Agrarian Reform in the Forests Around Vernacular Settlements: Asset Reform and Access Reform in Rural West Sumatra, Indonesia

Kurnia Warman, & Titin Fatimah
Department of Administrative Law, Faculty of Law
Andalas University, Padang, Indonesia
e-mails: kwarman@law.unand.ac.id
tinfatimah@law.unand.ac.id

Abstract

Agrarian reform is an urgent need in every country having a large population depending on agriculture for sustenance where land is disproportionately distributed based on the allocation of space and land ownership. This condition is caused mainly by the inequality of land ownership and control. Few people can easily control and even own land for their interests in large numbers while many people have limited access to land control and ownership. This is despite the urgent need for arable land by a vast majority of the population for their survival and livelihood. This inequality could trigger land-related conflicts that can tear down the social fabric and disrupt the functioning of the government.

This study explores land issues and agrarian reform in Indonesia. It seeks to address the issue of how both asset reform and access reform can lead to better land redistribution.

It employs a text-based method as a research methodology to collect data. The study relies on laws and regulations passed by both the central and West Sumatra governments. The study also draws on legal journal articles and textbooks related to the research question.

The study reveals that agrarian reform is hindered by the legal relations between the Ministry of Environment and Forestry and the customary community (Masyarakat Adat) in rural West Sumatra and other relevant government agencies in determining the objects of agrarian reform.

Keywords: Agrarian reform, Forest areas, Land redistribution, Asset reform, Access reform, Customary community.

Introduction

Agrarian reform in Indonesia is carried out based on the People's Consultative Assembly (MPR RI) Degree No. IX/MPR/2001 on Agrarian Reform and Management of Natural Resources which mandates the government to carry out a just rearrangement of tenure, ownership, use, and utilization of land. Agrarian reform can be interpreted as a policy supporting the regulation of the ownership, control, and use of agrarian resources, especially land, for the benefit of farmers, farm laborers, and other land users (Nurddin et al. 2019). It is

the redistribution of private and public agricultural land to help the beneficiaries survive as small independent farmers, regardless of the "tenurial" arrangement.

The main objective of agrarian reform is to change the structure of society based on feudalism and colonialism to a more just and equitable society (Jacobs 2010). Its goals are to provide landowners equality in terms of income and opportunities, empower landowner beneficiaries to have equitable land ownership, enhance agricultural production and productivity, provide employment to more agricultural workers, and put an end to conflicts regarding land ownership (Wiradi 2014). Thus, the welfare of the people can be enhanced, and the state can achieve self-sufficiency, especially in the agricultural sector. Therefore, agrarian reform activities are not enough just for redistribution of land (land reform) as an object (asset reform) but must be followed by follow-up activities in the form of community empowerment as the subject of agrarian reform (access reform) (Bedner and Arizona 2013). Agrarian reform includes two main programs cumulatively, namely land redistribution or land reform (asset reform) and community empowerment in the use of their land (access reform) (Wiradi et al. 2007).

Agrarian reform consists of asset reform and access reform. Asset reform means giving parcels of state lands to landless farmers or legalizing the right of abandoned lands that have been occupied by farmers for a long time. The process of legalizing land rights in this model is accompanied by empowering the farmers. The instruments for empowering farmers include skill training, infrastructure development (rural roads, irrigation, electricity, etc.), soft loans, etc. These instruments help farmers to access the economic (market) system to utilize their lands more productively (Sadyohutomo 2018).

Agrarian reform needs to begin with a government legal action on behalf of the state as the holder of public power because it needs policies. If the policy does not have a regulatory basis and does not prioritize the traditional community's rights to settle and use natural resources based on their needs, then the state must intervene to right the wrong according to the 1945 Constitution. In addition to fulfilling the community's need to settle and use natural resources, agrarian reform arrangement is also an instrument to prevent land conflicts and promote traditional values (*nilai adat*) and local wisdom (*kearifan local*). The implementation of agrarian reforms is the duty of the government on behalf of the state as the holder of public power, while people remain as the beneficiaries of the agrarian reform programs (Christodoulou 1990).

Since it is the task of the government, any implementation of agrarian reform must be supported by all relevant government agencies under the leadership of the head of state of the government. All technical obstacles, whether caused by regulatory synchronization or the discoordination of tasks in relations between the government agencies must be resolved before any agrarian reform program is implemented. If these obstacles have not been resolved, likely, agrarian reform will not achieve the expected outcomes. Unfinished agrarian reform can cause new problems among community members (Nurlinda, 2018).

This study aims to discuss the agrarian reforms in the forest around the vernacular settlements of the Minangkabau people in the province of West Sumatra, Indonesia. In so doing, the study intends to help better understand land distribution and use as well as the legislation surrounding it.

Literature Review

Land access and land distribution have always been the subjects of heated debates and studies throughout the history of mankind regardless of place race. In Indonesia, many studies have investigated the issue of land access and use given the fact that a vast majority of the population lives a pastoral life. These include the study of Wanenda et al. (2019) conducted in West Papua from 2018 to 2019 where they argue that customary land/customary rights in Papua should be able to provide welfare to its customary law community (Waryanto, 2019; Istiningdyah at al., 2018; Martini at al., 2019; Tarfi & Amri, 2021; Suhendro, 2013; Reneksi,

2021)). Wanenda et al., recommend that the regional government of West Papua Province provide recognition, protection, arrangement, and management of customary law community customary rights. They claim that this effort can be conducted by the regional government through asset reform and (2) access reform to customary rights of indigenous and tribal peoples. They argue that asset reform covers providing regional regulations, facilitating the mapping of customary territories to legal determination by the Regent/Governor of customary rights, and the administration of customary rights ownership through registration of customary law community customary rights. They argue that access reform to customary rights includes activities to establish business institutions owned by Indigenous peoples, community capacity building, data collection and inventory of potential, provision of financial and non-financial capital, facilitation of market access, and cooperation investment framework with third parties. Even though Wanenda et al provide a clear definition of both access reform and asset, they attribute the failure of land reform to the ineffectiveness of government intervention.

Furthermore, many experts claim that the model of agrarian reform consists of asset reform and access reform and is also referred to as land reform plus (Waryanto , 2019; Irawati, 2014). Echoing, Waryanto and Irawati, Arba (2019), claims that agrarian reform is a combination of asset reform and access reform, both of which are inseparable units. Sadyohutomo (2018) on the other hand observes that access reform means giving landless individuals access to land or access to income. He argues that giving access to land means that every landless household is given a parcel of land for economic activities. However, Sadyohutomo warns that having access to land without other supports offers no guarantee of solving their poverty problems. He concludes that this is mostly due to the small (less than 2 ha) of the land they receive.

Echoing the above-mentioned authors, Arisaputra (2016) argues that access reform is the process of giving as many opportunities as possible to community members to manage and utilize natural resources available in Indonesia with support and facilitation from the government in the form of agricultural facilities and infrastructure, irrigation,
roads, farming, production marketing, cooperatives farming, and banking (people's business credit). In line with Arisapuitra, Ahbar (2021), in his thesis, argues that in the Draft Land Law, access to reform is defined as granting access to land recipients of agrarian reform objects to optimally use and utilize their land for both agriculture and non-agriculture. Similarly, Irawati et al. (2014) and Limbong (2012) argue that access reform is a provision of access or facilities for the community (subject recipients of land redistribution) to everything that allows them to develop agricultural land as a source of a farmer's life (political economy participation, capital, markets, technology, assistance, capacity building, and capabilities).

However, many of the authors, if not all studies discussed above blame the inefficiency of land reform on the lack/weakness of the government's intervention and commitment. Some of these authors also blame the poverty and lack of education of some landless community members. The difference between the present study and those discussed above is that it focuses on the regulatory inconsistency between institutions and government agencies dealing with agrarian issues. Adopting almost similar view are Alvian et al. (2022) who argue that Indonesia can be said to have not succeeded in implementing agrarian reform due to contradicting regulations, the involvement of many ministries and government agencies.

Research Methods

This research is normative as it investigates how laws and government regulations impact agrarian reform for better land redistribution in Indonesia. This study relies on secondary data on agrarian reform and land redistribution comprising statutes and government regulations. The study also relies on legal materials and court opinions such as agrarian reform literature and court decisions on the designation of a forest area. Due to its nature, the study adopts a text-based approach to address the research question of how both asset reform and access reform can lead to better land redistribution. This approach is important as it helps not only to identify the relevant text materials but to better interpret them in the attempt to answer

the research questions. West Sumatra has been selected as the research location because it is the only province where the concept of *tanah ulayat* or communal land is still prevalent and plays a significant role in the life of the population. For this end, purposive sampling is used to identify the individuals (the *Minangkabau* people of West Sumatra) and the concept (asset and access reforms). A qualitative method was used to interpret data as shown in the following table.

Table 1: Settlement areas in West Sumatra Province
Source: 2017 Statistics of the Ministry of Environment and Forestry Statistics.

No	Forest Area Function	Area (Ha)
1	Nature Reserve Areas and Nature Conservation Areas.	806,939
2	Protected Forest Area.	791,671
3	Limited Production Forest Areas.	233,211
4	Production Forest Area.	360,608
5	Convertible Production Forest Areas.	187,629

Research Location

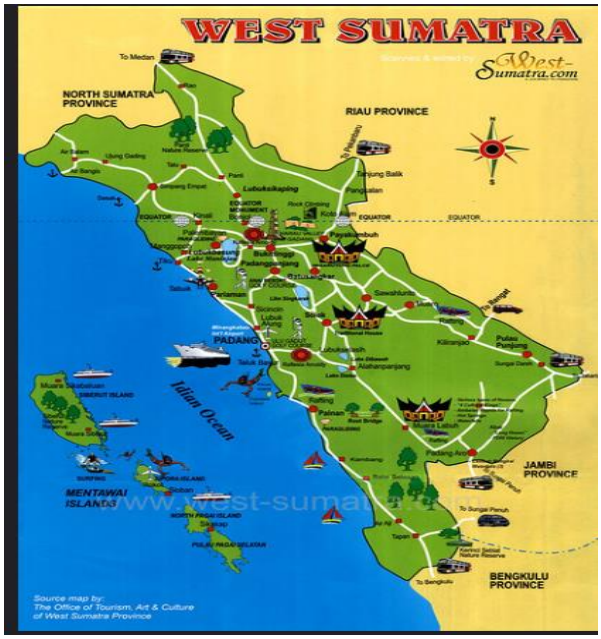

Fig. 1: Map of West Sumatra and the Forest Areas
Source: 2017 Statistics of the Ministry of Environment and Forestry Statistics.

Findings and Discussion

Legal Basis for Agrarian Reform

Implementation of agrarian reform in Indonesia has been under the umbrella of a strong legal basis starting with the 1945 Constitution of the Republic of Indonesia. Agrarian reform in Indonesia is carried out based on the People's Consultative Assembly (MPR RI) Degree No. IX/MPR/2001 on Agrarian Reform and Management of Natural Resources mandates the government to carry out a just rearrangement of tenure, ownership, use, and utilization of land by taking into account land ownership for the people and resolving conflicts related to natural resources that have arisen so far as well as anticipating potential conflicts in the future to ensure

the implementation of law enforcement. The legal basis for implementing agrarian reform in hierarchical order is as follows:

1. Decree of the People's Consultative Assembly of the Republic of Indonesia No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management.
2. Law No. 5 of 1960 on Basic Agrarian Regulations.
3. Law No. 56/Prp/1960 on Determination of Agricultural Land Area.
4. Government Regulation No. 224/1961 on the Implementation of Land Distribution and Compensation.
5. Presidential Regulation No. 2/2015 on the 2015-2019 National Mid-Term Development Plan.

In line with that, the government is also preparing a draft Presidential Regulation on Agrarian Reform. Specifically, the President also issued Presidential Regulation No. 88/2017 on the Settlement of Land Tenure in the Forest Areas, which can help resolve the status of land in the forest areas to become objects of agrarian reform (Sihombing, 2017).

Elements of Agrarian Reform and Related Government Agencies

The determination of government agencies related to the agrarian reform program depends on the scope of the agrarian reform program to be implemented. The scope of the agrarian reform program can be seen from three elements in the implementation of agrarian reform including access reform, asset reform, and certain government programs related to community empowerment. Access reform means giving landless individuals access to land or access to income (Sadyohutomo, 218), while asset reform covers providing regional regulations, facilitating the mapping of customary territories to legal determination by the Regent/Governor of customary rights and the administration of customary rights ownership through registration of customary law community customary rights (Wanenda et al., 2019). These three elements must exist in the legal instrument of the agrarian reform policy. They influence one another.

In principle, the Object of Agrarian Reform or *Tanah Objek Reformasi Agraria* (TORA) must legally have the status of state land (land controlled directly by the state); that is land that has no individual rights on it. Therefore, if the stipulated TORA is not state land, the government must release the land from the rights that burden it first. As long as these rights have not been released, TORA cannot be redistributed to TORA recipient subjects. On the other hand, if TORA has the status of state land, the implementation of agrarian reform is much easier because one important step has been passed (Fatimah 2015).

The determination of state land as the object of land redistribution has been regulated in Presidential Regulation No. 224/1961 on the Implementation of Land Distribution and Compensation. This provision was issued by the government to implement land reform as mandated by the Law no. 5/1960 on the Basic Agrarian Law referred to as *Undang Undang Pokoh Agraria* (UUPA), which is the legal basis for land reform programs throughout Indonesia. Specifically, Presidential Regulation No. 224/1961 is also the implementing the regulation of Law No. 56 Prp 1960 on the Determination of Agricultural Land Area as the object of land redistribution according to Presidential Regulation No. 224/1961 whose article 1 says that land redistribution reforms concerns:

a. Land exceeding the maximum limit as intended in Law No. 56 Prp 1960 and lands that fell to the State because the owner violated the provisions of the Act;
b. Land taken by the government because the owner resides outside the area (absentee land);
c. Self-governed and former autonomous lands that have been transferred to the state, as referred to in the Fourth Dictum letter A of the UUPA; and
d. Other lands directly controlled by the state.

This provision did not mention land acquisition law because, at that time, land acquisition for development had not been explicitly regulated by the state. Therefore, PP No. 224 of 1961 also regulates the provision of compensation to former land rights holders who will be made the object of land reform. In addition, this presidential regulation focuses only on the object of agricultural land and the subject of farmers, farm laborers, or cultivators of agricultural land, but has not specifically addressed the objects and subjects of agrarian reform in the forestry sector. In the present context, of course, this provision can no longer be fully used as the legal basis for determining state land as TORA. However, one thing that must be emphasized is that TORA must have a status as land independent of community rights.

Technically, the stage of releasing TORA from community rights is much more difficult because it requires deliberation with existing rights holders, and juridically, this activity must be carried out through the land acquisition process for development. Through land acquisition, which is specifically regulated in agrarian law, the government obtains state land as TORA which has been freed from the community rights. Therefore, if TORA is already a state land such as a forest area, the implementation of the agrarian reform program should be easier than TORA outside a forest area, because the state no longer needs land acquisition.

In this context, if the land that is the object of agrarian reform is a forest area, then government agencies in the forestry sector, including the main relevant agencies, must support the implementation of this program. This attachment is not only because the object is forest land but will also affect the determination of the subject and what empowerment program is suitable for the designated location. Thus, the determination of government agencies related to the agrarian reform program is highly dependent on the status of TORA and the community empowerment program for the subject of agrarian reform.

Agrarian Reform Land within Forest Areas

Based on Presidential Regulation No. 2/2015 on the 2015-2019 National Medium-Term Development Plan (Perpres No. 2/2015), it has been stipulated that there are 9 million hectares of land that will be made the object of agrarian reform. Thus, Presidential Regulation No. 2/2015 can be used as the main legal document for determining TORA. As stated above, to be designated as TORA, the 9 million hectares of land must have the status of state land. If it is not state land, then land acquisition for the agrarian reform program must first be carried out based on the provisions of the land acquisition law, which is now regulated by Law No. 2/2012. If the TORA in question has become state land, the process of implementing agrarian reform can be carried out immediately without land acquisition.

Of the 9 million hectares, 4.1 million are land located in forest areas, therefore the object of agrarian reform in forest areas is currently 4.1 hectares of forest areas. In line with that, Presidential Regulation No. 2/2015 is a general regulation as a declaration that the state will implement an agrarian reform program on a land area of 9 million hectares, of which 4.1 million hectares are forest areas. This presidential regulation does not yet contain a stipulation in the form of a decision by a state administrative official (*beschikking*) to designate certain lands as TORA. Therefore, in addition to Presidential Regulation No. 2/2015, the legal document that must exist in determining the TORA in a forest area is a decree from the Minister of Environment and Forestry or an official who is authorized to determine certain lands in certain forest areas, and a certain area, with certain limits (*specialties*) as TORA.

Forest area land is normatively state land. Thus the land certainly does not require the land acquisition process. However, the question is whether the 4.1 million hectares of forest area have truly become state land that has been separated from the civil rights of the community. This condition of course also depends on the process of establishing the forest area, whether the forest area has been confirmed as a forest area, starting from the designation, delineation of boundaries, mapping, and determination, or only through the designation of the area. The establishment of forest area is the main activity in forestry planning because it is through this activity that the status of forest area land is determined. The forest area that has gone through

the inauguration process means that the land in the forest area can be said to be state land. Therefore, this provision greatly affects the status of state land as TORA in the forest areas.

The Forest areas confirmation process is carried out in four stages as regulated in Article 15 Section 1 of Law No. 41/1999 on Forestry as follows:

1. Designation of forest area.
2. Demarcation of forest area boundaries.
3. Mapping of forest areas; and
4. Determination of forest area.

Article 1(8) of the Presidential Regulation No. 44/2004 on Forestry Planning confirms that the confirmation of forest areas is a series of activities for the designation, demarcation of boundaries, mapping, and determination of forest areas to provide legal certainty over the status, location, boundaries and area of forest areas. Based on the stages of area gazettement, TORA in forest areas can be grouped into at least two types, namely:

a. A TORA in a forest area designated by the government as a forest area.

If the forest area referred to has only been through an appointment process, it means that the civil rights of the community in the area have never been released, even though the Constitutional Court Decision No. 45/PUU-IX/2011 states that the land has become a forest area if the area has been designated before the Constitutional Court Decision. Designation of a forest area is an activity to prepare for the inauguration of a forest area, among others in the form of (1) making a map of designation that is directive on the outer boundary; (2) temporary boundary erection equipped with boundary passages; (3) construction of boundary trenches in vulnerable locations; and (4) announcement of planned forest area boundaries, especially in locations bordering private land (Explanation of Article 15 section 1 of Law No. 41/1999). The designation of the area is a unilateral action from the government based on technical considerations which state that a certain area as a forest area is per its function. Therefore, in the process of establishing a forest area, after the appointment, it must be followed by the demarcation of boundaries.

The demarcation of forest area boundaries is an activity that includes boundary projections, setting of boundary stakes, announcements, inventory and settlement of third-party rights, installation of boundary markers, measurement and mapping as well as making Minutes of Boundary Arrangements (Article 1 point (1) PP No. 44 2004). It is in this boundary arrangement that the calculation and settlement of the civil rights of the community in the designated area are carried out. For this reason, an inventory and settlement of the rights of third parties are carried out. The settlement of community rights (third parties) is intended so that within the boundaries of the forest area there are no longer community rights, or the existing community rights must be released first. Thus, all parcels of land that are confirmed through the determination of forest areas will be completely separated from community rights so that they can be said to be state land (land controlled by the state).

Legally, the determination of the forest area that has just been designated as TORA cannot be done directly, but it must first be done by structuring the boundaries of the area, then mapping and stipulating the forest area through a Decree of the Minister of Environment and Forestry. Each stage in the forest area gazettement process ends with their respective legal documents, namely Ministerial Decrees or authorized officials, as well as existing documents to support the issuance of Ministerial Decrees such as minutes of boundary demarcation, inventory, and settlement of third-party rights (compensation of third-party).

The third parties who have rights in the designated forest area are asked to provide legal documents, namely certificates of land rights, evidence, or proof of land tenure, both written and unwritten evidence. For third parties who own or control land without written evidence, because their control is hereditary based on customary law, they are asked to make a statement

of physical control of the land from generation to generation in good faith. This statement letter must be approved by the customary leader or environmental leader and known by the local regional head such as the village head, *sub-district head (lurah*), and district head. This statement letter in land administration practice is known as "sporadic".

Sporadic creation as a legal document also applies to someone who physically controls a certain piece of land for 20 years in good faith without being sued by the surrounding community. In this latter case, the basis for obtaining land rights is expiration (*verjaring*), as regulated in Presidential Regulation 24/1997 on Land Registration. All documents of proof of land ownership or third-party community land tenure rights must be submitted to the government at the time of settlement of third-party rights and written in the minutes of receipt of compensation.

b. A TORA Located within a Confirmed Forest Area

Juridically, the status of land in a forest area that has been confirmed can be said to be state land because it has gone through boundary structuring, mapping, and forest area determination. In other words, all the rights of third parties in the area have been relinquished by the rights holders, and the land becomes state land. Therefore, all legal documents for the process of establishing this forest area must be properly maintained and serve as the basis for its determination later as TORA. In addition to being the basis for determining TORA in forest areas, all legal documents, especially certificates of rights or rights to land, are brought to the Land Office (National Land Agency in districts/cities) to be stored as land parcels as the basis for state land (TORA). Administratively, the land is mapped into parcels of land which will be redistributed to the recipients of TORA, accompanied by a certificate of ownership rights or *Sertifikat Hak Milik* (SHM).

In forest areas that have been confirmed, the agrarian reform program can start immediately, starting with asset reform, because the government's affairs with third-party communities who have civil rights have been completed. The acceleration of the process of determining this area as a TORA depends on the government itself. So, this is more of a matter of government management.

Therefore, the forest area of 4.1 million hectares used as TORA must be detailed based on the two categories above as to how much of the 4.1 million hectares has been confirmed, and how much percentage is going through the process of area designation. This is intended not only to distinguish the process of establishing the land as a TORA but is also very important to determine the agrarian reform. This means that the government must also provide a budget for the settlement of third-party rights in the determination of TORA in the newly appointed forest area.

In addition to the 4.1 ha of forest area land for TORA, there is also 12.7 million ha that will be handed over to the community through the social forestry scheme. This means that this land can be used as a TORA, which begins with access reform and then proceeds to asset reform. If social forestry is intended to provide access to the community for the use of forest areas, this program can be integrated with the agrarian reform program. The mechanism for determining 4.1 million hectares of forest area land to become TORA also applies to the determination of forest areas for social forestry covering an area of 12.7 million hectares to become TORA in the future. Thus, the total land area of forest areas that can become the object of agrarian reform is 4.1 million hectares plus 12.7 million hectares which makes it 16.8 million hectares. This means that the forestry sector is the biggest "contributor" to the agrarian reform program and at the same time the most decisive government agency for the fulfillment of the president's promise through Presidential Regulation No. 2/2015, in addition to the National Land Agency. On the other hand, if the Ministry of Environment and Forestry does not really support this program, which prevents an effective agrarian reform.

Until now, the Ministry of Environment and Forestry seems to still support the realization of agrarian reform in forest areas. Although without distinguishing the status of

forest areas between designated and confirmed, the Ministry of Environment and Forestry has issued Minister of Environment and Forestry Decree No. 180/MENLHK/SETJEN/KUM.1/4/2017 on Indicative Map of Forest Area Allocation for Provision of Land Resources for Agrarian Reform Objects (TORA), which contains the determination of land allocations for agrarian reform over forest areas. The area allocated for TORA is 4,853,549 Ha of which 250.000 HA has an estimated 291 land ownership rights. This means that the remaining land will be removed from the forest area. The above-mentioned Decree of the Minister of Environment and Forestry details directions for the allocation of TORA in forest areas for various purposes outside the forestry sector as follows:

Table 2: allocation of TORA in Forest Areas
Source: Ministry of Environment and Forestry /SETJEN/KUM.1/4/2017 concerning Indicative Map of Allocation of Forest Areas for Provision of Land Resources for Agrarian Reform Objects (TORA).

No	Criteria	Surface (Ha)
1	TORA Allocation of 20% Forest Area Release for Plantation	437.937
2	Convertible Unproductive Plantation Forest.	2.169.960
3	The government program for new paddy reserve printings	65.363
4	Transmigration settlements and their approved social and public facilities.	514.909
5	Settlements, social and public facilities.	439.116
6	Cultivated land in the form of rice fields and people's ponds.	379.227
7	Dry land agriculture is the main source of livelihood.	847.038
	Total	**4.853.549**

Agrarian Reform Subjects in the Forest Areas

The subjects of agrarian reform can be divided into two groups, namely (1) subjects of implementing agrarian reform, and (2) subjects of TORA recipients. The subject of implementing the agrarian reform is the government on behalf of the state, while the subject of the TORA recipient is a person or community member who is the target of the reform program because they experience life difficulties due to inequality in ownership and control over land, as well as unfair access to economic resources to support activities. their efforts. Government agencies as subjects of agrarian reform consist of government agencies related to TORA status, and government agencies related to community empowerment programs subject to TORA recipients:

a. Government agencies related to TORA status consist of government agencies in charge of TORA, including the Ministry of Environment and Forestry for TORA in forest areas, the Ministry of Energy and Mineral Resources for TORA in mining areas, the Ministry of State-Owned Enterprises or *Badan Usaha Milik Negara* (BUMN) for former State-Owned Enterprises assets TORA, Ministry of Finance for TORA in the area of oil and gas exploitation (Migas), the Regional Government for TORA as a regional asset; and government agencies in the field of land administration, namely the Ministry of Agrarian Affairs and Spatial Planning (ATR) and the Head of the National Land Agency (BPN).
b. Government agencies related to community empowerment programs subject to TORA recipients are government agencies authorized in related fields such as the Ministry of Villages, Development of Disadvantaged Regions and Transmigration for the agrarian reform program aimed at structuring and distributing the population and structuring rural settlements, the Ministry of Agriculture for agrarian reform that specifically aimed at increasing the production of certain crops, the Ministry of Environment and Forestry for agrarian reform aimed at increasing the production of forestry

commodities, the Ministry of Maritime Affairs and Fisheries for agrarian reform in empowering fishermen, and so on.

In this case, the involvement of the Ministry of Environment and Forestry as a subject in agrarian reform in forest areas is not only the ruler of TORA in forest areas but also a government agency related to community empowerment programs. If the TORA is intended as a central area for the production of certain forestry commodities, the Ministry of Environment and Forestry certainly cannot just leave it after the forest area is released as TORA. Therefore, the Ministry of Environment and Forestry can prepare a special program for the implementation of agrarian reform in the forest areas aimed at continuing to produce forestry commodities. Thus, the area still serves as a forestry production area, the only thing that changes is the producer, namely from a company producer to a smallholder producer subject to TORA recipients.

The subject of agrarian reform, the main focus of this paper, is the subject of TORA recipients, namely companies or groups of citizens who urgently need assistance to get out of the difficulties of life in their own country, which is per the character of the location of TORA. In particular, the subject of TORA recipients is determined based on an empowerment program or a special program to be achieved through agrarian reform. According to Presidential Regulation No. 224/1961, the subject of the TORA (land redistribution) recipient is a priority farmer or cultivator, or agricultural hunter who has a legal relationship with the land previously. This is in line with the designation and use of land for the object of redistribution, namely agricultural land so that those who receive the retribution must be farmers.

The above-mentioned regulation determines the subject of land recipients for land reform objects. Article 8 Section 1 stipulates that state land subject to land reform is distributed with ownership rights to farmers by the committee according to the following priorities:

1. Farmers working their own land;
2. Farmers working the land on behalf of its owner;
3. Farmers who have worked the land for less than 3 years;
4. Farmers working someone else's land for themselves;
5. Farmers working a government-marked land;
6. Farmers whose arable land is less than 0.5 hectares;
7. Farmers owning land that is less than 0.5 hectares;
8. any other farmers.

Article 8 Section 2 of Government Regulation No. 224 even gives additional priority to; (1) a farmer who has family ties of not more than two degrees with the former owner, if there is a maximum of 5 people; (2) farmers registered as Veterans; (3) farmer widows of fallen freedom fighters; and (4) farmers who are victims of chaos. This provision shows that land redistribution is really meant for farmers who are physically and socially close to the land object of the land reform, so far, they do not have the right to a place to work because of inequality in land ownership. With the land reform, it is hoped that the agricultural lands are truly for the farmers (land to the tiller).

For this land redistribution (asset reform) to be right on target with the appropriate recipient subject, this provision also stipulates the requirements for the land redistribution recipient subject as follows (Presidential Regulation No. 224/1961):

a. General requirements include:
    - Indonesian citizens;
    - Domiciled in the sub-district where the land is located; and
    - Strong work in agriculture.
b. Specific requirements include:

- Sharecroppers, permanent farm laborers, cultivators working on proprietary land, and cultivators of lands that are given another designation by the government (on ex-self-regulation land) must have worked on the land in question for at least 3 consecutive years.
- For sharecroppers who have not worked on the land for 3 years, they must have worked their land for 2 consecutive seasons.
- For permanent workers who worked for the former landowners who had worked for the former owners for 3 consecutive years.

Government Regulation No. 224/1961 strictly regulates the subject of TORA recipients so that land redistribution does not profit those in charge of the process, it is aimed at doing justice to the less fortunate. Article 10 of this regulation even provides for the technical considerations of population density level that implies that in dense areas, the distribution of land shall be carried out using the following criteria:

1. farmers who already have more than 1 Ha of land are not included
2. Those who already own a plot of land of less than 1 Ha get a share of the land being worked on, but the amount of land owned, and the land distributed to them may not exceed 1 Ha.
3. farmers who do not own the land they could be granted a share not exceeding 1 ha of that land.
4. farmers who are classified as agricultural laborers get to keep the land in question, while those who have worked the land for less than 3 years; those working the land on behalf of the owner; and those working a government-marked land may receive 1 ha.
5. farmers who are classified as permanent workers by the landowner; those who have less than 0.5 Ha of arable land; those who have less than 0.5 Ha; and other types of farmers who may receive 0.5 Ha.

As far as areas of sparse population are concerned, the limit of 1 Ha and 0.5 Ha as referred to above can be extended by the Committee by considering the area of land available for distribution and the number of farmers who need it. The distribution of land to the farmers is intended to allow them to have economic assets (Article 11). Article 12 PP No. 224/1961 even takes into account the factual conditions of the exploitation of the plots of land to be distributed. If agrarian reform in forest areas is intended for business activities in the agricultural sector, then the provisions of the Government Regulation No. 224/1961 can be used as a guideline to determine the subject of TORA recipients. Especially for TORAs residing in customary forests, the farmers listed above need to be given additional priority for members of indigenous peoples. Thus, the subject of TORA recipients in (former) forest areas consists of farmers already cultivating land at the TORA location (Table 1).

Community Empowerment Program for Agrarian Reform in Forest Areas

The empowerment program is part and/or a follow-up to agrarian reform which is intended to provide easy access for TORA recipients to their land. This program is also intended to ensure that the goals of agrarian reform can be achieved properly and on target. Through this empowerment program, the farmers who are the subject of TORA recipients are not “forced” to sell their land because the land is unable to produce their livelihood. For the government, this empowerment program is the main support for achieving the goals of agrarian reform, namely increasing agricultural and/or forestry production.

The form of the community empowerment program subject to TORA recipients depends on the agrarian reform objectives set by the government in certain areas. If agrarian reform in forest areas is aimed at improving the welfare of the community, especially the subject of TORA recipients through increasing agricultural production, the empowerment

program is in the field of agricultural development. If agrarian reform in forest areas is aimed at improving community welfare through increasing the production of forestry commodities, the empowerment program is in the forestry business sector.

Along with the empowerment program for the community receiving TORA, they can also be given a ban on certain actions on their land, such as a ban on selling for a certain time. This has been implemented by the government in the transmigration program, that lands belonging to transmigration participants originating from land distribution may not be sold for 20 years. The assumption is that during this time it is estimated that the objectives of the transmigration program have been achieved for them and their welfare has increased. Furthermore, they may choose other professions apart from farming or move to other areas as their life choice.

Thus, the policy of releasing forest areas for TORA is only an administrative action so that parcels of land received by the subject of agrarian reform can be registered and granted a certificate of ownership. The Ministry of Environment and Forestry and related agencies should still create community empowerment programs for TORA recipients if the agrarian reform program in the location concerned is aimed at increasing the production of agricultural commodities. in this sense, the Ministry of Environment and Forestry can become the main institution for this kind of agrarian reform.

Legal Mechanism for Agrarian Reform in Forest Areas

Various efforts must be made by the government to allow agrarian reform in the forest areas to be effective. As the largest TORA in the implementation of agrarian reform, forest areas are the main target of this program. Therefore, it is important to explain the mechanism of agrarian reform in forest areas. Based on the identification of TORA in forest areas as stated above, two agrarian reform mechanisms can be proposed as follows. These two mechanisms are structured with the assumption that agrarian reform consists of cumulative asset reform and access reform:

1. The agrarian reform mechanism in the forest area for TORA covers an area of 4.1 million hectares per Government Regulation No. 2/2015. For TORA in the forest area, this group has indeed been reserved and even a directive for its allocation has been made through the Decree of the Minister of LHK No. 180/MENLHK/SETJEN/KUM. 1/4/2017 on Indicative Map of Forest Area Allocation for TORA, and the area is 4.8 million hectares. The agrarian reform mechanism in this area is preceded by land reform (asset reform), and followed by community empowerment as access reform. This mechanism is an ideal mechanism for agrarian reform, as asset reform is the first and main activity and access reform is a supporting activity.

Based on the status of the forest area land and the TORA status, which is redistributed to the recipient subject, this first mechanism can be pursued through two schemes, namely:

a. Forest area release scheme as TORA to be redistributed to members of the receiving subject community. This scheme, of course, begins with the Decree of the Minister of Environment and Forestry on the release of certain forest areas as TORA, then through agrarian reform, the land is redistributed to individuals subject to TORA recipients. The redistribution to each TORA recipient subject is carried out by the authorized official, namely, the Head of the National Land Agency to be registered with the Land Office and a certificate of ownership is issued to each TORA recipient subject.
b. Forest area release scheme to be designated as customary forest. In this case, the customary forest is not suitable to be included in the social forestry scheme within the forest area (state forest) because it is not a state forest. Therefore, the shift of forest areas into customary forests can be considered an asset reform, and not just an access reform. This means that through the TORA customary forest scheme, parcels of land have not been mapped to be directly handed over to individuals who are the subject of

TORA recipients. Through the customary forest scheme, the new TORA is only given to legal community units to be managed customarily for the welfare of community members. Therefore, the community empowerment program (access reform) following the asset reform is not just intended for individuals of the customary law community but for the customary law community in general. However, after a period of management by customary law communities, the customary forest may be redistributed individually to each member of the community (land reform). If this scheme can be implemented, the forest area for agrarian reform will certainly increase since the reserved forest area of 4.1 million hectares does not include customary forest.

Based on the identification of TORA in forest areas as stated above, two agrarian reform mechanisms can be proposed that are structured with the assumption that agrarian reform consists of cumulative asset reform and access reform:

1. The agrarian reform mechanism in the forest area for TORA covers an area of 4.1 million hectares per Government Regulation No. 2/2015. For TORA in the forest area, this group has indeed been reserved and even a directive for its allocation has been made through the Decree of the Minister of Environment and Forestry No. 180/MENLHK/SETJEN/KUM. 1/4/2017 on Indicative Map of Forest Area Allocation for TORA, and the area is 4.8 million hectares. The agrarian reform mechanism in this area is preceded by land reform and followed by community empowerment as access reform. This mechanism is an ideal mechanism for agrarian reform, as asset reform is the first and main activity and access reform is a supporting activity.

Based on the status of the forest area land and the TORA status, which is redistributed to the recipient subject, this first mechanism can be pursued through two schemes, namely:

a. Forest area release scheme as TORA to be redistributed to members of the receiving community. This scheme begins with the Decree of the Minister of Environment and Forestry on the release of certain forest areas as TORA, then through agrarian reform, the land is redistributed to individuals subject to TORA recipients. The redistribution to each TORA recipient subject is carried out by the authorized official, namely the Head of the National Land Agency or an appointed official, to be registered with the Land Office and a certificate of ownership is issued to each TORA recipient subject.
b. Forest area release scheme to be designated as customary forest. In this case, the customary forest is not suitable to be included in the social forestry scheme within the forest area (state forest) because the customary forest is a different status from or is no longer a state forest. Therefore, the legal release of forest areas into customary forests can be considered asset reform, and not just access reform. The difference between this scheme compared to scheme A is that through the TORA customary forest scheme, parcels of land have not been mapped to be directly handed over to individuals who are the subject of TORA recipients. Through the customary forest scheme, the new TORA is only given to legal community units to be managed customarily for the welfare of their community members. Therefore, the community empowerment program (access reform) after the asset reform is carried out is not or has not been directed to individuals from members of the customary law community but to the customary law community unit as a particular social unit. After going through a period of management by customary law communities and the purpose of establishing their customary forest has been achieved, the customary forest can be redistributed individually to each member of the community (land reform). If this scheme can be implemented, the area of forest area for agrarian reform will certainly increase, because the reserved forest area of 4.1 million hectares does not include customary forest.

2. The agrarian reform mechanism in the forest area is reserved for social forestry covering an area of 12.7 million ha. Normatively, the forest area of 12.7 million

hectares that is reserved for social forestry cannot be considered as agrarian reform because in this program there is no release of the area to be made as TORA or there is no asset reform as the main and first activity of agrarian reform. However, the social forestry program can be seen as an access reform because it provides access and even empowerment to the community according to the form of social forestry. Therefore, social forestry can be transformed into agrarian reform in the future if at certain locations this policy is appropriate to be followed up with asset reform. Thus, the agrarian reform mechanism in social forestry forest areas is carried out from a different direction, starting with access reform and then continuing with asset reform. So, in this case, agrarian reform begins with a supporting program first, and then the main program is implemented, namely asset reform. After the access is empowered and the community accepts it already has adequate knowledge, then only the assets are confirmed.

Conclusions

Legal issues related to agrarian reform in forest areas are not too complicated, because the current legal basis for this program seems to have been implemented, as described above. Considering that the forest area that can be used as a TORA is very wide, the problems that may arise in realizing agrarian reform in forest areas are various and have broad dimensions as well. In this regard, there are at least two main issues that must be resolved in implementing agrarian reform in the forest areas. These include the legal relationship between the government, especially the Ministry of Environment and Forestry with the local (customary) community in determining TORA in locations that are still designated as forest areas or have not gone through the process of the inauguration of forest areas. In this area, the civil rights of the community have not been resolved because they have not gone through boundary structuring. Therefore, when an area like this is designated as TORA, it can cause problems among the community members, especially if the subject of the TORA recipient does not come from the local community. This problem may be reduced by making individual members of the local community the subject of TORA recipients, through participatory methods. If the subject of the TORA recipient is not a member of the local community, the state should first settle the civil rights of the community before it is determined or before being redistributed to the subject of the TORA recipient.

The settlement of inter-institutional relations between the Ministry of Environment and Forestry and other relevant government agencies. If TORA in forest areas is used for non-forestry activities such as agriculture, the main institutional relationship of the Ministry of Environment and Forestry is with the Minister of Agrarian and Spatial Planning/Head of National Land Agency to complete the asset reform. The Ministry of Agriculture is also involved to carry out empowerment programs (access reform) in the agricultural sector in collaboration with the Ministry of Environment and Forestry. If TORA in forest areas is used for forestry sector activities to increase the production of forestry commodities, the institutional relationship between the Ministry of Environment and Forestry is primarily only with the Minister of Agrarian and Spatial Planning/Head of National Land Agency. The Ministry of Environment and Forestry remains the leading sector in the community empowerment program even though the land has been registered under the name of the subject of the TORA recipient. Finally, it is important to establish a synergistic relationship with banking institutions as providers of working capital assistance to farmers who are the target of the agrarian reform program.

References

Ahbar, F. K. (2021) Access Reform as Community Empowerment. Notariat Master Degree Program, Faculty of Law, Hassanudin University, Makasar, Indonesia.

Arba, H.M. (2019) Hukum Agraria Indonesia. Jakarta: Cet. 6. Sinar Grafika. p. 44.

Arisaputra, M.I. (2016, May) Access Reform dalam Kerangka Reforma Agraria untuk Mewujudkan Keadilan Sosial. Perspektif, Volume XXI No. 2.

Bedner, A. & Arizona, Y. (2013) Adat in Indonesian Land Law: A Promise for the Future or a Dead End? The Asia Pacific Journal of Anthropology, 20 (5): pp. 416-434, DOI: 10.1080/14442213.2019.1670246

Christodoulou, D. (1990) The Unpromised Land: Agrarian Reform and Conflict Worldwide. London: Zed Books, pp. 23-45

Fatimah, T. (2015) Reformasi Agraria Dalam Konteks Peningkatan Akses Kaum Tani Miskin Terhadap Penguasaan Tanah di Indonesia. Jurnal Hukum Samudra Keadilan. Vol. 10(2): 15

Fitra Alvian, F. & Mujiburohman D. A. (2022) Implementasi Reforma Agraria pada Era Pemerintahan Presiden Joko Widodo. Jurnal Tunas Agraria, Vol. 5 No. 2

Jacobs, S. (2010) Agrarian reform, Sociopedia.isa, DOI: 10.1177/205684601072

Irawati & Hakim, A. (2014) Peran Pemerintah dalam Distribusi Tanah atau Lahan Perkebunan (Studi Literatur Pemikiran Ekonomi Islam Perspektif Abu 'Ubaid Al-Qasim Bin Salam). Jurnal Ekonomi dan Perbankan Syariah.

Istiningdyah, R., Sutaryono, S. & Wahyuni, W. (2018) Kontribusi Redistribusi Tanah Terhadap Kenaikan Pendapatan Masyarakat di Jawa Tengah. Tunas Agraria, 1(1). https://doi.org/10.31292/jta.v1i1.2

Limbong, B. (2012) Reforma Agraria, Margaretha Pustaka; Jakarta, 2012, p. 299

Martini, S., Ash-Shafikh, M. H. & Afif, N. C. (2019) Implementasi Reforma Agraria Terhadap Pemenuhan Harapan Masyarakat Yang Bersengketa Lahan. BHUMI: Jurnal Agraria dan Pertanahan, 5(2), 150–162. https://doi.org/10.31292/jb.v5i2.367

Nurdin, Z. & Tegnan, H. (2019) Legal Certainty in the Management of Agricultural Land Pawning in the Matrilineal Minangkabau Society, West Sumatra. Land. Vol. 8(8): pp. 8. doi.org/10.3390/land8080117

Nurlinda, I. (2018) Perolehan Tanah Obyek Reformasi Agraria (TORA) yang Berasal dari Kawansan Hutan: Permasalahan dan Pengaturannya. Vol. 4(2): pp. 14

Rineksi, T.W. (2021) Strengthening GTRA Institutions in Responding to the Challenges of Agrarian Reform in Rejang Lebong Regency, Marcapada: Jurnal Kebijakan Pertanahan, 1(2), 105–122. DOI: https://doi.org/10.31292/mj.v1i1.10

Sadyohutomo, M. (2018) The benefits of an agrarian reform model in Indonesia IOP Conf. Ser.: Earth Environ. Sci. 202 012030.

Sihombing, B.F. (2017) Agrarian Reform in Indonesia: A Juridical Review. International Journal of Civil Engineering and Technology, 8 (11): pp. 348–356.

Suhendro, P (2013) Manfaat Reformasi Agraria Bagi Pemenuhan Hak-Hak Asasi Petani. Jurnal Pengabdian Kepada Masyarakat, 19(74), 60-64.

Tarfi, A., & Amri, I. (2021) Reforma Agraria sebagai Jalan menuju Perdamaian yang Berkelanjutan di Aceh. BHUMI: Jurnal Agraria dan Pertanahan, 7(2), 210–225. https://doi.org/10.31292/bhumi.v7i2.509

Tegnan, H. (2015) Legal pluralism and land administration in West Sumatra: the implementation of the regulations of both Local and nigari governments on communal land tenure. The Journal of Legal Pluralism and Unofficial Law 47 (2), pp. 312-323. doi.org/10.1080/07329113.2015.1072386.

Wanenda, N. & Yumte, Y. (2019) Assets Reform dan Access Reform Hak Ulayat untuk Kesejahteraan Masyarakat Hukum Adat di Wilayah Adat Bomberai, Domberai dan Saireri, Provinsi Papua Barat. The Samhana Institute: An Asian Centre for Social and Environmental Renewal.

Waryanto (2016) Reforma Agraria: Momentum Mewujudkan Kemandirian Ekonomi Masyarakat Kecil Dalam Mendukung Ketahanan Pangan (Agrarian Reform: The Moment to Realize Economic Autonomy of Lower Class in Supporting Food Security). Bhumi Vol 2-2 pp 189-193.

Wibowo, F. S., Wibowo, G. D. H. & Putro W. D. (2022) Implementasi Pembaruan Agraria dan Pengelolaan Sumber daya Alam Terhadap Access Reform. Jurnal Kertha Semaya Vol. 10 No. 9, pp. 2027-2041

Wiradi, G. (2014) Masalah Kehutanan Dalam Konteks Reforma Agraria, in Ismatul Hakim and Lukas R Wibowo (Editor), *Hutan Untuk Rakyat: Jalan Terjal Reforma Agraria di Sektor Kehutanan*, Puspijak, LKiS, Yogyakarta, pp. 412-413.