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Agrarian Reform Responding to the Challenges of the Times

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Abstract - Indonesia has entered the age of 77 years. In a long period of time, it seems we should be concerned that the implementation of Agrarian Reform as an effort to reorganize the ownership, control, use, and utilization of land for justice, prosperity, and people's welfare which is a national priority has not been fully successful. The Agrarian Reform Movement must be admitted that it is not a solution to the existing conflict. However, the aim of the agrarian reform is expected to be a systematic effort that is more preventive in nature to avoid the occurrence of agrarian inequality and conflict in the country in the future. So the author concludes that the main goal of "Agrarian Reform Responding to the Challenges of the Age is the creation of social justice which is marked by the existence of agrarian justice, increased productivity, and increased people's welfare.

Keywords: Agrarian Reform, Challenges of the Ages, Agrarian Justice, increasing productivity, and increasing people's welfare.

I. INTRODUCTION

The long journey of the formation of the National Land Law in Indonesia, is like a historical nick that is timeless. And until now, Law No. 5/1960 concerning Basic Agrarian Regulations or better known as the Basic Agrarian Law (UUPA) is still consistently used. The UUPA implements the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI), as stated in Article (2) paragraph (1) of the UUPA, namely: "On the basis of the provisions of Article 33 paragraph (3) of the Law The basis and matters as referred to in Article 1, the earth and water, and the natural resources contained therein are at the highest level controlled by the state, as an organization of power for the whole people".

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI) is the constitutional basis for the political formation of the National Land Law which contains orders to the state so that the earth, water, natural resources contained therein and placed under the control of the state used to realize as much as possible for the prosperity of all the people of Indonesia.

The rights of the Indonesian people to land have a communal nature, meaning that all land within the territory of the Unitary State of the Republic of Indonesia (NKRI) is land with

the Indonesian people who are united as the Indonesian nation. In addition, it has a religious nature, meaning that all land within the Territory of the Republic of Indonesia is a gift from God Almighty. The relationship between the Indonesian people and the land is eternal, meaning that the relationship between the Indonesian people and the land will continue uninterrupted forever. The eternal nature means that as long as the Indonesian people are still united as an Indonesian nation and as long as the common land still exists, under any circumstances, no one power will be able to sever or nullify this relationship.

The Indonesian people's rights to land are the parent of other land tenure rights, meaning that all other land tenure rights are based on the Indonesian people's rights to land and that the existence of any control rights, the rights in question do not negate the existence of the Indonesian people's rights to land. soil. According to Boedi Harsono, the statement of land controlled by the Indonesian people as shared land shows that there is a legal relationship in the field of civil law. Even though the legal relationship is a civil relationship, it does not mean that the rights of the Indonesian people are private property rights which do not allow for individual property rights.

The rights of the Indonesian people in the National Land Law are property rights, which allow the control of parts of the land together with Hak Milik by individual citizens. Apart from being a civil law relationship, the rights of the Indonesian people to land contain the task of authority to manage the joint land management for the greatest prosperity of the people, which is included in the field of public law. The state's right to control over land is rooted in the right of the Indonesian people to land, which is essentially the control of the implementation of the nation's authority duties that contain elements of public law. The task of managing the entire common land cannot be carried out alone by the entire Indonesian nation, so in its implementation, the Indonesian nation as the holder of the rights and the bearer of the mandate, at the highest level is controlled by the Indonesian state as an organization of power for the entire people.

The authority of the state's right to control land is mentioned in Article 2 paragraph (2) of the UUPA, namely:

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

According to Oloan Sitorus and Nomadyawati, the state's authority in the land sector as referred to in Article 2 paragraph (2) of the BAL is the delegation of the nation's duties to regulate control and lead the use of joint land which is a national asset. The right to control the state is the delegation of public authority from the rights of the nation, so consequently, this authority is only public (Santosa, 201). The exercise of state control over land may be authorized or delegated to autonomous regions (regional governments) and customary law communities, as necessary and contrary to national interests according to the provisions of government regulations.

Talking about agrarian reform, according to national agrarian law, the goal is to provide an equitable and fair distribution of the livelihoods of the peasants, namely land, so that with this distribution, it is hoped that fair and equitable results can be achieved. The regulation of control, ownership, use and utilization of land outlined in the LoGA is intended to ensure that land is not monopolized by a handful of land lords at the expense of weak economic groups whose lives depend on land, especially farmers.

And to achieve legal certainty and protection as well as justice and prosperity for all Indonesian people, the government issued Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. Agrarian Law expert, Gunawan Wiradi said that initially the land reform policy was a social policy, namely equal distribution of land tenure, not an economic policy (production); but then people realized that an economic rationale is needed that is able to give reasons from an economic point of view why an agrarian reform needs to be carried

out. That is why after the second world war, countries began to add social, economic, political, legal and cultural aspects to their agrarian reform programs (Wiradi, 2005).

These considerations are politically tolerable, economically viable, culturally understandable, socially acceptable, legally justified and legally technically applicable. And keep in mind that the various considerations mentioned above "do not need to give birth to a quasi-reform (quasi-reform)" or a pseudo-reform (pseudo reform), which is a polite reform but in essence it is not an reform, which is called nicely behaved non-land reform.

It seems undeniable, after all, agrarian reform can only be carried out if there is political will. In non-socialist countries, the concrete contents of agrarian reform are: rearranging the allocation of land provision; rearrange the status of ownership, control, use of land; rearrange the procedures for land acquisition; and rearranging land use. However, agrarian reform can also be seen as a systematic effort, planned and carried out relatively quickly, within a certain and limited time to create prosperity and social justice and pave the way for the formation of a new democratic and just society. Agrarian reform can be carried out starting with the steps of rearranging the control, use and utilization of land and other assets. Furthermore, a number of other supporting programs were carried out to increase farmer productivity programs in particular and the people's economy in general (Dorner, 1972). That is, if implemented properly and correctly, agrarian reform will become the basis for national development.

Even the world's experts agree, based on the historical experience of various countries that have implemented agrarian reform programs require a number of prerequisites, and for that it is necessary to reform agrarian reform in order to run successfully. The most important prerequisite is that there must be political will from the government, and there must be people's organizations (especially peasant organizations) that are strong and pro-reform, there must be complete and thorough data on agrarian matters. And most importantly, the ruling elite must be separated from the business elite, the bureaucratic apparatus must be clean, honest and understand the concepts and objectives of agrarian reform.

However, Agrarian Reform as the basis for development is an imperative, because it is precisely in the midst of various crises that the Indonesian nation is currently facing. And the complexity of the issue of Agrarian Reform should not make us give up, but instead must make us all aware to be willing to sit down together and plan seriously. Agrarian reform is no longer solely the government's agenda, not only the agenda of the people's struggle, but must be the agenda of all components of the Indonesian people.

II. AGRICULTURAL REFORM RESPONDING TO THE CHALLENGES OF THE TIMES

Agrarian land reform in principle is land reform in the sense of redistribution of land ownership and control. However, land reform will not succeed if it is not supported by supporting programs such as education, counseling, marketing, and so on, citing the opinion of Tuma Elias, Land reform "in a broad sense can be equated with "agrarian reform" (agrarian reform), namely an effort to change agrarian structure in order to create a redistribution of land ownership and control and access to economic resources (Elias, 1965).

Emphasizing what the World Bank Country Director for Indonesia and Timor-Leste, Rodrigo A. Chaves, said, agrarian reform is an important foundation in the development of a country because it will bring clarity to land use, access rights and licenses, which in turn helps reduce poverty and reduce poverty. income inequality. Currently, Indonesia is on track to achieve its goal of certifying and registering every parcel of land in Indonesia by 2025 (World Bank Press Release, 2018).

There are three main issues in Agrarian Reform (RA). First, how is the suitability of Agrarian Reform which actually existed before the Jokowi administration known as TORA (Land of Agrarian Reform Objects) with the initial concept of agrarian reform referring to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA 1960). Second, how is the journey of the RA policy launched by the Jokowi government. Third, the structural and institutional constraints of the current RA policy.

Gunawan Wiradi represented the Sajogyo Institute in an "Agrarian Reform Law Discussion, last Thursday, July 11 2019, which was held by Prisma, saying that almost all current policies are ambiguous. It's nobody's fault, because it is a product of historical

dynamics. We have to trace it from there when it comes to agrarian issues and this is not an easy thing. We need to study the history of Indonesia which is related to the Dutch colonialism. The question contained in the ToR regarding "what historical and structural contexts differentiated the implementation of the LoGA in the past from the RAPS program in the present" is indeed very good.

Gunawan Wiradi doubts whether the current national elite understands what is meant by "agrarian reform." When I was invited to the Presidential Staff Office (KSP), many did not understand, or deliberately misled, the concept of agrarian reform. He himself reminded the younger generation, "be careful not to be fooled by wrong concepts." Many people often confuse the term "reform" with "reforma", which means completely different. On various occasions, Gunawan has often said that agrarian reform is "land reform plus", that is, plus various supporting programs. The point is asset reform. That access reform, tenancy reform, and so on are needed, that is what is meant by "plus" (Wiradi, 2019).

Confirming what was conveyed by Gunawan Wiradi, according to Usep Setiawan as the Main Expert of the Presidential Staff Office (KSP), concluding that as a political document and the constitutional mandate, Agrarian Reform and its agendas have been stated in the Nawacita, the National Medium-Term Development Plan (RPJMN) 2015- 2019, and the Government Work Plan (RKP) every year. In essence, the implementation of Agrarian Reform as an effort to reorganize the ownership, control, use, and utilization of land for justice, prosperity, and people's welfare is a national priority, which is carried out by the government through two schemes, namely the provision of TORA from various sources with a target of Agrarian Reform of 9 million. hectares and Social Forestry through various schemes with a target of 12.7 million hectares (Setiawan, 2019).

Regarding Pak Gunawan Wiradi's criticism, Usep admitted that he realized that the government's understanding of agrarian reform was still very minimal. Therefore, since 2016, the Presidential Staff Office needs to supply a number of materials so that the agrarian reform program can be understood by all ministers and regional heads. Agrarian reform as a priority program in the 2019 Government Work Plan (RKP) contains five things. First, strengthening the regulatory framework and resolving agrarian conflicts. Second, the arrangement, control, and ownership of TORA land.

Third, legal certainty and legalization of TORA. Issuance of certificates of ownership of community land is part of the activities of Agrarian Reform. There are criticisms that the land certification process is actually outside the Agrarian Reform, but is included in the RKP as part of the Agrarian Reform. Fourth, community empowerment in the use, utilization, and production of TORA. Fifth, implementing Agrarian Reform institutions at the central and regional levels.

With the existence of institutions, in Presidential Decree No. 86/2018 concerning Agrarian Reform is stated by the Agrarian Reform Team which consists of 16 ministers and heads of institutions, including the Head of the Presidential Office. The team at the central level is led by the Coordinating Minister for the Economy. In addition, at the central level there is an Agrarian Reform Task Force which is the implementing institution and is chaired by the Minister of ATR/Head of BPN, at the regional level there is a provincial-level task force formed through a Governor's Decree, at the district/city level through a Regent and Mayor's Decree. However, the acceleration of the implementation of various Agrarian Reform agendas in the first period of Jokowi's administration has not been carried out quickly and has been fully implemented, especially land redistribution.

To realize Agaria Reform, according to Usep, ideally, Agrarian Reform is included in the work plan of the regional government, so that the budget can be allocated in the APBD (Setiawan, 2019). As an illustration, since 2016, Sigi Regency, Central Sulawesi, has set agrarian reform as a mission, vision, and action program into the Regional Medium-Term Development Plan (RPJMD), Regional Government Work Plan (RKPD), and budgeted in its APBD. Broadly speaking, there are four stages of Agrarian Reform activities which include preparation, implementation, determination of rights and issuance of permits, as well as monitoring and evaluation. If it is to be implemented simultaneously in an integrated manner, the scheme from the experience of Sigi Regency can be replicated in other districts. Of course

the scheme needs to be adapted to the context and challenges at the local level. The majority of land in Sigi Regency is in forest areas. The Sigi Regency Government also identified land from former forest areas and land from former plantation use rights (HGUs), which were later designated as TORA to the central government. Now being processed.

Dr. Yanis Maladi, SH, MH argues that the substance or character of agrarian reform based on political orientation in order to realize the ideals and goals of the nation with the Pancasila paradigm must be: First, national agrarian law politics must consistently protect the interests of its people in order to get the right to live in physical and spiritual prosperity. in a fair manner, has the right to own these property rights and must not be taken over arbitrarily by anyone, including the state and even large corporations. Second, the politics of national agrarian law must be driven by noble religious moral values and protect human rights without discrimination (Maladi, 2013).

From these two things, it can be seen that there are two social values that are combined into one in the concept of agrarian law politics with the Pancasila paradigm. However, Yanis's view if analyzed further, there will be many obstacles that come from various legislative products in the agrarian sector (both at the central and regional levels) which seem to overlap with one another, so basically it takes more than just changing the way We only look at the problem, but rather a comprehensive strategic plan in looking at the overlapping issue of the said legislative products.

Boedi Harsono explained that, "The UUPA not only contains provisions regarding the overhaul of the Agrarian Law, but also contains a strategic Revolution Program in the agrarian sector, which is called agrarian reform. Pancasila so that this UUPA is substantially the strategic foundation in the realization of this noble goal (Harsono, 1965).

Agrarian reform in Indonesia, according to Boedi at least includes 5 (five) basic programs", namely: "Renewal of Agrarian Law through legal unification with a national concept and the provision of legal certainty guarantees (rule of law); Abolition of foreign rights and colonial concessions to land; A gradual end to feudal exploitation; Revolution of land ownership and control as well as legal relations related to land control in realizing equitable distribution of prosperity and justice. Planning for the supply and designation of "earth, water and natural resources contained therein", as well as their use in a planned, structured and systematic manner, in accordance with the carrying capacity and capabilities.

In relation to the policy on the issue of Agrarian Reform, it is necessary to listen to what was expressed by the Professor of the Faculty of Law, Universitas Gajah Mada, Prof. Dr. Maria Sri Wulan Sumardjono, SH, M.C.L., M.P.A in "State Financial Accountability Work Visit in Order to Get input related to the BAKN Study of the DPR RI on Agrarian, Spatial Planning and National Land to Gajah Mada University, Yogyakarta Second trial period 2021 – 2022 11 – 13 November 2021.

Prof. Maria is of the opinion that the agrarian reform (RA) formulation in the Job Creation Law comes from the RA formulation in the Land Bill (RUUP) version after May 2019 when the government intended to establish a Land Management Agency (LPT) with the aim of providing land for: general; b) social interests; c) development interests; d) economic equity; and e) land consolidation. Sharp criticism from various parties who suspected that the formation of the LPT was very biased towards investment interests was muted by adding "RA and land justice" whose land availability was guaranteed by the LPT (Article 76 of the September 2019 version of the RUUP) (Sumardjono, 2021).

Furthermore, in its development, the phrase "land justice" was not included in the Job Creation Law without knowing the reason (Article 126 Paragraph (1) letter f). Furthermore, Article 126 Paragraph (2) emphasizes that the availability of land for RA is at least 30 percent of the state land designated for BT. Meanwhile, in the PP, the availability of land for RA is formulated in Article 2 Paragraph (1) letter f and is repeated again in Article 16 letter f. The definition of RA in the PP is taken from the definition of RA in Presidential Regulation (Perpres) No. 86 of 2018 concerning RA.

Article 22 of the PP stipulates that the availability of land for RA is in the context of land redistribution, the amount of which is at least 30 percent of the state land allocated for BT. Problems arise when Article 7 states that the acquisition of BT land which is the result of a

government determination consists of state land originating from a) former land rights; b) abandoned areas and lands; c) release of forest area; d) raised land; e) reclaimed land; f) exmining land; g) land of small islands; h) land affected by the spatial policy; and i) land that there is no control over it. The state land referred to in letters a, b, c, d, and f turns out to be part of the type of land subject to agrarian reform (TORA) as regulated in Article 7 of the Presidential Regulation RA. The question is, what is the purpose of formulating RA in this PP when the BT and RA paradigms clearly intersect? 10 Contest or Synergy? The inclusion of RA in the PP which from the beginning was not intended to be regulated in the Job Creation Law, if not clarified, has the potential to reverse RA's journey.

Various obstacles that cause the work of the Agrarian Reform Task Force (GTRA) to be less agile according to field observations include: unavailability of policies and mechanisms for resolving agrarian conflicts in the framework of a comprehensive RA, conflict resolution efforts have not touched the root of the problem, conflict resolution plans have not accompanied by a clear deadline for completion, the budget for the implementation of RA and conflict resolution has not been a priority. The lack of smooth running of GTRA's work was answered by the President's commitment to accelerate the resolution of agrarian conflicts and land redistribution by the end of 2020 (Sumardjono, 2021).

Prof. Maria identified the realization of this commitment as the formation of a "Team for the Acceleration of Agrarian Conflict Resolution and Strengthening Agrarian Reform Policies in 2021" through Decree of the Presidential Chief of Staff of the Republic of Indonesia Number 1B/T of 2021. The team is chaired by the Chief of Presidential Staff, Minister of ATR/Head of BPN as Deputy Chair I and the Minister of LHK as Deputy Chair II. The 32 members come from coordinating ministries, ministries and institutions, representatives of four non-governmental organizations (NGOs), namely the Agrarian Reform Consortium (KPA), the Indonesian Peasant Union (SPI), the Customary Territory Registration Agency (BRWA), and the Indonesian Social Forestry Echo. (PS echo). The results of the implementation of the team's duties and responsibilities are followed up by the National Agrarian Reform Team and GTRA as stipulated in the Presidential Regulation RA and reported to the President every three months or at any time if necessary.

The formation of this team at least encourages a "bottom-up" approach in the implementation of RA. And as an initial description of the Team's work, 71 Priority Agrarian Reform Locations (LPRA) have been proposed for TORA from four team member NGOs, and four locations have been proposed by other NGOs. Of the 71 locations, three locations have been redistributed; 13 locations entered priority I, ready to be redistributed in 2021; priority II resolves eight conflicts by 2021 for redistribution by 2022; priority III resolves 11 disputes/conflicts in 2022 to be redistributed in 2022 or 2023. The remaining 36 LPRAs will be handled by the Ministry of ATR/BPN.

From KPA records, it is stated that the 13 redistribution locations are entirely from former private company HGU lands and cover an area of 84 hectares (2015), 1,139 hectares (2016), 444 hectares (2018) and 288 hectares (2020). In order to encourage the acceleration of RA, the state land as a result of the government's determination which is BT land (Article 7 PP) which overlaps with TORA according to Article 7 of the Presidential Regulation RA entirely (not only 30 percent) is handed over by BBT as land 11 manager (whose committee chairman is held by the Minister of ATR/Head of BPN) to GTRA in the form of state land, for further redistribution.

As is known, the Minister of ATR/Head of BPN is also the chairman of GTRA at the central level. Land allocation for RA at least 30 percent of BT land can be obtained from BT land obtained from other parties (Article 8 PP). In accordance with the duties and functions of the Ministry of ATR/BPN as a regulator and administrator of land, lands that have the potential to become TORA need to be identified, inventoried, and hastened their stipulation as state land. The position of the Ministry of ATR/BPN as the main node for the implementation of RA can synergize the availability of TORA and its redistribution in collaboration with the team and GTRA with the full support of the local government. The work of the Ministry of ATR/BPN as the final node of the implementation of the RA is marked by the granting of Ownership Rights on state land resulting from the redistribution of TORA on behalf of the subject of RA.

The next homework is to ensure the rights of RA subjects to obtain facilitation in the context of structuring access. Synergies in the entire RA process and its acceleration and strengthening of RA policies are intended to strengthen the bargaining position of vulnerable groups in obtaining justice for access and use of land to fulfill their basic needs, which has the potential to be eroded if land policy tends to focus on encouraging investment.

According to Prof. Dr. Nurhasan Ismail, SH., M.S.i, the regulations on Land Redistribution for Land Reform Objects (TOL or now TORA) are irrelevant and not implemented. The provisions in Law No. 56/1960 and PP 224/1961, PP 41/1964, and PP 4/1977 are also irrelevant and not implemented because: first, the legal basis in the field of Land reform was made based on Indonesian policies and conditions in 1960; secondly, during the New Order there was no attention to Landreform so there were no new policies; third, the New Order even suppressed Landreform because it was seen as an obstacle to economic development; and fourth, the social, economic, and political developments that underlie land reform policies have changed so that they also demand changes in regulations regarding the distribution of TOL or TORA.

Prof. Nurhasan assesses that currently there is Presidential Decree 86/2018 concerning Agrarian Reform (RA) which aims to expand RA activities, which include the distribution or redistribution of TORA and legalization of land rights that are already owned by community members in the form of certificates. One note = legalization activities should not be included as RA activities. And TORA has also been expanded to include agricultural land and non-agricultural land, including those in urban areas, both those which originally had the status of State Land such as those originating in Forest Areas or those whose land rights were canceled for certain reasons and became State Land as TORA (Ismail, 2021).

Prof. Nurhasan emphasized that there are sectoral egos such as KLH which distributes land through the Social Forestry Program with its own KLH pattern. The policy of granting land with a very large area of tens of thousands and even hundreds of thousands of hectares is a liberal policy and of course limits the total area of TORA. And inconsistent provisions such as land whose rights are not extended or renewed to become TORA if 1 year has passed since the expiration (Perpres version) and 2 years (PP version 18/2021). The subject of the recipients of land distribution or redistribution has also been expanded, namely those who work as plant-pond-breeding farmers, fishermen, and other professions outside the agricultural & fishing sector, both individually and collectively as groups and cooperatives. Prof. Nurhasan notes, that there is a recipient subject that must be judged to be inappropriate, namely in the form of a Limited Liability Company or Village-Owned Enterprise which is fully individualistic in character and oriented to purely profit-seeking and restricts community members from being involved in it unless they are able to become shareholders.

In the future, to answer the challenges of the times, it is necessary to improve land policies, spatial planning and implementation. Furthermore, efforts to improve or perfect policies including legislation must continue to be carried out by the government, including with the DPR, namely in the field of land registration, management of land rights including land acquisition for the public interest, and spatial planning.

III. CONCLUSION

From the description above, various conclusions can be drawn, as follows:

- 1. The Team for the Acceleration of Agrarian Conflict Resolution and the Strengthening of the Agrarian Reform Policy in 2021 as a government formation is expected to no longer be purely technical in nature and ignore moral elements (substantial truth).
- 2. The statutory approach shows that the implementation of reforms that have been carried out by the Government, in fact, still leaves various main problems faced in the land sector which cause disputes, conflicts and cases in the field of land, especially legalization and land redistribution which, although positive impacts for the community, are also able to answer the question. various issues of disputes, conflicts and land cases which are actually wrong in their main task must be resolved in the implementation of agrarian reform.

3. The author also recommends an evaluation of policies in the land sector while still paying attention to the philosophy and basic principles contained in the LoGA so that the objectives of agrarian reform and its legal instruments can run as they should and have an impact on welfare for the people of Indonesia.

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