

Construct Integrated Agrarian Reforms Based On Justice

Rindiana Larasati^a, Retno Saraswati^b, Lita Tyesta A.L.W^c, Muh. Afif Mahmud^{d*}, ^{a,b,c}Diponegoro University law faculty, ^dFaculty of Law, Semarang University, Email: [d* afifmahfud4@gmail.com](mailto:afifmahfud4@gmail.com)

Agrarian reform is a program with purpose increase people prosperity mainly for farmer through land redistribution and land ownership legalization. In this research, there are two issues, namely: (1) how is agrarian reform in Indonesia from perspective of legal system theory stated by Lawrence M. Friedmann?; (2) how is construction of integrated agrarian reform based on justice?. This is a normative juridical, use secondary data and analyzed qualitatively. Based on analysis can be concluded that implementation of agrarian reform stated by Lawrence M. Friedmann theory on legal system has problem in its three elements, namely : (a) legal substance which is unjust regulation, (b) structure which is data disharmony among departments; (c) legal culture which is mistake in understanding social forestry as part of agrarian reform. The construction of integrated agrarian reform is : (1) based on justice; (2) integration namely vertical and horizontal integration; (3) contextual and (4) public participation. Integrated agrarian reform is also based on public information openness. This article recommend : first, change of unjust agrarian reform regulation and second, change of sectoral agrarian reform.

Key words: *Agrarian reform, integrated, justice.*

Introduction

Agrarian reform began since the Ancient Roman period when Tiberius Gracchus as one of the members of parliament in 134 BCE successfully proposed and promulgated the Agrarian Law (lex agraria). In this law, a maximum limit of land ownership and the maximum excess land must be submitted to the state and redistributed to small farmers and landless. (Wiradi Gunawan, 2009) In developing countries, the discourse on agrarian reform has been going on for three centuries. In Indonesia, the will to redistribute land to small farmers and create prosperity for farmers is one of the main drivers of the struggle for independence of the Republic of Indonesia.

The desire to create agrarian reform is an embodiment of justice in the agrarian field. This also ended the colonial agrarian law which did not create justice and welfare of farmers and ended the monopoly of land ownership in Indonesia. Gunawan Wiradi stated that the main factor driving Indonesia's independence was agrarian injustice. Resistance to agrarian injustice breeds national awareness. (Aprianto Tri Chandra, 2014).

In his speech before the Indonesian Independence Preparatory Agency for Investigation, Sukarno stated that justice was related to the queen of justice or sociale rechtvaardigheid, namely the condition when the community could prosper. (Basarah Ahmad, Hasanuddin Tb. (Ed), 2016) The meaning of justice was expressed more fully by Sukarno on other occasions, one of which was marhaenism as a concept of the underprivileged including farmers who use traditional tools in their production activities. (Sukarno, 2015).

Soekarno in his speech on August 17, 1959 entitled Rediscovering the Revolution We stated that a reshuffle of land ownership was needed as a form of structuring the Indonesian economy. The reshuffle of land ownership is called agrarian reform or agrarian reform. He also stated that agrarian reform was an effort to strengthen and expand land ownership for the community, especially the peasants. (Achdian Andi, 2008) The desire to create agrarian reform is also clearly illustrated from the beginning of the formation of legislation in the agrarian field. On May 21, 1948, the Jogjakarta Agrarian Committee was formed as the first committee in charge of preparing the Basic Agrarian Law. One of the recommendations of this committee is to set a minimum land ownership by smallholders of two hectares (2 ha). (Chomzah Ali Achmad, 2003).

The existence of a minimum land ownership limit is also regulated in Article 17 of Law No. 5 of 1960 concerning Basic Agrarian Regulations governing the minimum limit of land ownership. Determination of the minimum land ownership is a very good thing because by cultivating land with an ideal size, farmers will live well. In addition, this also puts an end to the monopolization of land tenure that creates exploitation de l'homme par l'homme or human exploitation of humans.

Thomas Paine stated that the monopolization of land tenure has caused poverty for farmers. For him, land ownership in a minimum limit is a right that must be fulfilled by the state. He stressed that this is right not charity so it is binding on the state to redistribute land to people whose land does not reach the minimum limit. (Paine Thomas, 2017).

In Indonesia, the agrarian reform discourse that has emerged since the beginning of independence does not seem to have achieved its objectives until its seventy-four years of existence. This can be seen from two indicators namely the imbalance of land tenure in

Indonesia and also the high poverty rate in rural areas as a location for farmers to live. Based on data from the Central Statistics Agency in 2017, there were 27.76 million poor people in Indonesia and 62.2% of the population lived in rural areas. (BPS, 2017) Darmin Nasution said that the high poverty rate in rural areas was caused by the decline in farmer exchange rates and the increasingly narrow tenure by farmers. In July 2017, farmers experienced an exchange rate decline of up to 0.83%. (Nasution Darmin, 2017).

In 2017, Global Wealth ranked Indonesia as the fourth most economically imbalanced country in the world. In this report it is stated that 1% of the richest people in Indonesia control 49.3% of national wealth. (Cahyono Eko, 2019) This data is even more ironic when compared to the land ownership index issued by the Central Statistics Agency which shows that land ownership is very lame, namely 0.72 in 2013. This means that 1% of Indonesians control 73% of land area in Indonesia. (Presidential Staff Office, 2017) Victims of land ownership inequality are farmers whose land area is under control is decreasing. (Linda Nopa, 2019).

Narrow land tenure by farmers certainly affects the welfare of farmers. This causes farmers to not be able to improve their welfare. On the other hand, land tenure by entrepreneurs continues to increase amid diminished land tenure by farmers. Based on the description above, two problems can be formulated, namely: (1) How is agrarian reform in Indonesia currently viewed from the legal system theory proposed by Lawrence Meir Friedmann ?; (2) How is the construction of integrated agrarian reform based on the value of justice?

Research Methods

This research is a normative research. This research uses secondary data obtained through literature research or literature study. The secondary data is both primary legal material in the form of legislation, secondary legal material in the form of literature relating to the object of research and tertiary legal material. The data collected is then analyzed qualitatively and presented descriptively.

Discussion

Agrarian Reforms in the Present

In the part considering the letters c and d of the People's Consultative Assembly Decree No. IX / MPR / 2001 concerning Agrarian Reform and Natural Resource Management stated that agrarian management including land in it has caused an imbalance in the structure of ownership, use, control and utilization. Inequality that occurs in Indonesia can be broadly divided into two, namely: first, inequality of land tenure by large companies that are profit-oriented and ownership or control of land by farmers. Second, inequality in land ownership

among farmer groups. Bambang Winarso stated that currently there are symptoms of a concentration of land ownership by strong or groot-grondbeitz capital owners while farmers belonging to the weak capital group are eliminated and must follow existing market mechanisms. (Winarso Bambang, 2012) This condition shows that policies in the land sector are increasingly adaptive to market mechanisms. On the other hand, there is no strengthening of community access to land ownership and control. As a result, the community lives in poverty due to the limited land owned. (Doly Denico, 2017) The result is that the number of small farmers and the homeless continues to grow. (Bachriadi Dianto, Wiradi Gunawan, 2011)

This condition is certainly not in line with the goal of controlling the state, which is to create the greatest prosperity of the people. This is also not in line with the substance of Article 9 paragraph (2) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles that require the protection of ownership and use of land by weak communities in order to create prosperity for all Indonesian people. The aim of the greatest prosperity of the people is then set out in the Constitutional Court's Decision in reviewing Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands. The decision stated that the achievement of the objectives of the state's right to control can be measured from four indicators which include the utilization of natural resources and the level of distribution of benefits of natural resources for the people. (Decision of the Constitutional Court of the Republic of Indonesia Article No. 3 / PUU-VII / 2010 on Legal Testing No. 27 of 2007 on the Management of the Coastal Areas and Small Islands against the Constitution of the Republic of Indonesia of 1945) There is an imbalance in the structure of land ownership in the community which is not in line with one of the indicators of the purpose of controlling the state, namely the level of equity of natural resource benefits for the people.

Inequality in the use of natural resource distribution is evident from the data on land tenure inequality in Indonesia. If calculated from 1963 to 2003, the area of land controlled by traditional communities is 0.45 hectares. During this time period, the number of smallholders increased by an average of 2.6% per year. This also causes the number of small farmers to continue to increase. This condition was followed by the rate of conversion of agricultural land reaching 40,000-100,000 hectares, which 50% of the total land transferred was in Java due to an imbalance between the land area and the number of people who needed it for non-agricultural activities. (Bachriadi Dianto, Wiradi Gunawan, 2011).

This condition is a sad thing. This is due to the purpose of national agrarian law to create the greatest prosperity of the people through the distribution of land ownership carried out in agrarian reform has not yet been realized. Agrarian reform in Article 1 paragraph (1) of the Republic of Indonesia Presidential Regulation Number 86 Year 2018 concerning Agrarian Reform is defined as a restructuring of the structure of control, ownership, use and use of

land that is more equitable through structuring assets and accompanied by structuring access to the prosperity of the Indonesian people. Asset management consists of land redistribution and legalization of assets.

The unfulfilled goal of agrarian reform can be analyzed using the legal system theory proposed by Lawrence Meir Friedman in his book *Legal System: A Social Science Perspective*. In the book stated that the law is a system. Like a system, law consists of sub-systems that compose it. There are three elements of the legal system namely substance, structure and legal culture. (Friedmann Lawrence M, 1975).

Substance elements can be divided into two primary and secondary rules. Primary rule is related to how humans should behave while the secondary rule relates to procedural aspects or actions of state administrative officials. Interestingly in the context of the secondary rule, H.L.A. Hart proposed an abbreviated concept with CAR namely create, adjudication and recognition. Change is related to how a rule should be made and changed by related institutions. Adjudication is related to how a law and regulation should be implemented and also recognition, namely the recognition and public response to a rule. (Hart H.L.A, 1961).

The substance element when related to agrarian reform currently seems to still have some weaknesses including Article 12 paragraph (2) of Presidential Regulation Number 86 Year 2018 concerning Agrarian Reform which stipulates that there are twenty individual subjects of agrarian reform including smallholders with land ownership of 0.25 hectares or smaller than that, civil servants with the highest rank of Group III / a who do not have land and members of the Indonesian National Army / National Police of the Republic of Indonesia with the highest rank of Lieutenant Two / Inspector of Two Police.

When analyzing the subject of agrarian reform above it will be very apparent the imbalance between the subjects of agrarian reform. In this case, farmers who have the right to be the subject of agrarian reform are farmers who own land of 0.25 hectares or less. This is very ironic because to be able to live well, it is fitting for farmers to control 2 hectares of land as formulated by the Agrarian Committee I, but on average Indonesian farmers currently only control 0.5 hectares of land and are categorized as small farmers.

If only the community is determined to be the subject of agrarian reform, only farmers who have 0.25 hectares of land, the majority of Indonesian farmers who only control less than 0.5 hectares of land cannot be the object of agrarian reform. In fact, in Indonesia the number of peasant households reached 26.13 million, of which, smallholders reached 55.95%, namely farmers who controlled less than 0.5 hectares of land and 31, 68% were small farmers, ie farmers who controlled 0,5 to 1.99 hectares. (Shihobudin Mohamad, 2018) In this case, these two groups of farmers should also be included as subjects of agrarian reform and not just be

limited to farmers who have an area of 0.25 hectares or smaller than that. This means that the agrarian reform program cannot reach all small and small farmers as subjects. As a result, there will not be many farmers who can improve their welfare because they are not subject to agrarian reform. In fact, the extent of land ownership affects the level of welfare of farmers. The subject of agrarian reform that does not accommodate farmers who control smallholders who own land above 0.25 hectares and small farmers also becomes more ironic when compared to other agrarian reform subjects, namely civil servants with the highest rank of Group III / a who do not have land and members of the Indonesian Armed Forces / National Police of the Republic of Indonesia with the highest rank of Second Lieutenant / Two Police Inspector whose basic salary reaches Rp. 4,425,000.00 (four million four hundred twenty-five thousand rupiah) based on Government Regulation No. 17 of 2019 concerning the Twelfth Amendment to Government Regulation Number 29 of 2001 concerning Salary Regulations for Members of the Indonesian National Police. The above description shows that there is injustice in the categorization of agrarian reform subjects.

Wojciech Sadurski stated that in determining whether an act is fair or not it can be compared with two things namely the treatment of other people and certain standards set by the government. In relation to equality or fairness of treatment between smallholders and civil servants with the highest rank of Group III / a who does not own land and members of the Indonesian National Army / National Police of the Republic of Indonesia with the highest rank of Lieutenant Two / Inspector Two of the Police seems unfair. In this case, the salaries of Civil Servants, Police and Soldiers with such Ranks are higher than small farmers who control land above 0.25 hectares are very unbalanced or unfair because these farmers have very low or poor income but are not included as subjects agrarian reform while civil servants, soldiers and police with adequate income become the subject of agrarian reform.

When juxtaposed with certain standards, what can be a reference is the amount of the minimum wage set by the region, for example, the monthly farmer's income in Jepara Regency is 1,092,489.00 (one million ninety-two thousand four hundred eighty-nine rupiahs) while the minimum wage the regional district of jepara is Rp. 1,600,000.00 (one million six hundred thousand rupiah). This shows that farmers' income is much lower than the regional minimum wage in Jepara Regency. On the other hand, when juxtaposed with the basic salary of the Inspector of Two Police which is Rp. 4,425,000.00 (four million four hundred twenty-five thousand rupiah), (Sekarnurani Dinda Ayu, 2019) this police income is far greater than the income of farmers and reaches 276% greater than the regional minimum wage. Ironically, the police are included as subjects of agrarian reform while smallholders who control land over 0.3 hectares cannot be subject to agrarian reform.

One thing that is also a concern in relation to the description above is that there is no priority scale of the subject in terms of land distribution of agrarian reform objects. This means that

there is equal equality and potential between farmers who control land of 0.25 hectares or less than the area with police and soldiers with the rank of Inspector Two and civil servants of Group III / a. At this point, it can be understood that there is a need for changes to these laws and regulations, especially with regard to determining the subject of agrarian reform.

Regarding the substance, the problem that arises is the existence of provisions in Presidential Regulation No. 86 of 2018 concerning Agrarian Reform that regulates public participation in agrarian reform. Article 30 of this Regulation stipulates that the planning and implementation of agrarian reform involves the community in accordance with statutory regulations. The community involvement is at least in the form of proposals (Leonard, T., Pakpahan, 2020), recipients and types of structuring access in agrarian reform and submission of entries in handling agrarian disputes and conflicts.

Based on the analysis, the substance of the regulation above requires the least or minimum public participation in terms of proposals, revenues and types of access arrangements. That is, the obligations of the National Agrarian Reform Team, the Central Agrarian Reform Task Force and the Regency / City Agrarian Reform Task Force in only three cases are required to involve the public to participate. In addition to this, the community is not required to be included. This condition is an ironic thing because it is fitting for the community to be involved in every set of agrarian reform activities.

Agrarian reform that wants to be formed in Indonesia is agrarian reform by leverage, namely agrarian reform based on the active role of the community rather than agrarian reform by grace, namely agrarian reform based on the initiative and active role of the government. If the agrarian reform chosen is agrarian reform by grace then its existence is determined by political conditions and can change from one regime to another even stop as happened in the transition between the old order regime under the leadership of Sukarno and the New Order under the Suharto government. (Tolo Emilianus Yakob Sese, 2013) Agrarian reform by leverage which emphasizes the active role and initiatives of the community requires space for public participation.

Public participation according to Creighton is a process when the views, needs and values contained in society are considered in order to make better decisions and also get public support. (Creighton J.L., 2005) According to J.M. Cohen and N.T. Uphoff, the community should be involved in three stages namely planning, implementation and supervision. (Cohen J.M. and Uphoff N.T., 1980) In this context, the government cannot carry out agrarian reform itself but needs to collaborate with the community and other parties. (Arisaputra Muhammad Ilham, 2013) The substance of Article 30 of Presidential Regulation No. 86 of 2018 concerning Agrarian Reform which only requires the enactment of public participation in proposing, receiving and types of access structuring in agrarian reform as well as submitting

entries in the handling of disputes and agrarian conflicts not in accordance with the concept of public participation which should include all stages of activities in the form of planning, implementation and supervision. The Agrarian Reform Commission stated in its evaluation that currently the mechanism for determining the Land for Agrarian Reform Objects (TORA) is still top down or only determined by the government, even though at this stage the active role of the community is really needed even determining the successful implementation of agrarian reform. (Agrarian Reform Commission, 2017).

The substance of the article clearly only limits it in the activity planning stage and there is no regulation regarding community participation in the implementation or supervision stages. In fact, in fact at the three stages the community was involved. This is important to make the community feel part of an agrarian reform program and take responsibility for its success. This public participation will be carried out if it is based on an open government based on three principles, namely: (Baba et.al Catalin, 2009).

1. Transparent, namely the community can supervise the activities planned and carried out by the government.
2. Accessibility, namely public information about government activities that can be accessed by the public anytime and anywhere;
3. Responsive namely the government is able to respond to the needs and requests submitted by the community. Regarding this responsive government, Nonet and Selznick stated in their book *Law in Transition: Toward A Responsive Law* that responsive law is aspirational law and oriented towards achieving goals. In this law, the community and the government work together to achieve the stated goals. It is at this point that politics and law are intertwined rather than in repressive law where law becomes an instrument of power or an autonomous legal type that separates law from various other aspects of life including politics. (Nonet Philippe and Shelznick Philip, 1978).

The openness of information that can be accessed by the public at each stage of the policy seems not to have been implemented in the context of agrarian reform. This is proven by the issuance of the Coordinating Ministry for Economic Affairs Circular Letter No. TAN.03.01 / 265 / D.II.M.EKON / 05/2019 which requires the Indonesian Palm Oil Board (DMSI), the Indonesian Palm Oil Association and all oil palm companies to keep data and strategic information on palm oil confidential. Secondly, it requires ministries / institutions and regional governments to keep information about the rights to cultivate (HGU) owned by oil palm companies so that the information cannot be accessed by the public. Third, it requires ministries and companies not to cooperate or make agreements with Non-Governmental Organizations (Civil Society Organizations) relating to the right to use the land owned by oil palm companies in Indonesia.

The substance of this Circular Letter has been closed access to the public and non-governmental organizations to obtain information about the right to use the business. This Coordinating Ministry of Economic Affairs Circular Letter is also not in line with the Supreme Court Decision (MA) Number 057 / XII / KIP-PS-MA / 2015 Juncto Supreme Court Decision Number 121 K / TUN / 2017 which imposes obligations for the government namely the Ministry of Agrarian Affairs National Land Space / Agency to open information on Cultivation Rights that are valid until 2016. This circular letter also contradicts Article 10 paragraph (1) and Article 11 paragraph (2) of Law Number 14 Year 2008 concerning Transparency of Public Information that requires the body public to disclose public information including data relating to the rights to cultivate plantations, including oil palm plantations.

This Coordinating Minister for Economic Affairs Circular is not only incompatible with the Supreme Court's Decision, it will also cause the community to lose access and not be able to supervise the granting and use of the right to use a business. In fact, this supervision is a very important thing because the land granted by the Cultivation Right is very broad and certainly affects the equity of land ownership in Indonesia. According to the Minister of Agrarian Spatial Planning / National Land Agency the area of HGU for oil palm plantations reaches fifteen million hectares. (Presidential Staff Office, 2017) Monitoring of such land area is important to prevent land ownership imbalance. In Sulation Rongiyati's view, agrarian reform is not only limited to changes in land tenure and ownership but is broader than that because it also includes oversight of land rights.(Rongiyati Sulasi, 2013).

The link between information disclosure and inequality in land ownership was also reviewed by Eko Cahyono in his article entitled opening the Pandora's Right to Use Box. According to him, the creation of economic inequality from developed countries which then spreads in developing countries is caused by asymmetric information that creates various risks of crime and injustice, corruption, hegemony and oligopoly created by parties who have authority in the information field. Ian Weinstein mentioned that access to information is very important in efforts to overcome poverty because it is through access to information that people can take advantage of and participate in a program that aims to change their welfare. (Weinstein Ian, 2017).

This condition is in line with Yakob Sese Tolo's research that inequality in land tenure in Indonesia is caused by land grabbing and control of aristocratic groups which has an impact on the formation of social classes in the community. It was also stated that the accumulation of land by certain parties was the source of poverty. (Tolo Yakob Sese, 2016) Darmin Nasution said that inequality in land tenure is one of the causes of high inequality in Indonesia. (Nasution Darmin, 2017) Weaknesses in the implementation of agrarian reform which is supported by information disclosure has led to inequality in land ownership, leading

to the group of homelessness or landlessness that ultimately triggers exploitation and threatens the fulfillment of the economic, social and political needs of these community groups. (Wiradi Gunawan and Bachriadi Dianto, 2011).

Endang Suhendar said that the limited land tenure is a major problem of land ownership in Indonesia which is correlated with high poverty rates. Until 2017, it was noted that 4.5 to 9 million Indonesians do not have access to land. (Suhendar Endang, 1995) Whereas based on Article 7 paragraph (1) MPR Decree No. 16 / MPR / 1998 concerning Economic Politics in the Framework of Economic Democracy stipulates that the management and use of land and other natural resources should be carried out fairly and eliminate the concentration of land ownership and control. One form of justice is the existence of equal ownership of land by the community so that there are no Indonesian people who do not own land.

Openness of public information regarding data on land use rights especially those belonging to oil palm plantations is also important to ensure that later abandoned HGU lands can be monitored and reported by the community to be determined as objects of agrarian reform and then redistributed to people who do not own land or smallholders who are landless. has a very narrow land. The disclosure of information about the right to cultivate in the plantation sector including oil palm plantations is also related to agrarian reform launched by President Jokowi is an agrarian reform that focuses on redistribution of forestry lands and plantations. This is because 63% of Indonesia's land area is forest area. In this case, it is targeted 4.5 million lands from forest areas to be distributed in agrarian reform. (National Human Rights Commission, 2017-2018).

In addition, there are also plantation lands which become the land of agrarian reform objects (TORA) which can be redistributed for smallholders. Hadi Daryanto in his address at the Seminar on Agrarian Reform Research Results stated that the 56% of plantation land (Hak Guna Usaha) was only controlled by 0.2% of Indonesia's population. (Daryanto Hadi, 2014) This condition shows the imbalance in land ownership in Indonesia. For this reason, these two fields are the main focus of land redistribution in Indonesia.

In the description above, it has been discussed about the element of substance in the theory of the legal system that was developed by Lawrence M. Friedman. Other elements of the legal system are structural elements. Structure relating to institutions that work in a legal system. The authority, number, hierarchy and also the role of the institution are the discourse in the discussion of this element. (Friedmann Lawrence M, 1975) In this regard, agrarian reform is a cross-sectoral policy so that the institutions involved in it start from the Ministry of Agrarian Spatial Planning / National Land Agency, the Ministry of Environment and Forestry and various other institutions. Agrarian reform as a cross-sectoral policy seems to cause various

problems such as information disjunctions marked by data differences, information disputes to various other problems.

Policies between ministries related to agrarian reform also tend to be sectoral and not integrated. In the Forest Watch report, it was stated that in 2010 to 2015, most information disputes occurred in the natural resource sector, including the land sector, which was 29%. Institutions related to natural resources that experience the most information disputes are the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency at the ministerial level, regional offices to district / city land offices. This institution is also the most closed institution compared to other institutions. (Rosalina Linda) Understanding the complexity of the problems in the structural aspects, the Agrarian Reform Commission has proposed the establishment of the Agrarian Reform Authority Agency or the National Agrarian Reform Council. This institution also has branches at the regional level and also at the district / city level. The existence of this agency is expected to improve the quality of policies related to agrarian reform and also the effectiveness of its implementation.

The third element in the theory of the legal system proposed by Lawrence M. Friedman is an element of legal culture. Legal culture is defined as opinions, ways of thinking and ways of acting related to law. legal culture is related to values and social life. This legal culture can be divided into two, namely internal legal culture and external legal culture. Internal legal culture is related to government officials' understanding of law while external legal culture is related to people's way of thinking and understanding of law. (Friedmann Lawrence M, 1975) Regarding the internal legal culture, government officials still argue that social forestry is part of agrarian reform. Though this activity cannot be seen as part of an agrarian reform because it only provides an opportunity for the community to control and work on a plot of land within a certain period of time. This means that the program does not give ownership to the community even though the core of agrarian reform is the redistribution which gives the community ownership of land and the legalization of assets.

This social forestry is regulated in Minister of Environment and Forestry Regulation No. P. 83 / MENLHK / SETJEN / KUM.1 / 10/2016 concerning National Forestry. In this regulation it is stated that social forestry is the access of the community to utilize a piece of land in a forest area for a certain period of time, namely for 35 years, which every 5 years will be evaluated. Moreover, in this regulation, social forestry cannot be implemented in areas that have forest areas not reaching 30%. This resulted in the Java, Bali and Lampung regions being unable to become objects of this program. (Agrarian Reform Consortium, 2017).

The weaknesses of agrarian reform both in terms of substance, structure and legal culture cause agrarian conflicts. Based on the Agrarian Reform Consortium data, for three years namely 2015 to 2017 there were 1361 agrarian conflicts. Most conflicts occurred in the

plantation sector as many as 208 conflicts or 32% of the total conflicts. The second sector with the most conflicts is the property sector, namely 199 conflicts or 30%. Followed by the infrastructure sector as many as 94 conflicts or 14%. Then the conflict in the forestry sector is 30 or 5% of the conflict. In the coastal and marine sector there were 28 conflicts or 4%. (Agrarian Reform Consortium, 2017).

The above description shows that there are weaknesses in agrarian reform today both in the substance, structure and legal culture. This condition results in social injustice characterized by inequality in land ownership in Indonesia. This also resulted in various agrarian conflicts. The many conflicts that occur in the field of agrarian and the level of poverty experienced by farmers is a reality that shows the need for new ideas in agrarian reform both in the context of policy and implementation. The change in agrarian reform should rightly lead to the realization of social justice, namely people's welfare and integration as a methodology.

Constructing Integrated Agrarian Reform Based on Social Justice

Moh. Hatta argued that welfare as one of the goals of the state could be achieved through the realization of social justice as the main foundation for the administration of the state. (Hatta Bung, 2015) The relationship between social justice in Pancasila and welfare is indeed very close, even Kaelan states that social justice is the core values of the welfare state. (Kaelan, 2013) The demand for justice requires not only the existence of a social system but also the way the social system works must be fair to all parties and its implementation guarantees the protection of the existence of all parties. Social justice is also related to the distribution of national goods and services. In order to create a fair distribution, it is necessary to consider the interests of the weak. This protection against the weak is part of social justice.

In this regard, Frans Magniz Suseno stated that the state is not a neutral institution. The state must take sides with the weak economy to overcome poverty. (Suseno Franz Magnis, 1994) Based on the description above, justice can be interpreted as creating a just social structure, a fair distribution mechanism and attention to the weak. In connection with this, changes are needed to the agrarian reform regulations which only provide opportunities for farmers who control land of 0.25 hectares or less. In fact, in Indonesia ideally every farmer controls 2 hectares of land. In this case, smallholders who control land of two hectares or less than the area should also be the subject of agrarian reform (Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, 2020: 765-774). Especially at this time there are still many Indonesian farmers who control only 0.5 hectares of land which is also important to be the subject of agrarian reform to improve their welfare.

At the same time, it is also necessary to evaluate or prioritize the agrarian reform subject. This is due to the fact that this regulation does not accommodate small-scale farmers who

control land over 0.25 hectares but accommodates Civil Servants Group III / a as well as the Army and Police with the rank of Inspector Two. In this regard, the priority scale of agrarian reform subjects is needed. This is also in line with the theory of justice proposed by John Rawls that there are two principles of justice, namely: (Rawls John, 1971).

1. Every human being has the same right to basic freedoms
2. Inequality in social and economic conditions in society must be regulated so that:
 - a. Providing benefits to disadvantaged person
 - b. Everyone has the same opportunity to fill a position or position

Based on these two principles, it is fitting for farmers to be prioritized in obtaining redistribution of agrarian reform land compared to other groups. This is due to small farmers and small farmers included in disadvantaged people because they live in poverty as the data the author has stated. The categorization of the poor as disadvantaged people was, among others, stated by Samuel Herbert Nsubuga. (Nsubunga Samuel Herbert, 2015) This is also in line with Nur Hasan Ismail's statement that the land policy must demonstrate equality, namely giving attention to disadvantaged people. (Ismail Nur Hasan, 2012) The attention can be in the form of ease in obtaining land to support his life. This is different from Presidential Regulation No. 86 of 2018 concerning Agrarian Reform which excludes smallholders who control only 0.26 to 0.5 hectares of land and small farmers who control only 0.6 to 1.9 hectares of land as the subject of agrarian reform. The two groups should have been included as subjects of agrarian reform because land ownership has not yet reached the ideal area of two hectares.

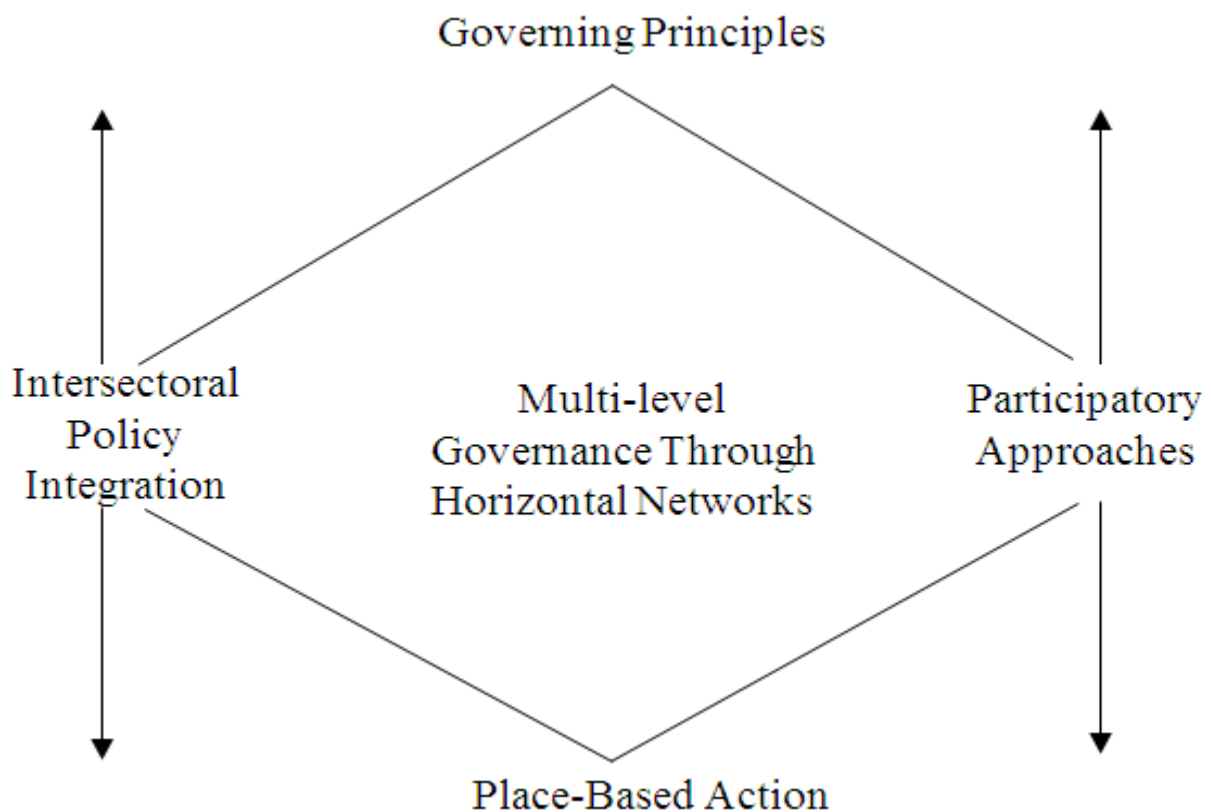
Justice in agrarian reform should be supported by integration. According to Friederich Heckmann (Heckmann et.al Friedrich, 2006) and Hayley Anderson (Anderson Hayley, 2006), cohesiveness emphasizes communication and cooperative relations between related parties. The integration shows the involvement of all parties in making and implementing a policy. This concept of cohesiveness shows that the community as a related party should also be included in the policy making and implementation. In fact, the community is also given space to influence the policies that will be produced. Through this concept, the aspirations and cultural characteristics of the community can be accommodated in agrarian reform so that a policy has the support of the community.

The existence of this integration will also harmonize, end differences in policies and improve coordination between relevant agencies. The alignment of policies and coordination between relevant agencies will certainly prevent conflicts between government agencies and create legal certainty in agrarian reform. Agrarian reform is important to be implemented in an integrated manner because this policy is related to cross-ministries and also very influential on people's welfare. The relevant ministries are the Ministry of Agrarian Spatial Planning /

National Land Agency (Lego Karjoko, Djoko Wahyu Winarno, Zaidah Nur Rosidah, I Gusti Ayu Ketut Rachmi Handayani, 2020), the Ministry of Environment and Forestry, the Ministry of Maritime Affairs and Fisheries, the Ministry of Energy and Mineral Resources and the Presidential Staff Office.

This integration is both vertical alignment and horizontal integration. Vertical cohesiveness is cohesiveness between government agencies that have different hierarchies and between government agencies and the community. This integration is related to coordination or cooperation between agencies at the central level and agencies in the regions and involving the community. Horizontal cohesiveness is integration between government agencies that have an equal level. (Anderson Hayley, 2006)

This integrated agrarian reform is based on the concept presented by Shannon, which can be illustrated in the following form: (Shannon M.A., 2001)



Source: Shannon, 2002 : 23

Based on this exercise, the elements of integrated agrarian reform can be explained as follows:

1. Governing principle, namely the principle that underlies the policy to be made. In this case, the principle underlying agrarian reform is the principle of justice. This justice is the foundation of national agrarian policy. Since its inception, national agrarian law was aimed at creating justice for the Indonesian people, especially farmers who were treated unfairly in the colonial period. One form of justice in the agrarian sector is the existence of equitable land ownership and open access for people to own land.
2. Place based action, namely agrarian reform policies must be contextual. Agrarian reform must be adapted to the conditions and culture of the local community. Jimly Ashshidique introduced cultural reading, that is reading a legal text including regulations on agrarian reform in accordance with the culture of society. (Asshiddiqie Jimly, 2017) Contextuality in agrarian reform policies should also be carried out at the level of implementation.
3. Intersectoral policy integration, namely cooperation between government sectors. The collaboration is good between agencies related to agrarian reform in an equal position or between agencies in an unequal position
4. A meaningful participatory approach opens space for community participation and non-governmental organizations.

The relationship of the four components will result in a policy that has multiple levels through horizontal network policy, which is a policy that opens space for public participation and coordination between relevant parties both between government agencies and between government agencies and the community. This integrated policy is also based on the value of justice and contextual. Justice and contextuality are two things that can not be separated even Menski states that justice is culture specific or related to the culture of the people concerned (contextual). (Menski Werner, 2006).

This integrated agrarian reform should also be based on information disclosure by the government. The disclosure of information includes the extent of land rights that have been given let alone the main focus of the current agrarian reform is the redistribution of lands in forests and plantations. Through the disclosure of information, an analysis of the problems can be faced, mapping the problems and also formulating policies to overcome the problem of agrarian reform together.

Conclusions and Recommendations

Based on the entire description in the discussion section, it can be concluded that: first, based on the legal system theory proposed by Lawrence Meir Friedmann, agrarian reform in Indonesia currently experiences weaknesses in the three elements of the legal system, namely: (1) elements of the legal substance namely the Presidential Regulation No. 86 of 2028 on Agrarian Reform has two weaknesses, namely: (a) does not accommodate small farmers who control land above 0.25 to 0.5 hectares and small farmers who control land

above 0.5 hectares to 1.99 hectares the subject of agrarian reform. (b) the regulation also determines the existence of a minimum threshold of public participation, namely proposals, recipients and types of access arrangements in agrarian reform and the submission of entries in the handling of agrarian disputes and conflicts. This shows that community involvement does not cover all stages of agrarian reform. (2) structural elements are also still problematic due to the lack of integration of data and information among relevant agencies. (3) elements of legal culture, namely employees of related institutions place social forestry as part of agrarian reform even though this program is not a form of land redistribution but only gives authority to the community to control and utilize forest land for 35 years and be evaluated every five years.

Second, the construction of integrated agrarian reform based on justice is: (1) based on justice, namely giving special attention and treatment to the weak; (2) vertical integration, that is integration between agencies at an unequal level and integration between government and society and horizontal integration, that is integration between equivalent agencies; (3) contextual that is based on an understanding of the economic, social and cultural conditions of the community concerned; (4) based on community participation and also non-governmental organizations. This integrated agrarian reform should also be based on information disclosure among the parties involved.

Based on this description, the author recommends two things, namely: first, the amendment to the laws and regulations on agrarian reform which is unfair and does not accommodate public participation in every stage of agrarian reform. Secondly, the change from agrarian reform that is still sectoral, non-participatory and unjust becomes an integrated agrarian reform based on justice.

REFERENCES

- Achdian, A. (2008). Land for farmers: Land reform in the period of guided democracy 1960-1965. Bogor: Eternal Press.
- Anderson, Hayley. (2015). conceptualising integration in policy and practice: A case study of integrated planning in Melbourne. State of Australian Cites Conference.
- Aprianto, T. C. (2014). Agrarian reform: A momentum of justice and welfare. *Bhumi Journal*, No. 39 Year 13, April 2014.
- Arisaputra, M. I. (2013). Application of good governance principles in implementing agrarian reform in Indonesia. *Yuridika*, Volume 28, No. 2, 123-147.
- Asshiddiqie, J. (2017). Cultural constitution and cultural constitution. Malang: Intrans Publishing.
- Baba et.al, Catalin. (2009). Public Participation in the Public Policy Process: Case Study in Seven Countries from North-Western Region of Romania. *Transylvanian Review of Administrative Science*, 26 e / 2009.
- Bachriadi, D. and Wiradi, G. (2011). Six decades of inequality in land tenure problems in Indonesia, Bandung: Arcamanik.
- Basarah, A. and Hasanuddin, T. (2016). Pancasila History and spirituality: Reflections on the 67th anniversary of the birth of Pancasila, Indonesian Democratic Party of Struggle MPR Struggle.
- BPS (2017c) Official Gazette Statistics No. 47/05 / Th. XX, retrieved 05 May 2017. https://www.bps.go.id/website/brs_ind/brsInd-20170505104425.pdf
- Bung, H. (2015). Prosperity and Justice, (Jakarta; LP3ES, 2015)
- Cahyono, E. (2019). Opens pandora's box for cultivation rights, Tempo Newspaper.
- Chomzah, A. A. (2003). Agrarian law (Indonesian Land), Jakarta: Literature Achievement Publisher.
- Cohen, J.M. and Uphoff, N.T. (1980). Participation's place in rural development seeking clarity through specificity. *World Development*, Volume 8 No. 3, 123-135.
- Consortium for Agrarian Reform, (2017). Agrarian reform under the shadow of investment: Large echoes on the side of the road, Jakarta: KPA.



- Creighton, J.L (2005). The public participation handbook: Making better decisions through citizen involvement, San Francisco: Jossey Bass.
- Daryanto, H. (2014). Agrarian Reform to Support Good Forestry Governance. Proceedings of the Seminar on Research Results. Jakarta: Center for Forestry Research and Development, Ministry of Forestry, 2014.
- Decision of the Constitutional Court of the Republic of Indonesia Case No. 3 / PUU-VII / 2010 concerning Judicial Review of Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands to the 1945 Constitution of the Republic of Indonesia
- Doly, D. (2017). State authority in land control: Land redistribution to the people. Rule of Law, Vol. 8 No. 2, 159-169.
- Friedmann, L. M. (1975). The legal system: A social science perspective, New York: Russell Sage Foundation.
- Hart, H.L.A., (1961). The Concept of Law, Second Edition, Oxford: Clarendon Press.
- Huzaini, Moh. Dani Pratama. (2019). Polemics on openness of information on cultivation rights, here's an explanation from the Minister of ATR / BPN. Online law. Com. Monday, May 20, 2019. Accessed from <https://www.hukumonline.com/berita/baca/1t5ce27beb8f8de/polemic-from-transparency-information-hgu--begini-explaining-menter-atr-bpn> at 10.12 WITA
- Ismail, N. H. (2012). Political direction of land law and protection of community ownership. Rechtsvinding Journal, Vol. 1 No. 1, 147-158.
- Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, (2019). Executability of the constitutional court decision regarding grace period in the formulation of legislation, *International Journal of Advanced Science and Technology* Vol. 28, No. 15, Page. 816-823
- Jaelani, A.K, Handayani, I.G.A.K.R, and Karjoko, L. (2020). Development of tourism based on geographic indication towards to Welfare State, *International Journal of Advanced Science and Technology* Vol. 29, No. 3s, Page. 1227-1234.
- Jaelani, A.K, Handayani, I.G.A.K.R, and Karjoko, L. (20202). Development of halal tourism destinations in the era of regional autonomy in West Nusa Tenggara Province”, *International Journal of Innovation, Creativity and Change*, Volume 12, Issue 12, Page. 765-774
- Linda, N. (2019). Factors that influence land tenure in Jambi Province. Journal of Agricultural and Agribusiness Economics, Vol. 3, No. 2, 123-136.



- MaHFud MD et.al, Mohammad, (2010). Comprehensive Text on Amendments to the 1945 Constitution of the Republic of Indonesia: Background, Process and Results of Discussion 1999-2002, (Jakarta: Secretariat General and Registrar of the Constitutional Court, 2010)
- Menski, W. (2006). Comparative law in global context: The legal system of Asia and Africa, Second Edition, UK: Cambridge University Press.
- Nasution, D. (2017). The importance of understanding inequality in indonesia: facts and strategies to overcome inequality, Presented in Indonesia Development Forum, 10 August 2017.
- National Commission on Human Rights, (2017). Position Paper for the Acceleration of Settlement of Agrarian Conflicts in the Framework of Agrarian Reform with Human Rights Basis 2017-2018, Jakarta: KOMNASHAM
- Nonet, P. and Selznick, P. (1978). Law and society in transition: Toward responsive law, New York: Harper and Row Publishers.
- Nsubuga, S. H. (2015). Marginalised and vulnerable people of uganda. A Research Report.
- Nurhayati, R., Gumbira, S.W., Tejomurti, K., (2020). Rights of freedom of expressing community organizations in Indonesia after law number 16 of 2017 concerning community organizations, *International Journal of Advanced Science and Technology*, Volume 28(20), pp. 510-518
- Nurhayati, R., Gumbira, S.W., Tejomurti, K., (2020). Rights of freedom of expressing community organizations in Indonesia after law number 16 of 2017 concerning community organizations, *International Journal of Advanced Science and Technology*, Volume 28(20), pp. 510-518
- Nurhayati, R., Gumbira, S.W., Tejomurti, K., (2020). Rights of freedom of expressing community organizations in Indonesia after law number 16 of 2017 concerning community organizations, *International Journal of Advanced Science and Technology*, Volume 28(20), pp. 510-518
- Paine, T. (2017). Agrarian Justice, Creative Commons.
- Presidential Staff Office, (2017). Direction of Presidential Staff Office: National Agrarian Reform Priorities in Government Work Plans.
- Rawls, J. (1971). A theory of justice, United State of America: The President and Fellows of Harvard College.



- Shihobudin, M. (2018). Straightening the Narrative of Agrarian Inequality, Kompas.
- Suhendar, E. (1995). Inequality of land tenure in West Java, Bandung: Akatiga.
- Sukarno, (2015). Pancasila philosophy according to Bung Karno. Matter I, Jakarta: P.T. Exciting Book.
- Suseno, F. M. (194). Political ethics: Basic moral principles of modern statehood, Fourth Matter, Jakarta: P.T. Gramedia Pustaka Utama.
- Tolo, E. Y. S. (2013). Agrarian reform and the Indonesian workers' alliance. Journal of Social Sciences and Political Sciences, Volume 16, Number 3, 123-136.
- Weinstein, I. (2017). Coordinating Access to Justice for Low and Moderate Income People. Journal of Legis and Public Policy, Vol. 20, 501.
- Winarso, B. (2012). The dynamics of rice field mastery pattern in pedesaab region in Indonesia. Journal of Applied Agriculture Research Vol. 12, No. 3, 147-158.
- Wiradi, G. (2009). Agrarian reform: An unending journey, Bandung: Akatiga.