THE UNBROKEN LEGACY: AGRARIAN REFORM OF YUDHOYONO'S ERA[1]

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ABSTRAK

Di saat pemerintahan yang baru akan segera dipilih, Pemerintahan Susilo Bambang Yudhoyono sebetulnya masih menyisakan beberapa "pekerjaan rumah" yang cukup besar bagi pemerintahan baru. Sebuah program (dan visi) mengenai reforma agraria telah dilaksanakan dalam bentuk proyek rintisan (pilot project) *sejak tahun 2007 meskipun kenyataan memperlihatkan bahwa pelaksanaan program ini mendapat banyak tantangan. Sebagai sebuah visi pemerintahan, diujicobakannya program reforma agraria di beberapa daerah sangat menarik, karena telah lama "reforma agraria" dipetieskan, belum lagi tantangan yang kemudian muncul karena saat ini pemerintah telah terlalu berat berpijak pada sistem ekonomi pasar bebas, sementara di sisi lain masih amat tergantung pada pola-pola kolonial yang mengandalkan industri ekstraktif atas pengelolaan sumber daya alam. Pola-pola industri ekstraktif ini terbukti membawa keuntungan bagi sektor yang mengelolanya sehingga ketika ada suatu program yang membutuhkan elemen terpenting dari industri itu, yaitu tanah dan sumber daya agraria untuk diredistribusikan pada masyarakat miskin, resistensi sektoral kemudian menguat. Dengan menggunakan pendekatan sosio-legal, tulisan ini mencoba mendalami bagaimana peninggalan pemerintahan-pemerintahan yang lalu berupa industri ekstraktif dan pengelolaan sektoral dalam sumber daya agraria, menjadi penghalang dilaksanakannya program-program berbasis agrarian, termasuk program reforma agraria, baik secara ideologi maupun secara kelembagaan.*

Kata kunci: *Reforma agraria, land reform, Pemerintahan SBY, pengelolaan sumber daya agrarian, institusi ekstraktif*

ABSTRACT

As new Indonesian Government will be elected soon, there are some problems from current government that need to be acknowledged. A program (and a vision) on agrarian reform has been conducted as pilot project since 2007 although some limitations and hindrances in their implementation are found. This writing tries to unfold the reasons behind the implementation of agrarian reform program being promoted by Susilo Bambang Yudhoyono in post reform Indonesia. The statement of Yudhoyono to implement agrarian reform was actually an interesting phase of Indonesia's agrarian transformation although the program does not meet its initial goals as it is facing rooted problems of sectored management of agrarian and natural resources that heavily leaned towards extractive policies and institutions. Using a socio-legal perspective,[2] this writing discusses how the legacy of past policy on extractive institutions and sectored management of agrarian resources caused resistances from other sectored ministries, and private sectors—largely benefited from previous policies—in the execution of agrarian reform programs. Ideologically, agrarian reform programs also have to face the free market mechanism and framework that have been chosen by post-reform Indonesian Government. Lastly, the implementing state agency is also in desperate need to reforming its institutional legal basis and capacity. In the end, the program, which was originally an ideal and has ambitious concept, has been compromized in its implementation.

Keywords: *Agrarian reform, land reform, SBY, agrarian resource management, extractive institutions*

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2 A socio-legal perspective is an approach to legal problems by using social sciences methods and conceptual analysis. The use of social sciences approaches aim for more comprehensive understanding on legal problems unable to be answered by using legal and normative approach *per se*. In this particular writing, some of the approaches in anthropology of policy, literature (text analysis) and sociology of institutions will be used as analytical tools in discussing the rooted problems in Indonesian agrarian resource management.

INTRODUCTION

In 2004 when Susilo Bambang Yudhoyono and Jusuf Kalla ran for presidential election, they one of them was shared their visions and missions. The program to conduct agrarian reform and redistribute arable land to the Indonesian poorest and landless. However, it was not until 2007 (3 years after successfully elected) that President Yudhoyono restated his plan to implement agrarian reform. In some occasions, the data was presented that there were almost 8,17 million hectares of arable—yet abandoned—lands which will be distributed and redistributed to the poorest Indonesian and landless farmers for their live improvement. Yudhoyono kept saying that, "… farmers shall be king in our own country …"[3]

The development was an important phase in Indonesian agrarian study, as previously, agrarian reform was overshadowed by other policies particularly during the New Order under President Soeharto's administration. This study was actually having its initial interest in evaluating Yudhoyono's policy on agrarian reform, how it has been conducted and implemented; who are the key actors that supports in its concepts and strategic formulation of the program; also who are the key institutions in its implementation. There will also be evaluation on the challenges in implementing agrarian reform policy in the midst of Indonesian economic policy direction that is already heading towards free market policy.

The main objective of this study is to gain deeper understanding on Agrarian Reform Program (the PPAN) approved as President Yudhoyono's policy starting from 2007–2014. This writing in particular will try to unfold the legal and political backgrounds of the program and whether the program is driven by specific paradigm. The evaluation of its legal basis will also brought the analysis to whether the legal basis for the program is sufficient for this program to succeed, what are the institutional challenges faced by the program; and how state agencies work and cooperate (or not cooperate) to conduct the program, which includes the dynamics of inter-agency relations (cooperation, contested claims, power relations, and the role of key actors).

3 President Yudhoyono's Early Years Speech, 31 January 2007.

SETTING THE CONTEXT

Resolving agrarian issues was one of the key developments in many countries (Bernstein 2010). Newly independent countries were mostly facing the problem of inequality of access to agrarian resources and inequality of land holdings and ownerships. The existence of these inequalities was to certain degree caused by past policies that had preference to the state and private companies to manage agrarian resources. Eventually, this past policies had excluded many people from agrarian resources that created poverty around rich-agrarian resources areas (Hall Hirsch and Li 2011). Long term poverty and exclusion from access to agrarian resources had been proven to create conflicts over agrarian resources (Mulyani et.al 2011).

After independent, Indonesia was among countries struggling to resolve the agrarian issues. During the period of President Sukarno's Government, there have been efforts to deal with these issues. The most obvious policy was the nationalization policy on land holdings and ownerships from any foreign companies and individuals to be held by the State before further redistributed to landless Indonesian citizen. Also in his Sukarno era, there were efforts to create a national land law modeled to traditional or *Adat* law, incorporated under the Law No. 2 of 1960 on Sharecropping in Agriculture and Law No. 5 of 1960 on Basic Agrarian Law. Normatively, the laws were adopting both *adat* and western concept of property rights. Law No. 2 of 1960 was enacted to remove colonial and feudal practice of sharecropping, which were largely discriminative and exploitative against the labor-peasants; meanwhile, the Law No. 5 of 1960 set the basic regulation for land and property rights in Indonesia, including articles on types of land rights (deriving from both customary *adat law–hak ulayat,* and western law—individual property rights—*hak milik*), and the implementation of land reform is to resolve the inequality of land ownership after independence.

There were actually five policy agendas during Sukarno period prepared to resolve the agrarian issue in newly independent Indonesia, namely (Harsono 1961, Hutagalung 1985: 12–13): *firstly,*

conducting Agrarian Law Reform through law unification with national conception characters as legal security to land; *secondly*, removing all kinds of foreign land rights and colonial land concessions; *thirdly, r*emoving all kinds of feudal exploitations; *fourthly*, reforming the inequality of land ownership and land holdings, and other legal relations occurring from land use and land exploitation rights to achieve welfare and justice; and *lastly*, planning the allocation and carreful use of earth, water and other natural resources considering their supporting capacities.

However, the Sukarno Government was only able to achieve the first three goals: 1) unifying agrarian law through the enactment of Basic Agrarian Law No. 5 of 1960; 2) removal of foreign land rights and land concession through the enactment of Law No.1 of 1958 on the Removal of Private Land Rights (*Tanah Partikulir*); and 3) gradual removal of colonial exploitation through Law No. 1 of 1960 on Sharecropping in Agriculture. The process of restructuring land ownership and holding inequality were conducted through Land Reform program, mandated by the Basic Agrarian Law of 1960, particularly article 17. The program was partially successful, yet partially failed, leading to forceful land acquisition from large land-owners and some violent land occupations in many areas in Indonesia (see Thornquist 2011; Sulistyo 2001). The program failed for some reasons: *firstly*, resistances from large landowners to redistribute their lands and give their land to religious institutions for covering their ownership; *secondly*, the program was largely associated with the "red party" which was the Indonesian Communist Party; and *lastly*, by the time all the needed regulations were established to support the implementation of landreform around 1964–1965, the coup was taken place.

After the 1965 failed coup attempt, there was regime alteration to the New Order under President Soeharto. The Soeharto Government made several changes in agrarian law and policy directions. The new administration enacted laws that would support Indonesian economic development, by firstly enacted Law No. 1 of 1967 on Foreign Investment and Law No. 2 of 1967 on National Direct Investment. Afterwards, other laws and regulations, directed to the optimization of agrarian and natural resources through massive extraction were made, namely Law No. 5 of 1967 on Forestry, Law No. 7 of 1967 on Mining.

Although the Land Reform program was not completely removed by the Soeharto government, the declaration of land to be redistributed (*Tanah Obyek Landreform* or also known as *"TOL"*) had been continuing until mid 1980s. In reality itself, the program did not go further than these declarations; there were no process of redistribution of land from large landowners or from state land to the poor and landless peasants.

As the government did not really have the intention to redistribute land to the people, as confiscating landrights for development reasons were the major practice in New Order era; the institutions to implement the landreform, including to buy back the land form large landowners were dissolved; the program was associated with communist party from the previous government.

The program was gradually stopped and replaced by other programs such as *transmigration* program. There are basic characteristics of the land-governance in New Order period, among others are 1) the optimizing of the land with social function concept; with stressing on the people's obligation to forfeit their lands shall it will be used for "development" purposes; 2) numbers of cases related to land exchanges or known in Indonesia as between state land under state institutions with private companies; 3) negations of *adat* or traditional communities' communal land rights or *hak ulayat* by giving state and private companies the land use and natural resources' exploitation rights in most *ulayat* lands outside Java island; 4) highlighting other types of redistribution of land schemes, such as transmigration; to avoid forfeiting large land owners in Java Island to redistribute their land to the poor; instead the government in many occasion used outer Java Island's perceivably[4] unused lands or traditional community *hak ulayat* to be redistributed for transmigration program purposes.

4 The word perceivably is used to describe the logic of the Soeharto administration considering land that are not cultivated as unused land outside Java; no matter if it is used by local communities to seek local medicine or pastoralis land for their cattles.

The vacuum of land reform policy during the Soeharto era can itself be considered as "no policy" policy, which designated to discreetly covers the real policy that supports infrastructure development and natural resource maximum extractions. Although there were no explicit policies saying that the land reform program was removed, there were also no action to implement regulations that related to landreform program after 1966. The enacted laws and regulation on land reform were left in the shadows of development policy. In fact, the period was also benchmarked as "the oil boom" period as the government relied very much on oil for their state revenue; with the seemingly balanced attention to the agriculture sector. The seemingly attention given to the agriculture sector in later decades also criticized another policy that actually gave more pressures to productive land and farmers to follow state policy on green revolution. The intensification of agricultural land having led to deteriorating of land fertility and the overused of chemical ingredients in exterminating agricultural plant diseases has also led to higher resistance of the pests and diseases which currently made them harder to be exterminated.

Another important point of the Soeharto period was that there were changes that reducing and limiting the authority of Agrarian Ministry, to a Directorate General of Agrarian Issue under the Ministry of Home Affair; and later in 1984, it was changed into a National Land Body. The later institution was a state institution having lesser authority to merely administrative body on land issues, instead of authority in managing agrarian issue as being mandated by the Indonesian Constitution and the Basic Agrarian Law.

The sectored management of agrarian resources has been continuing along with the Soeharto regime, leaving the condition of Indonesian agrarian management very fragmented and uncoordinated. Each sector (forestry, agriculture, mining, environment, land administration) has been moving towards different directions, which make it harder to create a coordinating mechanism or something that resembles that kind of mechanism. This sectored agrarian management has become the largest legacy of Soeharto's Government that made any reform to dissolve the fragmentation almost impossible.

A new light was arising after the reform era at the point where all the struggles of agrarian academics, activists and NGOs have succeeded to endorse the enactment of The Indonesian National Assembly Declaration (TAP MPR) No. IX/MPR/2001 on Agrarian Reform and Natural Resources Management. However, once again, afterwards the TAP MPR was left "dormant" with some interesting development in reform government under the President Megawati Sukarnoputri administration, namely Decentralization Policy—leaving the authority on land being competed between national and local governments; and the National Land Agency continued to do Land Administration Program with support from the World Bank despite its many critics.

THE POWER OF LEGAL TEXTS, LEGAL LANGUAGE, AND STATE INSTITUTIONS

In evaluating the policy enacted by the Indonesian Government on Agrarian Reform in 2007–2014, it is interesting to see how the context of the policy played by key actors shaped the output of the policy. The context also gave us guidance on the hindrance, or support that were given to the policy, connecting them with historical relevance of land or agrarian reform policies made by previous Indonesian Government. In order to do that, we need to see law more than what it is written. Law, majorly conveyed in legal texts shall be seen beyond their "normative text" as well as cultural and political texts (Shore and Wright 1997: 15). This means that this writing sees legal texts not only as normative text, but text as having power used by key actors to safeguards their interests, or their institutions' interest. Actors are shaping and re-shaping policies in accordance with their understanding and knowledge on certain problems. Rules conveyed in legal texts are created and re-created and becomes state's policies based on these processes. Institutions also react to policy differently, they would review their legal basis, function and authorities; and respond accordingly. These are among of the reasons why certain

policies will be reshaped and reinterpreted by actors and authoritative institutions supposedly implementing the policy.

Most legal rules, principles or doctrines, authorities, rights and obligations can be found within 'texts'. There are many forms of legal texts but the most important are legislation and judicial decisions since both contain authoritative rules (Posner 1986). According to Parkinson, these authoritative sources of law "lays down a rule or standard which citizens, administrators, legal advisers, and ultimately courts, must apply to given circumstances" (Parkinson 2003: 202). Other principles and doctrines can be found in published books or journal articles.

Legal texts are written in a particular kind of legal language. Taken from White's explanation on the nature of legal language which he called "arhetorical culture", I adopt its definition to define legal language as:

> [T]he arts of mind and language, and especially the claims to authority inherent in legal discourse can be controlled; the process of reading the texts of others and recasting them into other terms … which is crucial part of the work of lawyer and judge alike; [it also include] the force and power of narrative in the law, especially as it works in tension with more abstract and logical forms of thought; [and finally] the ways in which human beings are and can be, represented in legal discourse (White 2002: 1414).

Legal texts contain rules and procedure having legal and political implication (Fish 1989: 297). In this regard, analyses of legal texts have two basic limitations: the wording of the texts them self and the contexts when the texts were made. Both are to be applied in redefining legal text into current situations. In other words, legal texts cannot be interpreted in the same way as literary texts (Posner 1986: 1360) as they were made and could only be interpreted by authoritative institutions or persons (legal institutions, lawyers, and judges). However, as with others, non-legal texts, legal texts are also full with 'uncertainties' (White 2002: 1401). The readers (lawyers, judges and legal insitutions) do not always 'read' texts from the same perspective as the writer (Parkinson 2003: 201; Pearce and Geddes 1996: 3).

It is also true that legal text in this particular, sometimes serves as text that "empower some and silence others" (Shore and Wright 1997) or "exclude others" (Hall, Hirsch and Li 2011). Texts containing policies on agrarian and natural resource management are also the case. Different institutions, with authority given by Indonesian law (*Undang-Undang*) are having their own mechanism to secure their institutions' interest by claiming certain resources as their privilege and these claims may exclude others, including the people living around the resources areas, to access those resources.

Nonetheless, state is of course a "non-homogenous" structure. Each state institution has different legal basis and different interests. They would contest their claims against other state institutions. For example, there is contestation between the Ministry of Forestry and the Ministry of Energy and Mineral Resources in Indonesia to secure their authority in some areas where both resources are lying, forests and natural or mineral resources within the forest areas. Although open mining in forest areas is prohibited, in practice there are still mining companies, or people's mining that breaches the regulation. Therefore, it is also important, we need to "understand government interventions as dis-assemblages, where different agents with specific power" (Li 2007: 276) interact each other, or tries to "silenced" each other. In this particular position, as each state institution has its their own legal basis for its claims, it would be hard to exclude or "silence" other institutions quite easily, the problem lies with the people, which have very limited power and bargaining position. In the end, in most cases, it is the people that are being excluded from access to these resources.

Contestation also happened between productivity and sustainability regime (De Schutter and Pistor 2013). After a long massive exploitation of natural and agrarian resources in Indonesia under the Soeharto regime, the environmental impact is felt widely nowadays. Deforestation, land degradation, frequent flooding and landslides, rise in water toxic due to overuse of chemical substances for mining and industry, have urged the international community, and also national and local civil society to urge the government

to begin seeing the sustainability aspects of these agrarian and natural resources. Law on Environment Protection No. 32 of 2009, as the revision of previously Law on Environment No. 4 of 1982 was stipulated for the purpose. There are also Law on the Conservation of Natural and Biological Resources No. 4 of 1990.

A question which shall be proposed is that, "Isn't it the function of state institutions to conduct development for Indonesian people's greater good?" This is the mandate of the Indonesian Constitution of 1945, certainly, and these institutions would also base their claims on exactly the same constitutional provision. "Development" authorizes state agencies to engage directly and openly to projects aimed at transformation and improvement (Li 1999: 297). However, as the state and its institutions also face problems in itself, such as legacy of rent-seeking government, corruption, and perception that the people could not manage natural or agrarian resources effectively and efficiently; state would seeks helps from private sectors which are believed to have the capacity and capital to extract natural or agrarian resources for the benefit of Indonesian people. From this process, "as the state sees it", the poor people will get benefit from state revenues and taxes used to financial development process (Scott 1998).

Agrarian reform program can also be seen as state's efforts to smoothen the process of development through reducing inequality of land use and ownership; and also to give the poor peasants and tillers productive resource (which is land) to be exploited for their own livelihood. If we see agrarian reform policy, it always has a populist agenda of the ruling government, to balance the contestation of power between state institutions having authority to manage natural or agrarian resources.

There are different types of agrarian reform. Wiradi (2009) states that based on the purpose, there is state led agrarian reform which is entirely implemented and controlled by the state as part of the ruling government agenda. There is people's led agrarian reform, which is driven by the people's movement to implement agrarian reform. This movement may contain violent actions by forcefully taking lands from large land owners to be redistributed to the tiller or poor peasants in the country; or there are also some experiences of people's led agrarian reform that were conducted peacefully, after the movement was elaborated into state policy and monitored the implementation with the use of state institutions. Another type is market led agrarian reform, in which reform in agrarian structure is conducted through market demands, whether national market or global market. Interestingly, this market demand, usually "hid" behind state policy, as the market in most cases has the power to dictated ruling government.

AGRARIAN REFORM PILOT PROJECT PROGRAM IN YUDHOYONO'S ERA

Indonesia experiences two sequences of land or agrarian reform after its independence. The first one was land reform program, conducted by the Sukarno Government to implement the Basic Agrarian Law No. 5 of 1960 and Government Regulation No. 224 of 1961; and the second one is under the Susilo Bambang Yudhoyono's administration. The land reform program conducted in 1960's was unsuccessful due to 1) insufficient capacity of newly state institutions to conduct land reform; 2) there was lack of data on land cadastral or land administration; and 3) there were different estimation on land reform objects lands data (Mulyani, et al. 2011: 73–73). Interestingly, the land refom in 1960 was colored by a reality of the Indonesian Communist Party (the PKI) members' "one-sided action" that took lands forcefully from large land-owners or landlords.

After the regime changed to President Soeharto's administration, the program was dormant. And similar program aiming to redistribute land to the poor was not correlated with land or agrarian reform, for instance was the Transmigration program started back in 1970s. The program was mostly socialized as a program to reduce the population density in Java and redistribute them to outer Java, with the right given to the *trans-migrants* the 2 hectares land to be exploited, and 500–1000 meter square of land for housing. In this era also, landreform or agrarian

reform was associated with "the PKI" efforts to forcefully take lands from legal-owners. This has "silenced" any efforts to support land or agrarian reform policy in Indonesia, as activists or civil society were also largely prohibited with enforced legal sanctions shall anyone speak on any "PKI related" issues.

After the reform era, there is interesting development as the 6th President of Indonesia, President Susilo Bambang Yudhoyono, shared his vision to conduct agrarian reform for the poorest peasants and poorest Indonesian. There are several reasons on why Agrarian Reform in SBY's administration is interesting. *Firstly*, after the "dormant" land reform policy in New Order era (Soeharto administration), the emerging of the so called "Agrarian Reform" policy incorporated in *Program Pembaruan Agraria Nasional* or the PPAN is an important point of Indonesia's Land Law transformation. *Secondly*, it is also interesting to see how Yudhoyono's Government make some efforts to balance pro-poor–pro-market–pro-growth–pro-environment policy. *Thirdly*, amidst the government economic policies that mainly have "liberal" face, there is a big question on how to position "agrarian reform" in Indonesian economic policy that already actively becomes members of free world market organizations. Last but not least, after deeper analysis of the concept, it is majorly modeled to "Hernando de Soto's legalizing the extra legal to revitalize "dead capital" concepts as being stated by the Head of Indonesia's National Land Agency (*Badan Pertanahan Nasional*) or the BPN RI.

Legal and Political Background

In the first open Presidential Election in 2004, President and Vice Presidential Candidate, Susilo Bambang Yudhoyono and Jusuf Kalla, shared their visions and missions during their campaign. The most important vision was that having in mind "farmers shall be the king in our own country", he stated that if he was elected president, he would conduct Agrarian Reform for Indonesian farmers and Indonesian poorests. Soon after they were elected, President Yudhoyono prepared some steps to the implementation of the program. He appointed Dr. Joyo Winoto, once his co-supervisor for his Doctoral Degree in Bogor Institute of Agriculture (the IPB) as Head of National Land Agency (the BPN). The BPN is the main institution mandated to implement the program.

As the main institutions mandated to conduct Agrarian Reform, the BPN took some steps, such as: 1) in 2006, conducting internal restructurisation which was adding Deputi V on Conflict Prevention and Resolution, also strengthening Land Reform structure within Deputy III on Regulation and Management of Land; 2) formulating the Agrarian Reform concept in cooperation with the Brighten Institute Bogor, a think tank previously lead by Joyo Winoto; 3) socialization of the program to all BPN's offices all over Indonesia; 4) Implementing a Pilot Projects of National Agrarian Reform Program (PPAN) in Blitar, Malang, Cilacap, Surakarta (Solo), Lampung, and some other places in the beginning of 2007 (BPN 2006).

In 31st of January 2007, during his New Year's Presidential Speech, President Yudhoyono re-stated his objective to conduct Agrarian Reform for Indonesian peasants and Indonesian poorest people. Afterwards, in April–June 2007, some ceremonies were created in some pilot project locations, to formally mark the initiate implementation of Agrarian Reform Program or the PPAN, as it was also named formally.

The land to be redistributed, accordingly, was said to be 8,15 million hectares; comprising: 1) converted forestlands; 2) unused or abandoned lands; 3) landreform object lands (under PP No. 224 of 1961); 4) other lands coordinated with specific ministries given to the BPN to be redistributed, such as ex-mining, plantations lands, and so on (Mulyani, et al. 2011: 73–74). Nonetheless, due to priority and lack of time until the new Government Regulation Draft on Agrarian Reform is approved by President Yudhoyono, the implementation of the 2007 Agrarian Reform program was based on previous Government Regulation on Landreform, which was the PP No. 224 of 1961.

In 2009, Yudhoyono was re-elected for his second term as president, with Boediono as his new Vice President. Although there were ques-

tions on whether Yudhoyono would continue his program on Agrarian Reform, as people re-question paradigmatic position of his Vice President[5], Yudhoyono took a surprising action that stipulated Government Regulation No. 11 of 2010 on Unused or Abandoned Land in 2010. Although the first priority of land to be redistributed was converted forest land, the enactment of this government regulation gave a small hope that the Yudhoyono government would firmly sanctioned parties (particularly private companies holding Exploitation Rights but having not use them) to take away the rights that was once given but not being used in a productive manner. However, even until the regulation was supposedly enforced, there were no lands declared as unused or abandoned land to be redistributed in Agrarian Reform program, for reasons they will be unfolded afterwards.

On the contrary, in 2012, Yudhoyono administration with the Indonesian People's Representative Body (the DPR RI) enacted Law No. 2 of 2012 on Land Acquisition for Development. This was considered to be a counter-action for the Agrarian Reform pragram, as President Yudhoyono agreed to higher form of law (*undang-undang*) for the policy that takes people's land for development; upon the regulation that gives people a piece of land (under Draft for Government Regulation on Agrarian Reform).

Instead of supporting and stipulating the Government Regulation Draft on Agrarian Reform as the legal basis for implementing Agrarian Reform, President Yudhoyono took different path and strengthened the policy that took people's land. Even until this writing, the fate of the Government Regulation Draft (RPP) on Agrarian Reform is still unknown. Moreover, President Yudhoyono replaced the Head of the BPN, who also one of the conceptor was of Agrarian Reform program, Joyo Winoto with Hendarman Supandji, former State Attorney General of Republic of Indonesia; which mode the Agrarian Reform program's continuation more uncertain. There has been little information on the way Soepanji is going to take agrarian reform policy in the remaining Yudhoyono's administrative term until 2014.[6]

Key Actors and Institutions

In analyzing the context of certain government policy, identifying main or key actors is one of the steps in order to get better understanding on how the policy evolved. This could include how certain policy is supported, resisted, and reshaped by these actors and gives impact to its implementation.

According to the Basic Agrarian Law in 1960, the institution having authority to manage Indonesian natural or agrarian resources is the Ministry for Agrarian. Nonetheless, the institutional shaping and re-shaping during the Soeharto regime has turned and reduced the Ministry of Agrarian to only a State Body, which is The National Land Agency. The National Land Agency or the BPN was firstly created with legal basis of Government Regulation (*Peraturan Pemerintah*), a form of regulation made by the executive branch (president) as an implementation of higher law, the *Undang-undang*. Comparing to other institutions engaging in Agrarian Reform program, such as the Ministry of Forestry, Ministry of Agriculture (Directorate General for Plantation); Ministry of Energy and Mineral Resources; Ministry of Environment even the Local Governments, all are having higher form of legal basis, namely the *undang-undang*. Shall the BPN want to contest its legal basis as one condition to implement Agrarian Reform, resistance will surely arises, particularly from ministries supposedly forfeit lands and resources under their authority to be redistributed under the Agrarian Reform scheme.

Aside to that, sectored management of agrarian or natural resources in Indonesia has been continuously maintained, resulting in

5 Boediono was constantly associated as having his stand under neo-liberalism perspective, and his views and policies mostly reflect to his standing.

6 Soepanji was actually having different direction on land administration from previous head of BPN Joyo Winoto. He has little attention on agrarian reform program, and consider it as unsuccessful effort, and he instead tries to strengthen internal BPN institutions, making it cleaner and accountable institutions, and focusing on programs that are under the BPN's authority, such as redistribution program, certification and land adjudication, LARASITA; and have a tendency not to touch program that requires strong coordinations which might ignite resistances from other sectores such as the agrarian reform program.

un-coordinated of agrarian or natural resources management in Indonesia. Instead, each of these institutions is competing one another to secure their interests.

Other key actors in Agrarian Reform program to be implemented under President Yudhoyono's administration are academics, researchers, and agrarian activists, as supporters of agrarian reform policy and program. They also play as discourse creators. As a matter of fact, under the Joyo Winoto administration, the BPN even makes one of the agrarian activists to be his expert-staff. Joyo Winoto as Head of the BPN makes a good cooperation with agrarian activist to implement Agrarian Reform program, and even makes use of their established networks at local level to support the program. It was two way benefit actually, as the agrarian movement also needs supports from the ruling government to get formal recognition of the lands that was reclaimed all over Indonesia during the early period of reform era (1999–2002). The BPN not only legalized their reclaimed lands, and other landreform object lands (previously declared during 1960s to mid 1980s as the implementation of PP No. 224 of 1961), but also gave access reform as part of the program implementation. In some pilot project locations, the programs were successful such as in Lampung Tengah District Lampung although in some other areas, what last was merely certification of lands with no further economic empowerment of sustainability for the beneficiaries.

1. Comparison between Land Reform of 1960 and Agrarian Reform of 2007

If we compare between land reform program conducted in Soekarno administration and Agrarian Reform program conducted in Yudhoyono administration, there are differences in ideology that backgrounded the program, terminology used, legal basis, land object to be redistributed, subjects (beneficiaries), mechanism and state institution that have the authority to implement it. Table 1 shows the comparison between the two programs.

Having said earlier that due to some conditions, there has been a delayed in approval of Government Regulation Draft on Agrarian Reform by President Yudhoyono; therefore, the implementation of Agrarian Reform program in 2007 was based on PP No. 224 of 1961. This is actually an incorrect legal logic, as the previous PP No. 224 of 1961 is having different ideological background, objects, mechanism and implementing institutions. The upmost erroneous step was to put the PP No. 224 of 1961 in the Agrarian Reform program concept that is mainly adopting "soft capitalistic approach" *a la* Hernando de Soto, meanwhile the PP No. 224 of 1961 was based on Indonesia's socialism paradigm (Mulyani, et al. 2011: 47–55. Mulyani 2011b: 34–37). Even the object and mechanism are different. Those are certainly causing legal confusion, and therefore making the program inapplicable.

Although Indonesian agrarian movement has been pressing the Yudhoyono's administration to enact the new Government Regulation on Agrarian Reform; the reality is still far from what is expected. Until now, the government regulation has not been signed by President Yudhoyono; instead with his new Head of the BPN, he focuses more on BPN internal reform and capacity building.

2. Legacy of Extractive Institutions

The situation reflects very much on what Young in Acemoglu, Johnson and Robinson (2001) have asserted that in many post-colonial countries, there are institutions that will persist to exist in legal property system deriving from colonial rules, as new government fails to recreate new laws. What happen in Indonesia is that institutions having persisted to exist are those of what Acemoglu, Johnson and Robinson would call "extractive institutions" (2001). To certain extent, colonial rules are used by current institutions as based of their claims, or even though new government creates new rules or new institutions, it ended up just exactly how the colonial government created them and make use of them. This is when Indonesia's New Order and post-reform administrations repeated history as they created and re-created extractive institutions even though they were named or based on different paradigms.

As it happens, the authoritative body, the Ministry of Forestry, is based on their own claims

Table 1. Comparison Between Landreform in Soekarno and SBY Era

	Landreform in Soekarno Era	Agrarian Reform/PPAN in SBY Era
Ideology	Indonesian Socialism	Neo-populist? Capitalistic a la De Soto?
Terminology used	From English, with main objective to accommodate some land reform practices from commonwealth countries, such as top-ceiling of land ownership	Direct translation of Spanish term. Socialized by Wiradi, in particular to accommodate Agrarian Reform practices from Latin America countries with similarity of massive land inequality
Legal Basis	Share Cropping Law, BAL of 1960, Govt. Regulation (PP) No. 224 of 1961	BAL, Presidential Regulation on BPN, Govt Regulation on Unused/Abandoned Land
Object (Land)	Bought land through "lost exchange" from large land owners, paid in installments by landless peasants or smallholder peasants	Unused lands, land in forest areas (productive forest to be converted – HPKV); land with HGU or Use Rights that being abandoned
Subjects (beneficiaries)	Landless peasants or smallholder peasants	Indonesian Citizens living on state land, "ille-gally" (according to State landlaw) for decades or more; and poorest society
Mechanism	Land Registration, Lost exchange payment to previous owners, prospective benefi-ciaries identification and processing, land redistribution with unburden payment in installments	Identification of lands objects of AR/PPAN that is clean and clear, identification and data processing of prospective beneficiaries, land verification (conflicted? Land Reform Objects based on PP 224/1960?), Land Measuring, Certification
Key Institutions	Landreform Committees (Central, Regional and Local); this committee is selected from cross-sectors institutions	According to Perkaban 2007, shall be managed by Implementing Agency of Agrarian Reform Program (BPP RA)

Source: PP No. 224 of 1961, and the BPN's Expose on PPAN 2007.

by using outdated regulations and forest maps that its production could be traced back to the colonial era. They have enjoyed these one-sided claims for the 32 years of Soeharto's New Order. A sectoral management of natural resources in Indonesia persevering colonial institutions and claims has an entirely different ideological basis with that of independent Indonesia. The persever-ance of these legacies was made possible by the New Order government's support of rent seeking economy (Lindsey 1997).

The reason why colonial government cre-ated extractive institutions was that at first it had little interest of creating a similar institutions as in their country of origin due to many reasons. AJR considered one reasons, it was the high rate of mortality among first settlers. This made the colonial government did not want to invest to much on building institutions that would resemble much those in their country, except for extracting its natural resources for the purpose of colonial government. In Indonesia post reform context, the process of decentralization has made the extractive institution previously centralized under the New order regime became enlarge; and each decentralized local government was com-peting to gain revenues from agrarian resources exploitation. The situation has turned into cre-ation of "localized extractive institutions". Local governments imitated the way previous national government governed agrarian resources.

Currently, they are more extractive policies than ever in Indonesia, locally managed under local government given the authority to manage agrarian resources. Local policies are a place of competition between national policies and their own. Use right permits were given away to more companies as these newly decentralized districts are in need of local revenues. The situation has worsened, not only in term on it made worse of sectored agrarian resource management as it already existed; it also gave more pressures to the agrarian resources. Rules being enacted at local level are in consistent with national laws, use right permits given by district government and those given by national government are

overlapping in practices creating more agrarian conflicts to arise.

This situation has made worse the implementation of any agrarian based programs, such as Yudhoyono's Agrarian Reform Program. Remaining centralized institutions having authority to manage land governance (the BPN or National Land Bureau) and sectored ministries (Ministry of Forestry, Ministry of Energy and Mineral Resource–previously Ministry of Mining, Ministry of Agriculture, Ministry of Environment, and so on) are competing with local governments in agrarian resources management. Each has their own legal rules (Act or *undang-undang)* as their legal basis.

3. Compromising Goals or Compromising Failures?

The analysis on the Agrarian Reform in Yudhoyono's era has come to some conclusions that the program is: 1) lack of legal basis; 2) lack of resources of the implementing agency; 3) get insufficient support from related ministries (or we may call it "resistance"); and 4) it has to compete with more powerful paradigm, the free market policy. The main obstacle deriving from competing paradigm where "Indonesia's socialism" under the Basic Agrarian Law competing with free market and trade liberalization (see Mulyani, et al. 2011).

The Agrarian Reform Program is made under the "free market" policy framework that has been implemented in major Indonesian economic and natural resources management. Therefore, the program, which is designed as pro-people and pro-poor program has to face the other policies, designed to be pro market and pro large businesses.

Another challenge that any agrarian based program has to face is institutional challenges of not only sectored institutions but also persisted extractive institutions, at national and local level. The sectored management of agrarian or natural resources in Indonesia has left the legacy of sectored and fragmented institution, with their own legal basis and claims to secure their interest. Therefore, there will always be resistances shall a new policy require them to forfeit some of their authority for the shake of supporting the implementation of the new policy. Decentralization process in Indonesia has made thing more complicated, as the competition happened not only at national level (between state ministries) but also at local level (between central government and local government, or among local governments).

Another problem arises shall the BPN want to redistribute land based on regulation on unused or abandoned land according to Government Regulation (PP) No. 11 of 2010. Although the BPN claimed that it has identified these types of land, there are resistances from right owners, who are mostly large business (real estate) companies. The BPN also does not want to take the risk of being sued, besides it will also "interrupt" investment process in many areas.

Learning from the Agrarian Reform program implementation, we can see that the program is reduced to mainly asset legalizing of land that has already been held by beneficiaries (*clean and clear land*). Although at first it was designed very completely and comprehensively, the program has to compromised with the obstacles it is facing; and in reality, in most places that are being studied, the program is limited to what the BPN as implementing agency has authority in the first place, land administration through land certification. Although the BPN claimed that it has "successfully" redistributed approximately 387 thousand hectares of land during the program since 2007 (BPN Strategic Planning 2010–2014), the number is still very far from what it was promoted in the first place, that is to redistribute 8,15 million hectares of land to Indonesian peasants and Indonesian poorest.

4. Reflections and Recommendation for Newly Elected Government

To conclude, efforts to implement Agrarian Reform in Indonesia's Reform Era have found hindrance from sectored land law and institutions. If we see like a state, the state comprised of different interest "manifested in a form of different policies, laws and programs" as the realization. Each state agency lied upon their "legal text" for their own claims against other agencies, and the resistances are basically derived from these

legal texts; normatively and politically. This fragmentation has long been "preserved" as it has benefited the sectors that have the authority to manage agrarian resources. The legacy of sectored agrarian law generates sectored institutions.

One of the main precondition, to conduct Agrarian Reform is to have an integrated or for the least is better-coordinated state institutions, as the Agrarian Reform shall be implemented cross-sectorally. In the situation where institutional fragmentation is strong, there is a need for "political will and political power" to "melt" or reduce the sectored management of agrarian resource in Indonesia. Unfortunately, the legacy has not been broken although Yudhoyono's administration has stated to implement agrarian reform. Agrarian reform requires an integrated institutions that balance the management of agrarian reform between economic purposes (productivity), justice (equal access and equality of land ownership), and sustainability.

Last but not least, a government program or policy cannot be separated from the facts that many interests will shape the way the program will be implemented—this proves socio-legal studies concepts—concepts will no longer fit the way it was designed, due to 1) legacy of Sectored institutions; 2) different "regimes" contested at state arena: economic and development (pro-market and pro-growth regime); environmental regime, pro-poor regime, and 3) different interpretation in its implementation will bring the program to compromise their initial goals with the reality.

To conclude, there is a need to reform these government institutions if the newly elected government will establish any program related to land and agrarian resources management. The lessons learned from previous Yudhoyono's experience can be overcome if the will to improve through agrarian reform agenda is taken seriously with strong power to implement them. The sectored institutions and extractive objective must be replaced by more coordinated and balance vision on agrarian resource management to achieve equity, productivity and sustainability for Indonesian people's greater good.

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