

Presidential Decree Number 62 of 2023: Distortion Regulation or Acceleration Solution for Agrarian Reform?

Rahmat Ramadhani, Ida Hanifah, Farid Wajdi

Law Doctoral Program, Postgraduate Program of Universitas Muhammadiyah Sumatera Utara,
Medan, Indonesia

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Corresponding Author. Email:
rahmatramadhani@umsu.ac.id

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Abstract

The implementation of Presidential Decree No. 62 of 2023 has substantively attempted to integrate several regulations at technically applicable level; however, on the other hand, it still raises several problems, particularly in relation to the provision of land for agrarian reform objects, land originating from forest areas. This study aimed to analyze the implementation of Presidential Decree No. 62 of 2023 as the latest regulation regarding the acceleration of agrarian reform activities in Indonesia as an effort to recognize that land is the greatest source of wealth for people as ordered by the constitution. To analyze the problem, the method used is type study law normative. One of the factors inhibiting agrarian reform from seeming slow in creating just and prosperous land is the dis-harmonization of regulations, that cause legal gaps. The method used is normative legal research with a statutory regulation approach. The sectoral egos and legal gaps can be put aside and released to joint policies between related institutions, and agrarian reform can achieve its main essence; namely making land a source of the greatest prosperity for people. The results show that regulatory disharmony has narrowed the space for implementing agrarian reform. The advice given in this paper is to create an acceleration of agrarian reform that is right on target in accordance with the targets set, all implementing stakeholders must comply with the norms set out in the Presidential Decree in question. Thus, it is feared that Presidential Decree No. 62 of 2023 will become a regulatory distortion, even though its implementation aimed to provide a regulatory solution in the context of accelerating agrarian reform in Indonesia.

1. Introduction

Agrarian reform is commonly interpreted as an effort to reorganize the order of control, ownership, possession, and the use of land in a better direction. According to Krishna Ghimire, as stated by Bernhard Limbong, agrarian reform is a major change to the agrarian structure that has an impact on increasing the access of poor landless farmers to prosperity as a positive impact of the change in the agrarian structure in question.¹ Agrarian reform is one of the policy concepts adopted by various countries to overcome problem of land rights inequality and how to improve people's well-being.² The goal is closely related to the existence of Indonesia, as an agricultural country where the land is crucial for the survival of people.³

Several countries in the world have also used agrarian reform as a solution to overcome the problems of managing agrarian resources in the land aspect that occur in each country; such as France (1789), Bulgaria (1880s), Russia (1917), several countries in Asia such as China (1920–1930), and Japan, that began during Meiji reform and reached its peak during American occupation and post-World War II. The agrarian reform continued in South Korea and Taiwan; even in the 1950–1960 era, it spread to Asia, Africa, and Latin America.⁴

The agrarian reform implemented in Indonesia is the implementation of land reform principles as contained in Articles 7, 10, and 17 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations. In its development, the concept of land reform then metamorphosed into an agrarian reform program that did not only focus on alleviating inequality in land control and ownership but also on aspects of improving community welfare through aspects of community empowerment based on land rights. The implementation of land reform articles in the conception of agrarian reform rolled out by the government is actually part of the realization of the constitutional mandate of Article 33, paragraph (3), of the 1945 Constitution to make the land a source of the greatest prosperity of the people.

Article 33, paragraph (3) of the 1945 Indonesian Constitution is intended to be the basis for the constitutional right for Indonesian people to access prosperity that originates from land. Since the constitutional rights included in a constitution will become a part of the constitution; all branches of state power are obliged to respect them.⁵ For this reason, a country's legal system must be used to accommodate the interests of the state or society at large so that state functions can run effectively to ensure respect for the people's rights.⁶ Caused only the people have magic religious relation with the land, and have priority right to land.

The Indonesian constitutional mandate referred to was then confirmed in the Decree of People's Consultative Assembly Number IX/MPR/2021 on November 9th, 2001, concerning Agrarian Reform and Management of Natural Resources (hereinafter called TAP MPR). The mandate of the constitution and the directives of TAP MPR were then accommodated by the government in issuing various regulations as legal references for implementing agrarian reform in Indonesia. One of the regulations that is considered capable of translating constitutional orders and TAP MPR throughout the history of agrarian reform in Indonesia is Presidential Decree No. 86 of 2018 on Agrarian Reform, although it still seems to be progressing slowly in realizing just and prosperous land rights. One of the causes is the inability of Executive Order No. 86 of 2018 to Break the Stronghold of Regulatory Disharmony; that is blocking space for agrarian reform to achieve its goal, namely making land the greatest source of prosperity for people.

On October 3, 2023, Presidential Decree No. 62 of 2023 concerning the Acceleration of Implementation of Agrarian Reform (Presidential Decree No. 62 of 2023) was legally implemented and promulgated in the State

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- 1 Subhan Zein, "Reformasi Agraria Dari Dulu Hingga Sekarang Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 9, no. 2 (2019): 126.
 - 2 Muhammad Febri Ramdani and Martua Sihaloho, "Implementation of Agrarian Policy and Land Tenure Inequality (Case of Ex-HGU Land in Cipeuteuy Village, Kembangan District, Sukabumi Regency, West Java Province)," *Jurnal Sains Komunikasi Dan Pengembangan Masyarakat [JSKPM]* 4, no. 6 (2020): 733.
 - 3 Ahyar Ari Gayo, "Legal Protection for Title over Customary Land (Case Study in the Province of Aceh in Particular, the Regency of Bener Meriah)," *Jurnal Penelitian Hukum De Jure* 18, no. 3 (2018): 290.
 - 4 Oswar Mungkasa, "Reforma Agraria: Sejarah Konsep Dan Implementasi," 2020, https://www.researchgate.net/publication/343149830_Reforma_Agraria_Sejarah_Konsep_dan_Implementasi.
 - 5 Benito Asdhie Kodiyat MS and Eza Ista Maulida Sinaga, "Kewenangan Mahkamah Konstitusi Dalam Perlindungan Hak Konstitusional Warga Negara Melalui Konstitusional Complaint," *De Lega Lata: Jurnal Ilmu Hukum* 4, no. 2 (2019): 164.
 - 6 Andryan et al., "An Analysis of the Indonesian Government Policy on the Lockdown from the Perspective of Human Rights," in *Proceedings of the 1st International Conference on Law and Human Rights 2020 (ICLHR 2020)*, 2020, 422.

Gazette of the Republic of Indonesia of 2023, Number 126. The Presidential's regulation consists of XII (twelve) chapters and 78 articles, accompanied by an attachment in the form of a Table of Action Plans for accelerating the implementation of agrarian reform. Chapter and Presidential Decree No. 86 of 2018 concerning Agrarian Reform (State Gazette of the Republic of Indonesia of 2018 Number 1721).

From the regulatory framework in Presidential Decree No. 62 of 2023, it can be seen that it has substantively attempted to integrate several regulations at a technically applicable level, but on the other hand, it still raises several problems, particularly relating to the provision of land for agrarian reform objects originating from forest areas. Thus, it is feared that Presidential Decree No. 62 of 2023 will become a regulatory distortion, even though the initial aim of its implementation was to provide a regulatory solution in the context of accelerating agrarian reform in Indonesia to achieve its main essence, namely making land a source of the greatest prosperity for people.

Not many scientific papers have used Presidential Decree No. 62 of 2023 as the subject of discussion due to its relatively recent implementation. However, as a literature review, several previous scientific papers raised the theme of agrarian reform, including a journal written by Retno Sulistyaningsih entitled "Indonesian Agrarian Reform", Ahmad Nashih Luthfi entitled "Institutional Reform in Joko Widodo Era Agrarian Reform Policy-Jusuf Kalla", Subhan Zein entitled "Agrarian Reform From Past to Present in Indonesia" Fredick Broven Ekayanta entitled "The Absence of Agrarian Reform, Food Sovereignty, and Redistribution in the Indonesian Formal Political Arena" and Suci Rahmadani and Muhammad Imanuddin Kandias Saraan entitled "Dynamics of Development Agrarian Reform in Indonesia".

In general, the studies presented in scientific papers in the form of journals, discuss agrarian reform from a regulatory and policy perspective. This is different from the studies currently being done to analyze administrative Order A rule of 62 passed. Accelerating the implementation of agrarian reform in Indonesia with its various possibilities, thus producing something new from this research. The novelty lies in this study, that seeks to see the ability of the implementation of Presidential Decree No. 62 of 2023 as a regulatory solution to the problem of legal disharmony and various obstacles that are factors inhibiting the implementation of agrarian reform in Indonesia. The urgency of the research lies in the analysis carried out, namely on the possibility of legal implications arising from the implementation of Presidential Decree No. 62 of 2023; so that it does not turn into a regulatory distortion that only simplifies the rules and leaves aside various other legal aspects in relation to realization of agrarian reform.

The problems identified in these studies are related to weak factors in the implementation of agrarian reform based on Presidential Decree No. 86 of 2018; and strategies and actions for accelerating agrarian reform based on Presidential Decree No. 62 of 2023, that are then arranged into two problem formulations, namely as follows: What factors cause of the slow pace of agrarian reform in realizing just and prosperous land? Is Presidential Decree No. 62 of 2023 a regulatory distortion or a regulatory solution to accelerate agrarian reform?

2. Method

A scientific method is needed to answer problems in something research, thus a method study is useful for solving a problem or developing knowledge.⁷ To analyze the problem, the method used is type study law normative, that is, the study that puts law as a building block of a norm system.⁸ Norms, rules, and principles of laws related to objectives. Because this research is normative legal research, secondary data is used, including material for primary, secondary, and tertiary laws, that will be collected in this way through studies of literature (library *research*), that is later processed and analyzed in a qualitative approach. legislation (the *statute approach*); namely, the approach using legislation and regulations.⁹ The data collection tool used is library research. The data obtained was then analyzed qualitatively and described descriptively

7 Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Jakarta: Kencana Prenadamedia Grup, 2021): 3.

8 Mukti Fajar and Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris* (Yogyakarta: Pustaka Pelajar, 2019): 34.

9 Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Revisi* (Jakarta: Kencana, 2021): 47.

3. Findings and Discussion

3.1 Factors Causing the Slowness of Agrarian Reform in Realizing a Just and Prosperous Land

The concept of agrarian reform requires the creation of fair land rights and is able to create prosperity for the Indonesian people. The strategy put forward by the government to implement this concept is in the form of legalization of assets and redistribution of land, economic empowerment of agrarian reform subjects, agrarian reform institutions, and community participation. The application of agrarian reform is carried out through a series of activities between asset management and access management. It means that access management is an integral part of asset management activities.

Asset structuring is carried out to ensure legal certainty of land rights through the issuance of land rights certificates as an effort to realize legal order and orderly land administration so that the plot of land becomes a living asset and basic capital for the community to improve its welfare by providing access to resources economics such as capital, business, production, and markets.¹⁰ This is based on the fact that the essence of land for human life contains multidimensional meaning.¹¹ According to Heru Nugroho, one of the economic aspects is that land is a means of production that can bring prosperity.¹²

The agrarian reform that has been implemented so far in Indonesia, apart from realizing its essential goal; namely making land a source of the greatest prosperity for the people, is also a means for the government to resolve and alleviate the problem of inequality in land management that is currently occurring. Some of the issues in question are as follows:

First, land ownership inequality: the average Gini ratio for agricultural land ownership in Indonesia is 0.479; on Java Island, it is 0.460; and outside Java, it is 0.469.2. Second, the number of land disputes reached 8,959 cases, consisting of 56% disputes between communities in the form of boundary disputes between neighbors and neighbors, 15% disputes between individuals and legal entities, disputes between individual communities and legal entities, and 1% disputes between legal entities and legal entities. 28% of other disputes are between the community and the government and between communities. Third, the issue of land conversion: during 2013–2019, there was a reduction in the standard area of rice fields by 287,000 hectares, and the standard area of rice fields in 2019 was 7.46 million hectares. Fourth, there are 5,217 abandoned land plots, originating from 1,172 plots of cultivation rights, 3,113 building use rights, 18 plots of use rights in the form of management rights with a term, 70 plots of use rights without a term, 160 management rights, and land acquisition data for 675 plots.¹³

To overcome this problem, the direction of national development policy is based on Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005–2025. Presidential Decree No. 18 of 2020 concerning the 2020–2024 National Medium-Term Development Plan has targeted land certification for 9 million hectares through agrarian reform activities consisting of 4.5 million hectares through land redistribution activities and 4.5 million hectares through asset legalization activities.¹⁴

As recorded in documented legal material sources, in 2020 the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency realized asset management in the form of land redistribution of 1,189,748 hectares (26.44%), with a total of 1,830,034 plots of land subject to agrarian reform originating from the release of 398,645 plots with an area of 223,686 hectares and 1,431,389 parcels of land with former cultivation rights for abandoned land and another state land with an area of 966,062 hectares, thus leaving a backlog (remaining target) of 3,310,252 hectares (73.56%).¹⁵

10 Direktorat Pemberdayaan Tanah Masyarakat Direktorat Jendral Penataan Agraria Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, “Petunjuk Teknis Penanganan Akses Reforma Agraria Tahun 2023” (Jakarta: Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional, 2023): 5.

11 Wayan Resmini, “Hak Atas Tanah Adat Dan Permasalahannya,” *Ganec Swara: Media Informasi Ilmiah UNMAS Denpasar Kampus Mataram* 13, no. 1 (2019): 121.

12 Resmini: 121

13 Andi Tenrisau, “Roadmap Reforma Agraria: 2020–2024,” Materi Pemaparan Direktorat Jendral Penataan Agraria Kementerian Agraria Dan Tata Ruang/Badan Pertanahan Nasional (Jakarta, 2020): 5.

14 Tenrisau: 5.

15 Tenrisau: 5.

From the achievement of the targets mentioned above, in 2020, capital access arrangements were implemented for 57,034 heads of families (4.24%) of the total target of the Strategic Plan of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency of 1,344,967 heads of families.¹⁶ Several regions in Indonesia have implemented post-land redistribution capital access arrangements within the framework of agrarian reform between 2016 and 2019, including Bogor Regency, Jawa Barat Province, Bandung Regency, Jawa Barat Province, Garut Regency, Jawa Barat Province, Sukabumi Regency, Jawa Barat Province, Pandeglang Regency, Banten Province, Jakarta Utara City, DKI Jakarta Province, Cilacap Regency, Jawa Tengah Province, Blitar Regency, Jawa Timur Province, Muaro Regency Jambi, Jambi Province, Southeast Minahasa Regency, and North Sulawesi Province.¹⁷

The disparity between the achievement of asset management targets and access management in Indonesia, as described above, illustrates the situation that agrarian reform activities are still dominated by land certification activities. This description of the situation raises concerns about the failure of land reform in the past, that was limited to a land certification program (asset management) rather than structuring community welfare in the form of capital structuring (access structuring). Apart from that, this data illustrates that Indonesia's agrarian reform is still progressing very slowly towards equitable and prosperous land rights.

One of the reasons for the slow implementation of agrarian reform is the disharmonizing of laws governing Indonesian land, giving rise to legal gaps and narrowing the space for agrarian reform. The disharmonizing of regulations in the management of agrarian resources, especially the surface of the earth, or what is commonly called land, has resulted in overlapping acts of authority. Legal gaps that emerge from the legislation are capable of distorting provisions in the Law No. 5 of 1960 concerning Basic Regulations on the Principles of Agraria (hereinafter abbreviated as UUPA), thus further complicating the implementation of agrarian reform agendas, and for this reason, what is needed is not just land reform and access reform but also regulation reform.¹⁸ In fact, according to Maria Farida Indrati Soeprapto, as quoted by Irwansyah, a law that has been passed or promulgated can only apply to the general public if the law is promulgated in the State Gazette of the Republic of Indonesia or announced in the State Gazette of the Republic of Indonesia.¹⁹ This means that when it has been promulgated, the law should become a law that provides certainty and protection, not instead become a trigger for legal gap problems.

The implementation of Presidential Decree No. 62 of 2023 seems to consider that the legal gap is not a significant obstacle; this Presidential Decree urges agrarian reform to be implemented quickly. This can be seen from the preamble clause written in Presidential Decree No. 62 of 2023, described as follows: (a) that agrarian reform is a national strategic program that has an important role in efforts to equalize the structure of control, ownership, the using of land, as well as resolving conflicts agrarian, to realize a just economy; (b) that in order to accelerate the fulfillment of targets for providing land for agrarian reform objects and implementing land redistribution, legalizing transmigration land assets, resolving agrarian conflicts, and empowering the economy of agrarian reform subjects, a strategy for implementing agrarian reform that is just, sustainable, participatory, transparent and accountable is needed; (c) that the provisions Presidential Decree No. 88 of 2017 on the regulation of land ownership in forest areas and Presidential Decree No. 86 of 2018 on agrarian reform should be replaced in accordance with the needs of development and national development; (d) that based on the considerations as intended in letters "a" to "c", it is necessary to stipulate a Presidential Decree No. 62 of 2023;

Meanwhile, in the Preliminary Consideration of Presidential Decree No. 86 of 2018. It was previously considered the legal basis for implementing land reform activities in Indonesia, it is written as follows: (a) that land within the territory of the Unitary State of the Republic of Indonesia is a gift from God Almighty to the entire Indonesian Nation at the highest level controlled by the state is used for the greatest prosperity of people; (b) that currently the government still needs to achieve equal distribution of the structure of control, ownership, use and use of land; (c) based on the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management and Law Number 17 of 2007 concerning the National Long Term Development Plan for 2005-2025, it is necessary to regulate the

16 Tenrisau: 5.

17 Tenrisau: 5.

18 Muhammad Ilham Arisaputra, *Reforma Agraria Indonesia* (Jakarta: Sinar Grafika, 2015): 30.

19 Irwansyah, "Problematics of Circular Letter as Follow-Up to The Constitutional Court Decision," *Jurnal Penelitian Hukum De Jure* 23, no. 1 (2023): 50.

implementation of Agrarian Reform in order to improve social justice and people's welfare; (d) that based on the considerations as intended in letters a, b, and c, it is necessary to stipulate a Presidential Decree No. 86 of 2018.

If read carefully and compared with the substantive content of the two considerations mentioned above, it is implied that there are several obstacles faced by Presidential Decree No. 86 of 2018 on Implementation of Agrarian Reform to create just and prosperous land; it becomes the rationale for the government to replace it with Regulation Presidential Number 62 of 2023. Several comments that can be given on this matter are that:

First, agrarian reform based on the previous Presidential Decree No. 86 of 2018 has not been or is not even part of the national strategic program, so based on Presidential Decree No. 62 of 2023, agrarian reform is deemed urgent to be completed immediately in an effort to equalize the structure of control, ownership, and use, and land use, as well as resolving agrarian conflicts, to realize economy as part of the sub-sector of the national strategic program. It can be assessed that agrarian reform based on previous regulations gives the impression of being a half-hearted program carried out by the government. In fact, if you read the "Cisarua Petition" document, several agrarian reform experts and activists have warned that agrarian reform is the basis for (national) economic development for the new Indonesia and should not be carried out half-heartedly.²⁰

Thus, agrarian reform activities in Indonesia from the start should be placed on a priority scale in the national strategic program. Surprisingly, the emphasis on agrarian reform that has been carried out so far directed and written down in the guidelines for preparing National Priorities for Agrarian Reform as stated in the 2017 Government Work Plan, that includes five components, as follows: (1) Strengthening the Regulatory Framework and Resolving Agrarian Conflict, that is aimed at providing an adequate regulatory base for the implementation of agrarian reform agendas and providing justice through tenure certainty for community lands in agrarian conflicts; (2) Arrangement of land control and ownership of Agrarian Reform objects, that is aimed at identifying recipient subjects and land objects whose control and ownership relations will be reorganized. (3) Legal certainty and legalization of rights to land objects of Agrarian Reform aimed at land rights to objects of Agrarian Reform, that are aimed at providing legal certainty and strengthening rights in an effort to overcome economic disparities by redistributing land to the people; (4) Community empowerment in the use, utilization, and production of land as objects of Agrarian Reform, that is aimed at reducing poverty by improving land use and utilization, as well as the formation of new productive forces; and (5) Institutions for implementing Central and Regional Agrarian Reform to ensure the availability of institutional support in the Central and Regional Governments, as well as enabling villages to regulate control, ownership, use, and utilization of land, natural resources and village management areas.²¹

These five guidelines have normatively released a regulation for the implementation of agrarian reform in Presidential Decree No. 86 of 2018 means that land reform based on this Presidential Decree has been included in the national strategic plan, but it has not been stated in writing. On the other hand, from the political perspective of national land law, the affirmation of changing the status of agrarian reform from previously not being included as a national strategic program Based on Presidential Decree No. 86 of 2018 to becoming a national strategic program based on Presidential Decree No. 62 of 2023 is a regulatory pressure that emerged from the omnibus law on job creation as outlined in Law Number 6 of 2023 concerning job creation.

As a result, legal politics related to Indonesian agrarian reform must refer to legal politics, that is the main spirit of Law Number 6 of 2023. The biggest hope that arises with the change in the status of agrarian reform as a national strategic program based on the latest regulations (Presidential Decree No. 62 of 2023) is to achieve the essential goal of agrarian reform in the form of being able to quickly and precisely carry out equitable distribution of land ownership and control and use of land, that brings prosperity in a concrete form and the benefits are felt by the community. This goal is also another form of implementing the constitutional mandate of Article 33, Paragraph 3, of the 1945 Constitution to make land a source of maximum prosperity for the Indonesian people.

Second, Presidential Decree No. 86 of 2018 is deemed unable to meet the target of providing land for agrarian reform objects and implementing land redistribution, legalizing the transmigration land assets, resolving agrarian conflicts, and empowering the economy of agrarian reform subjects, a strategy for implementing agrarian reform that is just, sustainable, and necessary. participatory, transparent, and accountable, so it must be replaced with Presidential Decree No. 62 of 2023.

20 Retno Sulistyaningsih, "Reforma Agraria Di Indonesia," *Perspektif: Kajian Masalah Hukum Dan Pembangunan* 26, no. 1 (2021): 62.

21 Ni Luh Ariningsih Sari and I Wayan Suwanda, "Kebijakan Di Era Pemerintahan Joko Widodo Dan Jusuf Kalla (Perspektif Politik Hukum Dan Agraria)," *Ganec Swara: Media Informasi Ilmiah UNMAS Denpasar Kampus Mataram* 13, no. 2 (2019): 42.

From 11 land classifications for agrarian reform objects previously determined by Presidential Decree No. 86 of 2018, it turns out that they have not been fully able to fulfill the accelerated achievement of the agrarian reform target of 9 million hectares, especially the 4.5 million hectare redistribution scheme as stipulated in Law Number 17 of 2007 concerning the National Long Term Development Plan 2005-2025 and Presidential Decree No. 18 of 2020 concerning the National Medium Term Development Plan for 2020-2024. Despite the naivety of the targets that have been set, quantitatively, the number of legalizations has skyrocketed compared to redistribution, especially redistribution from the release of forest areas. The problem is not the unavailability of land, but rather that Presidential Decree No. 86 of 2018 is unable to break through the stronghold of sectoral egos, that have already blocked the tactical space to fulfill the land targets for the required agrarian reform objects.

The obstacles and challenges faced by Presidential Decree No. 86 of 2018 as an agrarian reform regulation are the inability of this regulation to ward off sectoral in its implementation in the field, especially in alleviating lands subject to agrarian reform originating from forest areas. In fact, this regulation is unable to synchronize the two agencies between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and the Ministry of Environment and Forestry, that have already been established with their respective understandings regarding agrarian reform, especially in relation to the settlement of land tenure in forest areas, ultimately causing a long bureaucratic flow to complete all the work in it.²² At the policy concept level, the agrarian reform program is a very attractive idea, but at the implementation level, it is very difficult to implement because it requires the involvement and assistance of many parties.²³ As a result, the decision or action in question must be carefully prepared before being decided and/or implemented.²⁴

Supposedly, the Sectoral legal development, that used land terminology in Forestry Legislation, makes the authority of the forestry minister decide that the part of the land as the forestry area, has been make contradiction with land terminology based on Agrarian Law as the authority of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. UUPA As a resource of Agrarian law politics never used the land as terminology for the earth surface. It caused a fight over authority on the earth surface between the forestry minister and Spatial Planning/National Land Agency. It should be forestry area is part of the earth surface that uses the forestry area based on the title Public Management Rights. Public Management Certificate Rights issued by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency.

Third, Presidential Decree No. 62 of 2023 clearly stated that Presidential Decree No. 88 of 2017 concerning on Settlement of Land Tenure in Forest Areas and Presidential Decree No. 86 of 2018 concerning Agrarian Reform are no longer in line with national developments and needs; therefore, need to be replaced. This point emphasizes that previously regulations were deemed unable to achieve the basic essence of the agrarian reform program and even tended to limit the implementation of national strategic projects.

Presidential Decree No. 62 of 2023 aimed to integrate two activities regulated in regulations that previously stood separately; namely the settlement of land control activities in forest areas as regulated in Presidential Decree No. 88 of 2017 and the implementation of agrarian reform previously regulated by Presidential Decree No. 86 of 2018. Both of the regulations have relevance that is used as a source of land for agrarian reform objects, that will be regulated through agrarian reform activities.

The integration of them is thought to be due to obstacles in realizing land resources for agrarian reform objects originating from the release of forest areas. The obstacles that commonly occur are related to the process and mechanism of issuing land for agrarian reform objects in forest areas and how to provide assets and access to the community, that are based on two mechanisms on two different regulations, namely Presidential Decree No. 88 of 2017 and Presidential Decree No. 86 of 2018.²⁵

The spontaneity of implementing asset and access management to create prosperity for people who have the right to land as objects of agrarian reform originating from forest areas feels blocked due to the differences between

22 Fitra Alvian and Dian Mujiburohman Aries, "Implementasi Reforma Agraria Pada Era Pemerintahan Presiden Joko Widodo," *Jurnal Tunas Agraria* 5, no. 2 (2022): 120.

23 Aditya Wicaksono and Yudha Purbawa, "Hutang Negara Dalam Reforma Agraria Studi Implementasi Mandat 9 Juta Hektar Tanah Indonesia," *Bhumi: Jurnal Agraria Dan Pertanahan* 4, no. 1 (2018): 26.

24 Eka NAM Sihombing and Cynthia Hadita, "The Ideal Mechanism of Clerical Errors Resolution in The Legislation in Indonesia (Comparison with United Kingdom, United States, and Singapore)," *Jurnal Penelitian Hukum De Jure* 23, no. 3 (2023): 275.

25 M Nazir Salim, *Reforma Agraria: Kelembagaan Dan Praktik Kebijakan* (Yogyakarta: STPN Press, 2020): 120.

the two mechanisms; so that community economic empowerment based on land rights within the framework of agrarian reform will be difficult to achieve. Asset and access management still have a long way to go in terms of the mechanism and flow of the process of providing land for agrarian reform objects originating from forest areas.

Although the mechanism and flow of the process for providing the objects originating from forest areas could be through proposals from below, such as social forestry and resolving land tenure in forest areas, agrarian reform object land originating from the release of forest areas still has to go through quite a lengthy mechanism and process. Starting with the reservation first by the regional government, then the regional government proposes determining the subject and object in collaboration with other stakeholders.²⁶

Apart from regulations that have not been integrated, the provision of land for agrarian reform also still has to deal with tenure conflicts, one of which is caused by differences in public perception of free state land over forestry land. The problem of land control in forest areas is a reflection of the two sides of forest management by the state. The state wants to maintain its forest areas in order to maintain the balance of the ecosystem, supporting life; but on the other hand, the state seeks to utilize forests for the prosperity of the people without being exploited.²⁷

Furthermore, the provision of land objects for agrarian reform originating from forest areas, as previously regulated by Presidential Decree No. 88 of 2017 and Presidential Decrees Number 86 of 2018, has given rise to a debate on interpretation between the Ministry of Environment and Forestry and the Ministry of Agrarian Affairs and Spatial Planning/Agency. National Land Affairs, about: Firstly, the land is the object of agrarian reform based on a 20% allocation of forest area release for plantations; secondly, production forests that can be converted; and thirdly, there is no agreement regarding the settlement of land tenure in forest areas, namely the extent to that conversion is carried out for community property rights with an individual rights scheme, especially with residential public facilities, social facilities, and cultivated land in a social forestry scheme.²⁸

Highlighting the problem of providing land that will be used as land for agrarian reform objects in relation to land redistribution activities and asset legalization within the framework of agrarian reform in forest areas, Shohibuddin is of the view that so far the concept of agrarian reform implemented by the government has experienced a process of narrowing its meaning because it is too focused on aspects (re)distribution of agrarian resources without considering ecosystem protection, or could be called “just giving away the land.”²⁹

3.2 Presidential Decree 62 of 2023: Distortion Regulation or Acceleration Solution for Agrarian Reform?

Referring to the comments above, in fact, Presidential Decree No. 62 of 2023, apart from being a replacement and the only reference for the latest law in the implementation of agrarian reform in Indonesia, should also be a regulatory solution to various obstacles and barriers that cause slowness and incomplete implementation of reform. Agrarian affairs in Indonesia are carried out based on previous regulations, namely Presidential Decree No. 86 of 2018. The important variables embedded in the meaning of “agrarian reform” based on Article 2 TAP MPR IX/2001 are: first, restructuring control and ownership of agrarian resources (land). Second, restructuring the use and utilization of agrarian resources (land). These two variables are then concretely described by Presidential Decree No. 62 of 2023 in agrarian reform activities, namely: first, asset structuring in the form of restructuring land control and ownership; and second, access structuring in the form of restructuring land use and utilization, accompanied by economic empowerment of agrarian reform subjects based on land rights.

The birth of Presidential Decree No. 62 of 2023 is proof that the issue of agrarian reform is no longer discussed at the level of ideas but rather has an urgent need to be resolved. According to its title, Presidential Decree 62 of 2023 is called “Accelerating the Implementation of Agrarian Reform,” making it a “Shortcut” regulation with strategic substance to finalize ideas for completing unfinished state tasks in implementing reforms in the agrarian sector. These ideas and strategies certainly cannot be separated from the lessons of past failures, that often become classic stories in the history of Indonesian agrarian reform.

26 Salim: 120.

27 Agung Anugra Putra Dempo, M Nazir Salim, and Abdul Haris Farid, “Evaluasi Pelaksanaan Redistribusi Tanah Eks Kawasan,” *Jurnal Tunas Agraria* 4, no. 1 (2021): 4.

28 M Nazir Salim and Westi Utami, *Reforma Agraria, Menyelesaikan Mandat Konstitusi: Kebijakan Reforma Agraria Dan Perdebatan Tanah Objek Reforma Agraria* (Yogyakarta: STPN Press, 2019): 119.

29 M Shohibuddin, *Perspektif Agraria Kritis: Teori, Kebijakan, Dan Kajian Empiris* (Yogyakarta: STPN Press, 2018): 46.

As if not wanting to beat around the bush any longer, the nuance of shortcut in Presidential Decree No. 62 of 2023 is reflected in the considerations considering letters a and b, that firmly state that “agrarian reform is a national strategic program...”, “in order to accelerate the fulfillment of targets...”. The quote from the preamble sentence seems to show that Presidential Decree No. 62 of 2023 was born out of anxiety about the slow achievement of the agrarian reform goal of realizing just and prosperous land rights. One of the reasons for the delay was that technical regulatory support as previously in force was deemed to be less firm, so concrete confirmation was realized through the latest Presidential Decree in question.

The word “acceleration” as embedded in the title of the Presidential Decree seems to want to ensure that as much as possible, agrarian reform is implemented and achieves its goal of “creating a just and prosperous land.” In connection with this goal, it seems important to pay attention to the principles of land direction and policy in order to realize land for justice and prosperity, as stated by Samun Ismaya, namely: First, the land must make a real contribution to improving people’s welfare and creating new sources of people’s prosperity. Second, land affairs must significantly contribute to improving a more just order of living together in relation to the utilization, use, control, and ownership of land. Third, land affairs must make a real contribution to ensuring the sustainability of the Indonesian social, national, and state systems by providing future generations with the widest possible access to the community’s economic resources. Fourth, Land Affairs must make a real contribution to creating a harmonious order of living together by resolving various land disputes and conflicts throughout the country and organizing a management system that will no longer give rise to disputes and conflicts in the future.³⁰

For this reason, there are several strategies promoted by Presidential Decree No. 62 of 2023 for accelerating the implementation of agrarian reform as written in Article 2 paragraph (1), namely: asset legalization; land redistribution; economic empowerment of agrarian reform subjects; agrarian reform institutions; and community participation. This strategy then becomes sub-work orders, that must then be included in action plans, starting from ministries and institutions, provincial regional governments, and district and city regional governments. In fact, the action plan referred to is not only related to work plans but must be included in regional development planning documents along with budget allocations, and the implementation of agrarian reform is determined to be one of the regional performance assessment indicators.

There are several urgent reasons why agrarian reform is important to realize immediately. Bernhard Limbong described the urgency of implementing agrarian reform as covering five aspects, namely:³¹

First, to uphold human rights, the state is obliged to respect, protect, and fulfill citizens’ constitutional rights to agrarian resources (land). The state is also obliged to fulfill citizens’ rights related to agricultural businesses in the form of providing agricultural business capital services for the farming community and providing correct and balanced information about market conditions, policies, prices, technology, and other matters related to the interests of farmers. Ignoring the constitutional rights of citizens is a failure of the state to carry out its obligations and is a violation of human rights.

Second, to alleviate poverty with rural industry, the reason for the urgency of implementing agrarian reform also lies in the fact that agrarian injustice (related to land) causes poverty and unemployment. Agrarian reform that is truly transformative and redistributive has been proven to be able to reduce poverty and hunger in many countries, as well as being the key to driving economic growth that benefits poor communities. Transformative reform for farmers, who make up more than 70% of the Indonesian population, can lead to a real social transition where asset reform and access reform policies are able to improve the lives of farmers who receive land compared to farmers who do not own land.

Third, to build food security, Indonesia is an agricultural country as a gift from God in the form of a vast and fertile expanse of land, so that the Indonesian people should be prosperous in meeting their food needs. Agrarian reform is an important strategy for guaranteeing the right to food because it guarantees the right to land, that is the most important means of producing food. Ownership of land rights resulting from agrarian reform activities turns small farmers, homeless people, and agricultural labourers into landowners so that it will encourage increased agricultural production in the form of food for both consumption and trade market needs.

Fourth, to minimize land conflicts, one of the urgent reasons for implementing agrarian reform is to reduce the spike in the number of land conflicts. Agrarian reform must produce responsive policies in order to be able to

30 Samun Ismaya, *Pengantar Hukum Agraria* (Yogyakarta: Graha Ilmu, 2011): 10.

31 Bernhard Limbong, *Reforma Agraria* (Jakarta: Margaretha Pustaka, 2012): 363-386.

answer the challenges of community needs in the land sector in the future, including resolving and anticipating the occurrence of land conflicts, both in the past, now, and in the future.

Fifth, to preserve the environment, the implementation of agrarian reform in Indonesia also has high urgency from the perspective of environmental preservation for sustainable development. The land reform concept is able to combine agricultural land productivity with environmental sustainability through small economic activities that maintain soil fertility through good land use, planting cover crops, and providing green fertilizer.

Looking at the strategy and action plan put forward by Presidential Decree No. 62 of 2023, agrarian reform is non-negotiable and must be implemented immediately and finalized. To be able to say that Presidential Decree No. 62 of 2023 is a solution regulation, the Presidential Decree must first prove its ability to fulfill the urgency of agrarian reform itself. If it is proven that it is unable to fulfill the intended urgency, it is feared that the Presidential's regulation will only become a regulatory distortion.

4. Conclusion

Several things cause the slow pace of agrarian reform in realizing land that is just and prosperous for the Indonesian people, one of which is the disharmonization of regulations, which causes legal gaps in the implementation of agrarian reform. Presidential Decree No. 62 of 2023 also simplifies bureaucracy between agencies when implementing agrarian reform in Indonesia. This regulation has a positive impact in responding to the obstacles and barriers faced by Presidential Regulation 86/2018, so it can be said to be a solution for regulation. However, Presidential Decree 62/2023 seems to oversimplify and simplify the patterns of providing land from forest areas and have an impact on the preservation of Indonesian forests. In the end, Presidential Decree No. 62 of 2023 will only distort regulations, not only related to agrarian reform in Indonesia but also legal aspects of the Earth's surface that have had an effect on speeding up the implementation of agrarian reform.

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