



Agrarian Conflict Settlement through Agrarian Reform Implementation

Shinta Purwitasari

Faculty of Law, Trisakti University, Indonesia

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Abstract

Mukmin Zakie states that land conflict is a chronic and classic issue that has lasted for years or even decades and can be present everywhere. Land conflicts are complex and multi-dimensional in nature. Therefore, in preventing, handling, and resolving them, both legal and non-legal aspects must be taken into account. However, they often encounter dilemmas between various interests that are equally important. Finding a balance or a win-win solution to the conflict that has already occurred clearly requires a lot of effort. Accordingly, an understanding of the root of the problem is needed, it is hoped that land conflicts and conflicts can be suppressed as much as possible in order to create a conducive atmosphere and assure legal certainty and prosperous agrarian justice. The research method used in this study is Normative Juridical as this research is conducted by examining theories, concepts, legal principles, and laws and regulations related to this research variable.

Keywords: *Agrarian Conflict; Agrarian Reform Implementation*

Introduction

The most profound problem facing Indonesian nowadays can be grouped into five areas, namely poverty, unemployment, social inequality, abandoned lands, and land conflicts¹. Population data records that the number of poor people reaches 9.78% of the total population in Indonesia, most of whom live in rural areas and are mostly farmers. Poverty occurs as a result of their lack of access to production factors including land, limited availability of land to own, and disputed land. And conflict has increasingly closed opportunities for people to optimize the use of land. The same happens to forest areas that have potential but are not utilized. This indicates that the potential of land resources that can be utilized to improve people's welfare is quite available and should be managed professionally. Another problem emerging is the unemployment rate in Indonesia reaches as much as 7.07% of the total population in Indonesia² and this in turn can lead to social inequality. Among the five problems referred to, the most urgent ones are poverty and unemployment because the impacts affect not only the economic aspect, but also other aspects including social humanity, a sense of justice, and so on. These two urgent problems are at the

¹ Bps.go.id., Persentase Penduduk Miskin Maret 2020 naik menjadi 9,78 persen.

² Bps.go.id., Tingkat Pengangguran Terbuka Agustus 2020 sebesar 7,07 Persen.

micro level so the policy taken must directly tap into people who are experiencing poverty and unemployment or focus on the micro level.

Effective and fundamental policies can reduce poverty and unemployment rates at the macro level and strengthen economic stability. The policy assumed to be effective in solving the above-mentioned problem is agrarian reform which is in line with the nine priority programs (Nawacita) of the 7th President of Indonesia to distribute approximately 9 million hectares of land to farmers and disadvantaged communities with an asset legalization and land redistribution scheme³.

The increasingly unequal structure of land ownership and control contributes to the emergence of poverty and increases the number of unemployed people, and this will deteriorate if the control over this land is not in line with the optimal use. In turn, this has the potential to widen social and economic problems as people's access to economic resources including land is increasingly limited and closed, especially for farmers who do not own land (asset reform). Various programs and activities conducted by the Government have in fact proven that the poverty rate and job creation have not shown encouraging results. Land management phenomena occurring frequently prove that the emergence of various land conflicts is the impact of the common practice of land management. Land conflicts both on a small scale and a big scale are always present. It is a shared responsibility for which a solution is needed.

From an economic perspective, land is a means of production that can generate wealth and assets (industry and commercial agriculture). While from a political aspect, land can determine a person's position in decision making for society. And from the sociocultural aspect, land can determine the level of the owner's social status. Finally, from a legal standpoint, the land is the basis of power for jurisdiction. All aspects of land may contribute to the emergence of conflicts, including land conflicts- a dispute between individuals, groups, organizations, legal entities, or institutions that have broad socio-political impacts. Agrarian conflicts often lead to acts of violence. During the conflict, the land that becomes the object of the conflict is generally in a state of status quo. As a result, the land in question cannot be utilized. This leads to a decrease in the quality of land resources which harms the interests of many parties and does not achieve the principle of land use. The process of implementing land reform in Indonesia is often discouraged by many conflicts related to agrarian affairs, especially concerning land. Agrarian conflict is a conflict related to land happening due to various factors, including land control and dispute over natural resources. They arise as a result of gaps related to agrarian resources which are none other than Natural Resources (SDA). In general, agrarian conflicts involve many parties and regulations. They are therefore complex ones.

Mukmin Zakie states that land conflict is a chronic and classic issue that has lasted for years or even decades and can be present everywhere⁴. Conflicts and land conflicts are complex and multi-dimensional in nature. Therefore, in preventing, handling, and resolving them, both legal and non-legal aspects must be taken into account. However, they often encounter dilemmas between various interests that are equally important. Finding a balance or a win-win solution to the conflict that has already occurred clearly requires a lot of effort. Accordingly, an understanding of the root of the problem is needed, it is hoped that land conflicts and conflicts can be suppressed as much as possible in order to create a conducive atmosphere and assure legal certainty and prosperous agrarian justice.

Conflict comes from the Latin verb *configere* which means hitting each other. Sociologically, conflict is defined as a social process between two or more people (or a group) where one party tries to get rid of the other party by destroying it or making it powerless. Conflict can also be deemed as a form of social interaction when two individuals have different interests and lose harmony between them.

³ Rencana Strategis Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional Tahun 2015-2019.

⁴ Mukmin Zakie, *Konflik Agraria Yang Tak Pernah Reda*, Legality, Volume 24 No. 1 Tahun 2016, hlm. 46

Basically, conflict is a natural thing that can occur every day⁵. Agrarian conflicts may start with the granting of utilization permits by public officials to parties who are given exclusive rights to use the land. They persist when there is a conflicting issue regarding land ownership rights between a local community and business entities engaged in production, extraction, conservation, and so forth. Ideally, the agrarian system, especially land administration, should make a real contribution to creating a harmonious life order by overcoming various conflicts and land conflicts throughout the country and organizing a management system that will no longer give rise to conflicts in the future.

According to data on land disputes, conflicts, and cases, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency shows that the number of disputes, conflicts, and cases handled by the Directorate General of Land Dispute and Conflict Management from 2015 to 2019 consisted of (1) disputes: 7,213 cases; (2) conflicts: 1,568 cases; (3) blank: 343 cases; and (4) cases: 13,300 occurrences. Up to 2020 resolved disputes and conflicts have reached 5,376 out of 27,433 cases of disputes, conflicts, and cases. However, the number of land cases settlement such as disputes and cases is not satisfying as the achievement is below 70%. Dispute cases that have been resolved are 1,882 with a percentage of 17.9% while conflicts that have been resolved are 682 cases with a percentage value of 85.4%. Meanwhile, the settlement of cases is still 17.5% or 2,812 cases complete⁶. This illustrates that the performance of handling various cases has not reached optimal conditions. The large number of agrarian conflicts involving the community certainly has a major impact on the welfare and security of the community. Society needs legal certainty and the right method of resolution in this agrarian conflict. If this conflict continues to persist, there will be more people suffering as their rights are neglected. Therefore, the current government is intensively carrying out a change called Agrarian Reform or land reform.

Agrarian reform is an activity to realign the control, ownership, use, and utilization of land. Afterward planning on the supply, allotment, and use of land is designed and supported by access reform in order to create welfare for the community. Access reform, according to Joyo Winoto, is the activity of providing/opening land access for the community to everything that allows landowners to develop their land as an economic source and a stream of income in order to improve their own social and economic welfare, to fulfill the basic rights, to increase social dignity and to fulfill a sense of justice which in turn creates social harmony⁷. Agrarian reform is not something new to countries around the world, especially to those whose level of economic prosperity is above Taiwan, Thailand, and Venezuela; agrarian reform has been and is being carried out in earnest. Their success in carrying out agrarian reform encourages the achievement of prosperity, a higher economy, a stronger social structure, and better and more stable political conditions.

In Indonesia, a program similar to the agrarian reform has been implemented since 1961, but the program does not really comply with the agrarian reform, but rather a distribution of land or in other words a division of land. Some people get a piece of land as a result of agrarian reform. However, they do not own access to utilize their land; they do not have capital, expertise, or land use support from the Government. This deprives them of the optimal use of the land. Later they resell the land that has been obtained earlier and this causes an increase in land tenure inequality⁸. However, since 2007 the implementation of agrarian reform has been carried out by distributing and redistributing land as well as access reform, namely providing access to the community in the forms of capital, marketing, technology,

⁵ Basri, dan Nurhamlin "Konflik Masyarakat dan Perusahaan Perkebunan Serta Alternatif Penyelesaiannya di Kabupaten Rokan Hulu" Disampaikan pada Konferensi Nasional Sosiologi I "Asosiasi Program Studi Sosiologi di Indonesia" di Palembang, 2013, hlm. 7.

⁶ Rencana Strategis Tahun 2020 – 2024 Direktorat Jenderal Penanganan Sengketa dan Konflik Pertanahan, Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional.

⁷ Joyo Winoto, Kebijakan Agraria Mandat Politik Konstitusi dan Hukum Dalam Rangka Mewujudkan Tanah Untuk Keadilan dan Kesejahteraan Rakyat, 2007, Balai Senat UGM, Yogyakarta, hlm. 18.

⁸ M. Noor Marzuki, Selayang Pandang Reforma Agraria, 2008

training, and course to improve the farmers' quality so that they can increase the productivity of their cultivated land. In fact, the objective of agrarian reform is to restructure the use, utilization, control, and ownership of agrarian resources, especially land, and access to reform in order to guarantee justice and increase people's welfare by providing support and facilitating people's access to land assets they own to financing and other support necessary. Therefore, to support the success of agrarian reform, it is necessary for stakeholders starting from the Village Head to the President to have a concern. Agrarian reform is understood not only as a policy for land redistribution but also as a broader process such as access to natural resources, finance/capital, technology, goods, and labor markets and also the distribution of political power. Agrarian reform is essentially a land reform concept complemented by the access reform concept.

The steps that have been and are being taken by the government in the context of agrarian reform are making a one-map policy, asset legalization, redistribution of land, and utilization of forest areas for the people. One of the strategies to go in that direction is to form a task force to control agrarian reform involving various ministries and institutions⁹. Meanwhile, in the context of agrarian reform, five steps can be taken, namely:

1. Strengthening the regulatory framework and agrarian conflict resolution;
2. Arrangement of control and ownership of the Land of the Object of Agrarian Reform (TORA);
3. Legal certainty and legalization of TORA;
4. Community empowerment in the use and utilization and production of TORA, and;
5. Strengthening the implementing institutions of agrarian reform at the central and regional levels.

In practice, resolving agrarian conflicts is easier said than done. The settlement in the judiciary sometimes still creates friction. Because there are still many unresolved agrarian conflicts, appropriate steps are needed to resolve ongoing agrarian conflicts.

Agrarian experts agree that not all implementation of land redistribution can be considered land reform or more broadly agrarian reform. Because basically, agrarian reform must encompass rearranging the structure of land tenure and this usually becomes the core program of land redistribution activities and restrictions preventing the concentration of land tenure. This land redistribution activity must then be accompanied by a number of follow-up programs which must also be provided programmatically, namely the provision of all facilities for land-recipient farmers to start developing their productivity potential on the land they receive¹⁰. The government's role is essential: not only in providing the facilities needed for production and then marketing the products of the farmer groups who receive the land but also in protecting the land recipient farmers to strengthen the economic units of production¹¹.

The agrarian conflicts that have spread so far are another sign of the need to implement agrarian reform because the agrarian conflict itself reflects the fading of agrarian justice within a society or a country. Agrarian reform is intended to answer the injustice and conflicts that arise. Agrarian conflicts are caused by the absence of the implementation of agrarian reform and the immature preparation of agrarian reform¹². Therefore, in order to prevent conflicts accompanying the implementation of agrarian reform, it is important for the agrarian reform to meet the necessary prerequisites. And the government's role is indispensable in the implementation of agrarian reforms.

⁹ Peraturan Presiden Nomor 86 Tahun 2018 tentang Reforma Agraria

¹⁰ Bernhard Limbong (selanjutnya disebut Bernhard Limbong II), Reforma Agraria, Margaretha Pustaka; Jakarta, 2012, hlm. 4.

¹¹ Ibid, hlm. 6.

¹² Pembaruan Agraria Anak Kandung Konflik Agraria, Konflik Agraria Anak Kandung "Pembaruan" Agraria, makalah yang disampaikan dalam Seminar Nasional Pembaruan Agraria, Yogyakarta 16 Juli 2002, STPN dan BPN.

Problem Formulation

Based on the background described above, it is necessary to further discuss and study the formulation of the problem as follows:

1. Can the settlement of agrarian conflicts suppress or reduce the number of agrarian conflicts?
2. How is the settlement of agrarian conflicts related to agrarian reform?

Research Method

The method used in this study is Normative Juridical which allows the research to be conducted by examining theories, concepts, legal principles, and laws and regulations related to this research variable¹³. This normative juridical research was carried out by examining literature or using secondary legal materials as the main material supported by primary legal materials.

Research Problem

1. Can the Settlement of Agrarian Conflicts Suppress or Reduce the Number of Agrarian Conflicts?

a. Conflict Resolution through Litigation

The conflict resolution process carried out through the courts or often referred to as "litigation" is a conflict resolution carried out by proceedings in court where a judge has the authority to regulate and decide. Litigation is a conflict resolution process in court, in which all conflicting parties face each other to defend their rights before the court. The end result of a conflict resolution through litigation is a decision stating a win-lose solution. Procedures in this litigation path are more formal and technical, result in win-lose agreements, tend to create new problems, are slow to resolve, require high costs, are unresponsive, and cause hostility between the conflicting parties. This condition causes the community to look for other alternatives, namely conflict resolution outside the formal justice process. This conflict resolution outside the formal justice process is what is called "Alternative Dispute Resolution" or ADR. If efforts have been made to reach a consensus between the parties in resolving a conflict, but no agreement is reached between the two parties, then the parties concerned can submit their case to the Court by filing a lawsuit against the opposing party. Settlement of land conflicts through the courts is a form of conflict resolution within the scope of civil law¹⁴, which in essence contains unlawful acts and compensation. In the Civil Code (KUHPerdata) unlawful acts and compensation are regulated in Article 1365 which reads that "Every unlawful act, which causes harm to another person, obliges the person who because of the mistake to cause the loss to compensate for the loss." In relation to the settlement of compensation as a consequence of responsibility for unlawful acts, the provisions of Article 1365 are closely related to Article 1243 which states that "Replacement of compensation costs and interest due to the fulfillment of an agreement, only then begins to be required if the debtor, after declared negligent in fulfilling the engagement, still neglects it or if something that must be given or made can only be given or made within the grace period that has passed. Meanwhile, the connection with proof needs to be put forward in Article 1865 BW which states that "Every person who argues that he has a right, confirms his own rights or argues against a person's rights pointing to an event is obliged to prove the existence of the said right or event. The definition of the third article can be concluded that a new plaintiff will receive compensation if he succeeds in proving the existence of an element of guilt on the part of the defendant. The guilt here is

¹³ Soejono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, (Jakarta:PT RajaGrafindo Persada,2014), hal. 1

¹⁴ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1999

an element that determines accountability, which means if there is no evidence of guilt, there is no obligation to compensate.

b. Conflict Resolution through Non-Litigation

Indonesia is one of the countries where land conflicts often occur, most of which are resolved through the courts. However, the lengthy court process and the high costs that must be incurred by the parties have encouraged the community to seek other more effective and efficient ways of resolving land conflicts outside the courts. In resolving conflicts through non-litigation, we are familiar with alternative conflict resolution or Alternative Dispute Resolution (ADR)¹⁵, in the perspective of Law Number 30 of 1999 Concerning Arbitration and Alternative Conflict Resolution, Alternative Dispute Resolution (ADR) is an institution of conflict resolution out of court based on the agreement of the parties by setting aside litigation conflict resolution in court. In the conflict resolution process, the parties have the right to choose which settlement process to undergo. When what is faced and lived by the parties without the help of other parties who have no interest will continue in the existing conflict, it is necessary to control the social relations of the community itself, which means that basically the community actively discovers, chooses, and determines its own laws. However, sometimes it is resolved by other parties outside the conflict peacefully. If it is not resolved through a process outside the court, then it can only be carried out through a litigation process in court, or the conflict is brought to a "green table". Out-of-court conflict resolution is basically carried out to reach an agreement on the form chosen to be used as a settlement forum. Alternatives in conflict resolution include:

a. Arbitration

Article 1 paragraph (1) of Law Number 30 of 1999 concerning Arbitration and Alternative Conflict Resolution explains that arbitration (referee) is a way of settling a civil conflict outside of a public court based on an arbitration agreement made in writing by the parties to the conflict. Arbitration is used to anticipate disputes that may occur or are occurring that cannot be resolved by negotiation/consultation or through a third party and to avoid resolving conflicts through the Judiciary which requires a long time.¹⁶

b. Negotiation

Negotiation is a two-way communication designed to reach an agreement when both parties have the same or different interests. It is a process of bargaining to reach an agreement with other parties through a process of interaction, and dynamic communication with the aim of obtaining a solution or way out of the problems being faced by both parties.

c. Mediation

Mediation is basically a negotiation involving third parties who have expertise in effective mediation procedures and can help in conflict situations to coordinate their activities so that they can be more effective in the bargaining process. Mediation can also be considered as an effort to resolve the conflict of the parties by mutual agreement through a mediator who is neutral, and does not make decisions or conclusions for the parties but supports the facilitator to facilitate a dialog between the parties in an atmosphere of openness, honesty and exchange of opinions to achieve consensus¹⁷.

¹⁵ Maria S.W Sumardjono, *Mediasi Sengketa Tanah Potensi Penerapan Alternatif Penyelesaian sengketa (ADR) Di Bidang Pertanahan*, Penerbit Kompas Gramedia, 2008, Hal 38.

¹⁶ Priyatna Abdurasyid, *Arbitrase dan Alternatif Penyelesaian Sengketa Suatu Pengantar*, Fikahati Aneska, Jakarta: 2002, hlm. 5.

¹⁷ Takdir Rahmadi, "Mediasi penyelesaian sengketa melalui pendekatan mufakat", PT RajaGrafindo Persada, Jakarta, 2011, hlm. 22.

Etymologically (language), mediation comes from the Latin *mediare* which means "to be in the middle" because the person doing the mediation (mediator) must be in the middle of the person being involved. In terms of terminology, there are many opinions that give different emphases on mediation. The success of mediation can be influenced by several things, such as the quality of the mediator (training and professionalism), the efforts made by the two conflicting parties, and the trust of both parties in the mediation process; the trust in the mediator, and the trust in each party. In other words, mediation is a form of conflict resolution held out of court where the parties to the conflict request or use assistance from a neutral third party to help resolve disputes between them. In the settlement process, the parties to the conflict allow third parties to get involved in the conflict and assist the parties to reach a settlement. However, this does not force the parties to always want to fully accept what is stated by the third party. Settlements can be reached or produced if all parties to the conflict can accept that settlement. However, there are times when, due to various factors, the parties are unable to reach a settlement, so the mediation ends in a stalemate (deadlock, stalemate). This situation distinguishes mediation from litigation. Litigation certainly ends with a legal settlement, in the form of a judge's decision, although a legal settlement does not necessarily end a conflict because tensions between the parties are still ongoing and the losing party always tends to be dissatisfied.

d. Conciliation

Conciliation is a continuation of mediation. The mediator changes its function to become a conciliator. In this case, the conciliator carries out a more active function in seeking forms of conflict resolution and offering them to the parties. When the parties agree, the solution proposed by the conciliator will become a resolution. The agreement that occurs is final and binding on the parties. When the conflicting parties are unable to formulate an agreement and a third party proposes a way out of the conflict, this process is called conciliation¹⁸.

e. Expert judgment

Expert judgment is a way of resolving conflicts by the parties by asking for expert opinion or judgment on the dispute that is currently happening.

f. Fact-finding

Fact-finding is a way of resolving conflicts by the parties by enlisting the help of a team which usually consists of an odd number of experts who carry out the function of investigating or finding facts that are expected to clarify the problem and end the conflicts.

The settlement of agrarian conflicts that has been going on so far as previously described is a step taken in resolving agrarian conflicts which, according to the author, is not a wrong way to resolve agrarian conflicts, but in the process, agrarian conflicts have continued to exist until now and even increase. This indicates that the conflict resolution steps mentioned above have not been able to resolve agrarian conflicts in this country.

2. How Is the Settlement of Agrarian Conflicts Related to Agrarian Reform?

Agrarian reform in President Jokowi's administration can be traced from the document *The Road to Change Towards a Sovereign, Independent and Personalized Indonesia*, "Vision, Mission and Action Program of Jokowi's government. The document contains nine priority agendas called *Nawacita*¹⁹. Some of the *Nawacita* passages related to Agrarian Reform or Agrarian Renewal are that "We will improve the quality of life of Indonesian people", which will be achieved through "...improving people's welfare with the "Indonesia Kerja" and "Indonesia Sejahtera" programs by encouraging land reform and land

¹⁸ Ibid, hlm. 24.

¹⁹ Kpu.go.id., visi-misi-program aksi Pemerintahan Jokowi-JK

ownership of 9 million hectares...". Of course, the election of Jokowi changed the status of the Nawacita document from a political promise to a trust from the people to the president to be implemented. Nawacita as the President's political commitment is a reference for the preparation of the National Medium Term Development Plan (RPJMN). Operationally, Nawacita was used as a reference for the preparation of the 2014-2019 National Medium-Term Development Plan (RPJMN), and then translated into Government Work Plans (RKP) programs run by the respective ministries and central government agencies. In addition to the Nawacita document, an important sign of the commitment of the Joko Widodo's government in improving agrarian and natural resource problems is the establishment of three new ministries namely: the Ministry of Agrarian Affairs, Spatial Planning and the National Land Agency (ATR/BPN-RI), the Ministry of Environment and Forestry (KLHK), and the Ministry of Villages, Development of Disadvantaged Regions and Transmigration (Kemendesa PDTT)²⁰. The ministry together with Bappenas then formulated the Nawacita into the five-year National Medium-Term Development Plan (RPJMN) for 2014-2019, and the annual Government Work Plan (RKP). In order to ensure that the agrarian reform agenda contained in the Nawacita runs effectively and achieves its goals, the Presidential Staff Office (KSP) drafted the directives for the 2016-2019 National Strategy for Implementing Agrarian Reform²¹. The document is intended by KSP as a reference for the implementation of agrarian reform, which includes the objective of providing tenure security for people whose land is in agrarian conflicts, identifying recipient subjects and objects of lands whose ownership relations will be re-arranged, overcoming gaps land tenure by redistributing and legalizing Agrarian Reform Object Lands (TORA) into people's ownership, alleviating poverty by improving land use and the formation of new productive forces, and ensuring the availability of institutional support in the central and regional governments, as well as enabling villages to regulate control, ownership, use, and utilization of land, natural resources, and village management areas. These five objectives are answered by the Government Work Plan (RKP) 2017 National Priorities for Agrarian Reform, which consists of 5 (five) Priority Programs, namely:

1. Strengthening the Regulatory Framework and Agrarian Conflict Resolution;
2. Arrangement of Land Control and Ownership of Agrarian Reform Objects;
3. Legal Certainty and Legalization of Land Rights as Objects of Agrarian Reform;
4. Community Empowerment in the Use, Utilization, and Production of Land as the Object of Agrarian Reform (TORA); as well as
5. Central and Regional Agrarian Reform Implementing Institutions.

After becoming a priority program, agrarian reform received an important portion of government policies and work. President Jokowi in the plenary meeting of the Indonesia Kerja Cabinet stated that the government would focus on work to realize economic equality through agrarian reform. "This is done by redistributing land and legalizing the assets of people's lands"²². Therefore, there are several strategic steps to straighten and accelerate the implementation of agrarian reform. First, the president must immediately lead directly the implementation of agrarian reform and re-ensure that the focus of national agrarian reform refers to UUPA No.5/1960 and MPR Decree No.IX/2001. This reference is very important to ensure that agrarian reform is a correction of agrarian injustice that has been occurring so far. And in addressing the location of agrarian conflicts, the use of the right reference will lead to locations where inequality, conflict, and poverty are raging.

Agrarian reform will result in a solid revitalization of the agricultural and rural sectors. Successful agrarian reform is marked by the certainty of land tenure that guarantees livelihoods and employment opportunities for farmers; land use that can improve natural resource management and preservation of environmental quality; food sovereignty; and productivity capabilities that enable farming families to re-invest and have high purchasing power. When this happens, our agricultural sector will

²⁰ Peraturan Presiden Nomor 165 Tahun 2014 tentang Penataan Tugas dan Fungsi Kabinet kerja

²¹ Strategi Nasional Pelaksanaan Reforma Agraria 2016-2019, Kantor Staf Presiden

²² Rapat Paripurna Kabinet Indonesia Kerja 11 April 2017.

become the livelihood of the majority of the people and at the same time a supporter of national industrialization. Thus agrarian reform will realize justice, prosperity, and security. In other words, the main objective of (true) agrarian reform is the creation of social justice which is characterized by the existence of agrarian justice, increased productivity, and increased people's welfare. Agrarian justice can be defined as a condition in which the land tenure structure relatively does not show inequality so that it provides opportunities for the creation of the spread and strengthening of rural-based people's economic activities and then becomes the basis for active (and productive) participation for the majority of the population which in fact depend on agricultural activities to be involved in national development activities both socially, economically and politically. That is why for a long time many experts have believed that genuine agrarian reform will make an important contribution to the process of rural democratization, which in the Indonesian context is one of the important bases for the social life of a large population.

In 1960 land reform was only intended for the distribution and redistribution of land, but since 2007 the implementation of agrarian reform has been carried out by distributing and redistributing land and providing access to the community in the fields of capital, marketing, technology, improving the quality of farmers through training and courses so that they can increase the productivity of the arable land. Land reform literally comes from the word land which means land and reform which means change or evolution. Land reform means an overhaul of the land structure²³. In a narrow sense according to Prof. Boedi Harsono, land reform is a series of actions in agrarian reform in Indonesia. It includes reforms in land ownership and control as well as legal relations related to land exploitation. The Land reform program in Indonesia has shrunk into land redistribution activities both directly to sharecroppers and into programs such as transmigration, Nucleus Estate Smallholders (PIR/NES), PIR-Trans, and so forth. The core objective of Land Reform Indonesia is to increase the income and standard of living of farmers as a basis or prerequisite for carrying out economic development toward a just and prosperous society. There are several models of Agrarian Reform as follows²⁴:

- a. Radical Land reform; large land belonging to individual landlords was taken over by the government, and then distributed to landless peasants, for example, land reform which was implemented in China and Russia.
- b. Land restitution; large plantation lands originating from community lands are taken over by the government, then the land is returned to the original owner with compensation. This model, for example, was implemented in South Africa.
- c. Land colonization; new areas are opened and developed, then residents from densely populated areas are moved there, and they acquire certain pieces of land. The early transmigration program conducted in 1905 in Indonesia adopted this model.
- d. Market-based Land Reform (market-assisted land reform); It is a land reform implemented based on or with the help of market mechanisms. This model is possible to realize when landowners or sharecroppers have deeds or certificates of their land so there is security in tenureship which in turn encourages financial markets in rural areas. This model cannot fully meet the land reform principle to carry out fair land tenure and ownership arrangements. This model was carried out in Brazil.

In Agrarian reform, what is meant by subjects are the beneficiaries while the objects are State lands originating from various sources in accordance with the applicable laws and regulations. Agrarian Reform activities are carried out by a Selection Team/Committee for consideration of Agrarian Reform; determining the subjects and objects and validating them afterward in the context of implementing Agrarian Reform²⁵.

²³ Bernhard Limbong, *Reforma Agraria*, Margaretha Pustaka; Jakarta, 2012, h. 48.

²⁴ BPN-RI, *Mandat Politik, Konstitusi, dan Hukum Dalam Rangka Mewujudkan Keadilan dan Kesejahteraan Rakyat*, 2007, hlm. 46

²⁵ BPN-RI, *Loc.Cit.* hlm 47-48

While the Access reform is intended to open people's access to economic resources and prevent the transfer of land to other parties. Access Reform is carried out, among others, through the provision of infrastructure and production facilities, coaching and technical guidance to beneficiaries, capital support, distribution support, marketing, and so forth. Agrarian reform is a necessity that should be regarded as a restructuring of the use, utilization, control, and ownership of agrarian resources. This is hoped to guarantee justice and sustainable improvement of people's welfare. Access reform should be carried out by agencies providing access/facilities to land recipient farmers who are members of farmer groups with facilitation assistance from the National Land Agency with the District/City Land Office acting as a facilitator. Access reform is carried out by cooperating with third parties such as banks or financial institutions and other related technical agencies. These access/facility providers can be developed based on the existing potential in each region so that it will get different access/facilities depending on the potential of each region. For the success of the intended activities, a sequence of activities is needed starting from exploring the potential of the area, coordinating with farmer groups, related agencies, and the Land Office (BPN), counseling, to signing a cooperation agreement²⁶.

As stipulated in Presidential Regulation Number 86 of 2018 concerning Agrarian Reform, one of the objects or land objects in agrarian reform is land resulting from the resolution of agrarian disputes and conflicts, and its settlement is carried out based on the principles of legal certainty and social justice. Agrarian Dispute and Conflict Handling will be facilitated by the Agrarian Reform Task Force in stages²⁷. Agrarian reform is intended to answer the imbalances and conflicts that arise. Apart from being a result of the non-implementation of agrarian reform, agrarian conflicts can also occur in the process of agrarian reform when the preparation is not sufficient. Therefore, in order to prevent conflicts that usually accompany the implementation of agrarian reform, agrarian reform needs to be carefully prepared by fulfilling the necessary prerequisites. The role of the state, in this case, the government, in the implementation of agrarian reform is very important and irreplaceable.

So far the resolution of agrarian conflicts and the implementation of agrarian reforms have been running so separately that there is no common ground for resolving agrarian conflicts through the implementation of agrarian reforms. But the Writer is convinced that agrarian conflicts can be resolved despite the fact that the number keeps increasing. Somehow this indicates that the ways to resolve the agrarian conflicts are not effective enough to solve. In addition, the implementation of agrarian reform which is separated from land distribution and redistribution contributes to the imbalances and conflicts which cannot be fully solved. Therefore, it is necessary to build a synergy to systematically implement agrarian reform in order to settle the agrarian conflicts which reflect the agrarian injustice in a country. Agrarian reform is intended to resolve the agrarian conflicts which result from the absence of agrarian reform and insufficient preparation for the implementation²⁸. Indeed, in order to prevent conflicts that usually accompany the implementation of agrarian reform, agrarian reform needs to be carefully prepared by fulfilling the necessary prerequisites. The role of the state, in this case, the government, is very important and irreplaceable in the implementation of agrarian reform.

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²⁶ Bernhard Limbong, Loc.Cit. hlm 299-300

²⁷ Peraturan Presiden Nomor 86 Tahun 2018 tentang Reforma Agraria

²⁸ Pembaruan Agraria Anak Kandung Konflik Agraria, Konflik Agraria Anak Kandung "Pembaruan" Agraria, makalah yang disampaikan dalam Seminar Nasional Pembaruan Agraria, Yogyakarta 16 Juli 2002, STPN dan BPN.

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