



Navigating the uneven policy terrain:

CSO Land Reform Monitoring Report in Indonesia 2018¹

An initiative of the Land Watch Asia Campaign

On various occasions, President Joko Widodo declared that agrarian reform was the pathway to prosperity for the entire society, and not simply an act of redistributing lands. Since the end of 2016, the government has been seeking to draw a map for the implementation of agrarian reform with the issuance of Presidential Decree No. 45/2016 of the Working Plans of the Government for 2017. With the decree, 2017 was supposed to be the crucial year for the implementation of the mapping.

It appears that the government does not have a real commitment for the implementation of the reform. Key aspects where the planned reform deviates from the principles outlined in the Agrarian Basic Law or UUPA No.5/1960 can easily be identified. Moreover, the whole bureaucracy from national to regional levels does not seem to be prepared for the implementation.


In recent years, agrarian reform progress tended to slow down despite demands from civil society to rectify and accelerate the reform.

In 2018, the Basic Agrarian Law was translated into its derivative regulation as the Presidential Regulation No. 86/2018 on Agrarian Reform, which comprehensively manages the aspects of agrarian reform implementation such as the institutional tasks,

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subject, object, as well as implementation procedures. Institutionally, the National Agrarian Reform Team, whom are assigned to regulate policy and supervise the implementation of Agrarian Reform, was led by the Coordinating Minister of Economic Affairs.

The Consortium for Agrarian Reform (KPA) is one of the civil society organizations engaged in the agrarian reform issue. This study includes KPA's reflections related to the status of agrarian reform from 2017 to 2018, as well as recommendations to improve its implementation in the coming years.

RESEARCH OBJECTIVES AND SOURCES OF THE STUDY

The Land Watch Indonesia Monitoring Report 2018 attempts to achieve the following objectives:


- provide an overview of the policy and legal framework on access to land and tenure security for the rural poor;
- describe the current status and emerging issues on access to land and tenure security of the rural poor;
- assess the transparency in land governance and public access to land-related information; and,
- identify strategic opportunities for advancing land rights for the rural poor in Indonesia.

This study was conducted primarily through literature review. Documents analyzed include reference materials from various government and non-government institutions (including previous research studies conducted by KPA), laws, jurisprudence, and statistical data. Furthermore, data and information inputs provided in this research also originated from the joint consultation meeting with relevant government institutions that was organized by KPA on 9 November 2018 in Jakarta.

LAND RIGHTS AND ACCESS TO LAND

Access to Land and Development

Given the critical condition of the peasant population and the agriculture sector in Indonesia, it is imperative to include agrarian reform in the national development agenda. Agrarian reform is the foundation for balanced development, poverty reduction, and rural job creation. It is in this context that the Indonesian government issued the Presidential Decree No. 45/2016 and Presidential Decree No. 79/2017 of the Government's Working Plan for 2018, which included agrarian reform as a national priority program. However, it was only in 2018 when the necessary Presidential Decree to support agrarian reform implementation was issued.



As a provisional solution, in 2017, the Coordinating Minister of Economy issued Ministerial Regulation No. 73/2017 forming an Agrarian Reform Team. This Team was tasked to accelerate agrarian reform implementation among concerned government agencies and ministries, such as the Ministry of Agrarian Affairs and Spatial Planning (ATR), Ministry of Environment and Forestry (LHK), Ministry of Rural Areas, Underdeveloped Areas Development and Transmigration (PDTT).

After forming the AR Team, the relevant ministries will establish working groups within each ministry, the government along with KPA and other CSOs are expected to formulate a mechanism for accelerating the implementation of agrarian reform, which is referred to as Agrarian Reform Land Objects (TORA).

In both the Ministry of Agrarian Affairs and Spatial Planning and the Ministry of Environment and Forestry, a Joint Secretariat (Sekber) will be formed to discuss the identification mechanism of TORA, its budget and legal basis of the mobile working group.

In addition, the Ministry of PDTT has also formed an agrarian reform task force. Its main function is to ensure that land redistribution is supported by other programs for increasing the beneficiaries' prosperity in rural areas through the use of village funds. Law No. 6/2014 identifies the village as the main entry point to make sure that land distribution beneficiaries will participate in additional programs such as cooperative enhancement, seeds and fertilizer provision. Besides, it is hoped that agrarian reform can be in synergy with village owned business units (*bumdes*) for developing the peasant economy.

Poverty

Poverty is a persistent problem in Indonesia. Despite many studies, government programs, and people's initiatives to combat it, the poverty rate remains high.

To measure poverty, the Central Statistics Agency uses the basic needs approach. In this approach, poverty is seen as an economic inability to meet basic food and non-food needs. Thus, the "poor" are the people with an average monthly per capita expenditure below the poverty line of USD 371.

Currently, the number of rural poor in 2017 has reached 16.31 million. Although poverty has decreased in recent years, the problem remains significant, since there are still peasants-households with average land size of only 0.10 to 0.19 of a hectare.

The increasing number of smallholders and landless peasants is a warning. Without agrarian reform, then the root cause of both rural and urban poverty will be very difficult to overcome and thus, the prosperity of peasants will remain a dream.

Table 1. Number of People in Rural Areas

Year	Population of the Underprivileged in Rural Areas
March 2014	17,770,000,000
September 2014	17,370,000,000
March 2015	17,940,000,000
September 2015	17,890,000,000
March 2016	17,670,000,000
September 2016	17,280,000,000
March 2017	17,100,000,000
September 2017	16,310,000,000

Source: Central Bureau of Statistics, 2013 Agriculture Census

**Table 2. Comparison of Agricultural Land Tenure from 2003 to 2013
(in million households)**

Agricultural Census	Agriculture of less than 0.10 of a hectare	Agriculture of 0.10 to 0.19 of a hectare	Agriculture of 0.20 to 0.49 of a hectare	Agriculture of more than 0.50 of a hectare
2003	9.38	3.60	6.64	11.43
2013	4.34	3.55	6.73	11.51

Key Issues Affecting Rural Poor's Access to Land

Changes in the development orientation in the New Order and the muddling up of the agrarian policies which accompanied it have had an adverse impact on the agrarian sector.

These are now shaping the structure of agrarian societies. One major impact is the disharmony or incompatibility in the agrarian sector. Four incompatibilities are identified here, namely:

- inequality in the tenure of agrarian resources;
- incompatibility of “allocations” of agrarian resources, especially land;
- the mistaken perception that “the agrarian issue” involves only land issues and its management divided into forest and non-forest; and,
- incompatibility of various legal products and sectoral policies (for instance, the management of land allotment does not consider other social interests).

These four incompatibilities are the main sources of various derivative problems, such as agrarian conflicts, poverty, and unemployment. Moreover, globalization has complicated the agrarian situation (Wiradi, 2009).



LEGAL AND POLICY FRAMEWORK ON ACCESS TO LAND

Land Laws and Policies in Indonesia

As explained in the previous section, agrarian reform was included in the Government Work Plan (RKP) of 2016 to 2018. The government's priority work in the 2016 to 2018 RKP is a manifestation of the government's seriousness in implementing the UUPA 1960 and Decree of the People's Consultative Assembly No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management (MPR Decree No. IX/2001).

Substantially, this Government Work Plan is really helpful in accelerating the agenda of land tenure ownership and control as a core part of agrarian reform.

Besides the Agrarian Basic Law (UUPA) 1960 and the MPR's decree, Indonesia has the No. 19/2013 Law on the Protection and Empowerment of Peasants. However, KPA believes that this Law has yet to protect and provide land rights to peasants. KPA together with other CSOs have assessed this law and conveyed their findings to the Constitutional Court.

At the same time, a number of CSOs have criticized this law:

- It does not place agrarian issues (land tenure and ownership) as the central focus;
- It establishes rent rights as mechanism for providing land resources for peasants;
- It does not include the land redistribution agenda in the agenda of peasant empowerment;
- It provides a very limited range of lands for peasants (free land and ex abandoned land); and,
- It does not allow peasants to organize or form unions.

Despite the flaws in the law, it also has some progressive provisions. For instance, Articles 12 and 18 stipulate that the national and regional governments should provide peasants with agricultural land plots sufficient for agricultural livelihood.

The provision is reaffirmed by the Article 19 Number 1 of the No. 41/2009 of Sustainable Food Crop Land Protection, which is part of spatial planning for rural areas in district territory. The policy for realizing the sufficient support for small peasants is included within Article 7 of the No. 19/2013 Law of Peasants Protection and Empowerment. Article 7 Number 1 of the law stipulates that strategies for protecting and empowering peasants are established by the national and regional governments.

Article 7 Number 2 enumerates the specific measures for protecting peasants:

- agricultural production means and equipment;
- business certainty;

- stabilizing effort over commodity prices;
- efforts to purge high cost economy practices;
- compensation of loss due to crop failure caused by force majeure;
- early warning and mitigation systems against climate change effects; and,
- agricultural insurance facilities.

Article 7 Number 3 stipulates that peasant empowerment is done by providing:

- education and training programs;
- counseling and assistance;
- developing agricultural products systems and means; and,
- consolidating and guaranteeing agricultural land area.

The 1960 UUPA (Basic Agrarian Law) also places additional obligations on government, including organizing and planning the universal land use, administering land so that it can improve production, assuring that every citizen is given dignity as a human being, preventing any private monopoly and improving social guarantee, and security for livelihood in the land sector.

The UUPA also provides that every Indonesian citizen, either male or female, has equal rights to owning or benefiting from land.

The Development of Agrarian Reform Implementation and Land Policy in Indonesia

Achievements of the Government in Implementing Agrarian Reform

Since 63 percent of Indonesian land area was claimed as forest area, the agrarian reform that was implemented by the Jokowi Government is prior to the issuance of Presidential Decree No. 86/2018 on Agrarian Reform, applied the Law No.41/1999 on Forestry (Forestry Law).

However, such claims are not all legal since those areas are not yet established as forest areas. Applying the Forestry Law, only some 4.5 million hectares are under the jurisdiction of the LHK Ministry. Abandoned land, which is under the jurisdiction of the ATR Ministry, covers only 400,000 hectares.

Therefore, determining the beneficiaries and coverage of agrarian reform is a crucial phase, and will determine the success of the program's implementation. Any error in this phase will increase the possibility of the program's failure. The experience in other countries shows that the participation of civil society movement is crucial to the success of agrarian reform implementation.

Applying the Forest Law, the only way to solve the problem is to set aside or include some forest areas into the TORA. The process of extracting an area from its former allocation is determined by: a) the status of the forest areas which can be released; b) the area of the forest at regional



levels; c) the proposal of spatial changes from regional governments; and, d) efforts in preparing beneficiaries.

Unfortunately, the system for the extraction has not yet been established by the Ministry of Environment and Forestry (LHK). Over more than a decade under the previous administration, out of a total of 7.5 million hectares of forest areas extracted, 90 percent was allocated to plantation enterprises. The application of the forestry law tends to make the determination of the TORA a top-down process based on the available criteria.

The establishment of the TORA from forest areas is stipulated through the Decree of the Minister of LHK SK 180/MENLHK/SETJEN/KUM 1/4/2017 of Indicative Map for Forest Area. The map targets 4,853,549 hectares of forest area (per November 2017) to be included within the extractable area for the TORA.

Such an allocation is not available for Java, Bali, and Lampung, since those places have forest areas of less than 30 percent of their total area, according to the one-sided interpretation of the government of the No. 44/1999 of the Forestry Law.

What is more frustrating is that the Ministry of the ATR has not commenced any inventory process for allocation TORA of 400,000 hectares of expired land use rights and abandoned lands. The ministry focuses its work on asset legalization or regular certification of areas where there is no conflict or dispute.

The plan is that the indication process of the TORA (which is fixed by the ATR Ministry) will be updated periodically. This is in accordance with the Minister of LHK's decree that all data related to TORA will be updated every six months, considering also suggestions from civil society. The government indeed has been doing this, but the ATR and LHK ministries tend to avoid lands which are the subject of conflict, preferring instead to target "clean and clear" land, and even fresh land.

Another aspect which is worth noting is that the 2017 agrarian reform progress report reflects a conservative implementation of TORA. Since the day agrarian reform was included among national priorities, the LHK ministry has extracted only 707,346 hectares from forest area (Kementerian LHK, 2017). As with the ATR Ministry, from the release of the LHK forest area of September 2017, no land has been redistributed due to its rejection by the community. The more complete achievements are, among others (Sofyan Djalil, 2018):

- out of 0.6 million hectares of transmigration lands targeted for legalization, only 75,600 hectares have been legalized (12.6 percent of target);
- out of 3.9 million hectares targeted for assets legalization (certification), only 1.832 million hectares have been legalized (47 percent of target);

- out of 0.4 million hectares of land targeted for redistribution (consisting of abandoned and ex-HGU lands), 236,186 hectares have been redistributed (59 percent of target); and,
- out of 4.1 million hectares targeted for forest estate release, some of 994,761 hectares have been redistributed (24.3 percent of target).

These facts indicate that there is wide gap between political promise and policy realization. Were it not for civil society involvement in setting the scope and targets, agrarian reform under Jokowi will proceed at an even slower pace.

Condition of Indonesian Land Policy

The following are the findings of KPA's 2017 monitoring work on policies relating to agrarian reform.

a. Palm Oil Plantation Moratorium

The moratorium on palm plantations is administered through Presidential Order No. 8/2018. It consists of 12 instructions to be obeyed by five ministries and the Head of the Investment Coordination Agency, including the regional government up to the regent and mayor level. This Presidential Order must also work in parallel with the government commitments to resolve the problem of inequality in the ownership and tenure of agrarian structures.

This Presidential Order consists of three vital points that must be implemented by the government -- suspension or postponement of permits for palm oil plantations, evaluation of the existing permits for palm oil plantations, and increasing the productivity of people-owned palm oil plantations. On the suspension provisions, the order itself works as a moratorium or deferral on the process of issuing the three permit types for palm plantation.

Ideally the moratorium should last for up to 25 years as proposed by WALHI, because environmental recovery requires a long time (*Ibid*).

b. World Bank Loans in the Name of Agrarian Reform (KPA, 2018)

The Consortium for Agrarian Reform is against the action taken by the government when it took loans from the World Bank for the Ministry of ATR, supposedly with the aim of accelerating agrarian reform. None of the components of the loan is aligned with the agrarian reform agenda. Rather, the loan is for the "one map policy," combining the Complete Systematic Land Registration (Pendaftaran Tanah Sistematis Lengkap or PTSL) with the electronic land information service. In other words, this loan is for an ordinary land administration program.



Minister Sofyan Djalil admitted this in his press statement, which said the World Bank was committed to support the land certification program through the USD 200-million or IDR 2.7-trillion loan.

KPA believes that the Ministry of ATR and the World Bank deliberately misled the people of Indonesia. This program is clearly not agrarian reform; in fact, it actually runs counter to the spirit of agrarian reform.

Two decades ago, the World Bank provided loans to the New Order for the Land Administration Project (LAP). The program was implemented in Jakarta, Bekasi, Depok, Tangerang, Bogor, and Karawang. KPA criticized the project because it would be an instrument for land liberalization.

The fears raised then concerning the LAP have unfortunately become reality. The areas where the LAP was implemented have fallen into the hands of a few businessmen who have since constructed industrial areas, housing compounds, shopping centers, and apartments. The old owners were not involved in the process, except that they simply sold their lands.

In light of the failure of the LAP, it is imperative that the current World Bank loan be cancelled.


In addition, the KPA also demands that government implement agrarian reform immediately by distributing lands to the appropriate beneficiaries and providing the necessary support services to make the lands productive. Agrarian reform implementation needs to be led directly by the President, in order to ensure effective coordination among the concerned ministries and agencies.

c. Land Grabbing in the Name of National Strategic Projects

The process of land acquisition for the benefit of national strategic projects has actually been adequately regulated by the Law No. 2/2012 on Land Procurement for the Development of Public Interest.

The legal procedure and phases of such acquisition have to be fully understood by the police, so that they are not easily used by regional governments and investors to undertake forced evictions, or arrest local people who are trying to defend their homes and farms. The Indonesian Constitution and this law protect the rights of people affected by development projects.

It has to be noted that people are not always inherently opposed to land acquisition for development projects. Resistance builds up because from the planning until field execution of the acquisition, the process is not transparent, and is often manipulative and corrupt. This results in land prices that are too low for the landowners.



In addition, when land acquisition faces opposition from people, the government usually does not undertake mediation processes. Instead, it often resorts to force through actions by the police and municipal security forces, or even thugs. Such repressive methods worsen the conflicts and often result in casualties during the eviction process.

The 1960 UUPA states that land bears a social function, that exploitative and repressive measures must be avoided, and agricultural laborers are to be prioritized in land distribution. If these principles are followed by all parties involved, and if procedures and phases stipulated in the Land Grabbing Law are obeyed strictly and transparently implemented, then land conflicts in development projects can be avoided.

d. The Trap of the P3H Law

The criminalization problem in the forestry sector has been a concern for some time. In 2014, civil society organizations formed an Anti-Forest Mafia Coalition to respond to cases being filed against small peasants.

The No. 18/2013 Law of the Prevention and Eradication of Forest Destruction (UU P3H) is among those laws used to file cases against peasants or villagers. In 2014, the coalition noted that 53 people were prosecuted using this law, and 43 of them were found guilty and sentenced to 18 months in prison.

In 2017, KPA records indicated that at least 26 peasants and villagers became victims of criminalization with the application of the P3H law. This criminalization was related to the agrarian conflict that put locals against the national park, conservation area, and State-Owned Enterprises on the Perhutani forest.

The cases involved charges of destroying conservation areas, working on Perhutani areas, stealing trees in Cilacap (Sudjana, 45), and illegal taking of Sonari worms in Sukabumi (Didin, 48). Such law entangled peasants and indigenous people's members in Lombok Timur, NTB; in Sompeng, South Sulawesi; and in Badung, Bali. In East Lombok, six peasants were criminalized (Nabil, 40 and Parihin, 60) with the charge of working on land within the national park.

While the P3H law was intended to protect forests against destructive acts by individuals and corporations, when applied in agrarian cases, the law has been effective in criminalizing peasants but impotent against corrupt and manipulative corporate investors.

If we refer to the decree of the Constitutional Court No. 35/PUU-X/2012, No. 95/PUU-XII/2014 and No. 45/PUU-IX/2011 related to forest areas and communities living in or around them, the ruling was that the P3H law cannot punish people who have been living in the particular forest area for generations.



Amidst the muddling up of forestry policies and management, the P3H law has further complicated agrarian problems. Civil society advocates that, instead of the P3H law, the decree of the Constitutional Court should instead be implemented, including the ruling that lands which are owned and worked on by local people are under their rights.

The increasing number of the P3H law's victims indicates that the government is incapable of solving structural agrarian problems which weigh on ordinary local people. Sensitivity to social justice and the chronic problems in the forestry sector is demanded of the Jokowi administration. If this situation persists, public trust in Jokowi will be at risk.

e. *Immensely Controversial Policy*

Presidential Decree No. 88/2017 on the Procedures for Solving Land Tenure Problems in Forest Areas was supposed to enhance the common regulation issued by the Ministry of Forestry, the Chief of BPN-RI, Public Works Minister, and Minister of Domestic Affairs.

The implementation of that common regulation of the four ministries faces a dead end, especially when national and regional governments are reluctant or negligent in enacting it. The formation of IP4T team as stipulated in that common ministerial regulation is dependent on the will of regional governments. A number of regional governments which have no commitment to it will not follow up the regulation seriously and automatically. There is also the problem of inter-ministerial political dynamics.

The Presidential Decree is supposed to solve these problems. In terms of its substance, the Presidential Decree is no different from the four ministers' common regulation. In the decree, the lead entity is now the Acceleration Team for Solving Land Tenure Problems in Forest Areas, with the Coordinating Minister of Economy as its head, with the ministers of ATR, of domestic affairs, of KSP and the cabinet secretary as its members.

At the provincial level, it is composed of teams of Inver PTKH, which are chaired directly by forest service chiefs at the local level who receive suggestions from district heads on addressing problems of conflict in forest areas. The Inver Team is directly tasked to conduct field investigation related to those suggestions.

There are four schemes for solving conflicts stipulated in the presidential decree, including the extraction from forest area, forest areas exchanges, social forestry management rights, and resettlement. Beneficiary subjects are those individuals, government services, social or religious organizations, and indigenous peoples. This scheme depends on the 30 percent of the forest area limit in a province.

If a conflict area has been physically occupied by locals for at least 20 years, with no claims from other parties, the area can be included in the extraction scheme. But such a claim



cannot be valid in a forest area which has a canopy area of less than 30 percent. If the forest area is less than or equal to 30 percent of the total area of a province, the exchange scheme can be applied. If the local people have been occupying the land for less than 20 years, then the social forestry scheme is the remedy. If the conflict area is within a conservation forest, the solution is the resettlement scheme.

In terms of the substance, agrarian reform has been reduced to the options provided in the Presidential Decree. Also, the agrarian reform option was previously available within the common ministerial regulation, applicable to local people with less than 20 years of land tenure. Now in the Presidential Decree, those with less than 20 years of tenure can only avail themselves of the social forestry option. Another controversy is that the resettlement option of the presidential decree is a huge setback from this regime.

f. Social Forestry Cannot Simply Be Called Agrarian Reform


The social forestry program (PS) has existed since the reign of President Susilo Bambang Yudhoyono (SBY). A decade of experience has proven that this program has not addressed the problem of structural agrarian conflict and inequality in Indonesia. Since the time of President SBY, KPA has strongly advocated against this social forestry program, including the various partnership models that drain the peasants of their livelihood.

Minister Regulation (PerMen) LHK No. P.83/MENLHK/SETJEN/KUM 1/10/2016 on SF regulates the public's access to forests and agrarian resources. SF is the community's access to land in a forest area for a certain period of time, namely for 35 years with an evaluation conducted every five years.

The government targets 12.7 million hectares of forest area for SF coverage. The Indicative Map of the Social Forestry Area (PIAPS) has been prepared by the Ministry of LHK and spread in almost all provinces. SF achievements until September 2018 have reached 2.004 million hectares. There are various forms of SF such as village's forest, community forestry (HKM), community plantations (HTR), and forestry partnerships.

There is still a possibility that social forestry could be one of the agrarian reform models recognized by the government. However, it is vital to remember that there are many models of SF that are precisely against the objectives and basic principles of AR itself.

These include partnership models with forestry enterprises that stipulate that only certain crops (commodities) can be cultivated; implementation of unfair profit-sharing schemes; and, the legitimization of monopoly over land or forest. In addition, SF is certainly not AR if provided to the community only because the government is reluctant to acknowledge their past mistakes, i.e. that the reinstatement of forest areas has plundered community lands.



SF has also not been able to answer the issue of agrarian justice. The problem lies in the lack of consideration for community interests in various forestry policies, such as in setting boundaries. So far, the uncertainty over the boundaries of forest areas has been the cause of prolonged conflict.

Furthermore, not all agrarian issues within forest areas can be solved with SF policies. For some areas, the solution must be agrarian reform.

New Legal Opportunities to Resolve Inequality in Land Tenure


For four years (2014 to 2018), the government of Indonesia has implemented agrarian reform as framed in RPJMN and the Government Work Plan (RKP). With the nine million-hectare target, the government pursued their objectives through legalization and redistribution systems.

On the regulation side, the government is applying various regional regulations, such as plantation and forestry laws, to implement agrarian reform. On the institutional side, the work done by the various ministries had always tended to overlap. Thus, be it on the basis of the laws or institutions, the work done by the government thus far has been sub-optimal.

The issuance of Presidential Regulation No. 86/2018 of Agrarian Reform is expected to overcome current implementation issues.

The major provisions of the regulation are as follows:

- An Agrarian Reform Team is established, led by the Coordinating Ministry of Economic Affairs and with members consisting of various ministries/institutions relevant to the implementation of agrarian reform. To assist in the daily work of the Team, the Agrarian Reform Task Force (GTRA) is also set-up. At the national level, the GTRA is led by Minister of Agrarian and Spatial Planning (ATR), while at the Provincial and Regency/City levels, these are led directly by their Governor/Regent/Mayor cooperating with the people's representative within.
- The budget for implementing Agrarian Reform will be drawn from:
 - a. State Revenue & Expenditure Budget (APBN);
 - b. Regional Revenue & Expenditure Budget (APBD); and/or,
 - c. Other legitimate sources in accordance with statutory provisions.
- There are 11 types of land that will be placed under agrarian reform coverage, including forest estates already owned by the people, and abandoned State lands already being used by the people.
- Agrarian reform beneficiaries may be individuals, groups (with communal rights), or legal entities. Moreover, the Presidential Regulation identifies 19 types of qualified beneficiaries including landless peasants and sharecroppers, but also including private employees and civil servants.



Given these, KPA is fully aware that Presidential Regulation No. 86/2018 cannot be said to be perfect for carrying out genuine agrarian reform. However, KPA sees an opportunity to address the agrarian issues in Indonesia today. Regulations that are aligned with the Presidential Regulation must be a reference for the government in its implementation of the mentioned policy.

STATUS OF ACCESS TO LAND BY THE RURAL POOR SECTORS

Peasant's Access to Land

Smallholder Peasants

In addition to the condition of peasants and agrarian problems outlined in the previous section on Land Rights and Land Access, Indonesian peasants from year to year have to face agrarian conflicts. Inequality in land ownership and tenure is the main cause of land disputes, especially in plantation areas where land tenure rights are concentrated. Agrarian structural inequality also brings about a situation where landless peasants or agricultural laborers have no choice but to sell their labor for low prices (KPA, n.d.).

In 2010, Indonesia's population was estimated 237.64 million, with about half living in urban areas and the other half in the rural areas.


In one decade, approximately 5.09 million peasant families fled from the agricultural sector and it can be concluded that they became landless peasants, laborers or urban poor, since the land conversion rate in Indonesia is still very high.

The rate of agricultural land conversion in this decade is 100,000 to 110,000 hectares per year (Ministry of Agriculture, 2016). But in 2018, the Ministry of Agrarian and Spatial Planning has provided data on agricultural land conversion of about 650,000 hectares, from 7.10 million hectares in 2013 to 7.75 million hectares in 2018.

The 2013 agricultural census by Central Bureau of Statistics (BPS) indicates that Indonesia still had a 31.7-million peasant population, and most of them were male (24.36 million people or 76.84 percent of the total peasant population). Their female counterparts numbered only 7.34 million or 23.16 percent of the total (BPS, 2013).

There is also a generation crisis as the number of farmers who are between 35 and 54 years old reached 14.21 million or 54.37 percent of the total.

This phenomenon indicates that agriculture does not yield enough benefits. In addition, the social status of a peasant is still deemed inferior. It can be seen from the fact that farmers' children tend to be reluctant to continue their father's work in the fields.



The desperate condition of Indonesian agriculture is worsened by the issuance of business use rights in the plantation and forestry sectors.

In 2018, the palm oil plantation area in Indonesia reached to 14.309 million hectares (General Directorate of Plantation of the Ministry of Agriculture, 2018). In the forestry sector, the Ministry of Environment and Forestry issued licenses (HPT, HP, HPK, HTI) to 499 enterprises with a total of 68.7 million hectares as of 2017 (General Directorate of Forest Planology and Environment Planning, 2016; Ministry of Environment and Forestry, 2016).

With large portions of land in the hands of private and State-owned enterprises, the condition of the peasant population is very miserable. In 2013, Indonesia had 14.248 million almost landless peasant families (those who had less than 0.5 of a hectare per family).

Agricultural families owning 0.10 to 0.19 of a hectare in 2013 reached 3.55 million. Peasant families with 0.20 to 0.49 of a hectare owned land numbered 6.73 million (BPS, 2013).

Indigenous Peoples

Large-scale, land-based extractive development is the main cause of indigenous people's marginalization. This foments many prolonged land and natural resources conflicts.


Indigenous people's rights marginalization has two sources. The first is expropriation of indigenous people's lands by the State (eminent domain). Second is the destruction of indigenous people's social units by homogenizing the village model in the New Order era.

The traditional rights and authorities of indigenous social units such as nagari, huta, marga, and others are being undermined due to the application of the New Order village model, thus diminishing the indigenous communities' legal capacity as the holders of indigenous territory.

The Aliansi Masyarakat Adat Nusantara (AMAN or Alliance of Indigenous Peoples of the Archipelago) has mapped indigenous peoples' land which comprises 9.3 million hectares. However, since the beginning of Jokowi administration, recognition and legal establishment for indigenous peoples' forests in Indonesia extends only to 25,110 hectares with only 33 certificates (LHK, 2018).

Rural Women

Currently, gender equality is truly a global agenda set out in the SDGs with 17 programs that apply to developing countries. During this time, women who fought alongside the men to obtain cultivated land had not yet obtained the rights to the cultivated land. This problem is still closely related to patriarchal culture which makes men more dominant in land ownership. Although there are currently 7.34 million peasants (23.16 percent of farmers) are female peasants (BPS, 2013).



Women as housewives are responsible for household food, good nutrition for families, and food security. This responsibility belongs entirely to women, as family nutrition is in the hands of women. However, the contribution of women in food security is not balanced with economic conditions, especially the gap in income between men and women in the agriculture sector. Based on data from the University of Jember in 2017, the average wage of female farm laborers in Java is only Rp 40,000 or USD 2.8 per day and for men farm laborers is Rp 52.828 or USD 3.8 per day (BPS, 2018). Such conditions do not seem to be very different from other regions in Indonesia, given the style and type of work performed by women farm workers is no different.

This is not because women are unable to cultivate the fields, but the lack of opportunities for women peasants to access information and their low level of education serve as hindrances to improving their capabilities in their respective communities.

Based on data from the Ministry of Agriculture in 2014, there are approximately 50 percent of Indonesian women peasants involved in the development of the agricultural sector. Women carry out heavy work such as preparing land, breeding, planting, and caring for plants until the harvest period. These activities are carried out periodically between their roles as housewives community members.

Most of the female peasants in the rural and village area does not have formal employment but are more involved in informal work such as farming or becoming farm laborers in certain seasons. Based on the facts, one of the focuses of the work of the Indonesian government in the implementation of agrarian reform is to ensure that women farmers receive land redistribution and programs to support agrarian reform.

RESOLUTION OF CONFLICTS AND PROTECTION OF LAND RIGHTS DEFENDERS

Agrarian Conflict in Indonesia

According to KPA's record, 2017 saw at least 659 agrarian conflict cases in Indonesia involving 520,491.87 hectares. These conflicts affected at least 652,738 peasants' families. In 2018, agrarian conflict was recorded 410 cases covering about 807,178 hectares, and involving 87,568 peasants' households in all of the provinces in Indonesia. Therefore, in the last four years (2015 to 2018) of the Jokowi administration, the number of agrarian conflict cases has accumulated to 1,769.

KPA categorized the kinds and causes of agrarian conflicts in Indonesia into seven sectors, i.e. a) plantation; b) infrastructure; c) property; d) forestry; e) mining; f) coastal area and maritime; and, g) agriculture.



In the 2018 period, almost half of which took place in the plantation sector (144 cases). The second most conflict-ridden sector was the property sector, with 137 cases. The agricultural sector ranks third with 53 cases. Next was mining with 29 cases, then forestry with 19 cases, coastal area and maritime with 12 cases, and finally the infrastructure sector with 16 cases.

In terms of commodities, oil palm plantations accounted for the highest number of agrarian conflict cases in 2017 and 2018. While the commodity brings in the most foreign exchange to Indonesia, it has come at a steep price given its long and tragic history of agrarian conflict. The moratorium on the issuance of licenses for oil palm plantations failed to alleviate agrarian conflicts for it was not followed with a thorough review of licenses that had already been issued.

Over the last 10 years, the area planted to oil palm increased by an average of 5.9 percent annually. The highest increase was in 2011, which saw a 7.24 percent increase amounting to 8.99 million hectares. As of 2018, the area of oil palm plantations in Indonesia was 14 million hectares (Ministry of Agriculture, 2018). The pace of this increase was not matched by improvements in location licenses, business license systems, and comprehensive impact studies of such plantations. The review of issued licenses has therefore become more urgent.

Agrarian Conflict Affected Areas

Based on KPA's calculations, 1,327,669.48 hectares were affected by agrarian conflicts throughout the country from 2017 to 2018. The two biggest conflicts are plantation and infrastructure. The plantation sector involves 786,093.59 hectares, of which palm oil plantations account for the largest area with 228,492.93 hectares.

The number of agrarian conflicts in forest areas is not that high. But actually, the conflicts in the plantation and mining sectors began in the forestry sector, for the areas devoted to these operations were carved from forest areas. This is why national agrarian inequality is concentrated in the forestry sector.

In the infrastructure sector, conflicts affected a total of 57,367.22 hectares from 2017 to 2018. Most of them is for national strategic project development. Based on Presidential Regulation No. 58/2017 on Acceleration of the Implementation of National Strategic Projects, there were as many as 245 National Strategic Projects (NSPs) identified. Land requirements for NSP development until 2019 reached 133,657 hectares (Ministry of Public Works and Housing, 2018).

Another conflict area is in mining sector which covered an area of 45,792.80 hectares in 2017 and 22,681.60 hectares from January to August 2018. The coastal and maritime sectors accounted for 42,109.47 hectares of conflict areas in 2017 and 54,052.60 hectares in 2018. In the agriculture sector, conflicts affected 38,986.24 hectares in 2017, plus 22,450.69 hectares in the first eight months of 2018. Finally, the property sector faced conflicts covering 10,337.72 hectares areas in 2017 and 12,567.44 hectares from January to August 2018.

Violence and Criminalization of Victims

In Indonesia, agrarian conflicts frequently involve brutal violence perpetrated by the State security apparatus or by companies against local people who resist eviction. For purposes of identifying violence victims, KPA uses four categories: killed, persecuted, shot, and criminalized (imprisoned).

Table 3. Victims of Land Conflicts

Years	Criminalized	Injured/ persecuted	Killed	Shot
2017	369	224	13	6
2018	216	132	10	6
Total cases	585	356	23	12

Source: KPA, 2017-2018

In 2017, 369 individuals were criminalized (351 male and 18 female), and 224 injured/persecuted (170 male and 54 female). Cumulatively, the last four years of the Jokowi administration (2014 to 2018), at least 41 people were killed in various areas of agrarian conflict, 546 persecuted, 51 people were shot, and 940 farmers and agrarian activist had been criminalized.

Table 4. Institutions/Party Who Cause Agrarian Conflict

Years	Private companies	Government	State-owned enterprises	Local apparatuses
2017	289	140	55	21
2018	244	58	31	28
Total cases	533	198	86	49

Source: KPA, 2017-2018


Although there is a small part of the conflict between communities as many as 36 in 2018 and 112 in 2017, what is noteworthy is that horizontal conflicts among communities are actually caused by government policies.

TRANSPARENCY IN LAND GOVERNANCE AND ADMINISTRATION

Participation in Land Governance

The value of the people's struggle as input in making decisions regarding land use in Indonesia has actually been accommodated in legislation.

For instance, Article 7 Paragraph 4 of Law No. 2/2012 of Land Procurement for Public Interest states that land grabbing is in the public interest when "organized through planning involving all stakeholders." Article 23 of Government Regulation No. 16/2004 on Land Stewardship states,



“that the adjustment of the control, utilization and cultivation of land by the Regional Spatial Plan, is carried out by involving the public in accordance with the laws and regulations.”

There are even more detailed community rights in Article 2 of Regulation No. 69 of 1996, concerning the Implementation of Rights and Obligations, as well as the Forms and Procedures for Community Participation in Spatial Planning.

In these rules, the public is entitled to:

- participate in the spatial planning process, space utilization, and control of spatial use;
- be informed of spatial plans, regional spatial plans, detailed spatial plan areas;
- enjoy the benefits of space and/or added value of space as a result of spatial planning; and,
- obtain appropriate compensation for the conditions experienced as a result of the implementation of development activities in accordance with the spatial plan.

The rules regarding community participation in land allocation decision-making processes are quite progressive. However, these regulations are rarely implemented. In many cases, peasants do not have any decision-making authority over the lands they till. In 2013, the Gini coefficient ratio of land in Indonesia reached 0.68 (BPS, 2013), meaning that one percent of the population controls 68 percent of the total land of the country through various permits and land rights.


CSO Participation in Agrarian Reform Implementation

KPA knows that the government’s concept of agrarian reform is erroneous and incomplete at both policy and implementation levels. It is therefore necessary that all parties constantly critique the agrarian reform program in the hope of improving it.

Agrarian Reform Priority Locations (LPRAs) constitute a competing concept of agrarian reform. LPRAs are also a strategy through which peasants, indigenous peoples, fishermen, women and other poor people can critique the implementation of agrarian reform, especially the process of settling the TORA which is top-down today.

The LPRA concept was developed by KPA based on the idea that peasants and other basic sectors have the deepest knowledge of their regions or land. Agrarian reform will not succeed unless the participation of peasants and their organizations in proposing priority locations for agrarian reform to the government is institutionalized (bottom-up approach).

LPRAs are sites where peasants have been organized and have been clamoring for agrarian reform. Complete and accurate data of the beneficiaries, and the site location have already been compiled and filed with the appropriate government agencies.



Currently, from the potential locations covering a total of 1.4 million hectares, KPA has consolidated 444 locations covering 654,392 hectares with 144,808 peasant families. Those locations are proposed by 103 civil society organizations of 20 provinces and 98 districts, and have been officially advanced to the national government on various occasions. All data regarding the LPRAs of the first phase have been mailed to the LHK, ATR, KSP, and to all levels of local governments.

Discussion on the LPRA is ongoing through the agrarian reform common secretariat in two ministries. The process is very slow, despite the fact that the Jokowi administration has little time left for implementing agrarian reform.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Opportunities for Advancing Land Rights


A sweet surprise during the 58th National Peasants Day on 24 September 2018 was the issuance of Presidential Decree No. 86/2018 of agrarian reform. The decree is important as it translates to reality the government's political commitment announced in 2014.

In his 9-Point Development Agenda, President Joko Widodo promised an agrarian reform in the form of land redistribution to poor people.

This Presidential Decree is supposed to overcome any hindrance to land redistribution, agrarian conflict resolution, peasant economic empowerment, and legal recognition of peasant's agricultural lands. Regulation impediments are the subject of frequent complaints from the government agencies tasked to implement activities mandated in the Rencana Kerja Pemerintah (RKP, Government Work Plan) of 2017, 2018, and 2019. Moreover, this decree is capable of raising the spirit and hopes of people, especially peasants who are struggling to claim their rights.

The challenge for civil society, especially for people's organizations working to eliminate inequality and conflicts, is that they have to effectively maximize opportunities provided by the Presidential Decree.

For KPA, the Presidential Decree is important because it: a) signifies growth in the agrarian reform movement; b) provides a legal opportunity and breakthrough for improving agrarian reform implementation; c) strengthens the proposals of subjects and objects of agrarian reform from civil people; d) binds provincial and district governments to their commitment to quickly implement agrarian reform; e) can be an instrument to make LPRA quickly accepted and followed up by regional governments; and, f) pushes for agrarian conflict resolution. Finally, this decree



can be used as an entry point for peoples' or peasant unions' participation in the implementation of agrarian reform either at national or regional levels of government.

RECOMMENDATIONS

KPA believes there are various steps that must be taken by the President to solve the problem of institutional stagnation and process delay while straightening AR policies at the same time:

- The President must direct the AR implementation body consisting of ministries and institutions as well as representatives of civil society.
- Return to the main objectives of AR, namely: (a) reducing the imbalance of agrarian tenure and ownership, especially land; (b) just resolution of agrarian conflicts; (c) creating sources of welfare and increasing rural agriculture productivity; (d) linking rural-urban economic and social relations; and, (e) guaranteeing environmental sustainability;
- Undertake a comprehensive and systematic inventory and registration of land use and ownership, by involving companies as well as communities, in the context of implementing agrarian reform.
- Reinstate the agrarian reform subjects (peasant laborers, small peasants, indigenous people, fishermen, youth, women and peasant cooperatives) and coverage based on the Agrarian Reform Priority Locations (LPRA) proposed by the community itself.
- Ensure legal breakthroughs and discretion so that the implementation of AR may run effectively on lands controlled by State-owned enterprises (State assets) and reduce the lands that are monopolized by large business entities.
- Involve peasant unions in the structure of the Agrarian Reform Task Force both at the provincial and district levels.
- Establish the maximum and minimum limits of land redistribution to prevent the emergence of new inequalities between communities, and promote transformation of socio-economic structures of communities.
- Conduct a review of various regulations relating to agrarian issues in order to synchronize the policies between sectors.
- Provide the knowledge, technology, financial capital and market certainty to each beneficiary of agrarian reform.
- Build a single land data system on control and use of forest and non-forest land (plantations, forestry, mining, ponds, and agricultural land to public housing), that is open and accessible to all classes of society.

With these recommendations, it is hoped that the problem of delayed implementation of agrarian reform can be solved. The Agrarian Reform Presidential Decree exists as the legal umbrella for the current government to implement agrarian reform. ■



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The purpose of this study is to campaign for land rights for peasants, women, indigenous peoples, fisherfolk, youth, urban poor and other poor people, as well as being used as academic considerations for the government in designing and implementing genuine agrarian reform in Indonesia.

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KPA realizes that there are still many things that needed to be considered, hence why the participation of other parties becomes significantly necessary so that a more comprehensive research may capture the problems and provide solutions for agrarian reform issues in the future of Indonesia.

Hopefully the results of this study will be useful as a reference for those who care about agrarian reform in Indonesia.

Dewi Kartika
Secretary General of Consortium for Agrarian Reform
Jakarta, 21 January 2019

ACRONYMS USED

AMAN	Indigenous People's Alliance of the Archipelago
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
ATR	Ministry of Agrarian and Spatial Planning
BORA	Special Authority Board on Agrarian Reform
BPS	Central Bureau of Statistics
BUMDES	village-owned enterprises
DRAK	Agrarian Reform District Council
DRAN	National Agrarian Reform Council
DRAP	Provincial Agrarian Reform Council
GLF	Global Land Forum
GTRA	Agrarian Reform Task Force
HGU	Rights to Exploit/Business Use Rights/Cultivation Rights
HKM	community forest

HTR	Community Forest Plantation
IP4T	Team for Inventorying Land Claims, Ownership, Use and Utilization
JOKOWI-JK	Joko Widodo-Jusuf Kalla
KK	Head of the Family
KPA	Konsorsium Pembaruan Agraria (Consortium for Agrarian Reform)
KSP	Presidential Staff Office
LAP	Land Administration Project
LHK	Ministry of Environment and Forestry
LPRA	Agrarian Reform Priority Locations
P3H	Prevention and Eradication of Forest Destruction
PDTT	Ministry of Village, Disadvantaged Regions and Transmigration
PERBER	Joint Law
PERPRES	Presidential Regulation
PIAPS	Indicative Map of Social Forestry Allocation
PNS	Government Employee/Civil Servant Officer
PP	Government Regulation
PPTKH	Acceleration of Land Tenure Settlement in Forest Areas
PS	Social Forestry
PTSL	Complete Systematic Land Registration
RA	Agrarian Reform
RKP	Government Work Plan
RPJMN	Medium Term Development Plan
SEKBER	Joint Secretariat
SKPD	Regional Government Task Force
Tap MPR	Decree of the People's Representative Assembly
TNI	Indonesian National Army
TORA	Land Objects for Agrarian Reform
UUD	Constitution of Indonesia
UUPA	Basic Agrarian Law
WALHI	Wahana Lingkungan Hidup Indonesia (Indonesian Forum for Environment)

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