

LEMBAR
HASIL PENILAIAN SEJAWAT SEBIDANG ATAU PEER REVIEW
KARYA ILMIAH : JURNAL ILMIAH

Penulis Jurnal Ilmiah : Dr. Hartanto, SE., SH., M.Hum
 Judul Karya Ilmiah (Artikel) : Deconstruction Of Landreform Policy In Indonesia (Study Of Regulation Of President Number 86 Of 2018 About Agrarian Reforms)
 Status Pengusul : Dosen Tetap Yayasan
 Identitas Jurnal Ilmiah :
 - Supremasi Hukum, Jurnal Terakreditasi Sinta 5
 - Penerbit : Fak Syariah & Law, UIN Sunan Kalijaga Yogyakarta
 - Penulis : Kedua
 - Volume 10 Nomor 2, 2021
 - ISSN Online: 2548-4729
 - ISSN Print : 2302-1128
 - Hal : 165 – 184
 - DOI: 10.14421/sh.v10i2.2342
 - URL: <https://ejournal.uin-suka.ac.id/syariah/Supremasi/article/view/2342>

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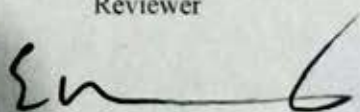
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Nama : Erna Tri Rusmala Ratnawati, SH, M.Hum
 NIDN : 0510056901
 Jafung : Lektor Kepala 400 AK
 Unit Kerja : Fakultas Hukum Universitas Widya Mataram

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Nama : Dr. Kelik Endro Suryono, SH, M.Hum
 NIDN : 0531126301
 JaFung : Lektor 300 AK
 Unit Kerja : Fakultas Hukum Universitas Widya Mataram

Deconstruction of Landreform Policy in Indonesia (Study of Regulation of President Number 86 Of 2018 about Agrarian Reforms)

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Article Title	Author	Page Range
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Tinjauan Yuridis terhadap Pengadaan Vaksin Covid-19 Sebagai Upaya Penanganan Keadaan Darurat di Indonesia	Dadan Ramdani	143-168
Deconstruction of Landreform Policy in Indonesia (Study of Regulation of President Number 86 Of 2018 about Agrarian Reforms)	Muhammad Fikri Alan	169-184

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Penulis kedua setelah Muhammad Fikri Alan

Deconstruction of Landreform Policy in Indonesia (Study of Regulation of President Number 86 Of 2018 about Agrarian Reforms)

Muhammad Fikri Alan¹, Hartanto², Andry Irawan³

¹ Law Faculty Kediri State Islamic Institute

^{2,3} Widya Mataram University Yogyakarta
mfikrialan@gmail.com

Abstract

There is a large gap between the regulation of Land Reform in the UUPA, with Presidential Regulation No. 86 of 2014 concerning Agrarian Reform. On one hand, the UUPA states that Land Reform is a systematic effort by the state to rearrange ownership, control, and access to land. Whereas on the other hand, the Presidential Regulation stipulates that Land Reform is equated with Agrarian Reform, and the scope of the arrangement covers the arrangement of access and arrangement of assets. Nevertheless, this Perpres then only means Landreform merely as the legalization of assets, which is part of the structuring of assets. One thing that is very different from the UUPA version of Landreform. This study aims to uncover the causes of the gap, and formulate an ideal form of regulation. This study uses the normative juridical method, with the statutory approach and the conceptual approach. The results of this study are first, the difference in regulation is caused by the two legal products born from different features or characteristics. The Perpres on Agrarian Reform was born in a regime that tends to be instrumentalist liberalism, while the UUPA was born from a legal regime that tends to be socialistic-communal. Second, there are at least 2 things that need to be fixed in the Landreform settings. First, the affirmation of the state's position in implementing Landreform, whether to continue to use the instrumentalist, socialistic-communal liberalistic model, or the conception of a welfare state that is native to Indonesia. Second, TORA must be the object of Land Procurement for Public Interest. Thus, Landreform activities can become the main national agenda and must be carried out.

Keywords: Deconstruction, Land Reform, Agrarian Reform

A. Introduction

On this September 24, Indonesia commemorated the National Farmers Day. One of the demands of the farming community is to restore agrarian reform as it should be. Agrarian reform must be redirected towards the welfare of the farming community. Not only for the welfare of the group of investors and land owners. The state must return to the side of the farming community as the frontline supporting the national economy. Thus, agrarian

reform must be deconstructed to suit this spirit.

The meaning of deconstruction, actually cannot be found in the Big Indonesian Dictionary (KBBI). However, if interpreted in every word used, the use of the "de" can be interpreted as a limitation or deletion. While construction can mean an arrangement, model, and layout ¹. So, linguistically, it can be interpreted that deconstruction is a limitation or elimination of a concept or arrangement. In the *Webster's Unabridged Dictionary*, it is explained that deconstruction means "*the separating of any material or abstract entity into its constituent elements.*" By definition, deconstruction means an analysis that is used to separate texts or an abstract entity, into something that can be accounted for. According to Al Fayyadl, this word is actually a strategy to decipher the structure and field of meaning in the text, but it still does not damage the essence nor the values contained within the text itself ².

According to Chris Barker, deconstruction is the dismantling of a text to find out and show the assumptions held by the text ³. By definition, deconstruction is done as an attempt to dismantle a text, writing, or reality, which serves to guarantee the truth of the text, writing, and ideas. So, it can be interpreted, the dismantling of the deconstructed text, is not destroying the text. It forms a new meaning of the text. So that the most essential truth can be obtained compared to the meaning of the text using other methods.

The process of meaning of the definition of the actual deconstruction also cannot be separated from the understanding given by the first initiator, namely Jacques Derrida. The deconstruction philosophy developed by Derrida is actually more tasked as an effort to eliminate illusive ideas that have so far mastered the understanding of the western world, namely an idea which says that ratios cannot be separated from the role of language, and will only arrive at the level of truth. According to Derrida, deconstruction is an analysis, the object of which is sedimented structure which form the discursive element, the philosophical discursivity in which we think. Derrida also adds immediately to his description about deconstruction as "discursivity of thought" in which we operate occurs through language ⁴. So, it can be interpreted that, deconstruction has been designed to interpret the language contained in the text, so that the ideas contained in the text, the framework of thinking, and the ratio of thought to an idea so that it can be in

¹ Badan Teknologi Republik Indonesia Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan, Kebudayaan, Riset, "Kamus Besar Bahasa Indonesia," <https://kbbi.kemdikbud.go.id/>, 2016.

² Anthon F. (Anthon Freddy) Susanto, *Dekonstruksi bukum : eksplorasi teks dan model pembacaan* (Genta Pub, 2010).

³ Susanto.

⁴ Ria Casmi Arrsa, *Deideologi Pancasila: analisis kritis perspektif sejarah bukum ketatanegaraan Indonesia* (UB Press, 2011).

accordance with the purpose of its formation.

Deconstruction, in this study is intended as an effort to provide re-interpretation of an object or concept, in which case the concept is the concept of agrarian reform contained in Presidential Regulation No. 86 of 2018 concerning Agrarian Reform (hereinafter referred to as Perpres on Agrarian Reform). Initially, the provisions regarding Agrarian Reform were regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA). UUPA was born when it was in a very authoritarian political atmosphere but was considered a responsive legal product⁵. UUPA is considered a responsive legal product, given the substance of its regulation which reflects the demands of the community at that time and is truly capable of creating social justice, especially in the diagramming sector. This assumption is mainly because in the UUPA has been regulated a number of basic national diagramming which also greatly reflects the value of agrarian justice. Such as the Landreform program, the Right to Control the State and the Rights of the Nation, social function of land, as well as recognition of the customary rights of indigenous people.

The Perpres on Agrarian Reform actually exists to provide more detailed and in-depth arrangements regarding the agrarian reform program. As one of the regulatory material that is considered important, during the new order until now, agrarian reform is considered dead animation, or not implemented as it should. The birth of this presidential regulation shows the enthusiasm of the current government to re-implement agrarian reform, as stipulated in the UUPA in a pure and consistent manner.

This research, will look at whether the arrangements in Presidential Regulation No. 86 of 2018 concerning Agrarian Reform are in accordance with the aims and objectives of its formation. This study was carried out, bearing in mind that this arrangement was actually born of a regime which tends to be instrumental liberalism. Namely the law is placed as an effort to implement the ideology and state programs that tend to be characterized by liberalism. In fact, the desire to implement Agrarian Reform, whether or not it is recognized is a type of program that tends to be populist socialist. Namely the type of legal arrangements that tend to meet the expectations of society, but close to the ideology of socialism and certainly different from the current state ideology.

Indonesia, likely or not, currently tends to have an economic pattern of capitalism. Agustiaty, stated that this system is actually a system of economic organization that has the main characteristic of private ownership of the means of production and distribution whose utilization aims to achieve

⁵ Mahfud Md, *Politik hukum di Indonesia*, Jakarta: PT RajaGrafindo Persada, 2009.

profits in very competitive conditions⁶. Adam Smith, as the originator of this economic system, argues that the best way to gain prosperity is to allow individuals to pursue their own interests, to the minimum involving the participation of the state⁷. The impact of this economic system is actually the ease of private ownership of important means of production (such as land) on the basis of strong capital ownership as well. In Indonesia, the threat of privatization of land appears to occur, when capital from the private sector, both domestic and foreign, enters the economic system.

According to the Investment Coordinating Board (BKPM), in the 1st Quarter of 2018, the amount of foreign investment in Indonesia reached 185.3 Trillion Rupiah. In the same year in Quarter IV, the investment reached 185.9 Trillion Rupiah. In 2019, in Quarter 1 (January-March), the amount of foreign investment had reached 195.1 Trillion Rupiah. As for domestic investment, Quarter 1 of 2018 amounted to 76.4 Trillion Rupiah, Quarter IV Year 2018 amounted to 86.9 Trillion Rupiah, and Quarter I Year 2019 amounted to 87.2 Trillion Rupiah⁸.

This condition, shows how the threat to the existence of Agrarian Reform is certainly very large. Perpres on Agrarian Reform, is actually expected to be a solution to this threat. However, as a legal product that was born in an economic system that tends to be liberalistic instrumentalist, this legal product also tends to be prone to be misinterpreted from the intent and purpose of its formation. This research is here to answer that doubt. The basic question is whether the Perpres on Agrarian Reform is in accordance with the aims and objectives of implementing Agrarian Reform as referred to in the UUPA?

At the end of this research, it will also produce an idea, what is the ideal arrangement regarding agrarian reform in the present. In addition, it will also explain about how it fits with the times, whether it is still worth maintaining or not, and what things must be completed or eliminated in order to re-realize agrarian justice that is substantive and in line with community expectations. Based on the description above, the formulation of the problem in this study are:

- a) What is the conflict with the regulation of Land Reform in Presidential Regulation Number 86 Year 2018 regarding Agrarian Reform with the UUPA?
- b) How is the deconstruction of Landreform policy in Indonesia?

⁶ Agustiaty, "Sistem Ekonomi Kapitalisme," *Journal Academica*, 2009, 152–66.

⁷ R. Saddam Al- (Respiratori) Jihad, *Pancasila ideologi dunia: sintesis kapitalisme, sosialisme, dan Islam*, 2018.

⁸ Indonesia Investment Coordinating Board, "Domestic and Foreign Direct Investment," *Economic Growth and Development* (Jakarta, 2019).

B. Discussion

1. Conflict of Land Reform Regulations in Presidential Regulation Number 86 Year 2018 Concerning Agrarian Reform With UUPA

Lon Fuller, as quoted by Hamid S. Attamimi, stated that there are at least 8 principles, which are indicators of the success of forming laws and regulations. One of them are the rule of law must not contradict each other, because if that happens then people no longer know which one to stick to⁹. By this definition, every regulation that has been made, can not conflict with one another. This is feared will lead to ambiguity, because there are two regulations governing the same thing, but the substance of the regulations is different. This principle can also be used to ensure the success of lawmakers in establishing the rules. If the resulting rules support one another, it can be said that the rule formers are successful. But if it turns out that the resulting rules are contradictory, then it can also be said that the rule formers have failed.

In this section, we will first explain the concept of regulating land reform in the UUPA and the concept of regulating land reform in the Perpres on Agrarian Reform. Both are related, because there are indications that the two regulations will conflict with each other. This is also done considering the two regulations were born from a legal regime that has different characteristics. The UUPA was born from a legal regime which tended to be a communist socialist, while the Perpres was born from a legal regime which tended to be instrumentalist liberalism.

a. *Landreform according to UUPA*

Land reform in the UUPA is categorized as an effort to replace the land tenure structure. The huge inequality of land tenure at that time was considered as a form of colonialism carried out by the colonial state. This inequality is evidenced through the control of a large portion of land by a small group of people. This imbalance is also considered as one of the factors of limited public access to land, so that the wider community is unable to get decent welfare because they are unable to benefit from any land management efforts.

Apart from that, the UUPA is also expected to be able to put the great aspirations of this nation on the issue of religion. Namely the spirit of social functions that prioritize the interests of society, spatial functions that ensure the sustainability of space in supporting life, environmental functions

⁹ A. Hamid S.; Attamimi, *Peranan keputusan Presiden Republik Indonesia dalam penyelenggaraan pemerintahan negara : suatu studi analisis mengenai keputusan Presiden yang berfungsi pengaturan dalam kurun waktu Pelita I-Pelita IV* (Kantor Menteri Negara Perumahan Rakyat, 1990).

that ensure sustainability, and functions of equality and justice ¹⁰. This function was created by UUPA through Landreform.

Land reforms, according to the UUPA, include a variety of programs that cover the arrangements for ownership and control of land. That program is ¹¹:

"Limitation of maximum area of land ownership; Prohibition of absentee land ownership; Redistribution of land that is excess of the maximum limit, lands subject to absentee prohibitions, formerly self-governing lands and state lands; Regulations relating to the return and redemption of panned agricultural lands; Rearrangement of agricultural production sharing agreements; The determination of the minimum area of ownership of agricultural land is accompanied by a prohibition on carrying out actions that result in the breakdown of ownership of agricultural lands into overly small parts."

Regulations regarding the land reform program are mainly regulated in Article 7, Article 10 paragraph (1), and Article 17 paragraph (1) and (3) of the UUPA. Article 7 states "In order not to harm the public interest, ownership and control of land that exceeds the limit is not permitted." In this article, it actually prohibits what has come to be known as *groot grondbezitter* ¹² namely the prohibition of land ownership that exceeds the limit or in the Common Law legal system, also known as *Latifundia*. This prohibition is actually intended to end and prevent the accumulation of land in the hands of certain groups and a small group of people. Ownership that exceeds this limit is feared to create landlords and many negative things that may occur such as rising production costs, rising rental prices, and increasing smallholders ¹³. This policy came to be known as the "Maximum Land Area Limitation" policy.

In addition to the policy, according to the UUPA, one of the objectives of holding land reforms is as an effort to share benefits evenly over the livelihoods of the farming community in the form of land. So, if there are still lands that exceed the maximum limit, the lands will be taken over by the government with compensation, then distributed to communities and farmers in need. This policy, often known as the Land Redistribution Policy.

¹⁰ Diyan Isnaeni, "Kebijakan Landreform Sebagai Penerapan Politik Pembaharuan Hukum Agraria Yang Berparadigma Pancasila," *JU-ke (Jurnal Ketahanan Pangan)* 1, no. 2 (Desember 2017): 83–97.

¹¹ Supriadi., *Hukum agraria* (Sinar Grafika, 2007).

¹² Budi Harsono., *Hukum agraria Indonesia : sejarah pembentukan undang-undang pokok agraria, isi dan pelaksanaannya. Jilid 1, Hukum tanah nasional* (Djambatan, 1997).

¹³ Badan Pusat Statistik, "Badan Pusat Statistik," Sensus Pertanian 2013, 2013.

Land redistribution, briefly, is the distribution of lands controlled by the state and has been confirmed to be the object of land reform that is given to smallholders and has fulfilled the conditions as stated in Government Regulation No. 224 of 1961 concerning the Implementation of Land Distribution and Giving Compensation. The purpose of the launch of this activity is to improve the socio-economic situation of the people by making a fair and equitable distribution of the livelihoods of the farmers in the form of land, so that with a fair and equitable distribution it is expected to achieve a fair and equitable distribution of agricultural products¹⁴. The division of land, in the Land Redistribution policy, is essentially not a confiscated object by the State. The land was not confiscated, but was taken with appropriate compensation. This compensation is a form of recognition of individual land ownership rights that are still recognized in the UUPA.

These two policies are at the core of Landreform activities based on the UUPA. According to Ahmad Nashih Lutfi, despite the maximum efforts that have been carried out so that the implementation can proceed well, the Landreform program with the core of the two activities did not run as well as desired. The overhaul of the land tenure structure carried out with Land Redistribution in fact actually causes prolonged bloody conflicts and instead creates prolonged conflicts. This is actually caused by several things, including¹⁵:

- 1) Land and object subject data are in fact inadequate (redistributable land data obtained by the Landreform committee is in fact unable to meet the land needs of farmers);
- 2) Slow execution in the field by Landreform officials and committees; and
- 3) Cultivating farmers take unilateral action by occupying and controlling land, destroying existing crops, and then dividing them among the farmers themselves.

b. Landreform according to Perpres Agrarian Reform

In the Perpres on Agrarian Reform, Land Reform is referred to Agrarian Reform. In fact, as is well known, Land Reform and Agrarian Reform have different dimensions. Agrarian Reform is more general than Landreform because it encompasses the rearrangement of the agrarian tenure structure that includes the earth, water, and space, as well as the natural wealth contained therein. While Landreform is more specific, given its purpose solely as an overhaul of the structure of control over land. Strictly

¹⁴ Nurhayati, "Pelaksanaan Redistribusi Tanah Obyek Landreform di Kecamatan Semarang Barat Kota Semarang" (Universitas Diponegoro, 2006).

¹⁵ Ahmad Nashih Luthfi dan R M Fauzi, *Kronik Agraria Indonesia (Memperluas Imajinasi Lintas Zaman, Sektor dan Aktor)*, Yogyakarta (ID): STPN Press bekerjasama dengan Sayogyo Institute dan Institute Sejarah Sosiasl Indonesia, 2010.

speaking, from the definition given, this Perpres has shown an early indication of a conflict with the UUPA.

Furthermore, this Perpres states that the implementation of the Agrarian Reform covers 2 major agenda of activities. First, the Arrangement of Assets, and Secondly the Arrangement of Access. This Asset Structuring is divided into 2 activities, namely Land Redistribution or Asset Legalization. Objects of Land Redistribution, in this regulation include:

- 1) HGU and HGB land that has expired and are not requested for extension or renewal of rights;
- 2) Land obtained from the HGU's obligation to surrender at least 20 percent of the area of the HGU that has changed to HGB due to spatial changes;
- 3) Land obtained from the obligation to provide at least 20 percent of the total area of State Land given to HGU holders in the process of granting, extending or renewing rights;
- 4) Land originating from the release of a forest area that encompasses land within a forest area that has been released into a TORA and land in a forest area that has been controlled by the community but has been settled in accordance with statutory provisions;
- 5) Former abandoned land that is used for the benefit of the community;
- 6) Land resulting from Settlement of Disputes and Agrarian Conflicts;
- 7) Ex-mining land outside the forest area;
- 8) Land arises;
- 9) Land that meets the requirements for strengthening people's rights to land which includes: land granted by the company in the form of social responsibility, consolidated land whose subject meets the criteria of Agrarian Reform, as well as the remaining land donated for development and land in lieu of agreed land consolidation as TORA;
- 10) Erfpacht former land, ex-private land and ex-eigendom land with an area of more than 10 Bauw which are still available and fulfill the provisions as redistribution objects; and
- 11) Maximum land for lease, absentee land, and swapraja / former swapraja land which is still available and meets the provisions of the law as the object of land redistribution.

All of the land redistribution objects are used for agricultural and non-agricultural activities. The object of land redistribution for agriculture is redistributed to the subject of Agrarian Reform with a maximum area of 5 ha, while the object of land redistribution for non-agriculture is not explained in extent. This regulation only mandates that further provisions on land redistribution for non-agriculture are regulated by a Ministerial Regulation. The structuring of access is carried out in order to increase economies of scale, add value, and encourage entrepreneurial innovation in the subject of

Agrarian Reform. This Access, according to article 15 verse (2) Perpres on Agrarian Reform, including 10 activities, namely:

"Social mapping, institutional capacity building, business assistance, skills upgrading, use of appropriate technology, business diversification, facilitation of access to capital, facilitation of marketing access (offtaken), strengthening of database and information of community products, and / or providing supporting infrastructure."

By definition, the existence of arrangements regarding the arrangement of assets and structuring of access in the Perpres needs to be sharply criticized, especially the regulation of structuring assets. First, the use of the word "or" in linking land redistribution and legalizing assets. Meaning of this word, actually means choice. The context of the use of this word is to provide an alternative between 2 different things. Therefore, it is not necessary that both should be selected or implemented. This phrase implies that only one of the 2 types of choices offered must be made. Whatever choice is taken, it is guaranteed not to be considered infringing or deemed not contrary to statutory regulations.

Taking refuge in this regulation, the government only implements the Agrarian Reform merely as the legalization of assets. Not seen as a limitation of the maximum area of land tenure or land redistribution, as referred to in the Land Reform Act. This provision complements the Government's 2015-2019 Medium-Term Development Plan (RPJMN), which also prioritizes the Agrarian Reform agenda on the legalization of assets, and not on land redistribution.

According to the compass note, since the Jokowi era, or starting 2015-2019, the government has carried out at least 7,565,236 legalization of plots of land or equal to 1,665,548 ha. Compare this amount with, for example, the realization of land redistribution as of October 2018. According to KPA records, the government which "only" targets 400 thousand ha of land distribution, has only been realized 270,237 ha. This amount cannot be compared with the amount of legalization of the assets above. In fact, according to KPA, only 785 ha of land has been distributed according to the goals and principles of Agrarian Reform. Namely, Mangkit Village in North Sulawesi, Pamegatan and Pasawahan Villages in West Java, and Tumbrek Village in Central Java. In addition to the object, it is strongly suspected that land redistribution was wrongly targeted and did not comply with the objectives of agrarian reform ¹⁶.

Second, the legalization of assets should not be part of the structuring

¹⁶ Konsorsium Pembaruan Agraria, "Empat Tahun Implementasi Reforma Agraria," 2019.

of assets. As regulated in TAP MPR Number IX of 2001 concerning Agrarian Reform and Management of Natural Resources, Agrarian Reform (Agrarian Reform) is a continuous process with regard to restructuring the control, ownership, use and utilization of agrarian resources. Is the legalization of assets included as part of an ongoing process? Apparently not. According to the Big Indonesian Dictionary (KBBI), legalization is an endorsement (according to law or law)¹⁷. Strictly speaking, the legalization of assets means an attempt to legalize land ownership, transmigration land and land owned by the community. Both are uncertified land.

Thus, according to this provision, the legalization of assets is in no way an attempt to overhaul the structure of ownership, control, use, and use of land as the original intent of agrarian reform or even Land Reform. Legalization of assets is only a process of granting certificates, to land owners who already own or control the land de-facto. Thus, there was no transfer of ownership, even an overhaul of land ownership. The concept of this arrangement is wrong and must be corrected.

2. An ideal arrangement regarding Landreform policy in Indonesia

Land reform in Indonesia cannot be implemented as desired by the UUPA. Indeed, according to Didik Indradewa, the current condition, in which Indonesia has not been able to exercise food sovereignty over its country, is actually more due to inequality in land tenure and ownership, especially on agricultural land in Indonesia. Land which is a very important factor of production, primarily as one of the supporting factors for achieving food sovereignty, is in fact still dominated by a small portion of the capitalist community. Thus, this is actually a limiting and limiting factor for achieving food sovereignty¹⁸. Land reform according to the UUPA is also running too slowly due to the fact that many sectoral laws and regulations are also slow in making them¹⁹. This is especially true if coupled with the number of derivative regulations from the UUPA that contradict the vision of Pancasila, the constitution and the UUPA itself²⁰.

However, according to Arie Sukanti Hutagalung, citing the opinion of Erich Jacoby, the land redistribution program does not necessarily and automatically increase agricultural production. Efforts in terms of increasing

¹⁷ Badan Pengembangan dan Pembinaan Bahasa, Kementerian Pendidikan, Kebudayaan, Riset, “Kamus Besar Bahasa Indonesia.”

¹⁸ Didik Indradewa, “Faktor-Faktor Produksi Utama,” in *Pembangunan Pertanian: Membangun Kedaulatan Pangan*, ed. oleh Triwibowo Yuwono, 2016.

¹⁹ Meirina Nurlani, “Pengaruh Pembaharuan Hukum Agraria Nasional Terhadap Politik Hukum di Indonesia,” *Jurnal Thengkyang* 2, no. 1 Desember (Desember 2019): 106–24.

²⁰ Suwardi and Arief Dwi Atmoko, “Pembaharuan Hukum Agraria Di Indonesia,” *Jurnal HUKUM BISNIS* Volume 3, no. 2 (2019): hlm. 235.

agricultural production must also be accompanied by other actions, such as increasing productivity, promotion, providing credit facilities, tax exemptions, resettlement, and so on²¹. In addition, according to Erman Rajagukguk, land reform policy in Indonesia is an unrealistic form of policy. National political conditions are actually unfavorable for the introduction and implementation of the land reform program itself. Competition between Indonesian political forces that actually creates a compromise between the interests of landowners and the interests of the authorities in each of the making and drafting of regulations and the implementation of the landreform, results in differences of opinion as well as a lack of cooperation between members of the landreform implementing committee. The impact of land reform policy efforts as a tool for social change has failed²².

Based on the opinions of some of the experts above, it can be concluded that there are still differences among experts about whether Landreform should be maintained or not in terms of its efforts to improve the welfare of farmers. In addition, there are also still very significant differences, especially in terms of how to formulate appropriate public policies relating to the pattern of acquisition and ownership of agricultural land, so that the pattern of ownership and control can be taken as much as possible over the agricultural land.

The government which in this case was the central committee for land reform in 1964 had estimated that there were approximately 966,150 hectares of land on Java that could be distributed to farmers. This amount is certainly relatively small, because "only" constitutes around 12.73 percent of the 7,588,793 hectares of rice fields and dry land found on the island of Java. In addition, in 1961, the Landreform central committee also projected that there would be an excess amount of land, especially in Java, Madura, Bali and West Nusa Tenggara, which numbered around 966,150 hectares. The amount then continued to decline from year to year, to 400,000 hectares in 1962, and 337,445 hectares in 1963²³.

According to Wolf Ladejinsky, architect of Landreform Japan, after his last visit to Indonesia in 1963, stated that, especially Java, had experienced a condition of land shortages due to too many inhabitants. According to him, with the conditions at that time (in 1963), the provisions regarding the determination of the maximum area of land ownership could not be implemented by the Government. The desire to distribute the land is not possible anymore, because given the formula on which the "distribution" is

²¹ Aric Sukanti Hutagalung, *Program redistribusi tanah di Indonesia: suatu sarana ke arah pemecahan masalah penguasaan tanah dan pemilikan tanah* (Rajawali, 1985).

²² Erman Rajagukguk, *Hukum Agraria, Pola Penguasaan Tanah, dan Kebutuhan Hidup* (Penerbit Chandra Pratama, 1995).

²³ Rajagukguk.

based will not produce an excess of land to be distributed. The provision on the maximum limit is only sufficient to produce excess land for a small number of farmers. Thus, the provisions regarding the minimum land ownership limit mentioned in Law Number 56 / Prp / 1960 concerning Determination of Agricultural Land Area, where each farmer must have a minimum of two hectares per family, is also unfulfilled and unrealistic²⁴.

With the conflict between Landreform arrangements as regulated in the UUPA and Landreform regulations in the Perpres on Agrarian Reform, and Landreform in the form of the UUPA that is difficult to implement, especially in view of today's conditions, it is necessary to have a new concept about the Land Reform. This concept is the main purpose of the deconstruction of the provisions of the text governing Land Reform. Apart from that, this new concept is also a middle way, whereby any sectoral legislation should refer to the UUPA as a determinant of the political direction of the national law²⁵. Strictly speaking, this deconstruction is not to replace the Landreform system. The main purpose of this policy must be maintained. Namely guaranteeing the broadest possible access that is owned by the Indonesian people, as well as ensuring that there is not too much overlapping of land tenure, only to a small portion of the community.

a. Affirming the position of the state in implementing Landreform

Each country can certainly have a different construction of welfare and the desirable image of a prosperous society. The difference in the basic thinking framework is certainly due to each country having a different national ideology foundation. Therefore, various policies formulated to realize welfare also have different approaches and approaches, adjusted to the formulation of the concept of welfare that is used as the basis for their policies.

Lavalette and Pratt see that there are variations in the concept of the welfare state based on the foundations of social democratic ideology, neo-liberalism, and Marxism without seeing any influencing community factors. Meanwhile, according to Anderson, the concept of a welfare state is very much determined by the existence of a formula called a good society, which is nothing but the construction of an ideal society which is the dream and vision of the country concerned. According to Andersen, if this concept is complemented by a liberal ideology, then the formulation is the result of a compromise between individualism and the market. Meanwhile, if the concept is complemented by the concept of social democracy, then the

²⁴ Wolf Isaac. Ladejinsky dan Louis Joseph Walinsky, *Agrarian reform as unfinished business: the selected papers of Wolf Ladejinsky* (New York: Published for the World Bank [by] Oxford University Press, 1977).

²⁵ Rahmat Ramadhani, "Peran Politik Terhadap Pembangunan Hukum Agraria Nasional," *SOSEK: Jurnal Sosial dan Ekonomi* 1, no. 1 (Juli 2020): 1–6.

formulation will be a compromise between the values of universalism, egalitarianism, and comprehensive social citizenship²⁶.

By definition, the concept of the welfare state is actually a condition where the state must be present in every social life of every citizen. The presence of this country then serves to guarantee the fulfillment of every basic need for its citizens such as social security, health, education, etc., which is carried out by issuing policies and regulations, which support the implementation of the agenda to fulfill those needs.

Each country, has a different concept in implementing the concept of this welfare state. In Indonesia, this concept must always be linked to a number of other basic concepts, such as the concept of the rule of law and democracy, as contained in the 1945 constitution post-amendment. This means that the welfare state in Indonesia is not only implemented by the Executive, but all state officials who receive delegation of authority from the people as the highest sovereignty in the country (democratic principles) are also obliged to organize and guarantee the fulfillment of the people's welfare. In addition, the concept of the welfare state must also go through and even comply with the rules set out in the constitution and other legislation below it, as a consequence of the adoption of the rule of law concept.

Therefore, a very strategic effort is needed primarily in order to restore the original intent or original intent of the tasks of the state as referred to in the Preamble to the 1945 Constitution of the Republic of Indonesia which contains the concept of the welfare state. This aims to prevent the thoughts of neoliberalists, which in essence according to David Harvey are thoughts that always oppose the theories of centralized planning by the state. The neoliberal will always assume that state decisions will tend to be politically biased because they depend on the strength of existing interest groups, such as workers, environmentalists, and tender lobbyists, so that state decisions will tend to be wrong. In fact, according to them, the speed and objectivity of information is very important, especially in supporting and building the economic system. And, such information is only obtained from the symptoms that arise from the market, and ideally the market is driven by "invisible hands"²⁷.

In order to achieve the true Land Reform, the state must begin to apply the original concept of the welfare state, which is not in the interests of liberalism or socialism. The concept of welfare state is meant as the concept of the state contained in the Pancasila and the Opening of the 1945 Constitution of the Republic of Indonesia, which requires that the State of

²⁶ Soetomo., *Kesejahteraan dan upaya mewujudkannya dalam perspektif masyarakat lokal* (Jakarta: Pustaka Pelajar, 2014).

²⁷ Raju Das, "David Harvey'S Theory of Accumulation By Dispossession," *World Review of Political Economy* 8, no. 4 (2017): 590–616.

Indonesia become a state based on popular values, in the sense that each community and individual is given the broadest opportunity to develop themselves and participate actively in every life of the nation and state, but that freedom is still framed in wisdom, which can be interpreted as a just and wise government, and able to carry out its duties properly.

Strictly speaking, the concept of the Welfare State in the Landreform is a concept where the state takes over the arrangement as an effort to formulate the visionary ideas of the nation going forward, protect the interests of the entire nation, and formulate every policy and regulation deemed necessary to achieve these objectives. This concept is carried out according to a state frame just law, but still did not eliminate the essence of the freedom of each individual and the people to freely determine their own destiny.

b. Affirmation of Land Status Results of Land Procurement for Public Interest in the form of Sustainable Food Agricultural Land as an Object of Agrarian Reform

One important thing that is also discussed in relation to Land Reform is its relationship with the land acquired from the public interest. Article 11 of Law Number 2 of 2012 concerning Land Acquisition for Development of Public Interest states:

- (1) Land Procurement for Public Interest as referred to in Article 10 must be carried out by the Government and the land thereafter is owned by the Government or Regional Government.
- (2) In the case of an institution requiring land acquisition for public purposes as referred to in Article 10 is a state-owned enterprise, the land will become the property of a state-owned enterprise

According to the author, with regard to ownership, it should not stop at ownership by the state, especially the procurement of land for public purposes which has included the Protection of Sustainable Food Agricultural Land (PLP2B) in it. The land should be "controlled" by the state, in the sense that the state undertakes regulating who has the right to own the land and regulating its designation. This is supported by Herman Soesangobeng's opinion, for example, which states that national agrarian law, as already recognized in the UUPA, is very nuanced with customary law. This can be seen from the adoption of the principle of "Right to Control the State", which is actually the concept of "common property rights" that have been recognized in the Indonesian Traditional Land Law. The concept is the same, namely that the land belongs to or belongs to all members of the legal community, which is controlled and regulated for use and use by the legal

alliance as the highest authority in the legal community (not owned). As a result, the state is burdened with the "right to administer" which in Dutch means "beheersrecht", according to which the "right to control" is not "the highest property right", but rather, the state has a social obligation to protect and manage land, which in the context of the state is referred to "Public obligation" (publiek verplichting, public responsibility)²⁸.

A different opinion was indeed expressed by Jimly Asshiddiqie. According to him, the function of "ownership" of the state is indeed inherent in the function of "control" of the state, as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Rather, ownership in a broad sense, in the sense of public law. Furthermore Jimly said²⁹:

Therefore it is appropriate that we also need not hesitate to understand the concept of "controlled by the state" in Article 33 of the 1945 Constitution in the sense of "being owned by the state", namely ownership in the broadest sense, ownership in terms of public law. Earth, water, and all the natural wealth contained in the bowels of the earth and in water are not only understood in the sense of mastery through mere control and regulation. Likewise, in the context of public law and at the same time civil law the meaning of "controlled by the state" in Article 33 paragraph (3) of the 1945 Constitution is control in the full sense which includes also the meaning of ownership, namely ownership in terms of public law which certainly serves as a source for civil ownership (private ownership). By being controlled by the state, the wealth of natural resources we have is entirely for the benefit of the people.

By definition, PLP2B should also fall into the category of land acquisition in the public interest, given its position concerning the lives of many people. After the implementation of PLP2B by using the principles of land acquisition for public purposes, land that has been controlled by the state, should be given back to the community through the Landreform program. In addition to social functions, the agrarian reform program is also an important element regulated in the UUPA.

As stated above, ideally, the object of public interest as regulated in Article 10 of the Land Acquisition Law, must also be supplemented by PLP2B activities. According to the author, the idea will not be implemented optimally in the context of the welfare of the community, when the land that has been taken over is not included also as the Land of Agrarian Reform Objects (TORA). This condition will not disrupt domestic food supply. According to Walter Pengué's research, as quoted by Peter Rosset, that the

²⁸ Das.

²⁹ Jimly Asshiddiqie, *Konstitusi ekonomi* (Jakarta: Penerbit Buku Kompas, 2010).

limited control of land from small farmers, actually has greater productivity compared to national production. By taking research data in Brazil, Walter Pengue stated ³⁰:

In Brazil, family farm agriculture produces 24 percent of the total national value of production of beef, 24 percent of milk, 58 percent of pork, and 40 percent of poultry and eggs. It also generates 33 percent of cotton, 31 percent of rice, 72 percent of onions, 67 percent of green beans, 97 percent of tobacco, 84 percent of cassava, 49 percent of maize, 32 percent of soya, 46 percent of wheat, 58 percent of bananas, 27 percent of oranges, 47 percent of grapes, 25 percent of coffee, and 10 percent of sugar. In total, family farm agriculture accounts for 40 percent of the total national value of production, while occupying just 30.5 percent of the cultivated land area. It generates fully 76.9 percent of the national employment in agriculture, all while receiving only 25.3 percent of farm credit

Therefore, according to Rosset, food sovereignty cannot be achieved without agrarian reform. According to him ^{31 32}:

As described above, food sovereignty rests on the concepts of economic and social human rights, which include the right to adequate food. Food sovereignty argues, as does the Special Rapporteur, that there is a corollary right to land, and even, the “right to produce” for rural peoples (Ziegler, 2002, 2004), which can in most cases only be achieved via agrarian reform. But, what kind of agrarian reform? Not all agrarian reforms are redistributive in nature; that is, not all agrarian reforms alter the existing structures of land tenure and land holdings, and in particular, not all address inequality in land holdings. It is the belief of the authors of this paper that food sovereignty and the right to adequate food can only be achieved by agrarian reforms which are redistributive in nature, and/or based on the defense of, or restitution of, the territories of indigenous farming, forest dwelling, pastoral and fishing peoples

Amartya Sen also explained this. According to him, by taking the case in Bengal in 1943, starvation was not solely due to his inability to resist hunger. But more to the limited access that the starving victim has, so that he is unable to produce the food. In this condition, the Landreform program

³⁰ And Michel Courville Peter Rosset, Raj Patel, *Promised Land: Competing Visions of Agrarian Reform, Development in Practice*, vol. 17 (New York: Food First Book, 2006), <https://doi.org/10.1080/09614520701723377>.

³¹ Peter Rosset, Raj Patel.

³² Jean Ziegler, “UN. Commission on Human Rights. Special Rapporteur on the Right to Food” (UN, Januari 2003).

guarantees community access to resources in the form of agricultural land. Furthermore Amartya Sen said ³³:

The entitlement approach to starvation and famines concentrates on the ability of people to command food through the legal means available in the society, including the use of production possibilities, trade opportunities, entitlements vis-à-vis the state, and other methods of acquiring food. A person starves either because he does not have the ability to command enough food, or because he does not use this ability to avoid starvation. The entitlement approach concentrates on the former, ignoring the latter possibility. In fact, in guarding ownership rights against the demands of the hungry, the legal forces uphold entitlements; for example, in the Bengal famine of 1943 the people who died in front of well-stocked food shops protected by the state were denied food because of lack of legal entitlement, and not because their entitlements were violated.

This condition shows the importance of community access, especially access of small communities to land, as an effort to eliminate the possibility of hunger. Under these conditions, land acquisition for public use with one of its objects in the form of PLP2B and wrapped with the Landreform program can be one of the reference programs that can be done. Initially the government took over non-agricultural land controlled by a small portion of the community (although with sufficient compensation), or other land objects that have been designated as Landreform objects, then the land was given to small communities who lack land or small farmers, to be controlled and managed through the Landreform program. It is hoped that through this step, food independence and food sovereignty in Indonesia can be realized immediately, and Landreform will again become a national strategic program that is truly carried out consistently.

C. Conclusion

1. The regulation of Land Reform in the UUPA with the Perpres on Agrarian Reform has very striking differences. On the one hand, the UUPA states that Land Reform is a systematic effort by the state to rearrange ownership, control and access to society. Whereas on the other hand, the Perpres on Agrarian Reform stipulates that Land Reform is likened to Agrarian Reform, and the scope of the arrangement covers the arrangement of access and arrangement of assets. Nevertheless, this Perpres then only means Landreform merely as the legalization of assets, which is part of the structuring of assets. One thing that is very different

³³ Amartya Sen, *Poverty and Famines, Poverty and Famines* (Oxford University Press, 2003), <https://doi.org/10.1093/0198284632.001.0001>.

from the UUPA version of Landreform. This difference is due to the Perpres on Agrarian Reform born in a regime that tends to be instrumentalist liberalism, while the UUPA was born from a legal regime that tends to be socialistic-communal.

2. There are at least 2 things that need to be fixed in the Landreform settings. First, the affirmation of the state's position in implementing Landreform, whether to continue to use the liberalistic instrumentalist, socialistic-communal model, or the conception of a welfare state that is native to Indonesia. Second, TORA must be the object of Land Acquisition for Public Interest. Thus, Landreform activities can become the main national agenda and must be implemented.

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