



Quo Vadis, Indonesian Agrarian Reform? Study on the Implementation of Public Policy towards Law Number 5 of 1960 to Presidential Regulation Number 86 of 2018 and the Complexity of Current Land Issues

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Abstract

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is widely praised as the great work of the Indonesian nation which is revolutionary, responsive and combines the undeniable combination of individualism and communalism. However, the achievement of these laws is not achieved and spending is more likely to fail due to normative and ideological reasons.

This paper tries to bring the study of the law to a more empirical direction by using theories of public policy implementation. This qualitative research method focuses on executive policy, bureaucrats' actions and the interactions that surround them.

The study found that the executive policy with the issuance of Presidential Regulation Number 86 of 2018 was precisely not in line with several provisions of Law Number 5 of 1960. The presidential regulation has a paradox, wants to accommodate many variables but is confused about the main purpose of agrarian reform. The implementation of the law requires the existence of a dominant actor, but the actions of the street level bureaucrats have long reduced the purpose of the law to a mere act of legalization of accounting transactions for land that are running according to market mechanisms. Now, the increasing number of Indonesians living in urban areas makes the issue of land more complex, related to land use change and various challenges of sustainable development. The theory of agricultural involution becomes less relevant. A more systematic approach with more sophisticated tools, such as the Land Administration System, is needed to answer these challenges.

Keywords

agrarian reform; public policy implementation; land administration

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1. Introduction

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles is widely praised as the great work of the Indonesian nation which is revolutionary, responsive and combines good elements between individualism and communalism. Sodiki (2013) states that the inherited values in the law that are still relevant are anti-colonialism and anti-exploitation of wealth, populist, strong desire to display the original Indonesian legal identity, egalitarian and strong state position so that the state can guarantee the fulfillment of the public interest. The law also has a responsive character even though it was born when the political configuration was very authoritarian (Mahfud MD in Sodiki et al., 2013). Soetiknyo (1990) states that the law is the only law that has succeeded in embodying every precepts of Pancasila in several points.

But not achieving the purpose of the law, the welfare of farmers and the principle of land to the tiller, is a fact that is difficult to deny. If the land tenure ratio is used as a measurement, then the number of land tenure inequality remains high after the law is more than half a century old. Bachriadi and Wiradi (2011) stated that in 1973 the land tenure ratio was 0.70, 1983 was 0.64, 1993 was 0.67 and 2003 was 0.72. Then according to INDEF (Kompas.com, 07/07/2017), inequality in land ownership in 2013 reached 0.64.

Soetiknyo (1990) argued that the law had not been able to solve the land problem because the law was a *het recht* in *rust law* which only contained the main points and that could move were the implementing regulations. Sodiki (2013) is aware of the problem of the effectiveness of the law. However, he precisely mentioned the possibility of the lack of success of the law because it ignored local provisions that were more able to solve local problems than the law that wanted to abolish the *adat* institution. Mahfud MD (2018) states that now the Law Number 5 of 1960 and several associated laws have never been implemented due to situational development policies, so he argues that agrarian laws must be reorganized.

2. Methods

This paper seeks to bring studies on the implementation of agrarian reform policies towards more empirical by using theories of public policy implementation. Research uses qualitative methods and focuses on executive policy, bureaucrats' actions and the contexts that surround them. Variables from relevant theory will be used to study implementation

3. Results and Discussion

Implementation is what happens after laws are enacted that provide program authority, policy, benefits or a tangible type of output. The term implementation includes actions (and without actions) by various actors, especially bureaucrats who are intended to make the program work (Ripley and Franklin in Winarno, 2014). According to Matland (in Hamdi, 2014), the literature on policy implementation in general is divided into two groups, namely groups with a top-down approach and groups with a bottom-up approach. Groups with a top-down approach see policy designers as central actors in policy implementation. In addition, this group also focuses on factors that can be manipulated at the central level or on variables that are macro. Meanwhile, the bottom-up group emphasizes two things, namely the target groups and service providers.

The first known experts to create an implementation model with a top-down approach are Van Meter and Van Horn (1975). Although he is not the first to conduct a policy implementation study. They stated that the implementation of the policy concerned (encompasses) all actions by individuals or public and private groups directed at the realization of the goals that were set in advance in the policy decision. Their model consists of six variables that form the link between policy and performance as follows: 1) Standards and objectives of the policy, 2) Policy resources, 3) Communication and strengthening activities between organizations, 4) Characteristics of implementing agencies, 5) Economic, political and social and 6) Disposition of implementers (Hamdi, 2014).

In addition to Van Meter and Van Horn, the expert who then formulated the implementation model was Grindle (1980) who stated that implementation was a political process and an administrative process whose success was influenced by two fundamental variables, namely the content of the policy and the context of implementation. But from a number of experts who can be classified as top-down followers, the model developed by Sabatier and Mazmanian (1983) is the most complete in combining various variables of the work of previous experts to become a comprehensive model. These variables are grouped into three types, namely 1) tractability of the problem; 2) ability of statute to structure implementation; and 3) non statutory variable (Purwanto & Sulistyastuti, 2015).

In addition to the top-down views, bottom-up criticism must also be noted. According to Sabatier (in Purwanto, 2015), there are basically four criticisms made against the top-down approach by critical implementation researchers such as Hjern and Hull (1982), Hanf (1982), Barrett and Fudge (1981) and Elmore (1979)). The four weaknesses of the approach are: 1) assume that the main actors who have the most influence on implementation are policy makers, so they forget that the success or failure of implementation can be influenced by other actors namely the vanguard bureaucrats, target groups, the private sector and others; 2) top-down approach is difficult to apply when there are no dominant actors; 3) the top-down approach forgets the fact that the vanguard bureaucrats and the target groups have a tendency to distort the policy direction for their respective interests; 4) the policy cycle itself is often not clear-cut in stages, thus opening space for the vanguard bureaucrats and target groups to influence and negotiate during policy formulation.

Several variables from the theory of policy implementation will be used to examine agrarian reform policies. The executive policy that will be reviewed is the Republic of Indonesia Presidential Regulation Number 86 of 2018. The vanguard of bureaucrats is implementing the policies in the Ministry of Agrarian Affairs and Spatial Planning /BPN. The policy context is a condition in Indonesia related to land and population.

3.1. Agrarian reform executive policy (Presidential Regulation of the Republic of Indonesia Number 86 Year 2018)

The "clear and consistent objectives" variable is part of the ability of statute to structure implementation category in the Mazmanian and Sabatier (1983) implementation model. If it is applied to examine this presidential regulation, it will find inconsistencies in its contents. These inconsistencies exist in several aspects, both regarding activities to be carried out, subjects and objects of agrarian reform.

Article 5 of Presidential Regulation No. 86/2018 states that the implementation of Agrarian Reform is carried out through the stages of structuring assets and structuring access.

The sequence of implementation is that the structuring of assets becomes the basis for structuring access as a series of ongoing activities. It is as if after a farmer acquires land (through structuring assets) it will proceed with empowerment to get access to capital, increase production and markets. The series is in accordance with the role of reform and development, as stated by Dorner (1972) which states that reform has a dual purpose of serving as both a redistributive instrument and vehicle for achieving increased productivity. To achieve the latter, land reform must be accompanied by changes in the pre-reform structure of supporting services — agricultural credit, marketing, research and extension, input supply, and processing and storage.

But the arrangement of these assets was reduced in Article 6 only to redistribute or legalize assets. Arrangement of assets can be in the form of land redistribution or legalization of assets. Separate options, not a single unit. Asset legalization activities can be claimed as asset management activities based on this regulation. Whereas the core of agrarian reform activities is land redistribution because the first objective of agrarian reform as mentioned in article 2 is to reduce inequality in land tenure and ownership in order to create justice. If it follows the Grindle (1980) implementation model, the extent of change envisioned in the policy content is not supported by the actions of the policy actors.

Article 6 of Presidential Regulation No. 86/2018 emphasizes that agrarian reform can proceed without land redistribution. This agrarian reform regulation does not intend to give land to farmers and increase its access to capital, but rather replace land redistribution activities by legalizing assets. In fact, there are many farmers who do not have land to be legalized and there are groups of people who accumulate ownership or control of land.

The reality has not yet been realized even distribution of the structure of ownership, ownership, use and use of land is actually recognized because it is in consideration of the presidential regulation. The first consideration of this regulation also mentions "that the land within the territory of the Unitary Republic of Indonesia as a gift of God Almighty for all Indonesian Nation at the highest level is controlled by the state used for the greatest prosperity of the people". This point wants to show the right to control the state as it also exists in Article 2 of Law Number 5 of 1960.

But in fact, 11 (eleven) objects of agrarian reform mentioned in the regulation (article 7) are almost all used or residual land. Even former mining land which is not productive enough and insignificant arising land is also mentioned. The right to control the state as stated in Article 2 paragraph (2) of of Law Number 5 of 1960 that "The State's right of control as referred to in paragraph (1) of this Article confers the authority to regulate and administer the allocation, use, supply, and maintenance of the earth , water, and airspace" have not yet materialized. The state apparently has not been able to provide a clear supply of land to be made the object of agrarian reform.

The agrarian reform subject referred to in article 12 paragraph (3) which consists of 20 types of professions also shows the inconsistency of the objectives of this regulation. The mention of work outside the agricultural sector, even government officials, the army and the police, is not in line with Law Number 5 of 1960 principle that the principle of land is for tiller. Provisions on the subject are not in line with Article 10 paragraph (1) of the law "every individual and corporate body which holds a right to agricultural land is in principle obliged to actively till the land or work on it themselves while avoiding any methods of human exploitation"

These facts show that the Presidential Regulation No. 86/2018 has many paradoxes, incompatibility with the principles in the above regulations and the principles of agrarian reform in general. The regulation wants to accommodate the resolution of many land problems in Indonesia, both in rural and urban areas, but in the end has experienced confusion over the main objectives of agrarian reform. Inconsistencies that occur in its contents will make this regulation difficult to implement to achieve its objectives. Or if the Richard Matland category (in Lester & Goggin, 1998) there would only be a symbolic implementation, marked by high levels of conflict and ambiguity. Unless agrarian reform is only meant by legalizing assets to strengthen inequality and the status quo.

3.2. Acting street level bureaucrat

As a relatively top-down policy, implementing agrarian reform policies as a mission of Law Number 5 of 1960 requires the existence of a dominant actor. But the actions of the implementing bureaucrats (street level bureaucrats) have long reduced the purpose of the law to a mere act of legalization of accounting transactions for land that are running according to market mechanisms.

In practice, the action taken by officials of the Land Office (Ministry of Agrarian Affairs and Spatial Planning /BPN) is to register or just record transactions that have been carried out by the people who are applying for rights. It is really almost just to record transactions because the first basis requested is proof of sale and purchase transactions or grants, then other documents relating to land and evidence of physical control. Selection of the possibility of accumulation of ownership or control of land is not carried out. If it is done only based on unilateral information from the community without further review. The material truth of the contents of the statement was also not carried out for reasons not the authority of BPN.

When using bottom-up implementation analysis as conveyed by Sabatier (in Purwanto, 2015) that in the policy cycle itself the stages are often not clear-cut, thus opening space for the vanguard bureaucrats and target groups to influence and negotiate when policy formulation, then agrarian reform policy formulation as in Presidential Regulation No. 86/2018 is actually very influenced by what has been done so far by the implementing bureaucrats in the Ministry of Agrarian Affairs and Spatial Planning /BPN. The Presidential Regulation is very similar in substance to the Regulation of the Minister of Agrarian Affairs and Spatial Planning related to "Prona" or "PTSL" (Complete Systematic Land Registration). Only the legalization of assets is supplemented by the inclusion of empowerment efforts (structuring of access).

The unclear definition of state land in practice also makes land redistribution activities at the Land Office merely a legalization of assets. Land that is used as an object of land redistribution is actually also land that has been controlled by the community. Even if there were some that were not controlled by the community before, the number was not significant. Whereas land redistribution is the beginning and part of actual agrarian reform. "Agrarian reform to cover all aspects of institutional development including land reform, tenure production and supporting services structures and related institutions, such as local government, public administration in rural areas, rural education and rural social welfare institutions, and so forth." United Nations in Progress in Land Reform, NY Fifth Report, 1970, Vol. III (Wilsonyudho et al., 2017)

3.3. *The context of the current agrarian reform policy*

The increasing number of Indonesians living in urban areas makes land issues more complex, related to land use change and various challenges of sustainable development. Data from BPS (Central Board of Statistics) of the Republic of Indonesia [1997, 2007] showed that the proportion of urban population in Indonesia continued to expand, i.e. 22.3% in 1980 to 30.9% in 1990 and rose sharply to 43.1% in 2005; 55% in 2013 (Wilonoyudho et al, 2017)

The consequences arising from the increasing number of residents living in urban areas make land-related problems even more complex. The need for land is no longer just for agricultural land, but also housing. The challenge is no longer just that agricultural land accumulates, but because agricultural land has changed functions. More people living in urban areas turned out not only because they migrated to the city, but because of the phenomenon of urban sprawl (irregular physical expansion of the city). Problems no longer only threaten farmers, but also the entire population and the environment.

The theory of agricultural involution becomes less relevant to describe the actual problem and is used as an agrarian reform framework in Indonesia. New and complex problems can no longer be solved by old paradigms. A more systematic approach with more sophisticated tools is needed to answer these challenges.

A system that can gather important information related to land, textually and spatially, needs to be made to make important decisions. The lack of integrated information makes land-related policies often do not answer the actual problem. The legal framework is of course also very important besides information systems. Land Administration System with ten Land Administration principles introduced by Williamson et al. (2010) is important to be adopted and developed.

4. Conclusions

1. The executive policy with the issuance of Presidential Regulation of the Republic of Indonesia Number 86 Year 2018 was not in line with several provisions of the Law Number 5 of 1960. The presidential regulation has a paradox, wants to accommodate many variables but is confused about the main purpose of agrarian reform. As a relatively top down policy, the implementation of the law requires the existence of a dominant actor.
2. Acting bureaucrats (street level bureaucrats) have long reduced the purpose of the law to merely act as a legalization of bookkeeping transactions on land that are running according to market mechanisms.
3. The increasing number of Indonesians living in urban areas makes the issue of land more complex, related to land use change and various challenges of sustainable development. The theory of agricultural involution becomes less relevant. A more systematic approach with more sophisticated tools, such as the LAS (Land Administration System), is needed to answer these challenges.

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