

Bridging the Gap by Exploring Inequalities in Access to Land and Disparities in Agrarian Law in Indonesia

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ABSTRACT

This article explores the historical underpinnings of unequal access to land in Indonesia, tracing its roots to colonial legacies and the lasting impact of Dutch colonial rule. Through an examination of laws such as the 1870 Agrarian Law, it highlights how indigenous peoples were systematically dispossessed of their land, exacerbating social inequality and perpetuating economic injustice. It also underscores the widespread legal uncertainty faced by marginalized groups, which hinders their access to essential services and deepens social and economic disparities. After the proclamation, Indonesia chose to create new regulations by passing Law No. 5/1960 on the Basic Regulation of Agrarian Principles (UUPA). This law became the legal framework for Indonesia's agrarian reform. Furthermore, this article explores the critical role of agrarian reform in reducing this disparity, advocating for comprehensive policy reforms that aim to strengthen legal protections for the land rights of marginalized communities. By elucidating the historical trajectory of land access inequality and its contemporary manifestations, this article contributes to a better understanding of the complex socio-legal dynamics that shape land tenure in Indonesia. Through a critical examination of colonial legacies and current policy frameworks, it seeks to inform efforts aimed at promoting social justice and equitable resource distribution. Ultimately, the article underscores the importance of agrarian reform that prioritizes the rights and welfare of marginalized communities, hoping to pave the way towards a more inclusive land governance regime and sustainable development.

KEYWORDS : Land Access, Inequality, Agrarian Law, Agrarian Reform.



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I. INTRODUCTION

Development in Indonesia is carried out with the main objective of improving people's welfare, by the mandate of Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia (UUD 1945). This article emphasizes the importance of utilizing all the potential owned by the Indonesian people, both human resources and natural resources, including the earth, water, and space, as well as the wealth contained therein, which is considered a gift from God Almighty. All these potentials are considered important capital in realizing sustainable and equitable development for all Indonesian people.

Development does not only focus on economic growth but also equitable distribution of development results so that all levels of society can enjoy the benefits. Therefore, the utilization of natural resources must be done wisely and sustainably, so that it can make the maximum contribution to development without harming the environment and future generations. The concept of national wealth as a gift from God also emphasizes the importance of good management of natural resources for the common welfare, as well as ensuring that the results of development can be enjoyed by all Indonesian people following the spirit of social justice mandated in UUD 1945.¹

Before the enactment of Law No. 5/1960 on Basic Agrarian Principles (UUPA), the land ownership system in Indonesia was divided into two major groups, namely property rights according to Customary Law and property rights based on Western Civil Law known as Eigendom rights. This separation creates different legal bases for communities to claim and defend land rights, often triggering prolonged conflicts. The Aru Islands Regency is one of the areas experiencing this dynamic, where indigenous communities, who have owned land in Aru for generations, often find themselves in conflict with government agencies in the implementation of development projects. The importance of paying attention to local wisdom and environmental safety in development is becoming increasingly apparent, especially in the context of Indonesia's border areas and small islands. Aligning local interests with modern development needs and protecting the environment from the negative impacts of development is key to reaching a sustainable agreement for all parties involved. With an approach that considers both sides of the dispute, where the interests of indigenous peoples and the protection of the environment are prioritized, we can achieve a fair and sustainable agreement that supports the efficient and responsible development of these areas.

UUPA is a legal regulation that was implemented in Indonesia in 1960. The main purpose of UUPA is to provide a solid foundation for regulating the agrarian legal system in Indonesia. In this context, UUPA focuses on several key aspects, including land rights, natural resource management, and protection of land rights. As a legal instrument governing the agrarian domain, UUPA serves as an important foundation for land regulation and management in Indonesia, a country with a complex and heterogeneous agrarian landscape. However, over time, the implementation of UUPA has created several problems that need to be addressed.

¹ Heryanti, Pengakuan Eksistensi Hak Ulayat Laut Masyarakat Hukum Adat Berdasar Nilai-Nilai Kearifan Lokal," *Holrev* 3, no. 2 (2019): 196–211.

One of the problems that has emerged is inequality in access to and management of natural resources, particularly land. This lack of equality has been the main trigger of conflict between various parties with different interests in land. Thus, the existence of the UUPA is important in dealing with this challenge, but it needs adjustments and improvements to ensure that the principles of equality and justice are better realized in practice.² Agrarian reform has been a constant concern in Indonesia's history, including the Old Order, New Order, and Reform Order periods. Agrarian reform emerged as a response to the injustice and inequality in land ownership that occurred in society. By overhauling the existing agrarian system, the main objective of agrarian reform is to reduce inequality in land tenure and ownership and address injustices that may arise in the agrarian legal system. Hopefully, through agrarian reform, Indonesia can achieve a more equitable and sustainable environment in the utilization of natural resources, especially land.

During the Old Order era, the Indonesian Agrarian Reform was emphasized to realize a just and prosperous society. This reform consisted of five main programs: first, agrarian law reform through legal unification; second, the abolition of foreign rights and colonial concessions on land; third, ending the existing feudal system; fourth, reforming land ownership and tenure and reorganizing legal relations related to land management; and fifth, planning covering the supply and allocation of land, water and natural resources. These programs reflect the government's efforts to restructure the agrarian sector in order to achieve more equitable and sustainable development goals. Through changes in laws and policies that are aligned with the needs of society, it is hoped that a more equitable and productive environment can be created for all levels of society as well as wiser and more sustainable utilization of natural resources.³

In fact, there are various regulations governing coastal and marine areas that do not make the UUPA the legal basis and do not pay attention to the existence of customary law communities or even if they recognize their existence, these regulations are difficult to implement because they have to go through certain processes in the regions. Despite the implementation of land reform in Indonesia, inequality in land tenure and ownership, especially in rural areas, remains high. There are still many farmers who own very small plots of land, often referred to as smallholders, so their agricultural output is insufficient to meet their needs. In addition, there are still many farmers who do not own land at all and are forced to become farm laborers, depending on landowners for their livelihoods. These conditions show that efforts to achieve people's prosperity in the agricultural sector through agrarian reform are far from being achieved.

This is because no regulation provides clear recognition of customary rights, including marine customary rights of indigenous peoples, in agrarian law as positive law in UUPA. The UUPA, since its enactment on September 24, 1960, should be able to protect various customary law institutions that do not conflict with national and State interests, including customary rights institutions on land (land, forests) and marine customary rights. Through its policies, the state must recognize and protect customary rights, as stated in Article 18B paragraph (2) of

² Felishella Earlene & Benny Djaja, "Implikasi Kebijakan Reforma Agraria terhadap Ketidaksetaraan Kepemilikan Tanah melalui Lensa Hak Asasi Manusia," *Tunas Agraria* 6, 2 (2023): 152–70.

³ Boedi Harsono, *Hukum Agraria Indonesia Sejarah Pembentukan Undang Undang Pokok Agraria, Isi Dan Pelaksanaannya*, (Jakarta: Universitas Trisakti, 2018) 4.

UUD 1945, although the provisions of this article are limited by certain requirements, that "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated by law".⁴

II. METHODOLOGY

This research uses the normative juridical method, which is based on legislation, doctrine, and jurisprudence. The approach used to explore legal issues in this article includes a statutory approach and a conceptual approach. The primary legal source used as a reference by the author is the Civil Code, while secondary legal sources include legal literature, books, journals, and other legal articles. The collection of legal materials is carried out through the process of collecting and classifying data, which is then systematically analyzed to answer the problems discussed in this article.

III. HISTORICAL ASPECTS IN THE FORMATION OF LAND ACCESS INEQUALITY

1. The Influence of Colonial Policies on the Structure of Land Ownership

Colonial policies have had profound consequences in shaping inequalities in access to land around the world. Along with imperial expansion and imperialist expansion in the 16th to 20th centuries, European countries such as Britain, Netherlands, Spain, and Portugal used their military and political power to redesign land ownership structures in colonized territories. The *encomienda* and *repartimiento* systems that were implemented in Latin America are examples of how land was confiscated from indigenous peoples and accumulated in the hands of colonialists, creating inequality.⁵ In Indonesia, the influence of colonial policies on the structure of land ownership has had significant consequences in shaping inequalities in access to land. During the Dutch colonial period in Indonesia, the most impactful colonial policy was the issuance of the Agrarian Wet (1870 Agrarian Law) which ordered a forced planting system, this 1870 Agrarian law resulted in massive land expropriation from indigenous communities for the benefit of Dutch-owned plantations.⁶ The forced planting system gave the Dutch exclusive rights to land and forced indigenous farmers to grow commodity crops such as coffee, tea and indigo on land they previously owned. As a result, many small farmers lost their land and were forced to work as laborers on Dutch-owned plantations.⁷

⁴ Mahrita Aprilya Lakburlawal & Jenny Kristiana Matuankotta, "Pengkakuan Hak Ulayat Laut Menurut Hukum Agraria," *BAMETI Customary Law Review* 1, no. 2 (16 November 2023): 94-104.

⁵ Yogi Sumakto, "Kebijakan Pertanahan Pemerintah Kolonial Hindia-Belanda di Bali," *Jurnal Hukum* 4, no. 1 (2015): 3.

⁶ Slamet Catur Pamungkas, "Transformasi UU Agraria Tahun 1870 Ke UUPA 1960 Pada Masa Dekolonisasi Kepemilikan Tanah Pasca Kemerdekaan di Indonesia," *Al-Isnad: Journal of Islamic Civilization History and Humanities* 2, no. 2 (2021): 45.

⁷ *Ibid*

The land ownership policy (*landrecht*) enforced by the Dutch Colonial Government such as *Domein Verklaring* regulated in article 2 of the Agrarian Wet.⁸ This law also stipulated that land in the Dutch East Indies was intrinsically owned by the Queen of the Netherlands and managed by the colonial government. The indigenous people were only given the right to use the land (*Eigendom verponding*)⁹, But these rights were also very limited and could be revoked by the government at any time. In addition, these laws gave greater legal protection to the land ownership rights of Europeans and Chinese, while the land rights of indigenous people were ignored or deemed invalid.¹⁰ This *landrecht* created significant inequalities in land access and ownership in Indonesia. Indigenous people often unfairly lost their land and were forced to work as laborers on plantations owned by the Dutch or other non-indigenous landowners. The impact of this unequal land ownership structure continues to be felt today, with land still a symbol of wealth and power concentrated in the hands of a small number of individuals or companies, while the majority of the local population struggles to gain equal access to these resources. This creates persistent economic, social and political inequalities in Indonesia, posing a challenge to inclusive and sustainable development.

2. The Role of Agrarian Reform in Land Redistribution and Its Impact on Access Inequality

In the Indonesian, the history of colonial policies has planted deep roots of inequalities in land access that are still felt today. Unequal land ownership structures inherited from the Dutch colonial period have created economic, social and political injustices that affect various aspects of people's lives. However, efforts to address these inequalities have been made through agrarian reform, which has an important role in bringing change to small landowners and marginalized communities. In this context, it is important to detail the role of agrarian reform in land redistribution and its impact on access inequality. Agrarian reform in the Indonesian context has had an important role in land redistribution and its impact on access inequality. After the Dutch colonial period, Indonesia has experienced inequalities in the structure of land tenure and ownership that were not immediately addressed, leading to economic, social and political injustices.¹¹ Agrarian reform is an effort to address this inequality, and has been carried out through various stages, such as institutional strengthening that handles agrarian reform, regulation in the form of laws, and the need for a legal culture of society regarding agrarian reform.¹²

⁸ *Domain verklaring* is a statement known during the Dutch colonial rule through the ABW which states that "that all land without proof of ownership is considered the domain of the state which at that time meant the Netherlands" further read at Ward Berenschot, "150 Tahun Belenggu atas Hak Tanah," *kompas.id*, 19 Juli 2020, <https://www.kompas.id/baca/opini/2020/07/20/150-tahun-belenggu-atas-hak-tanah>.

⁹ *Eigendom verponding* is a land title document inherited from the colonial era, which is still recognized as proof of legal land ownership in Indonesia, but is unfamiliar to some Indonesians, for more information read Septian Nugraha, "Mengenal Eigendom Verponding, Sertifikat Tanah Zaman Belanda," 2 Juni 2023, <https://www.99.co/id/panduan/eigendom-verponding/>.

¹⁰ H. G Schulte Nordholt, *Bali : Colonial Conceptions and Political Change, 1700-1940 : from Shifting Hierarchies to "Fixed Order"* (Rotterdam: Comparative Asian Studies Programme, Erasmus University, 1986), 1986, 42.

¹¹ Endang Pandamdari, "Penguatan Reforma Agraria untuk Kemakmuran Rakyat dalam Perspektif Hukum Tanah Nasional," *Jurnal Hukum Nawasena Agraria* 1, no. 1 (13 Juni 2023): 49–62.

¹² *Ibid*

Agrarian reform is one of the key instruments in efforts to reduce inequalities in land access and promote social justice in many countries, especially in rural areas. It aims to address a history of inequity in land ownership, where a small proportion of the population has disproportionate control over these natural resources, while the majority of smallholders or rural communities have little or no access to land. Through equitable land redistribution, agrarian reform aims to empower smallholders and improve socio-economic conditions in rural areas.¹³ The impact of agrarian reform is not only seen in increased land ownership by smallholders but also in increased agricultural production and economic welfare in rural areas. By expanding access to land for those who were previously marginalized, agrarian reform programs provide the impetus for farmers to increase their productivity and economic independence. This not only reduces rural poverty, but also drives overall economic growth.¹⁴

However, efforts to implement agrarian reform are often faced with complex challenges. Resistance from large landowners or groups with a vested interest in the status quo is often a major obstacle. In addition, the lack of resources to support smallholders in effectively managing their land, as well as administrative issues in land ownership and resource sharing, are often barriers to the success of agrarian reform programs.¹⁵ To achieve the success of agrarian reform, good program design, strong political support, and active participation from the community and other relevant stakeholders are required. Participatory and collaborative approaches in planning and implementing agrarian reform programs are key to ensuring that the interests of all parties are met in a fair and sustainable manner. In addition, strengthening the capacity of smallholders, providing wider access to education and training, and developing supportive rural infrastructure, are also important factors in ensuring the long-term success of agrarian reform efforts.¹⁶

The success factors of agrarian reform include the political will of the directing elite, separation of the political elite and business elite, support from the armed forces, and active participation from the community and other relevant stakeholders.¹⁷ An example of an agrarian reform program provided is the National Agrarian Reform Program (PPAN) or SBY's "Agrarian Reform" Program, which aims to address emerging inequalities and conflicts. With a comprehensive and integrated approach, agrarian reform can be an effective instrument in addressing inequalities in land access and promoting social justice in rural areas.¹⁸

¹³ Lina Triandaru dkk., "Kolaborasi Stakeholder Dalam Reforma Agraria Dengan Pola Redistribusi Tanah Di Kabupaten Hulu Sungai Selatan," *Kolaborasi : Jurnal Administrasi Publik* 7, no. 2 (2021): 209.

¹⁴ PDSI Kominfo, "Reforma Agraria Menjamin Pemerataan Sosial Ekonomi Masyarakat Secara Menyeluruh," Website Resmi Kementerian Komunikasi dan Informatika RI, diakses 4 April 2024, http://content/detail/13688/reforma-agraria-menjamin-pemerataan-sosial-ekonomi-masyarakat-secara-menyeluruh/0/artikel_gpr.

¹⁵ Dewi Gafuraningtyas, Nurasih Setiatin, dan Tommy Anggrivianto, "Dampak Redistribusi Tanah Terhadap Penghidupan Masyarakat di Kawasan Fora 2 (Ternate) Maluku Utara," *Majalah Geografi Indonesia*, no. 0 (23 Februari 2024).

¹⁶ Denico Doly, "Kewenangan Negara Dalam Penguasaan Tanah: Redistribusi Tanah Untuk Rakyat (The Authority of the State in Land Tenure: Redistribution of Land to the People)," *Jurnal Negara Hukum* 8, no. 2 (2018).

¹⁷ Dianto Bachriadi, "Reforma Agraria untuk Indonesia: Pandangan Kritis tentang Program Pembaharuan Agraria Nasional (PPAN) atau Redistribusi Tanah ala Pemerintahan SBY," 10.

¹⁸ *Ibid.*, 15.

3. The Influence of Urbanization on Urban land Tenure Patterns

Urbanization has a major influence on land tenure patterns in urban areas. Increasing urbanization has led to a massive transformation in land ownership patterns, caused by the efforts of large property developers to acquire land in urban areas and develop it for commercial and residential purposes. With the increasing demand for land in urban areas, large landowners often dominate urban land markets, leading to greater concentration in land ownership. For example, building density in the city of Surabaya occurs due to population density. Population growth in Surabaya city over the last 10 years has resulted in a high surge in land prices in Surabaya.¹⁹ The large number of residents in the city of Surabaya has led to an increasingly narrow land area for urban settlements.

In addition, urbanization has a major influence on land ownership patterns in urban areas. With the increasing demand for land, especially for infrastructure development, housing, and public facilities, conflicts between property developers, traditional landowners, and the government often arise.²⁰ In areas undergoing rapid growth or gentrification, competition for land is fierce. Urbanization also affects land ownership with the practice of leasing and the creation of informal housing areas. Many migrants to the city who cannot afford to buy land outright choose to rent houses or land for their residence. This results in a more fragmented pattern of land ownership, with owners having little or no legal certainty over the status of their land.²¹ Furthermore, urbanization also affects land ownership with conflicts between traditional landowners and property developers. With increasing urbanization, land previously used for farming or plantations is being used for commercial and residential purposes. This leads to conflict between traditional landowners who are unwilling to sell or lease their land, and property developers who want to acquire land for commercial and residential purposes.²² The importance of government intervention in regulating urban land tenure cannot be ignored. Sound urban planning policies and urban agrarian reform programs can help address the problems associated with land tenure. Land redistribution, clear title, and well-planned urban infrastructure development are measures that the government can take to ensure that urban land tenure is fulfilled in an equitable and sustainable manner.²³

4. Lack of Certainty in land Transfer and Ownership Procedures, Especially for Marginalized Communities

Legal uncertainty in land ownership, especially experienced by marginalized communities, is a deep-seated problem that affects many aspects of their lives. The lack of clarity in land transfer and ownership procedures has created serious challenges for marginalized

¹⁹ Hisyamuddin Salim, "Fenomena Urbanisasi Kota Surabaya (Studi Pertambahan Penduduk Berusia Muda)," *Prosiding Seminar Nasional Ilmu Ilmu Sosial (SNIIS) 2* (7 November 2023): 939.

²⁰ Firsya Asha Sabitha, "Analisis Pengaruh Tingkat Urbanisasi Terhadap Ketersediaan Lahan Lahan Permukiman Perumahan di Kota Surabaya," *Jurnal Lemhannas RI* 10, no. 1 (2022): 19–26.

²¹ *Ibid.*, 22.

²² *Ibid.*

²³ Armansyah, et. al., "Sosialisasi Terhadap Status Kepemilikan Hak atas Tanah dan Bangunan Pasca Gempa di Desa Nagrak Kabupaten Cianjur," *Community Development Journal : Jurnal Pengabdian Masyarakat* 4, no. 2 (16 Mei 2023): 2612–15.

communities in both urban and rural areas.²⁴ Marginalized communities often face difficulties in securing ownership of their land due to various factors, including lack of access to legal information, economic constraints and inequalities in the legal system. They often do not have valid documents or clear legal rights to the land they occupy or cultivate, making them vulnerable to oppression, exploitation and displacement by those with interests in the land.²⁵

This legal uncertainty also complicates marginalized communities' efforts to access basic services such as adequate housing, education, health and stable employment. Without secure land tenure, it is difficult for them to access bank loans or government assistance programs that require land as collateral.²⁶ This results in increased social and economic inequality among marginalized communities and the rest of society. In addition, the lack of legal certainty also fuels social tensions and conflicts in communities. Disputes over land ownership often arise between marginalized communities, traditional landowners and other parties with economic or political interests in the area. Such conflicts can disrupt social stability, hamper cooperation between residents, and even lead to violence and insecurity in the neighborhood.

Legal uncertainty in land ownership by marginalized communities is a serious challenge that requires deep attention and action. To address this challenge, concrete action is needed from the government and relevant parties. Policy reforms that strengthen legal protection for marginalized communities in land ownership are an important step. This includes providing better access to legal information, simplifying land transfer procedures, and fair and equitable law enforcement for all parties. In addition, empowering communities through legal education and awareness of their rights is also an important step in addressing legal uncertainty. By understanding their rights and having greater access to legal information, marginalized communities can more effectively protect themselves and participate in decision-making processes that affect their lives. Therefore, by strengthening legal protection, community empowerment, and cooperation between government, civil society, and the private sector, we can address these issues and create a more equitable and sustainable environment for all.

IV. INCONSISTENCY BETWEEN AGRARIAN LAW REGULATIONS AND THEIR IMPLEMENTATION IN THE FIELD

The inconsistency of agrarian law regulations and their implementation in the field is a phenomenon that is still a problem today. Although regulations have been established to regulate land and agrarian issues, in practice, the implementation of these regulations is often not as expected. This has led to various problems and conflicts, both among individuals and between individuals and the government. The implication is that existing rules are often interpreted differently by stakeholders, including the government, developers, and even local

²⁴ A. Wijayanti, "Implementation of Javanese Local Wisdom Principles as Alternative Solution for Non-Litigation Legal Aid Model for Marginal Community," vol. 1 (Annual Conference on Social Sciences and Humanities, Malang: ANCOSH, 2018).

²⁵ *Bantuan Hukum Akses Masyarakat Marjinal terhadap Keadilan: Tinjauan Sejarah konsep, Kebijakan Penerapan & Perbandingan di Berbagai Negara* | Perpustakaan Komnas Perempuan, 43.

²⁶ Administrator, "Undang-undang Masih Setengah Hati Akui Keberadaan Kelompok Marjinal," *Universitas Gadjah Mada* (blog), 2013, <https://ugm.ac.id/id/berita/7504-undang-undang-masih-setengah-hati-akui-keberadaan-kelompok-marjinal/>.

communities. In addition, weak law enforcement is also a major factor in this inconsistency. Although there are clear regulations, law enforcement is often ineffective. There are many cases where violations of agrarian regulations are not pursued firmly by the authorities.

More than half a century after UUPA, was enacted on September 24, 1960, land law enforcement has yet to reach the desired expectations. The law replaced land law regulations that were in effect during the Dutch East Indies colonial period. UUPA was established and promulgated with the aim of realizing prosperity for the people in accordance with the mandate of Article 33 of UUD 1945. The main focus of UUPA is to protect and guarantee the rights of the people, especially the underprivileged, to land ownership and natural resource management, with the aim of achieving social justice and prosperity for the entire community.²⁷ However, this goal shifted after the New Order era, when policies emphasizing economic growth were implemented. This led to a tendency to favor investors, which led to the emergence of various agrarian law regulations that in their implementation tended to ignore community rights.²⁸ As a result, there is an imbalance in land ownership. The problem of land ownership imbalance has become a very serious conflict, and is even considered the root of various agrarian conflicts that continue to this day.

Most of Indonesia's population lives in rural areas, where the majority of them depend on the agricultural sector. One of the main challenges facing the agricultural sector is related to land resources. These challenges include imbalances in the distribution of land ownership, limited land resources, and high tillage costs.²⁹ Countries around the world have recognized and implemented regulations related to land ownership for centuries. Efforts to restructure or reform the agrarian structure, especially related to land, are carried out with the aim of improving the welfare of the Community, especially farmers who previously did not own agricultural land or did not have adequate access to agricultural land.³⁰ In Indonesia, the land tenure system is very complicated and often results in inequality in access, the emergence of agrarian conflicts, and violations of the rights of marginalized communities and other vulnerable groups.

Law serves as a means to maintain order in Society, as it is conservative by nature, meaning it aims to preserve and maintain what has already been achieved. Justice is the goal of law that seeks to create equality in society, while also ensuring that there is legal certainty. Justice is a complex issue, one that can be found in almost every society.³¹ Ideal development aimed at achieving a just, prosperous and equitable society is not only related to power or government, but more importantly is how the process or efforts to achieve prosperity are carried out in accordance with the desire for community justice and reflect national ideals and goals.

²⁷ Serlika Aprita, "Editorial: Merajut Kepastian Hukum dan Keadilan," *Jurnal Kepastian Hukum dan Keadilan* 4, no. 1 (2022).

²⁸ Earlene & Djaja, *Op.Cit.*

²⁹ Nopa Linda, Indrawari Indrawari, & Syafruddin Karimi, "Faktor-Faktor Yang Mempengaruhi Ketimpangan Penguasaan Tanah Di Provinsi Jambi," *Jurnal Ekonomi Pertanian Dan Agribisnis* 3, no. 2 (9 Maret 2019): 398–407

³⁰ Fatimah, "Reforma Agraria dalam Konteks Peningkatan Akses Kaum Tani Miskin terhadap Penguasaan Tanah di Indonesia," *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 191–203.

³¹ *Ibid.*

UUPA is the main legal basis that regulates land ownership rights in Indonesia. UUPA provides the basis for granting land rights to individuals or legal entities, and regulates a fair and equitable land tenure process for all Indonesian citizens.³² However, the implementation of the UUPA has often experienced obstacles, especially related to unfair practices in granting land rights. Therefore, there are restrictions stipulated in Article 7 of the UUPA related to land tenure that exceeds certain limits to prevent harm to the public interest. As stipulated in the limitation provision, land ownership and control that exceeds the limit can be detrimental to the public interest. Especially due to limited agricultural land, especially in densely populated areas, this can lead to shrinking agricultural land and even eliminate the possibility for many farmers to own their own land.³³

Agrarian reform or *land reform* is one of the effective methods to achieve success in development. This is because access to land has a very important role in socio-economic development, poverty reduction, and also to maintain a sustainable environment.³⁴ The implementation of agrarian reform is not only aimed at reducing poverty but also at eliminating inequalities, especially in the political and social spheres. The main objective of agrarian reform is to achieve social justice characterized by agrarian justice, increased productivity, and improved community welfare. Agrarian justice essentially refers to a situation where the structure of land ownership shows a significant balance, which allows for the spread and strengthening of community economic activities. Agrarian reform is a large and complex program championed by the Indonesian government to improve community welfare, especially in improving poor farmers' access to land ownership. However, implementing agrarian reform is not an easy task as many obstacles are faced in the process.

Inequality and injustice in land ownership trigger serious agrarian conflicts. It is recorded that 68% of the land in Indonesia is controlled by 1% of large groups of entrepreneurs and corporations, while 16 million farming families only rely on land with an average area of under half a hectare for their lives.³⁵ An example of the inequality of control and ownership of land is the dispute over land ownership of oil palm plantations in Central Sulawesi between PT ANA and the people of North Morowali. In addition, land inequality in Pakel village, Banyuwangi, East Java, between Pakel villagers and PT Bumi Sari was caused by the unilateral and sudden claim of land area in Pakel village with the granting of Cultivation Rights Title (SHGU) but before the issuance of SHGU, BPN Banyuwangi had given a letter to Pakel villagers that the SHGU owned by PT Bumi Sari did not include the village area. The land has been a source of economic livelihood for Pakel villagers for a century, where the majority of the population are farmers who depend on the land for their livelihoods. In 2021, PT Bumi Sari even filed a lawsuit against Pakel villagers over their own land ownership.³⁶

³² Ayang Fristia Maulana, et. al., "Perlindungan Hukum Terhadap HAM (Hak Asasi Manusia) Dalam Memperoleh Hak Atas Tanah Di Indonesia," *Jurnal Pendidikan Tambusai* 8, no. 1 (29 Januari 2024): 6197–6204.

³³ Fatimah, *Op.Cit.*

³⁴ *Ibid*

³⁵ Earlene & Djaja, *Op.Cit.*

³⁶ *Ibid*

The conflict in Pakel village arose due to suboptimal government policies related to natural resource management, including the granting of land concessions to the private sector without regard to the status, origin of land, and conditions of the affected communities.³⁷ The government should be able to produce policies that are fair to the community, especially those belonging to marginalized groups such as the Pakel village community who need protection. The government's actions in granting concessions for Cultivation Rights (HGU) without involving community participation led to protracted land conflicts that ended with the expulsion of marginalized communities from their land. The government's lack of transparency in the policy-making process, especially the absence of community involvement in the measurement process before issuing HGUs to companies, has led to ongoing agrarian conflicts. Judging from this situation, there is an imbalance in land ownership between community members and corporations, which shows that the objectives of agrarian reform have not been fully implemented.

Legal uncertainty related to land rights and high levels of inequality in land ownership and control can be observed from the 2018 Inter-Census Agricultural Survey data. The data shows that out of a total of 27.2 million households, only around 15.8 million households or around 58% own land or land with an area of less than 0.5 hectares per household.³⁸ The imbalance in land ownership by farmers reflects the agrarian situation which also reflects the structure of poverty among farmers. Currently, a growing legal issue is that many farmers do not own sufficient agricultural land to develop their farming businesses, or some even do not own land at all. This illustrates the injustice in land ownership by farmers in rural areas. There is still injustice in society today, especially in terms of land ownership, which hinders the achievement of welfare. Although there has been an agrarian reform policy that aims to create social and economic welfare by resolving issues of inequality in land ownership and management, its implementation has yet to achieve justice and welfare for the entire community. The agrarian conflicts that continue to result from inequality in land ownership have the potential to reduce the economic level and increase the poverty rate in Indonesia.

Referring to the provisions of Article 2 letter (a) of Presidential Regulation No. 86/2018 which stipulates the purpose of agrarian reform to reduce inequality in land ownership and control in order to achieve justice, land conflicts related to inequality in land ownership and management are still common to date. The issue of inequality in land distribution can be concluded that the lack of progress in agrarian transformation in Indonesia is due to the lack of comprehensive implementation of agrarian reform policies, as mandated in Article 8 of Regulation in Lieu of UUPA concerning Determination of Agricultural Land Area, which sets a minimum limit of 2 hectares of agricultural land ownership by farmers.³⁹

³⁷ Irischa Pancarani & Ridha Wahyuni, "Perlindungan Hak Kepemilikan Tanah Masyarakat Desa Pakel: Penelusuran Legal Standing Akta 1929 dalam Sengketa Tanah dengan PT. Bumi Sari," *Tunas Agraria* 6 (13 Juni 2023): 110–24.

³⁸ Earlene & Djaja, *Op.Cit.*

³⁹ Nurhasan Ismail, "Arah Politik Hukum Pertanahan dan Perlindungan Kepemilikan Tanah Masyarakat," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 1 (2012): 33.

In addition to inequality in land ownership, another tenurial issue is uncertainty in the security of rights over agrarian resources owned by the Community. This is especially true in land tenure that is informal or based on customary law. This kind of ownership system lacks adequate legal protection from the government, making it vulnerable to expropriation or disposal.⁴⁰ The most striking economic disparity of agrarian inequality is the significant difference in ownership of agrarian assets, particularly land. Only a handful of economic elites, numbering less than 0.5% of the total population, control most of these agrarian assets.⁴¹ On the other hand, there are poor farmers who either do not own land at all or own it but cannot utilize it optimally because the agricultural land they own is very small. Meanwhile, the UUPA states that land has a very important role in the development of a just and prosperous society. This inequality in land ownership, both among sectors and communities and between sectors, emphasizes the need for redistribution that includes the transfer of land and other agrarian resources.

Land should be regarded as a means of production to promote social justice, not for individual interests that may lead to accumulation of ownership and exploitation by the stronger against the weaker. To this end, the UUPA prohibits monopolization of agrarian resources, except by the state acting as a representative of the people's interests, which is carefully regulated in the UUPA. Therefore, there are restrictions relating to the maximum allocation of land to companies, as follows:

Pegguna-an Ta-nah Wilayah	Untuk Pertanian (Ha)			Untuk Non-Pertanian (Ha)		
	Tambak	Tebu	Lain-nya	Peru-mahan	Resort & Hotel	Indus-tri
Per provinsi di Jawa	100	-	-	-	-	-
Total di Jawa	1.000	-	-	-	-	-
Per provinsi di luar Jawa	200	-	-	-	-	-
Total di luar Jawa	2.000	-	-	-	-	-
Per provinsi di luar Papua	-	60.000	20.000	400	200	400
Per provinsi di Papua	400	120.000	40.000	800	400	400
Total seluruh Indonesia	-	150.000	100.000	4.000	4.000	4.000

Source: Permen ATR/Head of BPN Number 5 Year 2015⁴²

⁴⁰ M. Shohibuddin, "Memahami dan Menanggulangi Persoalan Ketimpangan Agraria (1)," *BHUMI: Jurnal Agraria dan Pertanahan* 5, no. 1 (23 Mei 2019): 1-12.

⁴¹ *Ibid.*

⁴² *Ibid.*

There are a number of important notes that need to be emphasized regarding the provision of the maximum size of this location permit. The target of the maximum area provision is corporate legal entities, not group entities (*holding companies*). In fact, this entity can accommodate many subsidiaries with different corporate legal entities. Such a provision provides an opportunity to apply for a location permit on behalf of different companies, even though they all belong to the same group of companies. Formally and materially, all Indonesian citizens should be guaranteed legal protection from the uncertainty generated by the law itself. This guarantee is based on the legal provisions of Article 28D paragraph (1) of UUD 1945 which states that "everyone has the right to recognition, guarantee of protection, and certainty of a just law and equal treatment before the law".

Inequities in agrarian law enforcement have the potential to create social tensions and have a detrimental impact on more vulnerable groups of society, such as smallholders and indigenous communities. Economically, inconsistencies in agrarian law can hamper economic growth and development. Discrepancies between agrarian law regulations and their implementation on the ground can also impact on the overall welfare of communities. Land conflicts and legal uncertainty can result in decreased agricultural productivity and increased poverty levels in rural areas. This situation has the potential to create greater economic and social inequality among communities. These inconsistencies in legal regulations can cause widespread harm to the Community, both in terms of social stability, economic growth, and overall welfare.⁴³

Therefore, action is needed to resolve this issue through comprehensive agrarian reform, efficient law enforcement, and empowering Community participation in land decision-making. These measures will contribute to creating a stable, equitable and sustainable environment for Communities.

V. CONCLUSION

The historical aspects surrounding land access inequality, deeply rooted in colonial legacies, reflect an enduring struggle for justice and equitable resource distribution. Colonial policies, spanning from the 16th to 20th centuries, systematically dispossessed indigenous communities of their lands, consolidating ownership in the hands of imperial powers and local elites. In Indonesia, the legacy of Dutch colonialism, particularly through laws like the 1870 Agrarian Law, perpetuated this inequality, stripping indigenous peoples of their land rights and forcing them into servitude on plantations. Despite efforts like agrarian reform aimed at addressing these disparities, the lingering effects of colonial land policies persist, contributing to economic, social, and political inequities. Furthermore, inconsistencies in agrarian law regulations and their implementation exacerbate land tenure issues, perpetuating disparities and conflicts.

The dominance of large corporations and economic elites in land ownership exacerbates social divisions, while marginalized communities continue to face legal uncertainties and vulnerabilities. To address these challenges effectively, concerted efforts are needed to bridge the gap between legal mandates and on-the-ground realities, ensuring that agrarian reform

⁴³ Earlene & Djaja, *Op.Cit.*

initiatives prioritize the rights and welfare of all stakeholders, particularly marginalized groups. Only through comprehensive and inclusive reforms can Indonesia move towards a more just and equitable society, where land resources are accessible to all and contribute to sustainable development. An evaluation of Indonesia's agrarian reform implementation can provide valuable insights to develop more effective and inclusive policies in the future. By identifying existing weaknesses, the government can improve the approaches and strategies used in agrarian reform, so that it can be more effective in achieving the goal of sustainable and equitable agrarian development for all levels of society, especially for small and landless farmers.

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