. With two conflicting interests land conflicts tend to increase significantly with much greater intensity. The two conflicting parties are: first, local society and second, investors. The local society generally comprises farmers whose land is decreasing substantially. While the investors are those people invited by the Government with quite a few methods to make investment in many fields of business, mainly, in plantation, mining and oil drilling. The data issued by the Consortium of Agrarian Reforms demonstrated that there were 695 agrarian conflicts occurred in relatively all sectors in 2017; of which were mostly concerning plantation, property, infrastructure construction, forestry, mining and farming. (Kartika, 2018).

So far land redistribution has exhibited devastating facts; land was, somehow, distributed to big corporations at the expense of local society. (Aprianto, 2012). Historically, local society's land (Ulayat land) was formerly seized and transformed to plantations by the Dutch colonist. Upon its Independence, Indonesia took over all plantations and established national plantations over the seized properties, that is, PT Perkebunan Nusantara (PTPN). Once the land use rights of PTPN were due, the Indonesian government did not entrust the land holdings to the society who had supported the estate by far; instead, land tenure went to other parties (corporations and government officials' cronies).

## **METHODOLOGY**

Deriving from the background of problem that land holdings are disproportionately distributed to disadvantaged group of society; a question is raised for a research: how does the government exercise law politics in land law in order that society's welfare is acquired?

## DISCUSSION

Law Number 5 of the 1960 Basic Agrarian Law Act, also referred to as UUPA (*Undang-undang Pokok Agraria*), is a noble manuscript tended to protect the availability of farmlands, enhance farmers' welfare, ensure people's interests and maintain the state's sovereignty. In addition to the entire land and its property the UUPA not regulates agrarian land but it also enacts the regulation for waters, airspace and natural resources contained in the Indonesian state territories. The UUPA strictly defines that land holds numerous functions for social welfare, justice and harmony (Rachman, 2018) and it carries three virtuous goals to achieve: First, to restructure agrarian issues; from being improperly exercised to equitably practiced. Second, to seek resolutions for agrarian conflicts. Three, to manifest social welfare once agrarian reform is in effect.

Fundamentally, agrarian reforms provide workable programs for eliminating poverty within village societies, enhancing social welfare by establishing national food self-sufficiency, increasing land productivity and acknowledging land rights of either individual or public ownership and public lands designated for favoring public interests.

Furthermore, agrarian reforms are not merely critical to farmers and food self-sufficiency but they also serve all interests. For example, legal certainty needs to be granted to investors who are invited to put their money into business (Isnaeni, 2017). Additionally, land release should not incessantly halt infrastructure constructions and other related activities. Opportunities and legal certainties are required by major plantations, mining, oil and gas drilling and property construction without farmland constraints and depriving farmers of their land and making them destitute. Moreover, agrarian reform cover more extensive scopes than land reform; that is, it also provides access to farmers to obtain production tools, capital venture, assistance, post production process and to sell agricultural products at a marketable price (Ismail, 2012).

In regard to land conflicts, the first step necessarily taken is harmonization of law which concerns land issues. Currently, there are 13 different laws regulating numerous fields related to land issues in which agrarian lawyers find them overlapping; they have repeatedly asserted that these laws are even vertically against the Constitution, Laws of Oil and Gas, Mining, Infrastructure, Property, Forestry, and Agriculture; therefore, harmonization of laws are required to avoid overlapping. The number 41 of 2009 Protection of Farmland for Sustainable Food Law can unlikely resist changes on land use for alternatively different purposes other than for farming. Hence, the enactment of UU PA or existence of land laws are highly expected to ensure ownerships of farmland.

Further, beyond legal issues, the government asserts that scarce land supplies definitely make village societies barely obtain farmland and, consequently, urge them to move to cities. However, village societies with relatively low education level and poor skills tend to encounter hard competitions to land a job in cities. Seeking to solve this issue, the government, through agrarian reform, designs the following programs:

1. Social forestry program; that is, granting license upon forestry operation over 12.7 million hectares, or it is nearly equal to the width of Java island which extends to 12.8 million hectares, of national productive forests to farmers. Out of the targeted 12.7 million hectares of forest areas, only 1.9 million hectares of land were bestowed to farmers until September 2018. While for customary forest, only approximately 25.000 hectares of land were conveyed.
2. The government has allocated 9 million hectares to farmland, plantation, and productive forest within the agrarian reform.

Additionally, agrarian reform is exercised by legalizing society's land such as transmigrant land and unregistered society land as well as land redistribution; that is, by means of bestowing the society unused or abandoned land, private land of which land use title expires and uncultivated forest areas.(Doly, 2017).

Indonesia holds inequality related to land tenure which resulted from historical policies by which major scale entrepreneurs granted massive land use rights at the expense of disadvantaged group of society. As a consequence, society tend to be deprived of more lands. As such, the recorded land tenure inequality in Indonesia is illustrated as follows:

1. The land tenure concession of 35.8 million hectares to 531 companies holding the forest concession.
2. There are approximately 31,951 villages;of which land use statuses are undetermined for the entitites are situated within forests.
3. The data issued by BPS (Central Bureau of Statistics) in 2017 exhibited that 39.5millions people were the owners of less than 0.5 hectare, or roughly smaller than a football field, of farmlands.

Furthermore, the Government enacted the 2018 Presidential Decree (Perpres) Number 86 regarding Agrarian Reform as a support to agrarian reform. The main points highlighted in the Presidential Decree concerning agrarian reforms are:

1. Legislations over land issues have hitherto been resolved by the government through certification process
2. The government expects that the society would benefit from social forestry.
3. The cultivation rights title over land for individuals or corporations comprises:
  - a. Legal certainty be made available for the renewal of Land Cultivation Rights Title.
  - b. Land redistribution; the land of which is acquired from that of transmigration program for society utility.
  - c. Land ownership identification for lands of which legality is unspecified.

Moreover, Agrarian Reform, to a greater extent, is tended to:

1. Diminish disproportions of land tenure and land ownership in efforts to achieve equity;
2. Seek to settle agrarian disputes and conflicts;

3. Invent resources to provide social prosperity and welfare on the basis of agrarian sectors by means of land management, tenure, ownership and utilization.
4. Provide job opportunities to minimize impoverishment;
5. Upgrade public access to attaining economic resources;
6. Improve food sustenance and sufficiency; and
7. Elevate and maintain environmental quality.

In short, agrarian reform is a program for restoring the structures of land tenure, land ownership, land use and land utilization to be more equitable through asset management as well as access management toward the social welfare for Indonesian citizens.(Ningtyas & Dharmawan, 2010). In addition, Agrarian Reform is carried out through phases of asset management and access management. Asset management comprises land redistribution and/ or asset legalization.

While Access Management is conducted on a cluster basis seeking to enhance economic scale, added value as well as to encourage entrepreneurship innovation. The subjects referred to Agrarian Reform constitute: a. social mapping; b. increase on institutional capacity; c. business assistance; d. skills upgrading; e. high-tech use; f. business diversification; g. access to capital venture facilities; h. access to marketing facilities; i. reinforcement over data basis and commodity information; and/or supplies of supporting infrastructures.

Moreover, Access Management is carried out by means of: a. direct transfer by the government; b. a collaboration between the holders of Freehold Title Deed (Sertifikat Hak Milik) and a legal body through an equitable partnership program; and/ or c. collaboration amongst group of society the holders of joint ownership and a legal body through land programs tended as capital participation.

The conduct of Agrarian Reforms in the era of President Joko Widodo is unlikely flawless since agrarian reform, to some extent, is seen to have missed the targeted outcomes; thus, it has yet met the goals of agrarian reform. In other words, agrarian reform still leaves disproportion and agrarian conflicts persist; thus, it hinders farmers' welfare. The government shall put critical subjects related to disadvantaged farmers and laborers whose land is scarcely available a priority in order that productivity and welfare is increased (Setyaka, 2015). Unfortunately though, there are agrarian reforms under which civilians, farmers in particular, are literally excluded. As a result, the distribution of agrarian reform to beneficiaries has apparently been distorted. Similar cases occurred during the release of forest areas. Previously the government made promises that, within the context of agrarian reform, approximately 4.1 million hectares of forest area be released. The Consortium of Agrarian Upgrades noted no such release has been made available so far as targeted in the agrarian reform program. Needless to say, the government data containing the figure of released forest area of 994,761 hectares are far from reality or inaccurate due to the lack of conformity to land redistribution. As such, lack of conformity is possibly caused by improper locations of the released forest areas which are completely marshy. There are also

unreachable spots as they lie on steep slopes of a mountain; thus; it is unlikely sound for land redistribution to society. Nonetheless, land certification program is claimed as the government's achievement and its acknowledgement shall lead to legal certainty over land owned by society albeit the core issue of agrarian reform has yet hitherto been resolved and of course, such priority targets fail to manifest. (Bayu, 2019).

Throughout the past five years the government has enacted agrarian reform and successfully mapped fundamental issues within the society as they require major attention and serious handlings. On daily basis the government redistributes land to farmers and fishermen and registers lands as parts of agrarian reform as well (Saripudin, 2015). In respect of certificate distribution, there have been millions of freehold title deeds passed to society as part of agrarian reforms. If perspective 1 is viewed wherein a deed comprises 3,000 square meters of state land granted to society; thus, by accumulation, the 5 million deeds passed represent the massive quantity of land have been redistributed to society and the government makes its reform accessible ( by means of bestowing deeds for which administration fees paid by the government)

Agrarian Reform is a relatively major program that proceeds a quite lengthy period; thus, reviews, in a broader scope, over it are advised. In regards to reforestation conducted by the Ministry of Environment and Forestry, people whose dwellings situated within the forest are acknowledged for their existence, legalized, given trainings, aided by means of providing fertilizer supplies as well as seedlings. These actions are deemed as parts of agrarian reform and as a tremendous cutting edge. The government bodies authorized for those aforementioned actions are the Ministry of Agrarian and Spatial Planning (Agraria dan Tata Ruang) and the office of National Land Registry (Badan Pertanahan Nasional) whose duty is to identify objects' potentials followed by mapping, settlement and gradual redistribution.

## CONCLUSION

For settlements over farmland conflicts, an early stage necessarily taken is harmonization of law regarding land. Currently despite the existing 13 laws which regulate numerous fields related to land issues; however, agrarian lawyers find them overlapping. In addition, they have repeatedly asserted that these laws are even vertically against the Constitution, Laws of Oil and Gas, Mining, Infrastructure, Property, Forestry, and Agriculture; therefore, harmonization of laws are required to avoid overlapping. The number 41 of 2009 Protection of Farmland for Sustainable Food Law can unlikely resist changes on land use for alternatively different purposes other than for farming. Hence, the enactment of UU PA or existence of land laws are highly expected to ensure ownerships of farmland.

## SUGGESTIONS

The drafts of land law being discussed by the government and House of Representatives serve as the revision of UU PA and simultaneously regulate agrarian reform. The Revised Land Law shall regulate all interests in order that agrarian reform be fairly practiced and free of conflicts.

Furthermore, agrarian reform is supposedly defined not only as an action of seizing individuals' land by force. Rather, it demonstrates respects towards others' property or legal bodies related to land issues as well as determines land function in efforts to increase social welfare and social harmony.

The local society's rights over traditional society's land requires such a strict management to maintain their legacy in good hands. Albeit sufficiency of knowledge on agrarian reform, quite a few people learn how agrarian reform functions. Unless there is political willingness, either held by the government or House of Representatives, maintaining the minimum dimension of farmland and food self-sufficiency as well as enhance farmers' welfare and maintaining environmental conservation including investment sectors over all related fields.

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