

## Mapping Community Land in North Sumatra through the Implementation of Agrarian Reform

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### Abstract

*Agrarian Reform is an operation to reorganize agrarian structures that experience inequality to create a new, more just structure. The President as the highest leader of the state is a mandatory implementer of agrarian reform to systematically through his authority carry out conflict resolution and overhaul the structure of agrarian inequality. This is directly stated in the constitution of our country, the 1945 Constitution, and the Basic Agrarian Law no. 5 of 1960. This mandate was strengthened through MPR Decree No. IX of 2001 concerning Agrarian Reform and Natural Resources. Presidential Regulation Number 86 of 2018 concerning Agrarian Reform emphasizes asset management, access arrangement, and land dispute resolution. The agrarian reform movement is concerned, that the agenda for implementing agrarian reform will be neglected, there will be more lip service and ceremonial without touching the root of the real agrarian problem, even in the form of a political promise by the government to the community. And it has great potential to further deviate from the accuracy of the objects and subjects of Agrarian Reform that are not my main purpose. The Presidential Regulation on Agrarian Reform Number 86 of 2018 is considered a political breakthrough. It is strongly suspected that the suitability of the object (land) and the subject (recipient) of land redistribution is wrong and does not match the objectives of agrarian reform. Including the absence of supporting programs after the redistribution is carried out, as a condition of Agrarian Reform.*

### Keywords

agrarian reform; certainty; welfare



## I. Introduction

Article 33 paragraph (3) of the 1945 Constitution stipulates that the earth, water and the wealth contained therein shall be controlled by the State and used for the greatest benefit of the people. This is further implemented in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or known as the Basic Agrarian Law (hereinafter abbreviated as UUPA). Article 2 paragraph (1) of the LoGA expressly states that at the highest level the elements of natural resources are controlled by the State as an organization of people's power that has authority in the form of the right to control from the State to achieve the greatest prosperity of the people.

The vision of the transformation of the birth of the 1960 BAL is to carry out agrarian reform in Indonesia, which is manifested in the form of land reform policies in the form of regulations regarding the minimum and maximum land area of land ownership, as regulated in the provisions of Articles 7 and 17 paragraphs (1) and (3) of the LoGA. Land reform policy is further regulated in Law no. 56 Prp 1960 concerning Determination of Agricultural Land Areas (better known as the Landreform Law).

The land reform policy as regulated in a Government Regulation in lieu of Law Number 56 Prp of 1960 includes restrictions on the maximum area of land; prohibition of absentee or guntai ownership of land, redistribution of land that is more than the maximum area of land, lands subject to absentee prohibition, lands of former self-government and state lands; regulation regarding the return and redemption of pawned agricultural lands; re-arrangement of agricultural land product-sharing agreements; and determination of the minimum area of ownership of agricultural land, accompanied by a prohibition on carrying out actions that result in the division of ownership of agricultural land into parts that are too small (Dian Isnani, 2017).

After more than half a century of the birth of the LoGA, the land reform program has not run as expected and has not been in line with other national development policies. By alternating periods of state control, the land reform program did not provide many major changes to realize the prosperity of the people. This is illustrated by the increasing number of agrarian conflicts in various regions in Indonesia which are caused by land ownership that exceeds boundaries, overlapping land ownership rights, land manipulation practices in obtaining land ownership rights,

Based on data submitted by Secretary General of the Consortium for Agrarian Reform (KPA) Dewi Kartika revealed, throughout 2020 there have been 241 cases of agrarian conflicts in 356 regions in Indonesia with a total land area of 642,272 hectares and victims as many as 135,332 families. This agrarian conflict occurred in various sectors including:

**Table 1.** Agrarian Reform (KPA) Dewi Kartika revealed, throughout 2020

Sector	Year 2020 (case)	Large (hectare)
Plantation	122	230,887
Forestry	41	312,158
Infrastructure	30	57.185
Property	20	6.019
Mining	12	12.797
Military facilities	11	4.741
marine coast	3	243
Agribusiness	2	3.915

Land conflicts will worsen in the process of land renewal for the community, the problem is increasingly complex as development programs are activated for the public interest while the need for land availability is directly proportional to development. Soekanto in Ismail (2019) social change refers to changes in social aspects, community governance, and group behavior patterns. Community participation is the key word for development to be successful (Kelvin and Dewi in Angelia *et al*, 2012). In the era of Joko Widodo's administration, the agrarian land reform program or currently better known as agrarian reform became the government's agenda which was specifically promulgated in Presidential Regulation Number 86 of 2018 concerning Agrarian Reform. This Presidential Regulation is the government's commitment to structuring agrarian assets and access which has been mandated in MPR Decree No. IX/MPR/2001 on agrarian reform and natural resource management.

## **II. Research Methods**

### **2.1 Types and Nature of Research**

According to Soetandyo Wignyosoebroto, the types of research are divided into doctrinal law research and non-doctrinal legal research. (Soetandyo Wignyosoebroto, 2018) Doctrinal legal research consists of research in the form of an inventory of positive law, research in the form of an effort to find the principles and philosophical foundations (dogmas or doctrines) of positive law, and research in the form of an effort to find law in concreto that is feasible to be applied to resolve a problem. certain legal cases. Non-doctrinal research is research in the form of empirical studies to find theories regarding the process of occurrence and the process of working in society.

This type of research is doctrinal law research, especially research in the form of an inventory of positive law. This research is the result of an inventory of positive laws related to community land mapping in North Sumatra through the implementation of agrarian reform by analyzing various related positive laws.

Research according to its nature is divided into exploratory research, descriptive research, and explanatory research (Soeryono Soekanto, 2016). Exploratory research is research conducted to obtain information, explanations, and data about things that were not known before. Descriptive research is research that describes and re-explains existing phenomena. Explanatory research is a study to explain, strengthen, or test and even reject a theory or hypothesis against the results of existing research (Bambang Waluyo, 2016).

### **2.2 Research Approach**

The approach used in legal research is the statute approach. Case approach, historical approach, comparative approach, and conceptual approach (Peter Mahmud Marzuki, 2011), an approach used in this research is the statute approach. A statutory approach is an approach taken by reviewing all laws and regulations that are relevant to the legal issues being handled. (Peter Mahmud Marzuki, 2011) This research contains a review of all laws and regulations related to the issue of community land mapping in North Sumatra through the implementation of Reforma Agraria as a form of implementing prosperity for the community in utilizing land.

### **2.3 Data Sources**

Sources of data in research can be primary data and secondary data. Primary data is data obtained directly from the source either through interviews, observations, and reports in the form of unofficial documents which are then processed by researchers, books related to the object of research, and legislation. (Zainuddin Ali, 2009) Secondary data is then divided. on primary legal materials, secondary legal materials, and tertiary legal materials. (Bambang Waluyo, 2016)

Primary legal materials are authoritative legal materials and binding consisting of statutory regulations, official records, or minutes in the making of laws and judges' decisions. Whatever secondary material is in the form of all publications on a law that are not official documents and are not binding which can be in the form of textbooks, legal journals, and comments on court decisions (Peter Mahmud Marzuki, 2011). Tertiary legal materials are materials that provide instructions or explanations for primary and secondary legal materials, such as legal dictionaries. Encyclopedias, cumulative indexes, and so on (Bambang Waluyo, 2016).

The data used in this study is secondary data consisting of:

- a. The primary legal materials used are the Constitution of the Republic of Indonesia (UUD RI), Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Decree of the Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 concerning Agrarian Reform and Management Natural Resources, Law Number 17 of 2007 concerning the National Long-Term Development Plan of 2005-2025, Presidential Regulation Number 86 of 2018 concerning Agrarian Reform and other related primary legal materials.
- b. The secondary legal materials used are in the form of books, journals, related to Agrarian Law, especially regarding Agrarian Reform.
- c. The primary legal materials used are the Big Indonesian Language Dictionary (KBBI) and the Legal Dictionary.

## **2.4 Data Collection Techniques**

Data collection techniques in legal research can be in the form of field research and library research (Zainuddin Ali, 2009). Field research (field research) is a data collection technique used to obtain primary data obtained directly from the field which can be in the form of interviews or observations (observations) on behavior. Meanwhile, library research is a data collection technique used to obtain secondary data.

The data collection technique in this research is to use library research to obtain general concepts and theories related to research problems through books, legal journals, and (law) dictionaries as well as through laws and regulations relating to land mapping communities in North Sumatra through the implementation of agrarian reform.

## **2.5 Data Analysis**

Analysis of the data used is a qualitative approach to secondary data. The analysis is carried out to determine the content or meaning of the rule of law which is the object of study (Zainuddin Ali, 2009). The activities carried out in data analysis in this study were selecting articles that contained legal rules governing the problem of mapping community land in North Sumatra through the implementation of Agrarian Reform as a form of implementing social functions, containing the systematics of these articles to produce certain classifications that aligned, and conducted a qualitative analysis of the relevant laws and regulations.

# **III. Results and Discussion**

## **3.1 Agrarian Reform in Indonesia**

The promulgation of the UUPA in 1960 was the beginning of the implementation of agrarian reform. Agrarian reform or land reform is a change and renewal in the agrarian structure arrangement system in Indonesia. Land reform is a principle in the LoGA that provides an overview of the purpose of creating a new land ownership structure. About achieving that goal, land ownership and control that exceeds the limit is not permitted and the maximum and minimum limits for land use and ownership are set (Article 7 and Article 17 of the BAL). Land reform is carried out to provide a fair distribution of the livelihoods of the peasants in the form of land, by revolving the land structure in a revolutionary way, to realize social justice. This is also done to implement the principle of land for farmers,

Three months after the ratification of the Logga, the government issued a Government Regulation instead of Law no. 56 of 1960 concerning the Determination of

Outside Agricultural Land. This law determines the maximum limit of land ownership based on the types of land (rice field or dry land) and population density. The following table shows the maximum limit on land ownership according to Law no. 56 of 1960.

**Table 2. Population Density**

<b>Population density</b>	<b>Rice Fields (Ha)</b>	<b>Dry Land (Ha)</b>
1-50 inhabitants per km <sup>2</sup>	15	20
51-250 inhabitants per km <sup>2</sup>	10	12
251-400 inhabitants per km <sup>2</sup>	7.5	9
More than 400 inhabitants per km <sup>2</sup>	5	6

To make effective use of agricultural lands, Perpu no. 38 of 1960 concerning Use and Determination of Land Areas for certain plants. This regulation was made in the context of the government's efforts to regulate the efficient use of land as referred to in Article 14 of the LoGA and in particular to implement programs that will fulfill the people's food and clothing so that there is a good reward between the area of land that is important for the people and the state this rule. Then amended by Law no. 20 of 1964 (Yance Arizona, 2014)

Krishna Ghimire defines agrarian reform or land reform as a major change in the agrarian structure, which leads to the increased access of poor farmers to land, as well as certainty of tenure (tenure) for those who cultivate the land. This includes access to agricultural inputs, markets and services, and other complementary needs (Berharnhard, 2012). Agrarian reform is a change in the agrarian structure to increase the access of poor peasants to control. Agrarian reform is carried out to improve the welfare of poor farmers (Fatima, 2015)

Politics of agrarian law reform is followed up in the form of provisions outlined in MPR Decree Number: IX/MPR/2001 concerning Agrarian Reform and Natural Resource Management. Agrarian law reform is part of agrarian law reform which is juridically determined by the People's Consultative Assembly through MPR Decree Number IX/MPR/2001 agrarian resources and other natural resources (Diyan Isnaeni, 2017).

The review of agrarian reform in Article 2 of the MPR Decree states that "agrarian reform includes a continuous process about governance, regaining control, ownership, use, and utilization of agrarian resources, carried out in the context of achieving legal certainty and protection as well as justice and prosperity for all people. Indonesia.

### **3.2 Agrarian Reform in North Sumatra**

The people of Indonesia in general and North Sumatra, in particular, are currently waiting for the implementation of agrarian reform which is President Jokowi's flagship program to overcome the problems of poverty, inequality, food, and agrarian conflicts. In the implementation of the enactment of the regulation, there must be obstacles in the preparation for the implementation of agrarian reform. One of them is to prepare a legal basis for the implementation of agrarian reform so that agrarian reform can be on target and be able to overcome various problems that accompany the implementation of agrarian reform. Now President Jokowi intends to regulate agrarian reform with a Presidential Regulation.

First, in terms of the relationship between TORA and the subjects of agrarian reform, namely small farmers, farm laborers, sharecroppers, small fishermen, traditional fishermen, sharecroppers, small fish cultivators, and low-income communities. Not all TORA objects

are connected with the subject of agrarian reform. Because practically land redistribution will only occur in plantation areas and forest areas. Beyond that, the potential for connectivity is only land certificates. So that the redistribution of assets will only occur if the land certificate can be used as collateral in the bank to obtain a capital loan. This means that the Draft Presidential Regulation on Agrarian Reform needs to add TORA sources outside of plantations and forests, such as arisen land, post-mining land, ex-Building Use Rights.

Second, from the point of view of overcoming inequality. What should be the target of agrarian reform is inequality in ownership in land tenure, where the situation has often been described through the phrase “a few people control a lot of lands and many people control a little land.” Law 5/1960 concerning Basic Regulations on Agrarian Principles (UUPA 1960) can be used as a legal basis for regulation. According to the Basic Agrarian Law Number 5 of 1960, in order not to interfere with the public interest, land exceeding the maximum limit is prohibited.

Third, from the point of view of food sovereignty. The TORA data collection should not pursue the 9 million ha target. However, TORA data collection in all regions of Indonesia is to realize the obligation of the Government and Regional Governments to provide guarantees for the area of agricultural land for farmers and land support for fish cultivators as regulated in Law Number 19 of 2013 concerning Protection and Empowerment of Farmers and Law Number 6 of 2013. 2016 concerning Protection of Fishermen, Fish Cultivators, and Salt Farmers. This means that the Presidential Regulation on Agrarian Reform must be directed to support the implementation of the two laws.

Fourth, from the point of view of resolving agrarian conflicts. In this context, the target area for TORA and Social Forestry is irrelevant if they are not located in agrarian conflict locations. The Presidential Regulation on Agrarian Reform must be able to answer the question of whether the TORA originating from the former HGU and the release of forest areas is in the location of agrarian conflicts? Are the locations in villages that are included in the HGU of plantation companies and forest areas? Does Social Forestry answer the question of tenure or land ownership claims in the forest?

With the issuance of Government Regulation Number 86 of 2018 concerning Agrarian Reform, it has been mandated that the institutional form for implementing Agrarian Reform must be established within 3 (three) months after the issuance of the Presidential Regulation. The institutions referred to above are in the form of Task Forces at each level of government starting at the Central, Provincial, and Regency / City levels which are the embodiment of coordinating institutions.

Weaknesses in the implementation of Jokowi's Agrarian Reform, namely, the Government unilaterally determines the location and object of Agrarian Reform, there is no ideal institution led directly by the President, the absence of a legal basis and the absence of a state budget for the implementation of the Agrarian Reform program. (HTTP, bakumsu, 2018)

Articles and paragraphs in one statutory regulation are essentially more meaningful as corridors or barriers to movement. Some have been fixed, such as the sanctions articles (if any), but some are still having multiple interpretations, especially when it comes to What, Who, and How.



### 3.3 Mapping Community Land Through the Implementation of Agrarian Reform in North Sumatra

Agrarian Reform (Agrarian Reform) or land reform is one of the effective tools or ways to achieve successful development, because access to land is fundamental for socio-economic development, poverty reduction, and for sustainable environmental sustainability, apart from being a factor of production, the land is also a factor of wealth, prestige and power or power. In this perspective, land redistribution does not only increase economic assets owned by poor farmers, but also in increasing political power and social participation, thus, the implementation of agrarian reform is not only aimed at reducing poverty and unemployment, but also in eradicating inequality, especially in terms of political and social fields (Berharnhard, 2012)

The implementation plan for Agrarian Reform Object Land Locations (TORA) throughout North Sumatra Province is carried out as follows:

#### a. TORA 2020 Follow Up Plan

From the results of data analysis, TORA priorities are obtained as follows:

##### 1. Priority 1

- a) Transmigration land in Biru-Biru Village, Namo Tualang District, Deli Serdang Regency can be continued to the Land Consolidation (KT) program, which is 60 (sixty) plots.
- b) Beneficiaries of the Uninhabitable House Rehabilitation (RTLH) in Asahan Regency who can proceed to the Complete Systematic Land Registration (PTSL) program are 42 (forty-two) fields.
- c) Beneficiaries of Uninhabitable House Rehabilitation (RTLH) in Deli Serdang Regency who can proceed to the Complete Systematic Land Registration (PTSL) program.

##### 2. Priority 2

Abandoned land of former PT Kultindo Ereshamas HGU in South Tapanuli Regency which can be continued into the Land Redistribus Program

**Table 3.** Following are the results of the implementation of Agrarian Reform in 2019

No	Data source	Data collection	verification	Analysis Method Overlays	Legalization Instructions
1	Plantation Service North Sumatra Province	Oil Palm Rejuvenation Data People (PSR) 2018	-	-	-
2		Oil Palm Rejuvenation Data People (PSR) 2019	-	-	-
3	Department of Housing and Residential Area	Beneficiary Data Home Rehabilitation No Habitable (RTLH) Padanglawas Regency North	-	-	-
4		RTLH Regency Padanglawas	-	-	-
5		RTLH Deli Regency Serdang	√	√	<b>PTSL</b>
6		RTLH Langkat Regency	Submitted to the GTRA Team District Land Office Langkat		
7		RTLH Asahan Regency	√	√	<b>PTSL</b>
8		RTLH Nias Regency West	10	-	-

9		RTLH Nias South Regency	-	-	-
10		Land of Transmigration Tapanuli Regency South	√	-	-
11		Land of Transmigration Deli Serdang Regency	√	√	<b>POKT</b>
12	Handling Field Problems and Land Control Agency Regional Office	Land Former HGU Land Abandoned PT. Kultindo Ereshamas in District South Tapanuli	√	√	<b>Redis</b>
13	National Land	Settlement Land Dispute	√	<i>Success Story</i>	
14	Field of Relations Regional Office Law Land Agency National	Physical Inventory of Books Land and Letter of Measurement HGU	-	-	-
15	Mangrove Farmers Group Pematang Nibung Prosperous	Land of Emergence in Coal District	√	-	-
16	Farmer's Group Cooperative Sahora	Plantation TORA proposal in Asahan District	√	-	-
17	Consolidation Hall Forest Area (BPKH)	Area Boundary Samosir . District Forest	√	-	-
18		Area Boundary District Forest South Labuhanbatu	√	-	-

From the table it can be seen that the data collection process obtained 18 data. Furthermore, the data is verified by looking at the completeness of the information, distance and travel time to the location. If the proposed data does not have an accurate position, at least the coordinates, distance and travel time are too far, so verification cannot be carried out.

From these data, 10 data have been field verification. Where some of the data from the verification results cannot be further analyzed to be used as a priority location for TORA due to the following things.

- 1) The land resulting from forestry boundaries in Samosir Regency is because there is still a dispute regarding the land owner with the plank "This land belongs to Anggiat Sinaga" and is not cultivated by the community but by PT Toba Pulp Lestari Tbk in the form of Eucalyptus forest.
- 2) The land resulting from the forest boundary demarcation in South Labuhanbatu Regency is due to the current use of the land as housing for employees of PTPN III Sei Daun afdeling VII and PTPN III Palm Oil Mill (PKS) so that it is not possible to be used as a tora object with a building standing on the land.
- 3) Land transmigration in South Tapanuli Regency due to current land use as shrubs and swamps. Transmigrants have difficulty in growing crops in this location, so they began to be abandoned in 2012 and the houses that had been built for them have become rubble.
- 4) Land arises in Batubara Regency because the administrative area is not yet clear so it still has to be asked to Bappeda and to process land rights it must be processed by the Ministry of ATR/BPN to issue a SK Tanah Timbul at that location.
- 5) The land resulting from the release of forest areas in Sei Kopas Village, Bandar Pasir Mandoge District, Asahan Regency is still in a conversion production forest (HPK) area so it must be released by the Forest Area Consolidation Center (BPKH) first with the PPTKH (Completion of Land Tenure in Forest Area) inver program.



#### **b. TORA 2020 Location Plan**

The 2020 TORA Location Plan is in the form of potential data and data collection has been carried out such as data from:

1. Plantation Office of the Provincial Government. Data from the Plantation Service is in the form of People's Palm Oil Rejuvenation (PSR) data for North Sumatra Province which is divided into 7 (seven) regencies. The data is not feasible to be verified in 2019 because the location of the coordinate points is not yet available from the Plantation Service so that there must be further coordination with the relevant Office. PSR 2019 data has been shown above (data collection sub-chapter). In addition, data from the Plantation Service in the form of replanting or replanting smallholder oil palm plantations in 2018 is borne by the Palm Oil Plantation Fund Management Agency (BPBD). From the calculation results, there are 2.4 million hectares of people's gardens nationally that need to be rejuvenated. Some of the rejuvenated community gardens are not yet certified. This is a potential implementation of agrarian reform in North Sumatra. The potential for rejuvenating people's gardens in North Sumatra Province is 9109.29 Ha.
2. Department of Housing and Settlement Areas Data from the Department of Housing and Settlement Areas is data on the Rehabilitation of Uninhabitable Houses (RTLH) throughout North Sumatra which is divided into 7 (seven) regencies. 2 (two) of them have been verified and analyzed data in 2019, namely Asahan Regency consisting of 45 (forty five) fields and Deli Serdang Regency 50 (fifty) fields. Meanwhile, in Langkat Regency, data has been given to be continued by the Regency GTRA team. So that there are 4 (four) regencies that are used as TORA locations in 2020, namely: West Nias, South Nias, Padang Lawas, and North Padang Lawas Regencies.

Direction of Access Reform and Empowerment Programs in the Framework of Agrarian Reform

- a) Provision of data from BPN at urban TORA locations to provide assistance to the Cooperatives Office.
- b) Provision of data from BPN at agricultural TORA locations in the land redistribution program to provide assistance to the Agriculture Service and Plantation Service.

### **IV. Conclusion**

Presidential Regulation Number 86 of 2018 juridically in its implementation has weak points related to Agrarian Reform, both juridically, politically, economically. The Presidential Regulation does not understand Agrarian Reform which is regulated by the LoGA which causes different conceptions where the Presidential Regulation only focuses on Land which basically Agrarian includes Earth, Water, Space and the natural resources contained therein.

Agrarian reform is not only understood as a policy for land redistribution, but also as a broader process such as access to natural resources, finance/capital, technology, goods and labor markets as well as the distribution of political power that focuses on improving the economy through access. The Presidential Regulation on Agrarian Reform Number 86 of 2018 is considered a political breakthrough. It is strongly suspected that the suitability of the object (land) and the subject (recipient) of land redistribution is misdirected and does not match the objectives of agrarian reform. Including the absence of supporting programs after the redistribution is carried out, as a condition of Agrarian Reform.

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