

Restorative Justice and Agrarian Reform Conflict Resolution

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Received: June 23, 2024; Reviewed: October 7, 2024; Accepted: November 3, 2024

Abstract: Various structural agrarian conflicts remain unresolved after the government's implementation of agrarian reform. Differences in interpretation of agrarian reform trigger the conflict. The government's interpretation is different from the community's interpretation, which considers agrarian reform to be a systematic effort to provide the community with access to land. This article employs an empirical legal research method, combining a sociological perspective and a case study approach. This article contains several important findings, one of which is that asset legalization is not an agrarian reform. Asset legalization fails to address the issue of land ownership inequality. The government's implementation of land redistribution fails to address the issue of land ownership inequality. The government's version of land redistribution not only fails to resolve the issue of land ownership inequality, but also seizes land from marginalized communities. The same goes for social forestry. Social forestry leaves behind unresolved agrarian and environmental conflicts. Differences in interpreting agrarian reform actually cause all these problems. Therefore, we can use restorative justice as an alternative to solving the problem. As a problem-solving model involving victims and suspects, this resolution model seeks peace between the two parties. The hope is that there will be no more bloody agrarian conflicts, especially related to agrarian reform in Indonesia.

Keywords: Agrarian Reform, Agrarian Conflict, Restorative Justice

INTRODUCTION

Despite the promulgation of the Basic Agrarian Law (UUPA) nearly 60 years ago, the welfare of the agrarian community continues to fall short of expectations. The spirit of basic Agrarian Law (UUPA), which wants agrarian reform to occur in the concept of land management in Indonesia, seems to be fading day by day. Instead of continuing to be maintained and implemented, agrarian reform seems to be disappearing and tending to be abandoned (Purwanto dan Nasution 2022). In many cases, it turns out that agrarian reform is always associated with conflicts of interest and armed conflict. This proves how sensitive this issue is, so it must be resolved well, without haste, and peacefully (Escallón, 2021; Cant, 2021; Vilpoux et al., 2021).

Agrarian reform actually exists as an effort to eliminate inequality in land ownership. There have been many articles and studies discussing this matter. We build on the assumption that when people have equal and equitable access to land, their welfare will increase. Poor people, particularly sharecroppers who labor on the land but receive minimal wages, are not an exception. These farmers are considered not to receive sufficient

benefits from the land. Agrarian reform does not want this to happen. Therefore, the land redistribution program, which is followed by limiting the maximum area of land ownership, continues to be intensified and made every effort possible so that it can be expanded (Nurrochmat et al. 2020).

As we all know, the UUPA and its agrarian reform ideas continued to face ostracism during the New Order era. It is regarded as PKI and does not align with the direction of national economic development. The situation didn't appear to change significantly during Joko Widodo's administration. In the era of President Joko Widodo, agrarian reform was defined as three main programs namely: asset legalization, land redistribution, and social forestry (see National Medium Term Development Plan 2015-2019, Presidential Regulation Number 45 of 2016, Presidential Decree 86 of 2018, and National Medium Term Development Plan 2020-2024). The formulation of the concept of agrarian reform undoubtedly differs greatly from its original vision.

During the 2015-2021 period, legalization of assets reached 4.5 million ha. This amount was obtained from the legalization of transmigration land assets covering an area of 0.6 ha and complete systematic land registration (PTSL), which reached 3.9 million ha. Apart from that, the redistribution of former cultivation rights, abandoned land, and other state land reached 0.4 million ha, and social forestry reached 4.1 million ha. Based on statistical data, we should truly value this figure (Alvian & Mujiburohman, 2022). This number also shows the performance of a government that is very concerned about implementing agrarian reform. But apparently in practice, this is not the case.

The government's proposal to legalize assets as the first step in implementing agrarian reform is not true agrarian reform. Agrarian reform is the reorganization of land ownership (Ginting 2020). Reorganizing land ownership can provide equal access and prosperity to those who do not have land. This concept is, of course, very different from the concept of asset legalization. The concept of asset legalization merely establishes rights through an ownership certificate for land already under community control. Not a reorganization of land ownership. Therefore, the government's implementation of agrarian reform activities differs significantly from genuine agrarian reform initiatives (Wiradi, 2005).

The government makes claims about the redistribution of former cultivation rights, abandoned land, and other state land. The public is unaware of the successful redistribution of former cultivation rights, abandoned lands, and state lands among the 4.1 million hectares. The field data reveals no such information. According to data from the Central Statistics Agency for 2023, there are 29,360,833 agricultural businesses. Of this number, 17,248,181 are smallholders, or farmers who work on less than 0.5 ha of land (Badan Pusat Statistik, 2023). Based on the data, it appears that inequality is still occurring. It's possible that all 17 million smallholder farmers in Indonesia belong to the poor and underprivileged

groups. Has the government registered the 17 million smallholder farmers as priority individuals for land redistribution? There is never a definite answer because the success figures above are just numbers. The field has yet to prove its success.

Then, in the case of social forestry, according to Minister of Environment and Forestry Regulation Number 9 of 2021, is a sustainable forest management system implemented in state forests or private forests implemented by local communities or customary law communities. This definition clearly distinguishes social forestry from agrarian reform in the forest sector. Social forestry primarily involves the utilization of state or private forests by local communities or those adhering to customary law. Article 7 of the same LHK Ministerial Regulation also states this. Article 7, paragraph (2), states that "social forestry approval does not constitute a right to ownership of a forest area." From this article, it is clear that social forestry is not agrarian reform. Agrarian reform involves the equitable reorganization of land ownership (Rakatama & Pandit, 2020; Khanifa et al., 2021).

According to the description above, the implementation of agrarian reform in the current government era is still very far from expectations. Like a grill far from fire. This is where the possibility of conflict between the state and society lies. The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases distinguishes between conflict and dispute. A land conflict is defined as a land dispute that has the potential or has already had a significant impact. Conversely, land disputes are defined as those that do not have a broad impact. So, in this article, what does this article mean by agrarian reform? There is a dispute surrounding the implementation of agrarian reform, which could potentially have a significant impact on society.

Meanwhile, restorative justice is defined as resolving cases that aim to find a fair resolution and the best solution through mutual agreement. This Restorative justice is widely known in criminal law enforcement. So far, criminal law is known to only be an *ultimum remedium* or final remedy for resolving a case. As the final remedy, criminal law carries the heaviest punishment compared to other legal sanctions. The existence of restorative justice aims to challenge this notion. Restorative justice seeks to create peace and carry out rehabilitation following a legal case. The author tries to embody the same spirit in enforcing and resolving agrarian reform conflicts. We hope that a restorative justice approach will lead to the optimal resolution of the ongoing agrarian reform conflict.

In this regard, in the literature study, several references were found that were similar to what the author would write. Sulistyarningsih (2021), addresses the current state of agrarian reform in Indonesia. Upon reviewing the legislation, she discovered that the implementation of agrarian reform has not eliminated conflicts or disputes in the land sector. However, the article does not provide a clear definition of agrarian reform conflict or a solution to this problem until the end. The author will attempt to address these two

aspects in this article. The author will elucidate the definition of agrarian reform conflict and discuss efforts to resolve it through a restorative justice approach.

There is also an article from Ayuningutami & Najicha (2022). This article focuses primarily on the policy aspects of implementing the agrarian reform program within the forestry scope to ensure that the implementation of agrarian reform policies in the forestry sector does not result in prolonged agrarian conflicts. This paper differs from others in that it concentrates primarily on aspects of forestry policy. Meanwhile, in the upcoming article, the author focuses on all aspects of implementing agrarian reform, which is the government's target. Namely, asset legalization, land redistribution, and social forestry. Apart from that, the difference also lies in the application of restorative justice in this paper, which will be emphasized more as an effort to resolve the agrarian conflict that has arisen.

There is also an article entitled "Application of Progressive Law in Resolving Agrarian Conflicts" (Utomo, 2020). In his writing, author links agrarian conflict as a whole and efforts to resolve it using a Progressive Law approach. In this article, agrarian conflict is more defined as structural agrarian conflict, which often occurs between the state and its citizens. So, it does not specifically discuss conflicts that arise as a result of the implementation of Agrarian reform. Apart from that, the difference also lies in the use of the concept of progressive law. Something that is certainly different from this article, because it will use the concept of Restorative justice in an effort to resolve conflicts.

The article by Artaji et al (2024) also discusses the resolution of agrarian conflicts through restorative justice. However, this article focuses on the socio-legal approach and on plantation conflicts. This contrasts with the current article, which concentrates on conflicts related to agrarian reform. This article also does not explain how the implementation of restorative justice in resolving agrarian conflicts takes place. Another article that discusses restorative justice in the field of agrarian law is in Acciaioli (2017). However, this article focuses on efforts to use restorative justice in the field of resolving national indigenous movement conflicts and migrant worker conflicts. This article also takes a case study in the Lindu Plains of South Sulawesi which involves multi-ethnic conflicts.

METHODS

This study employs an empirical legal research design, incorporating a sociological approach and a case study methodology. This approach revealed that the cases exemplified the divergent interpretations of agrarian reform between the government and the community. The government views agrarian reform as an outdated concept that requires improvement. Meanwhile, the community considers true agrarian reform to be a restructuring of land ownership. This method clearly identifies the root cause of the conflict surrounding agrarian reform. Therefore, we must employ the concept of restorative justice.

RESULTS AND DISCUSSION

Reinterpreting the Concept of National Agrarian Reform and the Conflict it Causes

In this article, agrarian reform conflict is defined as conflict that arises from the haphazard implementation of agrarian reform by the government. As previously explained, in the current government era, agrarian reform is defined as the implementation of policies in the form of asset legalization, land redistribution, and social forestry. In practice, these three forms of policy produce conflict in society.

First, regarding the legalization of assets. The government considers that legalizing assets is the first door to resolving agrarian conflicts that often occur. Problematic land certification allows for the avoidance of issues such as overlapping land, double certificates, and disputes over land ownership boundaries. On the other hand, the legalization of land transforms it into a purely economic commodity. This actually distances the land from cultural, social, and even political aspects (Murtadho, 2022). This process also makes land a commodity, or what is often known as commodification. Land commodification, as stated by Karl Polanyi, treats land as a commodity. This will not solve the agrarian reform problem (Kirby 2020). Rather than resolving the issue, the commodification of land will exacerbate the damage. For instance, if person A obtains a land certificate, the bank will use it as collateral for a loan. The bank will confiscate the land if this loan develops bad credit, causing A to lose the land that forms the foundation of his family and identity. Conflict occurred as a result of the implementation of the government's version of agricultural reform. The government's implementation of agrarian reform, which increases the value of land to the market, incorporates mechanisms and the process of land confiscation into asset capitalization.

Second, the matter of land redistribution. Land redistribution is actually the "soul" of the Agrarian reform concept. Land redistribution is an important part of the implementation of agrarian reform, because the original aim is to reorganize the structure of land control and ownership (Rachman, 2011). So, if the government claims land redistribution as the main agenda in the agrarian reform program, then this will certainly be the right decision. The state's bias against the community prevents the completion of many land redistribution programs. The state actually sides with former holders of cultivation rights, former owners of abandoned land, and investors who have excess land but do not want to carry out land redistribution (Sinaga, 2020).

There have been many cases that show this. Case of the farming community in Genteng Village, Sumedang Regency (Nulhaqim, Fedryansyah, dan Hidayat, 2019), Case of agrarian conflict Ex-HGU PT. Pakisadji Banyumas (Fahreza, 2023), Case of agrarian conflict in Jenggawah District, Jember Regency (Badri, 2022), and the case of agrarian conflict on former HGU land in the North Bengkulu community (Anggriawan, Sutaryono, dan Salim, 2021) are proof that the land redistribution program implemented by the

government or state is still far from expectations. Instead of resolving the inequality in land control and ownership structure, the land redistribution program that was carried out resulted in a prolonged and never-ending conflict (Batubara dan Rachman, 2022).

Third, regarding social forestry. The social forestry Scheme was actually born from the concept of community based forest management (Abimanyu, 2023). This concept advocates for joint management of the forest by the government and the surrounding community. The hope is that social forestry can reduce the tenure conflicts that have occurred so far and involve the state and citizens. The question is, is the concept of social forestry really the crystallization of true agrarian reform? Often, it emerges that social forestry and agrarian reform are not mutually exclusive. The state grants citizens the right to work on forests under the concept of social forestry. Once again, this is not intended to reorganize citizens' ownership and control, but rather to focus on the forestry aspect. It is Communities around the forest can indeed utilize the concept of social forestry to engage in forest management and reap its benefits. Additionally, the allotted time of 35 years is more than sufficient (Mahardika et al. 2021).

Society, on the other hand, interprets social forestry differently. Rukminda et al. conducted research in the West Rinjani protected forest. Since 2016, the government has designated this area as a social forest. Initially, the community around the protected forest often experienced criminalization because they managed the former PT HPH area. ART. Because it is designated as a social forest area, residents who work on the former HPH land are given the ability to manage the forest. There are around 600 families who participate in managing the former PT HPH land. the ART. The research findings reveal that despite obtaining a social forestry permit, 63.33% of individuals still perceive a lack of prosperity as a consequence of this permit's issuance. The community assumes that the granting of this permit is solely for the purpose of providing security for the community in managing the former HPH land. So far, people have lived in fear, and even if a monkey falls, it will be mistaken for a patrol officer. Meanwhile, 16.67% think that social forestry is not useful at all. This group believes that the management they carry out is actually legal and correct according to the law. This group also believes that the land they work on has been abandoned by the old owner and the land has become free land (Rukminda et al, 2020). This situation increasingly shows that the concept of Social Forestry is not part of agrarian reform, and is instead part of the agrarian reform conflict.

Apart from the study above, in many literatures it has been stated that agrarian reform is a structured effort to change and reorganize citizens' ownership of land (Amaliyah et al. 2021). With this overhaul of land ownership, people who do not own land become land owners. And residents who own too much land will have their ownership reduced. So, everyone gets an equal share, and there is no inequality or too large a gap in land ownership. In addition, the theoretical implementation of agrarian reform aimed to

foster prosperity within society. The formulators of the agrarian reform concept aimed to ensure equal welfare for all citizens by providing equal access to land. All citizens possess the same amount of land. Even if there are some differences, they are not significant. Once again, social welfare is the main target. If interpreted like that, then there are interesting questions that need to be addressed in this article. Is it possible that infrastructure development—or the development of national strategic projects—is part of agrarian reform?

There are at least two reasons. First, the government, as the initiator and main implementer of infrastructure development activities, claims that it is an effort to advance general welfare. For instance, Article 1 point 1 of Government Regulation Number 42 of 2021 explains that National Strategic Projects aim to promote growth, equitable development, and enhance community welfare. Government Regulation Number 19 of 2021 regulates the implementation of land acquisition for development in the public interest. We carry out national strategic projects based on the principle that their development is in the public interest. Article 1 Number 7 of the PP asserts that the central government or regional government must realize the public interest, which encompasses the nation, state, and society, and utilize it to the maximum extent possible for the people's prosperity. Therefore, we can conclude that infrastructure development shares the same objectives as agrarian reform.

Second, the implementation pattern of the activities remains consistent. The concept of agrarian reform prohibits land from exceeding the maximum limit. This implies that an individual's land ownership cannot surpass the government-determined limit. Should an individual possess land surpassing the maximum limit, the government has the authority to seize the land and subsequently allocate it to those who are eligible to receive it. People who have the right to receive land include those who do not own agricultural land, small farmers, agricultural laborers, and poor rural communities. Infrastructure development and national strategic projects follow a similar pattern. Initially, the state took over individually owned land to build a national strategic project. Once the state makes its determination, it takes over the land and initiates infrastructure development to enhance the community's welfare.

The author considers this pattern to share similarities with both agrarian reform and infrastructure development. Therefore, in this paper, the conflict surrounding agrarian reform extends beyond issues of asset legalization, land redistribution, and social forestry. However, the concept of restorative justice will also resolve agrarian conflicts arising from infrastructure development. And in reality, the government, which is promoting the infrastructure development program, is leaving behind massive agrarian conflicts. (Bachriadi dan Wiradi, 2020).

According to the records of the Committee for the Acceleration of Priority Infrastructure Provision (KPPIP), since 2022, there will be 200 infrastructure development projects categorized as National Strategic Projects (PSN) with an investment value of 5,481.4 trillion Rupiah. Nearly all provinces in Indonesia are involved in this project. Of this number, the highest projects are for the construction of dams and irrigation with a total of 55 projects, and the second highest project is for the construction of toll roads with a total of 53 projects (Prioritas, 2022).

This national strategic project not only carries the promise of prosperity for the community. Although the aim is to bring prosperity to the community, the practice has fallen short of expectations. More than that, infrastructure development also leaves behind endless agrarian conflicts. The Agrarian Reform Consortium (KPA) releases a report almost every year, detailing the number of agrarian conflicts in each year. According to KPA records, there will be 241 instances of agrarian conflict in 2023. This number is up 12% from 2022. Plantation companies were responsible for 108 (44%) of the 241 conflicts that occurred. The property sector ranks second, accounting for 44 conflicts (18%). The mining sector follows with 32 cases, or 13%, and infrastructure projects follow with 30 cases, or 12% (Agraria 2023). So, the conflict resulting from infrastructure development is actually part of the Agrarian reform Conflict which must be resolved immediately.

Restorative Justice in Agrarian Reform Conflict Resolution

The concept of Restorative justice is actually widely known in criminal law enforcement mechanisms. The pattern of criminal law enforcement which tends to be retributive is starting to be replaced by a pattern of resolving criminal cases in a restorative (rehabilitation) manner (Kimbrell et al, 2023). This means that the pattern of criminal law enforcement is more directed at seeking forgiveness from the victim or their family to the perpetrator. This effort to forgive is intended as a form of returning the situation to the way it was before, or as it was before the crime occurred. It is hoped that by returning to the situation as it was before the crime occurred, social order, security and peace can be promoted by the state (Păroșanu dan Marshall, 2023).

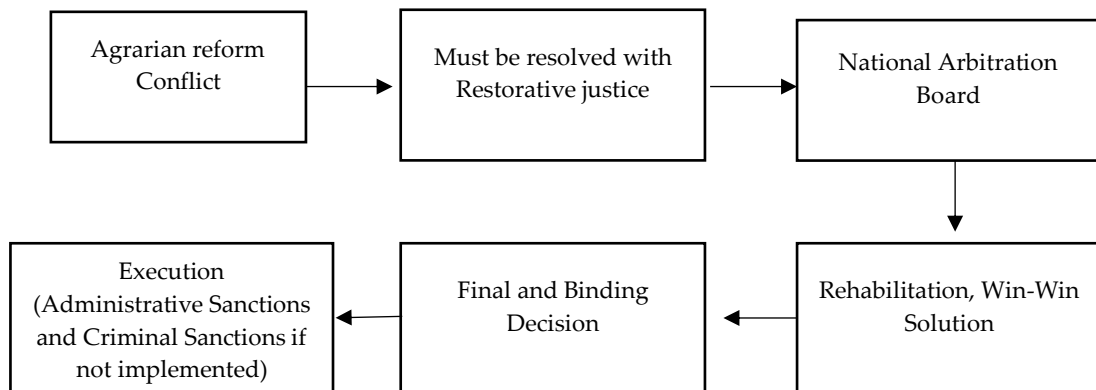
This article attempts to apply what is desired in the concept of restorative justice, which can be realized in conflict resolution patterns in the implementation of agrarian reform. By returning the situation to the way it was before the conflict, violence from the state towards its citizens under the pretext of enforcing agrarian law will not happen again.

There have been several articles discussing the same thing. Nurnaningsih (2022), stated that resolving agrarian conflicts in a restorative manner is something that must be considered. Susatyo et al (2024) also stated the same thing in their writing. He even proposed that there be a special institution called the Land Mediation Institute to resolve the agrarian conflicts that occurred. According to him, resolving agrarian cases in civil and state administration never truly returns the situation to the way it was before the conflict

occurred. Therefore, the establishment of this mediation institution is necessary and must be carried out immediately. Meanwhile, according to Anugrah (2022), natural resource conflicts have become increasingly common after the Job Creation Law was introduced. So according to him, there is also a need for a restorative justice approach in every resolution of agrarian cases.

Based on all the explanations above, it can be concluded that the concept of restorative justice needs to be applied in resolving agrarian conflicts (Budianto et al., 2022; Ma'arif, 2022). However, no one has explained in detail what and how restorative justice should be implemented. The author proposes a case resolution model based on restorative justice as in the following chart:

Chart 1. Restorative Justice Model in Agrarian Reform Conflict Resolution



Source: Author, 2024

The state and its citizens are always at odds in agrarian reform conflicts. Differences in interpretation regarding the meaning of general welfare are allegedly the main factor in the agrarian reform conflict. Therefore, the implementation of restorative justice to resolve this conflict cannot rely on existing state institutions. We cannot use the Police, Prosecutor's Office, National Land Agency, and the TNI as the front line in conflict resolution (Ramadhani dan Lubis, 2021). Apart from the low level of public trust, in many cases, several state institutions actually side with the state. Therefore, these institutions are viewed as non-neutral, particularly when it comes to resolving cases such as these.

However, even creating a new institution is not easy. We must consider various technical matters, including who will take office, what their authority is, the procedural law, the accountability model, and the budget. So, in this paper, the author provides recommendations to further strengthen existing non-court dispute resolution institutions. The National Arbitration Agency serves as an established state institution (Faradhiba dan Subekti, 2023). The basic concept of law enforcement outside of court is to provide a win-win solution. Therefore, we expect the arbitrator to maintain impartiality while resolving this agrarian reform conflict. Specifically, the arbitration method is mandatory for resolving

this conflict. We hope that the arbitrator's decision, which can be final, binding, and a win-win solution, can resolve the conflict's increasing escalation.

After the agrarian reform conflict occurred, efforts to resolve it began. The previous section has explained various types of agrarian reform conflicts in detail. The activities of asset legalization, land redistribution, social forestry, and land acquisition for public use are associated with this conflict. If these four conflicts occur, then one of the parties to the lawsuit submits a request to BANI to resolve the case. The arbitrator will issue a final and binding decision for both parties to the conflict after registering the case and making peace efforts. The authorized institution must execute the delivered decision. If the arbitrator's decision remains unimplemented within a specific timeframe, a mechanism must be in place to impose administrative or criminal sanctions.

In light of the various explanations provided above, it appears that the following actions are necessary to implement this idea:

1. The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases needs to be amended.

The Minister of Agrarian Regulation previously stipulated that the BPN is the institution with the authority to resolve land disputes or conflicts outside of court. The author argues that we should replace this rule with the previously mentioned explanation. The public's trust in BPN is steadily declining, particularly in the process of resolving agrarian conflicts. So this Minister of Agrarian Regulation must be revised.

- 2). There is a need to strengthen the institution of the National Arbitration Board.

The National Arbitration Agency continues to face undervaluation. People still consider the process of resolving disputes outside the court as secondary dispute resolution and rarely use it. People are increasingly using the courts to resolve the cases they are experiencing. We must strengthen BANI's institutions to resolve agrarian reform conflict cases through channels outside of court. The goal is to supervise the agrarian reform conflict resolution process to ensure its effective resolution and uphold a sense of justice.

- 3). There is a need to strengthen the rules in the form of provisions for sanctions if the execution of the arbitrator's decision is not carried out.

The resolution of the agrarian reform marks the end of the restorative justice pattern. Conflict is in its execution. Therefore, the implementation of the arbitrator's decision requires both legal and political strengthening. This section can be used by the next author to formulate an appropriate model of sanctions to strengthen the execution of the arbitrator's decision. The next author can study who can execute the decision and who supervises its execution in greater detail.

CONCLUSIONS

The legal issue in this article is the gap between facts and rules. The rules and concepts of true agrarian reform want the community to get the greatest benefits from land and other agrarian resources. However, the government has failed to effectively implement this concept in practice. Numerous bloody agrarian reforms have resulted in unresolved agrarian conflicts. The author tries to offer the concept of restorative justice so that this conflict does not continue. Instead of bloody conflict, the resolution of agrarian conflicts must seek peace between the community and the government.

This article concludes, First, the main cause of the agrarian reform conflict is the government's misinterpretation of the meaning of agrarian reform and community welfare. When the government fails to implement agrarian reform as originally intended, it often leads to rejection and societal conflict. Second, we must resolve the agrarian reform conflict using restorative justice. Conventional methods, which tend to be retributive and have a "win-lose" nature, can no longer resolve it. There needs to be a systematic effort to implement restorative justice in resolving the agrarian reform conflict.

Third, we should immediately implement restorative justice to resolve agrarian reform conflicts. We aim to prevent further bloody agrarian reform conflicts that could potentially cause societal losses. This concept begins with the amendment of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases. There is also a need to strengthen the institution of the National Arbitration Board. And finally, we need to strengthen the rules in the form of provisions for sanctions if the execution of the arbitrator's decision is not carried out.

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