

## Justice Perspective on Agrarian Reform in Realizing People's Welfare

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### Abstract

*This paper analyzes agrarian reform from the perspective of justice in realizing people's welfare. The aim of agrarian reform is to organize land management, both in terms of asset management and access for the benefit of the people, so that an interesting legal issue to study in depth is equitable land management. It is necessary to understand that the no. of inequality in land control and ownership creates disparities which are correlated with imbalance. Agrarian reform based on asset management and access is expected to be able to answer the problem of inequality, especially in the object of agrarian reform. This research was conducted using a normative juridical method with a statutory approach and a conceptual approach. Agrarian reform can be interpreted as the government's efforts to organize assets and community access related to land, which so far has been felt to have a lot of inequality in control and ownership. This arrangement is very important to provide certainty and access to manage assets so that they can provide equitable welfare. Fair land management is part of the state's constitutional mandate regarding the utilization of agrarian resources for a country's economy which is structured and aimed at the maximum prosperity of the people. As a benchmark for the success of implementing agrarian reform is the creation of legal certainty regarding land ownership as capital for the welfare of the people with justice.*

**Keywords:** Justice; Agrarian Reform; People's Welfare.

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### Introduction

Agrarian reform policies have a long historical trajectory starting from the end of the colonial era until the present. What cannot be separated from all forms of movement and polemics that continue to surround each route cannot be separated from land issues as well as the policies that regulate them. The main concept of agrarian reform is a corrective effort to reorganize the unequal agrarian structure, which is human, towards a new order with a structure that is based on agrarian justice.<sup>1</sup>

Meanwhile, there is another definition of agrarian reform which is more comprehensive, namely a systematic, planned, and carried out relatively quickly, within a certain and limited period of time, to create prosperity and social justice and pave the way for the formation of a 'new' democratic and social society. fair; which began with

<sup>1</sup> Yerrico Kasworo, 'Reforma Agraria Kini dan Nanti' (2019) 7 Jurnal Rechvinding.[6].

steps to reorganize the control, use and utilization of land and other natural resources, then followed by a number of other supporting programs to increase the productivity of farmers in particular and the people's economy in general.<sup>2</sup>

Dorreen Warriner<sup>3</sup> provides an understanding that has a broad meaning, agrarian reform (known as land reform) is a spirit of struggle oriented towards economic development or living standards by advancing the political goals of freedom and independence of a nation. In practical terms, land reform is defined as an effort to change the social structure in the agricultural sector with land rights and ownership for the people. Krishna B Ghimire<sup>4</sup> defines agrarian reform or land reform as a major change in the agrarian structure, which brings about increased access by poor farmers to land, as well as security of tenure for those who work on the land. This also includes access to agricultural inputs, markets and other accompanying services and needs.<sup>5</sup>

The existence<sup>6</sup> of the Law No. 5 of 1960 concerning Basic Agrarian Law (hereinafter called UUPA), a policy interpreted by Soekarno as a legal basis which is part of the revolutionary spirit which aims to eliminate various agrarian problems which are reflected in colonial policies and feudalism. The UUPA is a momentum in the history of agrarian politics to date, meaning that as a statutory regulation it is still very relevant as a legal umbrella for regulatory products that will be made, apart from that the UUPA is conceptually a guideline in the implementation of agrarian reform.

The concretization of the UUPA policy has had a positive impact both in terms of national agrarian ideas and practices, as evidenced by the concept of the state's right to control land (HMN), whose existence in the philosophy of the UUPA relies on the 1945 Indonesian Constitution Article 33 paragraph 3 "Earth, water and natural resources that contained therein is controlled by the state and used for the greatest prosperity of the

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<sup>2</sup> Dianto Bachriadi, 'Pandangan Kritis Tentang Program Pembaruan Agraria Nasional (PPAN) Atau Redistribusi Tanah Ala Pemerintah SBY' (2007) 2 Jurnal Ilmiah Reforma Agraria Untuk Indonesia.[12].

<sup>3</sup> Dorreen Warriner, *Landreform in Principle and Practice* (Coloradon Press 1969).

<sup>4</sup> Krishna B Ghimire, *Land Reform and Peasant Livelihoods: The Scoial Dynamics of Rural Poverty And Agrarian Reform in Developing Countries* (ITDG Publishing 2001).

<sup>5</sup> Bernhard Limbong, *Reforma Agraria* (Margaretha Pustaka 2012).

<sup>6</sup> Gunawan, 'RUU Pertanahan: Antara Mandat dan Pengingkaran Terhadap UUPA 1960' (2014) 39 BHUMI: Jurnal Agraria dan Pertanahan.[445].

people.” This verse means that it is an obligation for the earth, water and space and wealth to be placed in the power of the state to realize the welfare of all Indonesian people.<sup>7</sup> Ontologically, the state is positioned as the highest organization which has the right to management, which is essentially to utilize and regulate control and ownership of land for the welfare of the people.

People’s welfare is a target that must be realized because geographically Indonesia is an agricultural country, this condition is still relevant today. It is proven based on data from the Central Statistics Agency (BPS) Indonesian Republic that the labor census in the agricultural sector as of February 2022 reached 40.69 million people.<sup>8</sup> Terminologically, it can be interpreted as the Indonesian people still relying on the agricultural sector for their livelihood which is still quite significant from the total population of Indonesia which reaches 281,864 million.<sup>9</sup> Welfare indicators, especially for farmers, can be seen from control or ownership of land, but in fact it can be categorized as still low, so land levies as part of agrarian reform are important for the interests of farmers.

Reaffirming the spatial conditions of Indonesia as a country whose people’s economic structure is agricultural in nature, which gives rise to the consequence that policies in the processing of agrarian resources must be ensured that they can be distributed evenly to realize ‘social justice for all Indonesian people’. Despite the fact that many farmers are poor because they have limited land control.<sup>10</sup>

However, the availability of agricultural land is decreasing every year, referring to the results of the BPS Indonesian Republic publication report “Land Area According to Use in Indonesia” states that the decline in the area of rice fields that occurs every year is generally dominated by conversion to non-agricultural users. such as for the construction

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<sup>7</sup> Mohammad Hatta, *Hukum Tanah Nasional Dalam Perspektif Negara Kesatuan, Hukum Tanah Antara Teori Dan Kenyataan Berkaitan Dengan Kesejahteraan Dan Persatuan Bangsa* (media abadi 2005).

<sup>8</sup> Badan Pusat Statistik, *Statistik Indonesia (Statistical Yearbook Of Indonesia)* (2022).

<sup>9</sup> Kementerian Koordinator Bidang Perekonomian Republik Indonesia, ‘Pemerintah Dorong Peningkatan Sektor Pangan Dan Pertanian Untuk Kesejahteraan Masyarakat Indonesia’ (*Siaran Pers No. HM.4.6/175/SET.M.EKON.2.3/11/2020*, 2020).

<sup>10</sup> Martua, *Kemajuan Ekonomi Reforma Agraria dan Land Reform di Pedesaan (Analisis Sosiologi Ekonomi Pada Masyarakat Pedesaan Ber-Etnis Dayak di Kabupaten Landak dan Pontianak, Provinsi Kalimantan Barat)* (Pusat Penelitian dan Pengembangan Sosial Ekonomi Pertanian 2010).

of housing/settlements, industrial areas, public facilities, trade complexes and so on.<sup>11</sup> Apart from that, there are problems that can disrupt land activities and life, namely the control of agricultural land owned by private parties and its use is not based on the nature of agriculture for farming, but is used as a residential complex or industrial area.

So, to mobilize assets/land for farmer productivity in a hierarchical manner, supporting conditions are needed, as in Mosher's<sup>12</sup> opinion, if agriculture is to be advanced, then the conditions must be implemented in full, including 1) development education; 2) production credit; 3) cooperation between farmer groups; 4) improve and expand agricultural land; 5) national planning for national agricultural development. An important point in agrarian reform is of course to equalize land ownership so that there is no longer inequality in land ownership in line with the creation of the nation's ideals of providing justice and prosperity for the community.<sup>13</sup>

Judging from previous research which reviewed the implementation of the agrarian reform agenda in the early New Order era (1967-1973),<sup>14</sup> where agrarian reform experienced ups and downs and crossed every political regime so that the implementation of agrarian reform depended on who was in power. The aim of this research is to understand the implementation of agrarian reform during the early days of the New Order, both in terms of ideology, policy structure and technical implementation. The similarity in this research is reviewing agrarian reform, while the difference in this research is that the research discusses the implementation of agrarian reform during the New Order era, but the current research discusses the point of justice in accelerating agricultural reform through access management and asset management.

It can be seen temporarily that the concept of agrarian reform is currently undergoing a reorientation so that there is a need for a preconception, namely agrarian reform as a leverage to create a just economy in the land sector through agrarian reform. So strategic

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<sup>11</sup> Irawan Bambang and Ening Ariningsih, 'Dinamika Kebijakan dan Ketersediaan Lahan Pertanian' (2015) 2 Indonesian Agency for Agricultural Research and Development Repository.[14].

<sup>12</sup> Mosher A.T., *Menggerakkan dan Membangun Pertanian: Syarat-Syarat Pokok Pembangunan dan Modernisasi* (Yasaguna 1987).

<sup>13</sup> Setiyo Utomo, 'Percepatan Reforma Agraria Untuk Mencapai Keadilan' (2021) 4 Jurnal Hukum Bisnis Bonum Commune.[204].

<sup>14</sup> Tri Chandra Aprianto, 'Pelaksanaan Agenda Reforma Agraria Awal Masa Orde Baru (1967-1973)' (2021) 3 Jurnal Historia.[399].

steps need to be taken by the Government, especially the legality of agrarian reform assets for the community, because conceptually agrarian reform cannot be separated from legal certainty and justice. Based on legal thoughts and problems, this research cannot be separated from normative problems in achieving certainty and justice in the context of agrarian reform, so that problems arise that need to be studied more deeply, namely: what is the meaning of agrarian reform justice in the context of agrarian reform? So the problems revealed are intended to show that agrarian reform is not just about distributing land or issuing and distributing land certificates. Agrarian reform must create social justice which is characterized by agrarian justice and community welfare.

### **Research Method**

This research uses a normative juridical method with a statutory approach and a conceptual approach. Statute approach, what must be understood is the hierarchy and principles in statutory regulations. The conceptual approach analyzed is the concept of agrarian reform justice. Research focused on studying the application of rules or norms in positive law so that we can understand the concept of the development of agrarian reform, especially regarding asset management and fair access to land.

### **The Meaning of Agrarian Reform Justice in Realizing People's Welfare**

Based on the philosophy contained in Article 33 paragraph (3) of the 1945 Indonesian Constitution, that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. Turning to the normative side, there is a norm of authority (*bevoegdheidsnorm*), so Article 33 paragraph (3) has attributed authority to legal subjects, in this case the state, to carry out legal actions against natural resources (earth, water and the natural wealth contained therein) inside).<sup>15</sup>

Agrarian reform is juridically normed in Article 7, Article 10 and Article 17 of the UUPA, so it can be understood that the meaning of agrarian reform contained in these

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<sup>15</sup> Urip Santoso, *Hukum Agraria; Kajian Komprehensif* (Prenada Media 2012).

articles is only limited to land reform. Article 7 of the UUPA regulates the prohibition of ownership of land that exceeds the boundaries. Then Article 10 of the UUPA regulates the obligation for every person and legal entity who has rights to agricultural land to work or exploit it actively by preventing extortion methods. Meanwhile, Article 17 regulates the maximum and/or minimum area of land that may be owned with rights by one family or legal entity.<sup>16</sup>

The position of land in people's lives is essential, where all aspects of human life depend on and are related to land, such as a source of livelihood, shelter, the need to build public facilities and various other needs.<sup>17</sup> The current condition, making land a commodity is certainly contrary to the social function of land rights, where making land a commodity will result in problems such as land speculation or land monopoly which will result in the absence of welfare and prosperity for the Indonesian people.<sup>18</sup> The UUPA contains provisions that imply the practice of land monopoly and land speculation as stated in Article 13 and Article 26 of the UUPA which hereby implies that land cannot be used as a commodity.<sup>19</sup>

Agrarian problems which are caused by problems of policy and institutional sectorial relating to the management of land resources such as infrastructure development, expansion of the scale of plantation land, and others are the accumulation of problems of inequality over control or ownership and unfair use of land.<sup>20</sup> Justice in land use is the main focus in structuring assets and access which is a way to realize people's welfare. Fair land management requires strategic steps based on the needs and proportionality of control and ownership of land.

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<sup>16</sup> Muhammad Ilham Arisaputra, 'Access Reform Dalam Kerangka Reforma Agraria Untuk Mewujudkan Keadilan Sosial' (2016) 21 jurnal perspektif.[83].

<sup>17</sup> AH Usman, 'Perlindungan Hukum Hak Milik Atas Tanah Adat Setelah Berlakunya Undang-Undang Pokok Agraria' (2010) 1 Jurnal Kepastian Hukum dan Keadilan.[65].

<sup>18</sup> A Harris, FY Sitepu and SL Andriati, 'Analisis Yuridis Terhadap Dualisme Kepemilikan Hak Guna Bangunan Diatas Hak Pengelolaan Sebagai Aset Pemerintah Kota Medan (Sengketa Tanah Di Kecamatan Medan Petisah)' (2021) 6 De Lega Lata Jurnal Ilmu Hukum.[345].

<sup>19</sup> JB Angkoso, AN Luthfi and Sudibyanung, 'Distribusi Penguasaan Dan Pemilikan Tanah Pertanian Di Desa Ngelegok, Kabupaten Karanganyar' (2020) 3 Jurnal Tunas Agraria.[111].

<sup>20</sup> RD Salfutra and RA Agustian, 'Alternatif Penyelesaian Konflik Agraria (Suatu Telaah Dalam Perspektif Reforma Agraria Dan Pembangunan Berkelanjutan)', *Prosiding Seminar Hukum dan Publikasi Nasional (Serumpun)* (2019).

The government has delegated the implementation of arrangements in the land sector to the Indonesian Land Agency (BPN) which has implemented a land reform program that is more pro-farmers or cultivators. Land reform is not only a solid and stable basis for economic and social development, but also the basis for the development of democratic social life. This program provides an opportunity for a capital formation process in rural areas which becomes the basis for a strong industrialization process.<sup>21</sup>

The implementation of land reform is deemed incomplete if it is not followed by access reform activities in the form of guidance and facilitation after land redistribution. Frithjof Kuhnen characterized agrarian reform as an action to overcome obstacles to development that arise due to defects in the prevailing agrarian structure. Agrarian reform must mean reorganizing the land tenure structure which includes land redistribution and limiting (preventing) concentration of land tenure and may even include actions to reorganize the profit sharing system in agricultural activities.

The basic reason agrarian reform is needed, especially when the pattern and system of society is still agrarian, is justice and the elimination of all forms of exploitation. However, development must be based on a sense of justice and equality. Agrarian reform, one aspect of which is land reform, is an effort to create socio-economic equality in every level of society. Meanwhile, the phenomenon of inequality in control and ownership of land is increasing day by day and has an impact on increasing poverty and unemployment, basically it cannot be separated from land policy which only focuses on increasing productivity which leads to economic growth. Meanwhile, the management of production assets is neglected, which results in marginalized communities being increasingly neglected and losing access to land.

This condition gives rise to agrarian conflict in the form of land disputes at the farmer household level, increasing large-scale land control, unplanned land use conversion, inconsistent and overlapping spatial planning. This not only has an impact on society directly but also on government programs such as food security, public

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<sup>21</sup> Bernhard Limbong, *Konflik Pertanahan* (Margaretha Pustaka 2012).

housing and the environment.<sup>22</sup> It then becomes a necessity to implement agrarian reform as an effort to overcome inequality in land control and ownership as the main source of problems, which ultimately leads to reducing poverty and improving the welfare of society as a whole.

Asset management regarding asset legalization and land redistribution, one of which is divided into several groups, namely uncertified transmigration land, asset legalization, ex-cultivation rights, abandoned land, and the release of forest areas, which in this case are included in Land Objects of Agrarian Reform (TORA). Some of the parties who receive TORA are landless farmers, fishermen and residents in the underprivileged category. The desired goal of this asset arrangement is to be able to provide space for land ownership so that people have land title certificates. It is hoped that legal certainty over land can be managed well so that there is no more oppression of injustice for society. The emergence of disputes over land begins with a complaint from a party (person or legal entity) containing objections and demands for land rights regarding both the status of the land and its ownership.<sup>23</sup>

Today's conditions indicate that the main problem of agrarian reform is still the matter of land redistribution which is often simplified to land reform and the use of abandoned land, especially state-owned land, so that the use of abandoned state-owned land in many cases is the most common problem in Agrarian Reform in Indonesia.<sup>24</sup> In essence, agrarian reform has experienced developments and changes, both in terms of nature, content, objectives, functions, rational/conceptual basis, so that until now it is considered an unfinished problem.<sup>25</sup>

Each program contains activities that will be carried out in collaboration between ministries and central government institutions, regional governments, and village governments. The success of this program depends on the participation of civil society

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<sup>22</sup> Shohibuddin and Muhammad Nazir Salim, *Pembentukan Kebijakan Reforma Agraria 2006-2007 Bunga Rampai Perdebatan* (Sekolah Tinggi Pertanahan Negara Press 2012).

<sup>23</sup> Amaliyah Amaliyah and others, 'Reforma Agraria Dan Penanganan Sengketa Tanah' (2021) 5 HERMENEUTIKA: Jurnal Ilmu Hukum.[67].

<sup>24</sup> Febrie Hastiyanto, 'Perencanaan Pembangunan Dan Gerakan Sosial Dalam Reforma Agraria Di Indonesia' (2019) 2 Kybernan: Jurnal Studi Kepemerintahan.[23].

<sup>25</sup> Rohmat Junarto and Djurdjani, 'Pemetaan Objek Reforma Agraria Dalam Kawasan Hutan (Studi Kasus Di Kabupaten Banyuasin)' (2020) 6 BHUMI: Jurnal Agraria dan Pertanahan.[224].



and representatives of the communities who benefit from this agrarian reform program.<sup>26</sup> Agrarian reform is to create prosperity and well-being so that acceleration is needed which is expected to be able to provide justice for inequality in ownership, control and use of land. The transfer of power over ownership of land rights has a negative impact on the welfare of society, especially in the structure of power and government. The justice that the community wants is equal distribution of land for land that is considered abandoned due to companies exceeding the maximum limit.

Basically, the justice provided will resolve the problem of unequal land ownership for the majority of the population in rural areas. The government's efforts to accelerate agrarian reform in asset management provide space for justice for society regarding inequality in land ownership. Fairly structuring of assets (land) by distributing land to the community is part of the practice of Pancasila, namely social justice for all Indonesian people, so that it must be felt by all people, from the poor to the well-to-do, regarding the structuring of these assets. Achieving asset management through land redistribution by providing certificates as a benchmark for a country's progress in providing legal certainty and a development process that does not discriminate against the community.

Injustice in controlling land has an impact on conflicts which result in land grabbing that does not have a certificate. Arrangements in the land ownership structure in Indonesia must also be able to reach a sense of justice for people who do not understand the law. Access to land obtained by farmers is a very fundamental part of social and economic development, and the function of law in society is not only given certainty but there are norms that must be built as a means of development.

The aim of social justice, namely the improvement of inequality and economic transformation in the Agrarian Reform process, cannot be mixed with the liberal economic orientation and objectives of Agrarian Reform "carried over" as a sweetener to minimize the Agrarian Reform movement's rejection of the plan for a Land Bank since

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<sup>26</sup> Sri Martini, Maiza Hazrin Ash-Shafikh and Nur Choirul Afif, 'Implementasi Reforma Agraria Terhadap Pemenuhan Harapan Masyarakat Yang Bersengketa Lahan' (2019) 5 BHUMI: Jurnal Agraria dan Pertanahan.[155].

the 2019 rejection.<sup>27</sup> In substance, what the community aspires to achieve justice must be balanced with legal products passed by the government regarding the implementation of agrarian reform. J.J Rousseau in his book explains that economics and law are related.<sup>28</sup> The connection between the two is that law cannot develop without economic support and likewise the economy will not grow if the law is unable to guarantee orderly justice and certainty.<sup>29</sup>

Bearing in mind the reality that economic development cannot be separated from legal regulations. After elaborating on 4 (four) aspects related to the implementation of Agrarian Reform, namely: (I) program achievements, (II) regulations, (III) institutions; and (IV) the impact on strengthening the people's economy, so accelerated steps are needed, so that the Agrarian Reform Program can truly be implemented optimally. Strengthening the people's economy through Agrarian Reform cannot be implemented optimally if asset management (land redistribution and asset legalization) has not run optimally.<sup>30</sup> Asset structuring is an effort to provide legal certainty, which is expected to provide access to prosperity.

## Conclusion

The implementation of land management in Indonesia has implications for the implementation of agrarian reform as part of the ideals of asset management and access management. However, in its implementation there are gaps in land control and ownership, so there is a need to reinterpret the existence of agrarian reform. So the government needs to carry out a comprehensive evaluation of equitable asset management and whether access management is in line with community empowerment as an effort to create prosperity for the community. The government has implemented agrarian reform in terms of asset management on a massive scale through the Complete Systematic Tanah Registration (PTSL) program which is targeted to end in 2024 covering

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<sup>27</sup> Hendra Sukarman and Wildan Sany Prasetya, 'Degradasi Keadilan Agraria Dalam Omnibus Law' (2021) 9 Jurnal Ilmiah Galuh Justisi.[30].

<sup>28</sup> J. Rousseau, *The Social Contract & Discourses* (The Project Gutenberg eBook 2014).

<sup>29</sup> Jimly Asshiddiqie, *Konstitusi Ekonomi* (2010).

<sup>30</sup> Aditya Nurahmani, 'Revitalisasi Kebijakan Reforma Agraria Dalam Rangka Penguatan Hak Perekonomian Rakyat' (2023) 53 Majalah Hukum Nasional.[303].

an area of 160 million hectares. Fair asset management means that the government must be careful in restructuring land ownership and use for people who depend on land. This of course aims to provide justice for all Indonesian people to obtain a decent living in accordance with the mandate of the country's constitution.

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