

---

## **Agrarian Reform and National Land Law Political Policy Provide Legal Assurance for Investment**

I Made Pria Dharsana<sup>1</sup>, I Nyoman Putu Budiarta<sup>2</sup>, I Made Setia<sup>3</sup>  
<sup>1,2,3</sup>Law Faculty, Warmadewa University, Bali  
dharsanaimade@yahoo.co.id

*Published: 01/02/2023*

How to cite:

I Made Pria Dharsana, et al. Agrarian Reform and National Land Law Political Policy Provide Legal Assurance for Investment. *Sociological Jurisprudence Journal*. Volume 6 Issue 1. Page. 11-21. <https://doi.org/10.22225/scj.6.1.2023.11-21>

### **Abstract**

The provision contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI) as the initial milestone in the birth of Law No.5 of 1990 concerning Basic Agrarian Regulations or better known as the basic Agrarian Law (UUPA). This research was designed using normative legal analysis with a statutory and conceptual approach. These two approaches are used to develop arguments, especially to answer the legal issues raised in this study. The result shows that The land law itself is a law that regulates the rights to control the land or the surface of the earth. The development of land law politic cannot contradict the essence of state goals that have been regulated in the state goals is regulated in the 1945 Constitution, where Pancasila as the basic norm that gave birth to the preamble provisions in the 1945 Constitution. Speaking about the agrarian reform, according to the national agrarian law, the goal is to make a fair and equitable distribution on the source of the livelihood of farmers in the form of land, so that with the distribution it is hoped that fair and equitable result can be achieved.

**Keywords:** Basic Agrarian Law, Land Law Politic, Investment and Land Tenure

### **I. INTRODUCTION**

Agrarian policy relates to rural and agricultural development policy, which is considered fundamental. In Indonesia, agrarian policy is known as agrarian reform. Meanwhile, the scientific terminology that is often used is land reform (Widodo, 2017). Agrarian aspects, land, in particular, are the most important production factor of agriculture. According to Ellis (1992), agrarian policy is very important because economically, land is very different to other production factors, such as fertilizers, labor, seeds, etc., which can be reproduced. Land, on the other hand, is a fixed production factor. It also represents capital in the form of assets or investment, which is an indicator of welfare as well. Ownership of land is a form of private property and affects the forms of social relations.

Historically, the agrarian aspect is a fundamental cause of economic, social, and cultural changes in rural communities. Various policies on agrarian aspects have been implemented since the colonial government in Indonesia. At the time of Raffles, a land rent system was implemented to replace the contingent policy (tax in the form of agricultural products), which Daendels had applied. In the midst of the economic downturn of the colonial government, and because of the ineffectiveness of the land rent policy, the cultuurstelsel policy was implemented. At that time, it appears there already was a struggle between liberal and conservative ideologies. The efforts to develop the colonial economy involved the private sector to contest the government's dominance in the management of the colonies. The history of the agrarian structure began at this time until the Agrarische Wet (Agrarian Law) and the Suikerwet (Sugar Law) were enacted in 1870. Meanwhile, after independence, the starting point of Indonesia's agrarian policy was the enactment of Law 5/1960 concerning Basic Regulations on Agrarian Principles.

Law No.5 of 1990 concerning Basic Agrarian Regulations or better known as the basic Agrarian Law (UUPA) until now is still consistently used. UUPA implements the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI), as mentioned in Article (2) paragraph (1) UUPA, namely: "based on the provision of Article 33 paragraph (3) of the

Constitution and the matters referred to in Article 1, The earth, water and natural resources contained therein are at the highest level controlled by the state, as an organization of power for all the people". Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUDNRI), is the constitutional basis for the formation of the National Land Law Politic which contains a command to the state so that the earth, water and natural resources therein and which is placed in the control of the state are used to realize as much as possible for the prosperity of all Indonesian people.

UUPA up to present is still considered as a legal parameter of the national land law, because UUPA regulates almost all land rights as regulated in article 16 except the right of management. However, UUPA does not explicitly regulate the land law, and UUPA only mentions the definitions of the land law as regulated in the provisions of article 4 paragraph 1, which says: on the basis of the state's right to control as referred to in Article 2, it is determined that there are various types of rights on the earth's surface called land, which can be given to and owned by people, either individually or collectively with other people and legal entities. Although UUPA in this case doesn't give a clear understanding of the law on land law, but bachelors of law (in the field of land) give understanding concerning the definition of land law, among others: Land law is a field of law that regulates the rights of control over land. The rights of control is the right that gives authority to the right holder to act with the land under his control (Syah, 2007). Another legal opinion says that land law is part of the agrarian law itself which consists of the law of earth (land), water and space (Limbong, 2014).

UUPA is considered by a number of agrarian observers as the most popular legal product compared to other legal products made during the Old Order, New Order and up to present. In its development, UUPA is considered as the umbrella (umbrella act) of other regulations that regulates agrarian and land. The birth of new laws related to agrarian and law is hoped to be able to continue a more populist UUPA spirit (which is more on the side of the common people and farmers). However, in reality, there has been an out of sync between UUPA and sectoral law which does not match what has been outlined in UUPA. To answer questions that are dualism in the field of agrarian law, the creation of the new agrarian law adheres to one principle of national law, which is simple and guarantees legal certainty for all Indonesian people (Zaman, 2016). The research aim is to describe the agrarian reform and national land law political policy provide legal assurance for investment.

## **II. METHOD**

This research was designed using normative legal analysis with a statutory and conceptual approach. These two approaches are used to develop arguments, especially to answer the legal issues raised in this study. The statutory approach is used to examine and analyze the legal assistance of the State's Attorney in handling Covid-19 from various related regulatory aspects. At the same time, the conceptual approach comes from diverse literature combined with informants' views to explain different factors that hinder the State's Attorney in providing legal assistance. Furthermore, the analytical model used is descriptive qualitative juridical, in which various legal materials and data compiled in a structured and systematic way are analyzed juridically and described in a qualitative descriptive manner. It aims to make the resulting information clearer and more argumentative.

## **III. RESULT AND DISCUSSION**

### **3.1 Agrarian Reform and Political Policy of The National Agrarian Law**

Agrarian Politics is the outline of the policies adopted by the State in maintaining, preserving, allocating, cultivating, taking advantage of, managing and distributing land and other natural resources including their products for the interest of the welfare of the people and the country, which for the Indonesian Country is based on Pancasila and the 1945 Constitution (UUD). The Agrarian politic can be implemented, translated in a law regulating agrarian affairs which contains principles, basics and agrarian matters in outline, equipped with the implementing regulations. Thus, there is a close relationship between politics and law (Az, 2015).

In the Agrarian Politic, the above problems is the main problem to be solved. The agrarian politic has an object, the relationship between humans and the land, along with all the problems and community institutions that arise because of them, which are political,

economic, social and cultural. In summary, it can be concluded that the main focus of agrarian politics is on three factors, namely (Fauzi, 1999): Firstly, there is a relationship between humans and the land which is a reality that will exist forever. Secondly, humans from the political, social, economic, cultural and mental point of view. Thirdly, nature, especially land. And according to the author, agrarian issues are one of the interesting studies in legal science that are quite important to discuss. Perhaps agrarian is one of the important things that is quite complex to discuss. Because there are many social and legal issues that always color the news in the media in Indonesia related to disputes, cases and conflicts of lands.

According to Satjipto Rahardjo, legal politics is the activity of choosing and the methods to be used to achieve social goals with certain laws in society of which scope includes answers to various basic questions, namely (Rahardjo, 2009): First, what goal to achieve. Second, what methods are the best to use in achieving this goal. Third, when and in what way the law needs to change. And fourth, can a standard and established pattern be formulated to help decide the process of selecting goals and the best ways to achieve these goals.

The agrarian problem and the management of the Indonesian natural resources in general were once formulated simply by the national government elite in the reform era through a Decree of MPR RI (the Indonesian People's Consultative Assembly) No. IX/MPRRI/2001 regarding the Agrarian Reform and the Natural Resources Management, as follows: (i) the inequality (concentrated) of land and natural resource control in the hands of a few companies, (ii) conflicts of agrarian and natural resource management that has been erupted here and there with no resolution, and (iii) severe ecological damage and make natural services no longer available to people (Fauzi, 2003).

The land law itself is the law that regulates the rights to control the land or the surface of the earth; and if the notion of the legal system is related to agrarian law regarding the Renewal of Agrarian Law and the Management of Natural Resources, then what is meant by the agrarian law system is an orderly series of agrarian law rules which regulates control rights over the earth, water, space and natural resources contained herein.

Next, speaking about agrarian reform, according to the national agrarian law, the aim is to hold an equitable and fair distribution of the livelihoods of farmers, namely land, so that with the distribution, it is hoped that fair and equitable results can be achieved. The main purpose of UUPA includes: First, laying foundations for the preparation of national agrarian law which is a tool to bring prosperity, happiness and justice to the people, especially the farmers, in the framework of a just and prosperous society. Second, laying foundations to establish unity and simplicity in land law. Third, laying foundations to provide legal certainty regarding the rights of all Indonesian people.

The regulation of control, ownership, use and utilization of land outlined by UUPA is intended to ensure that land is not monopolized by a few land owners who sacrifice weak economic groups whose lives depend on land, especially farmers. In order to achieve legal certainty and protection as well as justice and prosperity for the entire Indonesian people, the government issues the Presidential Regulation Number 86 of 2018 concerning Agrarian Reform.

In a search through the literature conducted by the Author, it turns out that UUPA only contains the basic principles governing the earth, water, space and the natural resources contained therein, so the author agrees with the statement that UUPA is as an "umbrella" (umbrella provision *kaderwet*) for the preparation of laws and regulations concerning other lands that are operational in nature (Sundari, 2005).

Therefore, the development of land law politics must not conflict with the essence of the state's goals which have been regulated in the 1945 Constitution, where Pancasila as the basic norms that gave birth to the preamble provision in the 1945 Constitution (Zaman,

2016). This means that land law cannot be separated from national legal politics, because land law politics is an inseparable part of national legal politics. As part of the national legal politics, the development of land law should not conflict with the grand design of the development of national law based on Pancasila and the 1945 Constitution, beside the unwritten law.

Land law is a state policy that makes the contents of the policy regulate matters related to land. In connection with the land law policy, According to Oloan Sitorus and Nomadyawati, the state authority in the land sector as referred to in Article 2 paragraph (2) of UUPA is the delegation of the nation's duties to regulate control and lead the use of shared land which becomes a national wealth. The right to control the state is the delegation of public authority from the rights of the nation, so the consequence is that this authority is only public (Santosa, 2015). The implementation of the State's right to control over land can be authorized or delegated to autonomous regions (Local Government) and Customary Law communities, only as necessary and contrary to national interests according to the provisions of government regulations.

According to Bernhard Limbong, the success of agrarian reform also relies on the reforms to land regulations. This is related to regulations in the form of laws and regulations in the field of land that apply to independence, which contributes to the emergence of land conflicts in Indonesia. Land politics in our country so far has not been able to present laws and regulations that guarantee justice in the land sector (Limbong, 2015).

Agrarian Law Expert, Gunawan Wiradi that initially the land reform policy was a social policy, namely equal distribution of land tenure/control, not an economic policy (production); but then people realized that an economic rationale is needed to be able to give reasons from the economic point of view why an agrarian reform needs to be carried out. That is why after the second world-war, countries began to add social, economic, political, legal and cultural to their agrarian reform programs (Wiradi, 2005).

It seems undeniable that agrarian reform can only be carried out if there is a political will. In non-socialist countries, the concrete contents of agrarian reform are: rearrange the allocation of land provision; rearrange the status of ownership, control, and use of land; rearrange the procedure of land acquisition; and rearranging land use. Even the world's experts agree, based on the historical experience of various countries that have implemented agrarian reform programs require a number of prerequisites, and for that it is necessary through the renewal of agrarian reform so that it can run successfully. The most important prerequisite is that there must be a political will from the government, and there must be people's organizations (especially farmer organization) which strong and pro-reform, and has complete and thorough data on agrarian matters. And the most important thing is that the ruling elite must be separated from the business elite, the bureaucratic apparatus must be clean, honest and understand the concepts and objectives of the agrarian reform.

Principally, Landreform agrarian is a landreform in terms of redistribution of land ownership and control. But landreform will not succeed if it is not supported by supporting programs such as education, counselling marketing and so on, quoting the opinion of Tuma Elias, Landreform "in a broad sense can be equalized with "agrarian reform", namely: an effort to change the agrarian structure in order to create a redistribution of ownership and control over land and access to economic resources (Elias & Scotson, 1965). Furthermore, the author confirms what was said by the Director of the World Bank Representative for Indonesia and Timor-Leste, Rodrigo A. Chaves, that the agrarian reform is an important foundation in the development of a country since it will bring clarity to land use, access rights and licenses, ultimately helping to reduce poverty and income inequality. Currently, Indonesia is on track to achieve their goal of certifying and registering every plot of land in Indonesia in 2025 (Siaran Pers Bank Dunia, No 2019).

The author sees that there are three main issues in Agrarian Reform (AR) up to present. First, how is the suitability of Agrarian Reform which actually existed before the Jokowi administration is known as TORA (Tanah Objek Reforma Agraria) with the initial concept of agrarian reform referring to Law No. 5 of 1960 regarding the Basic Regulations of Agrarian Principles (UUPA 1960). Second, how is the policy trip of Agrarian Reform that is proclaimed by the government of Jokowi. Third, Structural and Institutional Constraint of current. Gunawan Wiradi from Sajogyo Institute in an “Agrarian Reform Law Discussion, on Thursday, 11th July 2019, held by Prisma said that almost all current policies are ambiguous. It's nobody's fault, because it is a product of historical dynamics. “We have to trace it from there when it comes to agrarian issues and this is not an easy thing. We need to study the history of Indonesia which is related to the Dutch colonialism”. The questions contained in the ToR regarding “what historical and structural contexts have distinguished the past implementation of the UUPA from the RAPS program today” very good indeed. Gunawan on various occasions often says that agrarian reform is a “land reform plus”, that is, plus various supporting programs. The point is asset reform. That access reform, tenancy reform, and so on are needed, that is what is meant by "plus" (Wiradi, 2005).

Gunawan Wiradi has doubt, whether the national elite understand what is meant by “agrarian reform.” When he was invited to the Presidential Staff Office (KSP), many do not understand, or intentionally mislead the concept of the agrarian reform. He himself reminded the young generation, “be careful not to be fooled by the wrong concept.” Many people often confuse the terms “reformation” with “reform”, of which meaning are completely different. Emphasized what was said by Gunawan Wiradi, according to Usep Setiawan as the Main Expert Staff of the Presidential Staff Office (KSP), concluded that as a political document and a constitutional mandate, Agrarian Reform and its agendas have been set forth in the Nawacita (the nine goals), the National Mid-Term Development Plan (RPJMN) 2015-2019, and the Government Work Plan (RKP) every year. In essence, the implementation of Agrarian Reform as an effort to reorganize the ownership, control, use and utilization of land for justice, prosperity and people’s welfare is a national prosperity, which is carried out by the government through two schemes, namely the provision of TORA from various sources with the Agrarian Reform target of 9 million hectares and Social Forestry First, strengthening the regulatory framework and resolving agrarian conflicts. Second, the arrangement, control, and ownership of TORA land. Third, legal certainty and legalization of TORA through various schemes with a target of 12.7 million hectares (Setiawan, 2019).

Responding to the criticism of Gunawan Wiradi, Usep realized that the government’s understanding about the agrarian reform is still very minimal. So that, since 2016, the Presidential Staff Office need to supply supplying a number of materials so that the agrarian reform program can be understood by all minister and regional heads. Agrarian reform as a priority program in the 2019 Government Work Plan (RKP) contains five things. First, strengthening the regulatory framework and resolving agrarian conflicts. Second, the arrangement, control, and ownership of TORA land. Third, legal certainty and legalization of TORA. Issuance of certificates of ownership of community land is part of the activities of Agrarian Reform. There are criticisms that the land titling process is actually outside the Agrarian Reform, but is included in the RKP as part of the Agrarian Reform. Fourth, community empowerment in the use, utilization, and production of TORA. Fifth, implementing institutions for Agrarian Reform at the central and regional levels. With the existence of institutions, in the Presidential Regulation (Perpres) No. 86/2018 concerning Agrarian Reform here is listed the Agrarian Reform Team consisting of 16 ministers and heads of institutions, including the Head of the Presidential Office. The team at the central level is led by the Coordinating Minister for the Economy. In addition, at the central level there is an Agrarian Reform Task Force which is the implementing institution and is chaired

by the Minister of ATR/Head of BPN, at the regional level there is a provincial-level task force formed through a Governor's Decree, at the district/city level through a Regent and Mayor's Decree.

However, the acceleration of the implementation of various Agrarian Reform agendas in the first period of Jokowi's administration, indeed, has not been fast and fully implemented, especially land redistribution. To realize Agrarian Reform, according to Usep, ideally, Agrarian Reform is included in the work plan of the regional government, so that the budget can be allocated in the APBD (Maladi, 2013).

Usep revealed, as an illustration, since 2016, Sigi Regency, Central Sulawesi, has established agrarian reform as its mission, vision and program of action in the Regional Medium-Term Development Plan (RPJMD), Local Government Work Plan (RKPD), and budgeted in the APBD. Broadly speaking there are four stages of Agrarian Reform activities which include preparation, implementation, determination of rights and issuance of permits, as well as monitoring and evaluation. If it is to be implemented simultaneously in an integrated manner, the scheme from the Sigi Regency can be replicated in other regencies. Of course the stated scheme needs to be adjusted to local context and challenges. The majority of land in Sigi Regency is in the forest area. The government of Sigi Regency identifies the land which used to be the land from former forest areas and land from former land use rights (HGU) of plantation, which is then defined as TORA to the central government. Now is being processed.

Dr. Yanis Maladi, SH, MH argues that the substance or character of agrarian reform based on a political orientation in order to realize the ideals and goals of the nation with Pancasila paradigm must: First, National agrarian law politics must consistently protect the interests of its people in order to get the right to live in physical and spiritual prosperity in just a manner, has the right to own these property's right and may not be taken over arbitrarily by anyone, including the state and even large corporation. Second, National agrarian law politics must be driven by noble religious moral values and protect human rights without discrimination. From these two things it can be seen that there are two social values that are combined into one in the concept of agrarian law politics with the Pancasila paradigm. However, Yanis's view if analyzed further, there will be many obstacles that come from various legislative products in the agrarian sector (both at the central and regional levels) which seem to overlap with one another, so basically it takes more than just changing the way we view the problem, but a comprehensive strategic plan in looking at the overlapping issue of the products of the legislation in question.

Boedi Harsono explained that, "UUPA not only contains provisions regarding the reform of the Agrarian Law alone, but also contains a strategic Revolution Program in the agrarian field, which is called agrarian reform, Indonesia, which in fact has aspirations to create a just and prosperous society based on Pancasila, so that this UUPA is substantially a strategic foundation in realizing this noble goal (Harsono, 2008).

The application of agrarian reform in Indonesia according to Boedi Harsono, covers at least five basic courses, namely: "Renewal of Agrarian Law through legal unification with a national concept and providing legal certainty guarantees (rule of law); Abolition of foreign rights and colonial concessions to land; Ending feudal exploitation gradually; Revolution of land ownership and control as well as legal relations related to land control in realizing equitable distribution of prosperity and justice. Planning for the supply and designation of "earth, water and natural resources contained therein", as well as their use in a planned, structured and systematic manner, in accordance with the carrying capacity and capability".

Meanwhile, in connection with the Agrarian Reform Policy, the Professor of the Faculty of Law GajahMada University, Prof. Dr. Maria Sri Wulan Sumardjono, SH, M.C.L., M.P.A in "State Financial Accountability Working Visit Report In Order to Get Feedback related to

the BAKN DPR RI Study on Agrarian, Layout and National Land to GajahMada University, Yogyakarta Trial Period II of 2021–2022 11–13 November 2021 said that the agrarian reform formulation in the Job Creation Law came from the AR formulation in the Land Bill (RUUP) version after May 2019. In this case, the government intends to establish a Land Management Agency (LPT) with the aim of providing land for: public interest, social interest, development interest, economic equity and land consolidation. Sharp criticism from various parties who suspected that the formation of the LPT was very biased toward investment interest, was muted by adding “AR and land justice” whose land availability was guaranteed by the LPT (Article 76 RUUP version September 2019) (Sumardjono, 2012).

Next, in its development, the phrase “land justice” was not included in the job creation law without knowing the reason (Article 126 Paragraph (1) letter f). Furthermore, in Article 126 Paragraph (2) it is emphasized that the availability of land for AR is at least 30% of the state land designated for BT. Meanwhile, in the PP, the availability of land for AR is formulated in Article 2 Paragraph (1) letter f and is repeated again in Article 16 letter f. The definition of AR in PP is taken from the definition of AR at the Presidential Regulation (Perpres) No 86 of 2018 concerning AR. Article 22 PP emphasized that the availability of land for AR is in the context of land redistribution, the amount of which is at least 30 percent of the state land designated for BT.

The problem then arises, when Article 7 states that the acquisition of BT land which is the result of a government determination consists of state land originating from: a) former land rights; b) abandoned areas and lands; c) release of forest area; d) raised land; e) reclaimed land; f) ex-mining land; g) land of small islands; h) land affected by the spatial policy and i) land that there is no control over it. The state land referred to in letters a, b, c, d, and f turns out to be part of the type of land subject to agrarian reform (TORA) as regulated in Article 7 of the Presidential Regulation AR. The question is, what is the purpose of formulating AR in this PP when the BT and AR paradigms clearly intersect? 10 Contest or Synergy? The inclusion of AR in the PP which from the beginning was not intended to be regulated in the Job Creation Law, if not clarified, has the potential to reverse AR's journey.

In its implementation, various obstacles caused the work of the Agrarian Reform Task Force (GTRA) becomes less agile, according to field observations, among others, because: the unavailability of policies and mechanisms for resolving agrarian conflicts within the framework of a comprehensive RA, conflict resolution efforts have not yet touched the root of the problem, conflict resolution plans have not been accompanied by a clear deadline for settlement, the budget for implementing RA and conflict resolution has not been a priority. The lack of smooth running of GTRA's work was answered by the President's commitment to accelerate the resolution of agrarian conflicts and land redistribution by the end of 2020, with the formation of “The Team for the Acceleration of Agrarian Conflict Resolution and the Strengthening of the Agrarian Reform Policy in 2021” through Decree of the Presidential Chief of Staff of the Republic of Indonesia Number 1B/T of 2021. The team is chaired by the Presidential Chief of Staff, the Minister of ATR/Head of BPN as Deputy Chair I and the Minister of LHK as Deputy Chair II. The 32 members come from coordinating ministries, ministries and institutions, representatives of four non-governmental organizations (NGOs), namely the Agrarian Reform Consortium (KPA), the Indonesian Farmer Union (SPI), the Customary Territory Registration Agency (BRWA), and the Indonesian Social Forestry Echo (Gema PS).

Prof Maria identified the realization of the commitment as the result of the implementation of the team's duties and responsibilities followed up by the National Team for Agrarian Reform and GTRA as regulated in Perpres RA (Presidential Regulation on Agrarian Reform) and reported to the President every three months or at any time if needed. The formation of this team at least encourages a “bottom-up” approach in the implementation

of Agrarian Reform. And as an early picture of Team Work, 71 Priority Agrarian Reform Locations (LPRA: Lokasi Prioritas Reforma Agraria) have been proposed for TORA from four team member NGOs, and four sites proposed by other NGOs. From 71 locations, three locations have been redistributed; 13 locations become priority I, ready for redistribution in 2021; priority II resolves eight conflicts by 2021 for redistribution by 2022; priority III resolve 11 disputes/conflicts by 2022 for redistribution in 2022 or 2023. The remaining 36 LPRA will be handled by the Ministry of ATR/BPN. From KPA records, it is stated that the 13 redistribution locations all came from former HGU lands of private companies and covered an area of 84 hectares (2015), 1,139 hectares (2016), 444 hectares (2018), and 288 hectares (2020). In order to encourage the acceleration of RA, the state land as a result of the government's determination which is BT land (Article 7 PP) which overlaps with TORA according to Article 7 of the Presidential Regulation RA entirely (not only 30 percent) is handed over by BBT as land 11 manager (whose committee chairman is held by the Minister of ATR/Head of BPN) to GTRA in the form of state land, for further redistribution. And the next homework is to ensure the rights of AR subjects to obtain facilitation in the context of structuring access. Synergies in the entire AR process and its acceleration and strengthening of RA policies are intended to strengthen the bargaining position of vulnerable groups in obtaining justice for access and use of land to fulfill their basic needs, which has the potential to be eroded if land policy tends to focus on encouraging investment.

Prof. Dr. Nurhasan Ismail, SH., M.S.i, argues, Redistribution regulation of Land Reform Object or Tanah Obyek Landreform (TOL or now TORA) is not relevant and not implementable. The existence of provisions in Law No.56/1960 and PP 224/1961, PP 41/1964, and PP 4/1977 is also irrelevant and not implemented because: first, the legal basis for land reform was made based on Indonesian policies and conditions in 1960; second, during the New Order there was no attention to Landreform so there was no new policy; third, The New Order even shut down Landreform because it was seen as an obstacle to economic development; and fourth, social, economic, and political developments that underlie land reform policies have changed so that they also demand changes in regulations regarding the distribution of TOL or TORA.

This professor of the Faculty of Law at GajahMada University assessed that currently there is a Presidential Regulation (Perpres) 86/2018 concerning Agrarian Reform (AR) which aims to expand AR activities, which include the distribution or redistribution of TORA and legalization of land rights that are already owned by community members in the form of certificates. One note = legalization activities should not be included as AR activities. And TORA has also been expanded to include agricultural lands and non-agricultural lands, including those in urban areas, both those which have the status of State Lands such as those originating in Forest Areas or those whose land rights have been canceled for certain reasons and become State Lands as TORA.

Nurhasan considered, there are sectoral egos such as KLH which distributes land through the Social Forestry Program with its own KLH pattern. The policy of granting land with a very large area of tens of thousands and even hundreds of thousands of hectares is a liberal policy and of course limits the number of TORA. And inconsistent provisions such as land whose rights are not extended or renewed to become TORA if 1 year has passed since the expiration (Perpres version) and 2 years (PP 18/2021 version).

The subject of the recipients of land distribution or redistribution has also been expanded, namely those who work as plant-pond-breeding farmers, fishermen, and other professions outside the agricultural & fishing sector, both individually and collectively as groups and cooperatives. For the record, this Professor of Law Faculty UGM emphasized that there are recipients that must be judged to be inappropriate, namely in the form of a Limited Liability Company or Village-Owned Enterprise which is fully individualistic in character

and oriented to purely profit-seeking and restricts community members from being involved in it unless they are able to become shareholders. He hopes that in the future, it is necessary to improve land policies, spatial planning and implementation. Furthermore, efforts to improve or perfect policies including legislation must continue to be carried out by the government, including with the DPR (The House of Representative), namely in the field of land registration, management of land rights including land acquisition for the public interest, and spatial planning.

The author argues that land law policy is a dynamic process and continuously changes according to the dynamics of society, or this reason, in the future, the renewal of the substance of agrarian law and the formation of laws and regulations in the land sector need to pay attention to three things, namely: first, it is necessary to pay attention to the history of the nation's struggle related to the preparation of the UUPA in the past. Second, the current objective conditions. Attention at this time is certainly very necessary so that the Land Law that is being formed is in accordance with the UUPA or at least is more perfect and can be adapted to the needs of today's society, so that it can be applied effectively and efficiently. A perspective on future developments is needed so that legislators can think futuristic to anticipate the development of society that goes hand in hand with the development of technology and information.

### **3.2 Legal Certainty of Land Tenure for Investment in Indonesia**

The government looks at the optimism for economic growth in 2022, one of which is driven by improving regulations in the context of structural reforms, namely the existence of the Job Creation Law. The Job Creation Act is not only an effort to increase investment, but also to expand the role of UMKM/MSME (the Micro Small and Medium Enterprises). In encouraging the legality of UMKM/MSME, the Government has made it easy to establish a limited liability company, which is simply an online system managed by the Ministry of Law and Human Rights. Increase in capital through the distribution of People's Business Credit (KUR) which in 2022 has been targeted to be Rp. 373 trillion and the Government also provides a 3% KUR interest subsidy.

In addition, the Government has provided ease of business licensing through the Online Single Submission (OSS) System, in which UMKM/MSME actors only need to register their business activities. For businesses that have low to medium risk, business licenses will be granted online through OSS. The business license completes the fulfillment of other obligations, such as SNI and distribution permit according to the NSPK that has been determined. To support the implementation of the OSS Risk Based Approach (RBA), the Government continues to improve services and the OSS System and its supporters. In addition, the Government is also making efforts to increase the capacity of human resources, both at the central and regional ministries/agencies, so that the operation of the OSS System to provide business licensing facilities quickly, easily, and surely, can be further improved.

Investment as an important part of modern economic activity has recently grown rapidly along with the increasing development of technology and science. For this reason, from a legal perspective, investment actors or parties interested in investing in investment activities must understand it properly so that their investment does not violate the law so as to harm themselves and other parties.

In principle, investment law is a rule of law that examines investment, be it domestic investment or foreign investment. Investment law can be seen from the perspective of two different interests, namely from countries that carry out capital export activities to be invested in other countries (capital exporting states) and from countries that have an interest in attracting foreign capital to be invested in the country (capital importing states/host states). For capital exporting countries, investment law must accommodate the interests of investors

by providing protection to investors and stipulating obligations to host states to protect capital invested in host states. As for the host states, investment law must contain rules for controlling investment in order to support economic growth.

In attracting investment, investment law has a very important function, namely: first, to contribute to the quality and characteristics of the investment climate because investment law is part of the development and realization of the national investment policy package. Second, it becomes an important point for the government in its expectations of investors and in providing treatment to investors. Third, considering that the economy, legal framework as well as public and private institutions in developing countries are still under development, investment law is very important because there are so many investment policies with legal foundations by organizing everything in one container that includes everything. Fourth, it is a sign that the government welcomes investment and framed some of the requirements desired by the state in attracting investment (especially foreign investment), considering that foreign investment is an important source for accessing technology, financial know-how and foreign markets.

Talking about investment, land has its own attraction for investors which is a consideration for investors who will invest in Indonesia. For this reason, the Role of the Government is very important for the implementation of the land sector for Investment which must provide certainty of Land Tenure. The Strategic Function of land can be seen from several aspects, namely the Elements forming the state, the place of live and the life of the citizens of the nation, the place of investment (to do business), the gift of God (to humanize human).

Investment Law is established to design, regulate and encourage investment activities influenced by ideology, political considerations, economic theory, development goals, as well as the national interests of each country. There are laws made by a country that are very flexible in accepting the entry of capital, especially foreign capital. Regarding the use of land in investment, it can be seen from the provision of land rights for legal subjects to be able to use their land in Indonesia based on the types of rights, namely Ownership Rights, and Business Use Rights (HGU), Building Use Rights (HGB), Use Rights (HP) which has a limited time period. The regulation regarding land tenure in terms of granting land rights to the community is stated in PP No. 24 of 1997 jo. PP No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration. Another important thing that must be considered is the Utilization of Land in Investment which must be based on Sustainable Environmental Insights for People's Prosperity.

With the stipulation of Law Number 11 of 2020 concerning Job Creation, the Land Bank Agency was formed. With the establishment of the Land Bank Agency, it is hoped that the state's need for land will get a solution. Land Bank Agency is a special agency that manages land and functions to carry out planning, acquisition, procurement, management, utilization and distribution of land. The establishment of the Land Bank Agency is intended to ensure the availability of land in the context of public interest, social interest, national development interest, economic equity, land consolidation and agrarian reform. So that the regulation regarding the Land Bank is expected to be able to bridge the state's needs to meet the needs for land, such as for the construction of national strategic projects in the form of toll roads, reservoirs, dams or for the development of other infrastructure that concerns the public interest

#### **IV. CONCLUSION**

From the description above, various conclusions can be drawn as follows:

1. Thof Agrarian Cione Team for the Acceleration of Agrarian Conflict Resolution and the Strengthening of the Agrarian Reform Policy in 2021 as a government formation is expected

to no longer be purely technical in nature and ignore moral elements (substantial truth).

2. The statutory approach shows that the implementation of reforms that have been carried out by the Government, in fact, still leaves various main problems faced in the land sector which cause disputes, conflicts and cases in the land sector, especially land legalization and redistribution, which although have a positive impact on the community, are also able to answer various problems, disputes, conflicts and land cases that are actually wrong, their main task must be resolved in the implementation of agrarian reform. Likewise, it will provide an attraction for direct investment in land acquisition in Indonesia.
3. The author also suggests an evaluation of policies in the land sector while still paying attention to the philosophy and basic principles contained in the UUPA so that the purpose of agrarian reform and its legal instruments can run properly so as to provide legal certainty over land tenure for investment and its impact on welfare to the community as aspired by the founders of the Indonesian nation.

## REFERENCES

- Az, L. S. (2015). *Hukum Pemerintahan Daerah: Mengurai Problematika Pemekaran Daerah Pasca Reformasi di Indonesia*. Pustaka Pelajar.
- Elias, N., & Scotson, J. (1965). *The Established and the Outsiders*. Cass & Company.
- Ellis, F. (1992). *Agricultural Policies in Developing Countries*. Cambridge University Press.
- Harsono, B. (2008). *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaanya*. Djambatan.
- Limbong, B. (2015). *Pengadaan tanah untuk pembangunan*. Margaretha Pustaka.
- Maladi, Y. (2013). *Reforma Agraria Berparadigma Pancasila Dalam Penataan Kembali Politik Agraria Nasional*. *Jurnal Mimbar Hukum*, 25(1).
- Rahardjo, S. (2009). *Ilmu Hukum*. Aditya Bakti.
- Santosa, U. (2015). *Perolehan Hak Atas Tanah*. Prenada Media.
- Sumardjono, M. S. W. (2012). *Penguasaan Tanah Oleh Warga Negara Asing Melalui Perjanjian Nominee, Rapat Kerja Wilayah Ikatan Notaris Indonesia (INI) Pengurus Wilayah Bali dan NTT*.
- Sundari, S. (2005). *Hukum Lingkungan dan kebijaksanaan Lingkungan NAsional*. Airlangga University Press.
- Syah, M. I. (2007). *Dasar-Dasar pembebasan Tanah Untuk Kepentingan Umum (Basics of Land Acquisition for Public Interest)*. Jala Pratama.
- State Financial Accountability Working Visit Report In Order to get feedback related to the BAKN DPR RI Study on Agrarian, Layout and National Land to Gajah Mada University, Yogyakarta Trial Period II of 2021–2022 11–13 November 2021
- Widodo, S. (2017). *A Critical Review of Indonesia's Agrarian Reform Policy*. *Planning, Journal of Regional and City*, 28(3), 204–218.
- Wiradi, G. (2005). *Reforma Agraria untuk pemula*. Bina Desa.
- Zaman, N. (2016). *Politik Hukum Pengadaan Tanah: Antara Kepentingan Umum dan Perlindungan Hak Asasi*. Reflika Aditama.
- Acts, Government Regulation and Ministerial Regulation
- Pancasila
  - The 1945 Constitution
  - Law No 5 of 1960 regarding Basic Agrarian Principles
  - Presidential Regulation (Perpres) No 86 of 2018 about Agrarian Reform.
  - TAP MPR (People's Consultative Assembly) IX/MPR/2001 DATED November 9th, 2001 concerning the Agrarian reform and Management of Natural Resource