

The urgency of establishing regional regulations on the recognition and protection of indigenous peoples to tackle agrarian conflicts in Central Kalimantan Province

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Abstract: Agrarian Reform is a national agenda that requires serious attention and concrete action from the Indonesian government. Although Law No. 5/1960 has become the legal foundation, its implementation is still constrained by many violations and obstacles. On the other hand, ratifying the Regional Regulation by the Kalimantan Provincial government is urgent, primarily to address conflicts between indigenous peoples and companies in Central Kalimantan. The Regional Regulation is expected to accommodate indigenous peoples' rights and regulate local governments' obligations. Establishing the Indigenous Peoples Committee is crucial in identifying and empowering indigenous peoples. The method used in this writing is normative juridical using a statutory approach. The research results explain that Agrarian Reform requires serious attention from the Indonesian government and concrete steps to succeed. Although UUPA already exists, its implementation is still constrained by violations and obstacles. It requires prioritization of subjects and objects, civil society participation, army and police support, total funding, and transparent supervision. Drafting a Bill on Agrarian Reform is vital to face the challenges of agrarian politics. The ratification of the Regional Regulation in Central Kalimantan is urgent to resolve conflicts between indigenous peoples and companies. The Regional Regulation must accommodate indigenous peoples' rights and regulate local governments' obligations. Establishing Masyarakat Hukum Adat is essential to identify and protect customary law communities. Overall, the ratification of the Regional Regulation and the establishment of Masyarakat Hukum Adat are concrete steps in resolving agrarian conflicts and recognizing the rights of indigenous peoples in Central Kalimantan Province.

Keywords: Agrarian Reform; Local Regulations; Indigenous Peoples

INTRODUCTION

Agrarian disputes in Indonesia have been ongoing since the New Order government under Soeharto, which claimed to be part of the development agenda. The government at that time arbitrarily seized land from the people. At that time, no one dared to challenge the Soeharto regime's dominance and power. After the fall of the New Order regime, agrarian disputes intensified as the democratic era began, resulting in previously silent communities beginning to speak out to fight for their land rights that the government had arbitrarily taken away (Sholahudin, 2017). The state's responsibility to ensure justice and welfare for all people remains relevant in addressing agrarian conflicts that remain unresolved today. Agrarian conflicts arise due to imbalances in land ownership, use, and utilization, where some individuals own large areas of land that far exceed their needs while many others own no land. Therefore,



it is necessary to restructure the purpose of land use to ensure equity in land access and utilization (Utomo, 2020).

According to the 2023 Year-End Note of the Consortium for Agrarian Reform (KPA), there were 2,939 conflicts involving 6.3 million hectares of land and 1.759 million family victims during 2015-2023. Most of these conflicts remain unresolved. Out of 851 locations prioritized for agrarian reform, only 21 priority locations for agrarian reform (LPRA) have successfully achieved land redistribution and conflict resolution, covering 5,400 hectares of land for 7,690 families. However, two of them are still awaiting the issuance of redistribution decrees. Meanwhile, 830 other LPRAs are still experiencing prolonged conflicts and have not yet been redistributed (Nababan et al., 2024). In an online discussion organized by Komunitas Akademia Benua Banjar and Fisipol Universitas Widya Mataram-Yogya with the theme "Indigenous Peoples and Land in Corporate Iron Law: Who Gains and Loses?", Komnas HAM Commissioner Hairansyah explained that there are three main issues related to indigenous peoples, namely agrarian conflicts, recognition of indigenous peoples by the state, and protection for human rights defenders (Utari, 2020). "Another significant issue is how indigenous peoples are recognized as communal entities rather than individuals. The certification that is currently done is only individual, whereas indigenous peoples are inherently communal," he added.

Hairansyah also highlighted granting business licenses to corporations to carry out mining activities and the expansion of oil palm plantations in areas inhabited by indigenous peoples. This is the cause of continuing agrarian problems as licenses continue to be granted without giving recognition to indigenous peoples, and land resources are shrinking. Indigenous peoples are also considered human rights defenders in the context of human rights, where any individual who fights for human rights is called a human rights defender (Rato, 2021). Indigenous peoples are fighting for their rights and territories and forest areas that are important for protecting the environment and the lives of other living things (Cetera, 2021).

These agrarian conflicts spread to various sectors, such as plantations, forestry, mining, and infrastructure-related conflicts (Budhiawan et al., 2020). In Central Kalimantan, these conflicts are dominated by oil palm plantation companies, mainly private companies, which have caused the people of Central Kalimantan, especially indigenous peoples, to lose their rights to the land on which they live. Often, in the struggle to defend their land, indigenous peoples face brutal and repressive actions from police and company security forces. They are also often subjected to criminalization and oppression, and even death threats haunt indigenous peoples and non-governmental organization (NGO) activists who fight alongside them. Effendi Buhing, who also serves as the Chairperson of the Laman Kinipan Indigenous Community, experienced criminalization that serves as a clear example. He was accused of theft with violence at his home in Kinipan Village, Batang District, Lamandau Regency, Central Kalimantan. When representatives from the Coalition of Justice for Kinipan testified at the Complaints Room of Komnas HAM RI, Menteng, Jakarta, they stated that Effendi was forcibly arrested without any prior summons and any investigation report (BAP) as a suspect (Lumbanrau, 2020).

There are two reasons why agrarian conflicts are often followed by violence and criminalization of victims. First, the harsh approach applied by the police and military in handling agrarian conflicts. Second, legal discrimination or formal legal approach. This legal approach often leads to accusations from the government against victimized communities as groups that oppose development and are considered criminals (Agraria, 2020). The conflicts involved several parties, including PT Kapuas Sawit Sejahtera with residents in Kapuas, PT Sawit Mandiri Lestari with the Laman Kinipan indigenous community in Lamandau District, PT Karya Septa Damai with residents in East Kotawaringin District, PT Katingan Indah Utama with

residents in East Kotawaringin District, and PT Hampara Masawiti Bangun Persada, also in East Kotawaringin District. In addition, there are also conflicts involving rubber plantation companies, such as PT Ketapang Subur Lestari, with residents in East Barito District. In the mining sector, conflicts arose between residents and PT Multi Tambang Jaya Utama in South Barito District. Meanwhile, conflicts stemming from land acquisition for the construction of Kotawaringin Market and the construction of Sampit Circuit were highlighted in the infrastructure sector conflicts in Central Kalimantan in 2019. This agrarian conflict makes Central Kalimantan the province with the third most significant agrarian conflict nationally after West Java in first place and North Sumatra in second place, according to the 2019 Year-End Data of the Consortium for Agrarian Reform.

In addition to highlighting the agrarian conflicts that occur, the provincial government of Central Kalimantan has yet to make a regional regulation on the protection and recognition of customary law communities, which is the forerunner of customary forest protection. Whereas the 1945 Constitution Article 18B recognizes the existence of indigenous peoples and also through laws and other derivative regulations as follows: (1) Law No.5 Year 60 on the Basic Regulation of the UUPA Article 14; (2) Law No. 41 of 1999 on Forestry Article 67 Paragraph 2; (3) Law No. 26 of 2007 Concerning Spatial Planning Article 5; (4) Government Regulation No. 16 of 2004 Concerning Land Stewardship Article 9 et seq; (5) Presidential Regulation No. 71 of 2012 Concerning the Implementation of Land Acquisition for Development in the Public Interest; (6) 6. Governor Regulation No. 13 of 2009 on Customary Land and Customary Rights on Land in Central Kalimantan Province.

These laws and other regulations have indicated that the governor and legislature are obliged to form Regional Regulations recognizing and protecting indigenous peoples both visibly and explicitly (Fahmi & Armia, 2022). However, the government must be more negligent in carrying out its duties. Then, Regional Regulation No. 5 of 2015 concerning the Provincial Spatial Plan (RTWP) of Central Kalimantan, which still needs to be revised, including indigenous territories in the RTWP, is homework for the government in the future. Indigenous territories must be included in the RTWP so that investors do not carelessly encroach on land and forests that are the living space of indigenous peoples.

METHODS

The method used in this research is normative juridical research with a statutory approach. The normative juridical research method examines, studies, and analyzes principles, norms, and rules from laws and regulations, court decisions, agreements, doctrines (teachings), and various data obtained from internet sites (Achmad & Mukti Fajar, 2015). The statutory approach examines all laws and regulations related to the discussed legal issues. The statutory approach is carried out comprehensively, systematically, and inclusively in describing and analyzing laws and regulations against phenomena that occur in society (Juliardi et al., 2023).

RESULTS AND DISCUSSION

The Position of Agrarian Reform in the Indonesian Legal System

Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA) is a law that fundamentally deals with land issues by containing 58 articles that mainly discuss land-related regulations (Supriadi, 2023). UUPA was designed to redesign the land structure to be more equitable in justice, resolve land disputes, and improve the community's welfare after implementing agrarian reform (Nuriyanto, 2020). However, the implementation of agrarian

reform has yet to be entirely successful due to the many violations in its application. This is due to the existence of many conflicting regulations. For example, separate laws on forestry, mining, plantations, and water resources, which often override the UUPA, create overlaps in inter-ministerial regulations that majorly trigger disputes and conflicts.

Agrarian reform can address land ownership and control imbalances, not just redistributing land (Mahmudah, 2021). The hope is that agrarian reform will be one of the solutions to create equality in land ownership for welfare and justice. The implementation of agrarian reform has many benefits, including creating economic independence and food security, playing a role in increasing community income, reducing land disputes, and contributing to preventing recurring conflicts that can threaten national unity (HAM, 2021). Agrarian reform is also considered an effort to fulfill the human rights of farmers (Utomo, 2021). Agrarian Reform is a national agenda that requires careful implementation planning to achieve the desired goals. In general, the process of implementing agrarian Reform involves four main aspects, namely (1) object determination; (2) subject determination; (3) mechanism and delivery system of agrarian Reform; and (4) access to agrarian Reform (Supinah, 2023).

Agrarian reform, often considered an agrarian reform effort and often associated with land reform, is a measure to improve the welfare of the Indonesian people (Masdin, 2022). Essentially, the main objectives of agrarian reform are to create social justice reflected in agrarian justice, increase productivity, and improve people's welfare (Rosmidah et al., 2023). Agrarian justice encompasses conditions where relative land ownership does not show imbalances that provide opportunities to spread and strengthen agriculture-based economic activities in rural areas (Prakoso, 2021), which then becomes the foundation for the active (and productive) participation of the majority of the agriculture-dependent population to engage in national development socially, economically, and politically (Sizi & Munir, 2023).

According to the Agrarian Development Consortium, the most significant contributor to agrarian conflicts in Indonesia over the past five years has been the plantation sector (Agraria, 2020). It is undeniable that Central Kalimantan is one of the contributors. Ideally, the steps to resolve agrarian conflicts should be based on Agrarian Reform, which is a systematic and long-term operation to arrange and arrange unequal agrarian structures in society to become more equitable through land redistribution programs and full recognition of people's rights, such as the establishment of Regional Regulations on Community Recognition and Protection, accompanied by other supporting programs that improve the quality of life of the community. Therefore, steps to correct several mistakes in the implementation of Agrarian Reform legal products and other supporting legal products that have been issued are important to accelerate the recovery of agrarian conflicts that occur in society.

Normatively, there are no legal obstacles in carrying it out, and, first, optimizing the implementation of Agrarian Reform in a limited manner through articles that strengthen people's rights in the Presidential Regulation on Agrarian Reform (Yahman, 2023), obey the principles and objectives while preventing the entry of stowaways that could be accommodated through the weaknesses of the Perpres. Second, following up on the president's commitment, together with the National Agrarian Reform Committee, the government needs to immediately push for initiatives to change the Perpres with the principles of justice and the interests of the people that must be prioritized. Changes to the Perpres of Agrarian Reform to ensure the main things, namely:

1. Institutionally, the implementation of Agrarian Reform should be led directly by the President, no longer by the Coordinating Minister or other ministers, so that this institution has executive power in dealing with chronic agrarian problems and can make

innovative steps to resolve conflicts, as well as coordinate all relevant ministries and institutions;

2. Set priorities in Agrarian Reform by prioritizing small farmers, tenant farmers, farm laborers, small fishermen, indigenous communities, and the rural poor who are still or willing to depend on the agriculture, plantation, and livestock sectors and the urban poor;
3. Establish priorities in the object of Agrarian Reform by prioritizing areas that have long been affected by structural agrarian conflicts, areas where there is inequality in land ownership between small communities and corporations, areas inhabited by indigenous peoples to be fully recognized, as well as areas that are pockets of poverty or centers of people's agriculture;
4. As an essential condition for the success of Agrarian Reform, the central and local governments must ensure the participation of civil society organizations, including people's organizations such as farmers, indigenous peoples, fishermen, and women, in the structure of the Agrarian Reform implementing agency;
5. Provide stages or procedures that support the implementation of Agrarian Reform by enabling a grassroots participation process in proposing priority locations for Agrarian Reform;
6. Ensure that the process of land redistribution, agrarian conflict resolution, and strengthening of land rights (legalization) is integrated with complementary programs of Agrarian Reform. Such programs include economic empowerment, strengthening production processes that focus on changing people's production patterns collectively and innovatively, transferring relevant technology, and providing infrastructure to market people's products in areas where Agrarian Reform is implemented;
7. Ensure total funding from the State to implement agrarian reform nationally and systematically structured;
8. Ensure support from the army and police in implementing agrarian reform and ensuring protection and respect for people's land rights. The army and police are expected to be neutral in areas experiencing agrarian conflict and in locations proposed as agrarian reform priorities;
9. Ensure the existence of a mechanism that ensures information disclosure on the progress of agrarian reform implementation and provides education and understanding of agrarian reform to bureaucratic apparatus and related parties; and
10. Develop a monitoring and evaluation mechanism for the implementation of Agrarian Reform.

Reflecting on the agrarian situation in 2019 and during Jokowi's one-term administration, Indonesia needs a comprehensive agrarian reform policy, where agrarian Reform is the nation's political agenda. Agrarian Reform must be the foundation of Indonesia's future development so that it is only a partial program in various related ministries with a shared vision and goal in viewing this agenda (Alaerts, 2020). In addition, facing the challenges of agrarian politics in the future, which has the potential to seize and displace people's land for large-scale investment, needs to be done by further strengthening the people's agenda in the agrarian sector (Hardiyanto, 2021).

Therefore, as a medium-term strategy for agrarian reform to become the nation's political agenda, it is also essential for the Jokowi administration to initiate steps to draft a Law on Agrarian Reform. This old mandate has not been realized since the birth of TAP MPR IX/2001 on Agrarian Reform and Natural Resource Management. The Draft Law on Agrarian Reform is important as a regulation higher in the legal hierarchy than the Presidential Regulation and

better guarantees the agrarian reform agenda in the future. The Draft Law is necessary to contain the principles that guide our nation to realize social justice based on agrarian resources as mandated by the Basic Agrarian Law of 1960, namely the ideals of land reform and agrarian reform in the future. Through this Draft Law, agrarian reform is not only a partial regulation but a road map on how agrarian resources in Indonesia are to be administered, regulated, used, managed, and safeguarded for justice, welfare, and sustainability of human life and nature (Junarto et al., 2024).

Thus, the Draft Agrarian Reform Law is a translation of national agrarian law, which originates from Pancasila, especially the fifth principle and Article 33 of the Constitution, which was then translated by the Basic Agrarian Law of 1960 as follows; "...obliges the State to regulate land ownership and lead its use, so that all land in all parts of Indonesia is used for the greatest prosperity of the people, both individually and in cooperation."

Of course, towards true agrarian Reform, there are still political obstacles in the form of differences of interest between ministries and state institutions, so these ideals have never been implemented comprehensively. Therefore, the President should immediately lead the initiative and invite all state and quasi-state institutions to discuss a national consensus to carry out agrarian Reform in a more planned manner. Agrarian Reform is needed normatively and practically to create a just society at the grassroots level.

Ratification of Regional Regulation on Recognition and Protection of Adat and Establishment of Indigenous Peoples Committee

The ratification of the Regional Regulation by the Kalimantan Provincial government is considered very urgent. They were looking at the current conditions in Central Kalimantan regarding conflicts between indigenous peoples and companies in several regions with the same pattern. There is no longer any reason for the government to neglect to complete the Regional Regulation where the 1945 Constitution Article 18b paragraph 2 recognizes the existence of indigenous peoples, plus several derivative laws (UU). The content of the Regional Regulation itself is expected to contain a clear subject, namely the Dayak indigenous community as a collective; the regulated object is the customary territory. The Regional Regulation must also accommodate rights to customary territories, rights to natural resources, development rights, and rights to spirituality and culture. Then, of course, the Regional Regulation also regulates the obligations of the community and government stakeholders themselves, such as requiring each city and district government to identify and validate customary land or customary forests in their respective regions. Furthermore, of course, do not forget to contain community empowerment rules such as providing scholarships for indigenous peoples who cannot afford them, holding regular training/skills training and entrepreneurship, and providing proper health assistance and welfare guarantees for indigenous policymakers.

Regulation of the Minister of Home Affairs No. 52/2014 is the basis for the government to establish a Committee on Masyarakat Hukum Adat (MHA), which will be tasked with identifying Masyarakat Hukum Adat, verifying and validating Masyarakat Hukum Adat, and then determining Masyarakat Hukum Adat. Identification as referred to in paragraph (1) is carried out by scrutinizing: (1) history of the Masyarakat Hukum Adat; (2) customary territory; (3) customary law; (4) customary property and/or objects; and (5) customary institution/government system.

As referred to in paragraph (2), the identification results shall be verified and validated by the district/city Indigenous Peoples Committee. Furthermore, the verification and validation results, as referred to in paragraph (3), are announced to the local Masyarakat Hukum Adat

within one month. In Article 6 Paragraph 1, the district/city Indigenous Peoples Committee submits recommendations to the Regent/Mayor based on the verification and validation results as referred to in Article 5 paragraph (4). Moreover, in Article 6, paragraph (2), the Regent/Mayor determines the recognition and protection of indigenous peoples based on the recommendation of the Indigenous Peoples Committee with a Regional Head Decree. Establishing Customary Law Communities is very important to support the legality of customary territories later.

CONCLUSION

Agrarian Reform is a national agenda that requires serious attention and concrete action from the Indonesian government. Although Law No. 5/1960 on Basic Agrarian Principles (UUPA) has been in place for a long time and serves as a legal foundation, its implementation has yet to succeed as there are still many violations and obstacles. To effectively implement Agrarian Reform, various strategic measures are needed, including prioritization of subjects and objects, increased civil society participation, and support from the army and police with a neutral stance. In addition, total funding from the State and a transparent monitoring mechanism are essential to ensure the success of Agrarian Reform. In addition, preparing the Draft Law on Agrarian Reform is an essential step in facing complex agrarian political challenges. Through these efforts, it is hoped that Agrarian Reform can become a structured and sustainable political agenda of the nation, which aims to create a more just and prosperous society in Indonesia.

The ratification of the Regional Regulation by the Kalimantan Provincial government is very urgent, especially considering the current conditions in Central Kalimantan, which have been associated with conflicts between indigenous peoples and companies in several areas. The completion of this Regional Regulation is expected to accommodate the rights of indigenous peoples, including rights to customary territories, natural resources, development, spirituality, and culture. The Regional Regulation is also expected to regulate local government obligations, such as identifying and validating customary land and empowering indigenous peoples through programs such as scholarships, skills training, health assistance, and welfare guarantees. Establishing the Masyarakat Hukum Adat (MHA) Committee based on Permendagri No. 52/2014 is essential to identify, verify, and recognize indigenous peoples. This is important to support the legality of customary territories and provide proper protection for indigenous peoples. Overall, the efforts to pass the Regional Regulation and the establishment of Masyarakat Hukum Adat are concrete steps in resolving agrarian conflicts and recognizing the existence and rights of indigenous peoples in Kalimantan Province.

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