

AGRARIAN REFORM UNDER THE REIGN OF JOKO WIDODO VIEWED FROM BASIC AGRARIAN LAW

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ABSTRACT

This study raises the issue of agrarian reform draft under the reign of President Joko Widodo. Agrarian reform became a priority program in the RPJMN of 2015-2019. Based on this matter, the writer analyzes the concept of agrarian reform during the reign of Joko Widodo terms of BAL. The nature of the study was a normative research with statute approach, which was done in four ways, namely descriptive, comparative, evaluative and argumentative. The results showed that the agrarian reform draft during the reign of Joko Widodo is a concept of land stewardship and land reform. The economic system leads to a form of capitalism. It is necessary to conduct refinement of content and material of BAL implementation in order to achieve the justice and the welfare of the nation and the State. The agrarian reform program should be carried out in stages in order to obtain the desired results. It requires the will, ability and active involvement of all elements of the state.

Keywords: Agrarian reform, Concepts, Capitalist.

A. INTRODUCTION

1. Background of the Research

The 2015-2019 RPJMN is the third stage of the National RPJP 2015-2025¹. The 2015-2019 RPJMN formulates nine priority agendas called Nawa Cita. Nawa Cita includes an agrarian reform agenda and strategies to develop Indonesia from the periphery starting from the village. Agrarian reform is important as a foundation for national economic policies related to efforts to equalize development, reduce inequality, reduce poverty and create employment in villages. President Joko Widodo sees that it is necessary to create a breakthrough to complete access to land, as well as the issue of land tenure inequality in rural areas. Most farmers in the village are farm laborers who do not own the land and smallholders who own land less than 0.3 hectares (ha) per person. These two categories of farmers have a low level of income so they are

vulnerable to rising food prices and encourage increased urbanization to the city.²

The policies of Joko Widodo's reign through the 5th Nawa Cita and the 9 million hectare agrarian reform national strategic project for the people, especially farmers, actually gave new hope after 10 years of the previous reign. This policy is a hope for the people, especially farmers, fishermen and low-income people to improve and improve the quality of life. However, agrarian reform policies approaching the end of Joko Widodo's reign (2015-2019) faced many challenges. Many public policies that were born and the development process that is in the contrary to the spirit of agrarian reform, awakened old agrarian conflicts, and led to new agrarian conflicts.

Presidential Decree (further will be referred as Perpres) No. 86 Year 2018 on Agrarian Reform is the new hope of the people of Indonesia. This Perpres is considered as proof

¹Law number 17 of 2007 on the National Long-Term Development Plan (RPJPN) 2005-2025 stipulates that the national development vision is to make Indonesia an independent, advanced, just and prosperous place in four stages medium term development plan (RPJMN). Indonesian Presidential Regulation No. 2 of 2015 on the National Medium Term Development Plan 2015-2019 year. RPJMN Stages 2015-2019 is the third of four stages of RPJPN 2005-2025.

²The Ministry of Agricultural and Spatial Planning / National Land Agency, *Jokowi Minta Percepatan Reformasi Agraria*, <https://www.atrbpn.go.id/Berita/Berita-Pertanahan>, accessed on August 25, 2016

of the Government's seriousness in implementing and succeeding Indonesia's agrarian reform program. The hope of the community after the issuance of Perpres 86 of 2018 is that the targets of Indonesia's agrarian reform can be achieved, namely poverty alleviation and economic equality, providing certainty and justice to the community, the availability of quality land information with the use of technology, reducing the occurrence of agrarian disputes and conflicts, as well as the support and role and the community in the success of agrarian reform, so that the land can prosper the people. Perpres No. 86/2018 separates asset reform and access reform as two separate programs. The implication is that the implementation and institutional responsibility is also separate. Agrarian Reform as required in the Peasant Charter requires that the structuring program for the ownership, control and use of land or what we are more familiar with land reform, together with the support program for empowerment (access reform) is a complete package that cannot be separated. BAL is a

revolutionary program in the field of agrarian, which is called the Indonesian agrarian reform. Land reform as referred to in BAL is the definition of land reform in the narrow sense. Land reform is a series of actions in the context of Indonesia's agrarian reform. The basic principles and provisions of land reform are found in BAL. The main objectives of BAL are to lay the groundwork for the drafting of national agrarian law, to establish the unity and simplicity of land law, and lay the groundwork for providing legal certainty regarding land rights for all Indonesian people.

2. Identification of the Problem

Based on the description above, this research identifies problems regarding the concept of agrarian reform according to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or better known as Basic Agrarian Law (BAL), and the concept of agrarian reform under Joko Widodo's reign when viewed from BAL.

B. RESEARCH METHODS

This study used a normative legal research method with legislative approach by analyzing the legislation relating to agrarian reform that was issued during the reign of Jokowi with a higher statutory regulation, namely Law No. 5 of 1960 concerning Basic Rules for Agrarian Principles or better known as the Basic Agrarian Law (BAL). The collection of primary legal materials was performed by using the snowball system means that it continues to roll from the highest rule to the lowest rule based on Law No. 12/2011 concerning the Formation of Laws and Regulations in article 7 paragraph (1) concerning the hierarchy of laws and regulations. To conduct the analysis, four types of techniques are used, namely descriptive, comparative, evaluative, and argumentative techniques.

C. RESULTS AND DISCUSSION

1. Agrarian Reform Concepts According to Law Number 5 of 1960 concerning Basic Rules of Agrarian Principles

Fundamental changes in the agrarian law in Indonesia occurred with the enactment of Law No. 5 of 1960 on Basic Regulation of Agrarian. BAL based on customary

laws on land as the original law of the vast majority of Indonesia. The changes are organized in a rapid, fundamental and thorough in order to implement the national development towards the realization of a just and prosperous society based on Pancasila. With the enactment of the BAL, the device is a single law.

BAL can be expressed as the parent of Indonesian land reform which cannot be separated by a national revolution. Land reform is aimed at:

- a. Conducting a fair share of the farmer livelihoods in the form of land for social justice;
- b. Implementing the principle of land for the peasant;
- c. Strengthening and expanding the land ownership for all Indonesian citizens, both men and women who have social function;
- d. Ending the landlord system and abolishing the ownership and control of land on a large infinite scale, by conducting the maximum and minimum limits for each family;
- e. Enhancing national production and encouraging the implementation of intensive

agriculture in mutual cooperation in the form of cooperatives and other forms of mutual cooperation, to achieve equitable and fair prosperity, coupled with a credit system that is specifically directed to the peasant class.

The principal activities of land reform that can be encountered in the BAL are:

- a. Restrictions on the maximum area of land tenure. Under Article 7 and 17;
- b. Prohibition of absentee land ownership or *guntai*. With regard to the provisions set forth in Article 10;
- c. Redistribution of the remaining lands of the maximum limit of the lands affected by the ban on absentee, the lands of the former autonomous region and state land, based on the provisions of Article 17 paragraph (3);
- d. Provision about returns and redemption arrangements of farms which are mortgaged based on provisions of Article 53 paragraph (1);
- e. Determination of a minimum area of agricultural land ownership, accompanied by a ban on acts that

resulted in splitting the ownership of agricultural lands into parts that are too small. This provision is also mentioned in Article 17.

According Boedi Harsono, BAL is a revolution in the field of agrarian program, called Indonesian Agrarian Reform. Indonesian Agrarian Reform includes five (5) programs, namely:

- a. Agrarian law reform, through concepted national law unification and the guarantee of legal certainty;
- b. Elimination of the rights of foreign and colonial concessions on the ground;
- c. Ending the feudal exploitation gradually;
- d. Reshuffle ownership and control of land and legal relations concerned with the land concession in realizing equitable distribution of prosperity and justice;
- e. Inventory planning and allotment of land, water and natural resources contained therein and its use is planned, according to the carrying capacity and ability.

Overall Agrarian Reform program is often called the land

reform program, so there's a "reform in a broad sense" and "reform in the strict sense."³

2. The Concept of Agrarian Reform during Joko Widodo's Reign In Terms of BAL

The 2015-2019 RPJMN as stipulated by Presidential Regulation Number 2 of 2015 contains a vision, mission and nine priority agenda or called Nawa Cita. Agrarian reform became the direction of policy in realizing the fifth agenda of Nawa Cita. Agrarian reform through priority programs to improve the welfare of marginal people is directed at the distribution of farmers' land rights through:

- a. Providing a source of Agrarian Reform Land Objects (TORA in Indonesian abbreviation) and the redistribution of land and the legalization of assets.
- b. Land asset management (asset reform) that includes the redistribution of land and the legalization of assets of 9 million ha.

The average land area per-province of Indonesia is under 10% of the total area of Indonesia. Of the total land area, about 124.19 million hectares (64.93%) is still in the form of forests such as dense forests, similar forests and shrubs. The remaining 67.08 million hectares have been cultivated for various activities both agriculture and non-agriculture. 77.19% of the territory of the Republic of Indonesia is in the form of water areas. This is a challenge and a big job for the government and the community in its management. Population growth and cultural shift from an agrarian country to an industrial country have also led to an increasingly strategic and increasingly complex implementation of agrarian reform.

Indonesia is located in a fast developing region (Pacific Ocean Rim and Indian Ocean Rim). This has led to an increase in the intensity of spatial use activities related to the exploitation of natural resources, increasingly declining settlement quality, increased uncontrolled land use change, and high disparities between and within the region. In terms of spatial planning, legal

³Prof. Boedi Harsono, *Hukum Agraria Indonesia-Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Trisakti University, Jakarta, in 2016, pp. 3-4

regulations related to spatial management arrangements that are still incomplete, implementation of spatial management guidance that is still ineffective, spatial planning implementation that is still not optimal, and supervision of spatial planning that is still weak and incompatible various laws and regulations relating with spatial planning and land management in particular and also with the regulation of other fields relating to the earth, water, space and natural resources of the Republic of Indonesia. Increasing the number of population in Indonesia that is not followed by an even distribution of the population is also a problem that must be considered for the successful implementation of Indonesia's agrarian reform. In the future, the possibility of changing the culture of an agrarian country to an industrial country is inevitable. This causes the spread of population will lead to urban areas. Increasing population in urban areas is increasing the demand for urban land. The increasing need for land on the one hand, while the area of land is fixed and does not increase can impact on the increase

in the conversion of land, including productive agricultural land. These problems must of course be of particular concern for the success of Indonesia's agrarian reform in the present and future.

In 2016, the Presidential Staff Office (KSP in Indonesian abbreviation) prepared a draft National Strategy for the Implementation of Agrarian Reform in which the agrarian reform program was specifically controlled by KSP. In the text, the main components of agrarian reform are mentioned, namely:

- a. Strengthening the regulatory framework and resolution of agrarian conflicts;
- b. Structuring the control and ownership of Land for Agrarian Reform Objects (TORA);
- c. Legal certainty and legalization of land rights for the object of agrarian reform;
- d. Community empowerment in the use, utilization, and production of land for agrarian reform objects; and
- e. National and regional agrarian reform implementing institutions.

Community participation, both civil society organization groups and representatives of program beneficiary communities, is a benchmark for the process and achievement of the success of the agrarian reform program.

Inequality of land tenure, ownership, use, and use (P4T in Indonesian abbreviation) and obstruction of some land and space management are the main causes of land problems and conflicts. In addition, there are no institutions specifically tasked with resolving agrarian conflicts thoroughly and abiding by their decisions. Agrarian conflicts that occur now are largely inherited from previous repressive orders, and are also supported by imperfect land administration systems. One of the main causes of agrarian disputes and disputes is the issuance of regional autonomy policy. Law No. 32 of 2004 concerning Regional Government which was later revoked by Law No. 23 of 2014 concerning Regional Government, and the issuance of Law No. 33 of 2004 concerning Financial Balance implies an increase in land disputes

and conflicts due to changes in the government system that was initially centralized to a delegated government system to the village. Decentralization has also affected agrarian management systems in the regions. Community efforts in maintaining access to life are often tinged with conflicts both with companies and between communities themselves. Agrarian conflict is an excess of creating a community livelihood environment that is conditioned for the benefit of investment. National and regional governments, play an important role in the preparation and provision of space and facilities to facilitate the interests of investment. Therefore, solving agrarian problems must be a priority that must be resolved immediately.

The cause of inequality in agrarian tenure is land tenure concentration. Capital investment continues to advance followed by changes in the status of forest areas and land ownership. In the period 2013-2018, the 2018 census showed an increase in the number

of small farmers⁴ in Indonesia. In 2013, the number of landless farmers as much as 14,248,864 RTUP (Domestic Enterprises Farmers⁵, and in 2018 it increased to 15,809,398 RTUPs (up by 10.95%). The highest growth rate of smallholders in East Kalimantan Province was 85.77% and the lowest in Papua Province was - 6.01%. One reason for the high increase in the number of RTUP Gurem in East Kalimantan is that the agricultural sector is dominated by the Palm Oil sub-sector. This sub-sector dominates 55.76% of the entire agricultural sector in East Kalimantan Province⁶. Whereas in Papua province the highest number of Gurem RTUP decreases was - 6.01%. The economic structure of the Papua Province is dominated by

the categories of mining and quarrying business fields. Then the construction business fields and categories of agriculture, forestry, and fisheries.

Acquisition of land (land grabbing)⁷ of agriculture became the main factors increasing the number of small farmers in Indonesia. FAO defines land grabbing if land is transacted on a large scale, directly involves foreign governments, and often has a negative impact on agriculture. The general pattern of land acquisition is the ongoing transfer of structural power over land, a key role of the state, taking place in the context of neoliberal economic-political development, resulting in evictions and impoverishment, as well as on a global scale. The two main actors are the government and business people. Large scale land transactions are positioned as an investment program. Land acquisition is considered an

⁴Farmer households are agricultural households that use land which controls less than 0.50 hectares of land. Source: BPS catalog 5101018-Series A1, Inter Agriculture Census Survey (Sutas) 2018, p. 20

⁵Household farming is a household in which one or more members of the household manage agricultural enterprises with the aim of some or all of the results are to be sold, whether agricultural enterprises own property, in the result, or the property of others with pay (charge d'affaires), including in this case the agricultural services business Source: BPS catalog 5101018-Series A1, Inter Agriculture Census Survey (Sutas) 2018, p. 8

⁶<https://disbun.kaltimprov.go.id/halaman/potensi-daerah-provinsi-kalimantan-timur>

⁷The term "land grabbing" first proposed by an agricultural institution GRAIN in Spain in 2008. The term is used to describe the events taking agricultural lands by large corporations through agribusiness investments. Source: Agro Economic Research Forum, Vol. 36 No. 1 July 2018: 1-12

investment problem, not an agrarian problem.

President Joko Widodo said that investment is very important to open new jobs. For this reason, everything that hinders investment must be cut, starting from slow licensing, convoluted to extortion issues. Joko Widodo's administration provides certainty and at the same time provides attraction for investors, especially foreign investors. The global economic crisis is the background of Jokowi's government to issue an economic policy package I-XVI. The economic policies of the Jokowi administration rely on investment investment to improve the national economy. Government Regulation No. 96 of 2015 concerning Facilities and Convenience in Special Economic Zones (KEK) increasingly shows the direction of Jokowi's government economic policy. Increasing economic growth is the main target of Jokowi's government with economic transformation through strengthening agriculture, fisheries, mining, manufacturing, modernization in the mastery of

science and technology, developing innovation, increasing competitiveness and the role of micro, small and medium enterprises (MSMEs) and cooperatives. The final outcome expected by the Jokowi government is the independence of the Indonesian economy.

The main target of agrarian reform is the Land Acquisition, Ownership, Use and Utilization Inventory (IP4T) activity. IP4T is mandated by TAP MPR RI No. IX / MPR / 2001, specifically article 5 paragraph (1.c) which states that in order to formulate agrarian reform policy directions it is necessary to collect data on land through inventory and registration of control, ownership, use and utilization of land comprehensively and systematically in the context of implementing land reform. IP4T activities become an important part in the agrarian reform National Priority activities. 2019 has become an important moment where P4T inventory uses participatory mapping patterns. Participatory mapping is a mapping activity that is carried out actively by involving

the community in collecting P4T data.

In the context of agrarian reform, legal certainty and legalization of land ownership assets should be placed as estuaries of land redistribution. So that the legalization of land ownership assets becomes a legal instrument to safeguard the results of agrarian reform. Certification of land rights, in addition to realizing the legal order and land administration order, also to make the said land parcels a living asset and can be a basic capital for the community to improve their welfare by providing access to economic resources (capital, business, production, and market) which is based on participation, independence, entrepreneurship, justice, prosperity and sustainability.

Farmer empowerment must be based on the desire to improve the welfare of farmers. One of the agricultural development strategies that is considered to be in accordance with the spirit of agrarian reform is community-based agribusiness, in which a format of cooperation is made

between entrepreneurs and farmers. Smallholders and landless are involved as partners in large-scale agribusiness activities carried out on land controlled and managed by a large corporation, through the application of locally-owned production relations (including leasing) institutions.

The concept of agrarian reform of the Jokowi government when viewed from the agrarian reform concept of the BAL is actually a concept of land and land use reform. In Presidential Regulation number 86 of 2018 concerning agrarian reform, what is meant by agrarian reform is the restructuring of the structure of ownership, ownership, use and utilization of land that is more just through the structuring of assets and is accompanied by structuring access for the prosperity of the Indonesian people. And, in the BAL, even though it is not clearly stated, the definition of agrarian reform can be interpreted as land reform in the narrow sense. So from the definition in Perpres No. 86 of 2018 concerning Agrarian Reform, the concept of Jokowi's

agrarian reform is what is called land reform in the BAL. The agrarian definition itself in the BAL can be seen in Article 1 paragraph (2), which is the entire earth, water and space, including the natural resources contained therein in the territory of the Republic of Indonesia.

Article 12 of the BAL mandates a populist economy pattern based on Pancasila. Meanwhile, the structuring of assets desired by the Jokowi Government in order to support the agrarian reform program is a partnership between banks and MSMEs. Asset structuring system like this is the direction of the system of capitalism. In the Big Indonesian Dictionary, capitalism is defined as a system and understanding of the economy (economy) whose capital (investment capital, industrial activity) is sourced from private enterprise capital with the characteristic of competition in the free market.

D. CLOSING

1. Conclusion

- a. The concepts of agrarian reform according to Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles are:
 - 1) National agrarian law based on customary law by relying on elements of religious law;
 - 2) The achievement of the function of the earth, water and space in accordance with the interests of the people of Indonesia;
 - 3) Religious communal;
 - 4) Elimination of foreign rights to land;
 - 5) Arranging the implementation of land ownership and control and legal relations concerned with land exploitation;
 - 6) The implementation is through the planning of the supply and allotment of the earth, water, and space including natural resources contained therein and their use is carried out in a planned manner with due regard to the carrying capacity and capability of agrarian

resources for the realization of sustainable development.

b. The concepts of agrarian reform during the reign of Joko Widodo-Jusuf Kalla in terms of the BAL are:

- 1) Is a concept of land use and land reform;
- 2) The economic system leads to a system of capitalism;
- 3) The appearance of agrarian reform subjects that are different from the BAL concept;
- 4) 4) The object arranged is only land;
- 5) Arrangement of assets (asset reform) is done through 2 (two) activities, namely land redistribution and legalization of assets;
- 6) BAL mandates a form of joint venture based on kinship, while the agrarian reform of Joko Widodo-Jusuf Kalla's reign uses a partnership pattern.
- 7) A review of various laws and regulations relating to agrarian matters is only limited to implementing regulations in the land sector.

2. Suggestion

a. It is necessary to enhance the content and implementation of Law No. 5 of 1960 on Basic Regulation of Agrarian, namely the furnishing with the arrangements relating to the management of agrarian resources / natural resources in order to ensure legal certainty and legal protection of the Indonesian people for the realization of environmentally sustainable development to achieve justice and prosperity of the nation and the State of Indonesia, and increase community participation in the implementation of agrarian reform.

b. Things that need to be done by Joko Widodo Government to improve and to enhance the concept of agrarian reform are:

- 1) Execute the mandate of MPR Decree No. IX / MPR / 2001;
- 2) Act decisively in terms of regulation of land tenure and ownership of land;
- 3) The implementation of the agrarian reform program carried out in stages;

- 4) It takes the willingness, ability, and the active involvement of all elements of the state.

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