

# BALANCING LAND USE AND TENURE POLICY BETWEEN PLANTATIONS COMPANIES AND PUBLIC INTEREST IN THE PANCASILA PERSPECTIVE

MUHAMAD YUDHO SYAFEI<sup>1</sup>, FX. ADJI SAMEKTO<sup>2</sup>, SUKIRNO<sup>3</sup>

Universitas Diponegoro, Semarang, Indonesia<sup>1</sup>

Universitas Diponegoro, Semarang, Indonesia<sup>2</sup>

Universitas Diponegoro, Semarang, Indonesia<sup>3</sup>

mysyafei.undip@gmail.com<sup>1</sup>

**Abstract** - Plantation industries have now become a crucial factor in economic growth, but the development of plantation business often overlooks the interests of the community and the environment. This study aims to explore strategies for balancing land use and tenure policies between the interests of plantation companies and the public. The research approach used in this study is the socio-legal research approach, which delves into the societal perspective of legal issues. This interdisciplinary study highlights the importance of explaining legal issues in a more meaningful theoretical manner that is accessible to citizens. The study employs the Pancasila perspective, which is the founding philosophy of Indonesia, as a guiding principle to ensure a balance and justice mechanism for land tenure and use. This study emphasizes the importance of the substantive application of the law in protecting the interests of both corporations and the wider community. The concept of plasma plantations, where investors invest their capital for business interests in the large plantation sector, can serve as a strategic approach to achieving a balanced land tenure and use mechanism. This study offers valuable insights for policymakers and stakeholders tasked with establishing land tenure and use policies for plantation sector. By considering the interests of both corporations and the public, policymakers can ensure sustainable economic growth, protect the environment, and uphold the rights of citizens through a balanced land tenure and use mechanism.

**Keywords:** land use policy, tenure, land rights, plantation, public interest, Pancasila

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## INTRODUCTION

Indonesia's Basic Agrarian Law (BAL) of 1960 is a law rooted in the country's constitution. It is based on Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This article states that the earth, water, and space contained within shall be controlled by the state, to be used as much as possible for the prosperity of the people. The explanation further elucidates that the basis of economic democracy is that production is carried out by all, for all, under the leadership or ownership of community members. Priority is given to the welfare of society over the prosperity of individuals. The economy is structured as a collective effort based on a sense of kinship, and it is based on the principles of democracy and prosperity for all people. The state must control the branches of production that are essential to the wellbeing of citizens so that they are not monopolized by powerful individuals who might oppress the people. Only businesses that do not control the lives of many people can be owned by a single person. In essence, the BAL aims to ensure that all of Indonesia's citizens enjoy the benefits of economic activity, rather than merely a select few. It is a law that promotes economic democracy and ensures that the means of production are shared by all. By distributing economic power and control, the BAL aims to create a

fairer, more just society, where all citizens can reap the benefits of economic development. The BAL is not only a legal instrument but also a constitutional guarantee of economic democracy and social justice in Indonesia..

he prosperity of people mainly depends on Earth, water, and other natural resources found within it. Therefore, the state must have control over them and use them for the maximum benefit of the people. This is the basis of Article 2 paragraph (1) of the Indonesian Basic Agrarian Law (BAL). The BAL is based on the provisions mentioned in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that Earth, water, space, and all the natural wealth contained therein are controlled by the state, being the representative of the power of all the people. The BAL serves as the national land policy and the basis for land management in Indonesia. It also served as the basis for drafting the national agrarian law aimed at achieving prosperity, happiness, and justice for the state and people. The Indonesian government, through its Investment Law, provides facilities and ease for investors. The services provided are permits for investment companies to obtain land rights, immigration service facilities and import licensing facilities. Furthermore, The President signed Law Number 39 of 2014 on October 17, 2014, which concerns plantations. By providing such facilities and ease of investment, the government expects to increase investments and ultimately achieve the prosperity of its people.

According to data from the Commission on Human Rights and Sawit Watch, the Indonesian government has issued business permit for a land area of 4,953,882.39 Ha until 2006. In the Indonesian philosophy, land and humans are interconnected, where individuals and society are inseparable, and fulfilling land for the community is a collective effort. The meaning of "for the greatest prosperity of the people" is embedded in the agrarian law that governs land tenure and policies. However, there is inequality and injustice in the allocation and use of land between large corporations and communities, which raises questions on whether policies can provide justice for all levels of society. This study aims to investigate the impact of capitalism and the free market on land tenure and use by corporations in Indonesia and proposes strategies to balance the benefits of corporations with those of society based on Pancasila. The study recognizes the urgent need to address the disparities in land use and ownership to ensure justice for all. The government must intervene and regulate land use to ensure equal distribution among individuals and corporations. Land policies need to align with the principles of Pancasila, which prioritizes the collective good over individual benefits. Efforts need to be made to ensure that land distribution benefits the most vulnerable members of society and prioritizes community initiatives. The study highlights the need to address land tenure and use issues in Indonesia, which primarily affect communities. The study calls for urgent measures to be taken to resolve this issue, such as interventions by the government to regulate land policies, balancing the benefits of corporations with those of society based on Pancasila. The study also recommends that priority be given to the most vulnerable members of society to ensure that land distribution benefits all, including the community, as a whole.

#### LITERATURE REVIEW

Guba and Lincoln (2009) define a paradigm as a fundamental set of beliefs that dictate how researchers approach and conduct their work. These beliefs are rooted in first principles, which determine a researcher's worldview and inform their actions. Paradigms are made up of multiple worldviews, built around ontology, epistemology, and methodology, that cannot be interchanged. Each worldview represents a distinct philosophical system that guides how researchers understand the world and how they approach their work. A paradigm is a foundational set of beliefs that governs how researchers approach their work. These beliefs are based on first principles, which dictate a researcher's worldview and guide their actions. Paradigms are built from multiple philosophical systems that cannot be interchanged and ultimately shape how researchers understand the world and their research.

Ontology is concerned with the nature of reality and what can be understood about it, while epistemology deals with how individuals or groups can understand and gain knowledge about reality. Methodology, on the other hand, refers to the techniques used to acquire information. A

paradigm is a set of principles that determines the researcher's perspective on reality, their relationship with the subject of study, and how research should be conducted. Any methodology chosen, whether it is born out of a specific paradigm or already exists, must remain consistent with its ontology, epistemology, and methodology. Therefore, if a researcher selects a particular paradigm, they must adhere to its principles in terms of ontology, epistemology, and methodology.

The Post-Positivism paradigm leads to a discussion about ontology, which assumes that reality does exist, but cannot be fully understood due to limitations in intellectual mechanisms and properties of the phenomenon that are difficult to regulate. A critical realist ontology is used to test reality in a critical manner, allowing for as much understanding as possible. Modified Epistemology is either dualist or objectivist, with objectivity remaining a guide while dualism recedes. Research that can be repeated is likely to be true. The experimental or manipulative modification methodologies emphasize critical variance for falsification rather than hypothetical verification, helping to partially solve problems through research, gathering situational information, and reintroducing findings. These methodologies can have an emic viewpoint, with subjectivity playing a role in determining meaning and purpose. Qualitative methods or techniques are used to achieve these goals.

The role of values in research has been treated similarly in the Post-Positivism and Positivism paradigms. Both paradigms have discouraged the role of values in research, and considered values to be disruptive. This is because both paradigms adhere to an objective perspective of reality, and researchers claim to be objective observers. Post-Positivism, however, is based on a critical realist perspective of reality. This means that reality is still considered to be "real" but it is also acknowledged that the human being is inherently subjective and cannot be completely objective. The relationship between the researcher and the research object remains dualistic, but the researcher's involvement in the understanding of reality is more subjective. Objectivity is still the primary criterion, but the researcher accepts subjectivity as a necessary factor in understanding reality. The methodology of Post-Positivism involves experimental modifications to falsify current realities. The emic perspective of the research object is increasingly taken into account. The researcher collects situational information in a natural setting and considers the findings significant in solving problems. The hypothesis is not verified in Post-Positivism methodology, but the focus is on natural settings and qualitative methods. In conclusion, the role of values in research is seen differently in Post-Positivism than in Positivism. Although both paradigms see values as problematic, Post-Positivism acknowledges the subjectivity of the human being and acknowledges the need for subjective involvement in the understanding of reality. The methodology in Post-Positivism also revolves around a natural setting and qualitative methods, and the focus is on understanding the research object in its natural setting rather than following a set hypothesis.

#### RESEARCH METHOD

The research conducted in this study utilized the socio-legal research approach, which is not a new approach but rather a combination of previous studies in law and legal studies. The purpose of this interdisciplinary study is to provide a more theoretical and meaningful explanation of legal issues. It also aims to clarify how the law works in the daily lives of citizens. This study addresses a need for a more comprehensive understanding of the societal perspective on law and legal issues (Irianto, 2012).

The aim of investigating the current state of affairs is to determine whether the existing positive laws or those born from societal relationships are just or not. If the law is deemed unjust, efforts will be focused on modifying it to promote justice. Research focus will be on the socio-legal domain, hence, interpreting law as a norm and recognizing law as behavior. Empirical research is vital in exploring the interplay of external elements outside legal aspects such as social, economic, political, historical, cultural, and other factors to discern the impact of these factors on the enforcement of the law.

## RESULTS

The impacts of economic liberalization will affect all sectors of society and require the establishment of a legal framework that upholds the principles of Article 33 Paragraph (3) of Indonesia's 1945 Constitution. This framework will form the foundation of the country's national agrarian law, which aims to promote social justice for all citizens. However, the current challenge is to properly interpret "the greatest prosperity of the people" in various national land policies. This requires a comprehensive approach that addresses issues such as preventing self-enrichment, optimizing land use, ensuring affordable land prices, preserving natural resources, protecting individual and customary law communities' rights, and providing necessary guarantees for them. Implementation of land politics in Indonesia must be done carefully and considerately to prevent any unjust practices. The overall aim is to promote equity and fairness in society, especially in terms of access to land. It is critical to maintain land prices at reasonable levels to ensure that everyone has the opportunity to own and use land, regardless of their socioeconomic status. Additionally, natural resources should be preserved to safeguard the environment and prevent the depletion of vital resources. The rights of individuals and customary law communities must also be protected, and adequate guarantees should be provided to ensure these rights are upheld. Successful implementation of these policies will support social justice in Indonesia and ensure prosperity for all citizens.

The current issue of land ownership and use requires immediate attention as there exists an imbalance in the system. The private sector has the advantage of easily acquiring land for industrial development, whereas it proves to be a challenging task for those working on ex-plantation lands to receive recognition and approval. The authorities must provide legal certainty to investors along with policies to strengthen legal certainty for the community (Sumardjono, 2001). To achieve a balance, a concept of building without displacing is being implemented. This effort is to empower the community in the wake of economic liberalization. However, the policies must not only benefit the private sector but also strengthen economic and legal certainty for all parties. Therefore, addressing the issue of land ownership and use is essential for sustainable development. Policies should not only benefit a single party but aim to balance the system, creating equal opportunities for all. The concept of building without displacing is just a step towards a larger goal that requires additional measures to support it. Therefore, it is imperative to enforce policies that promote legal certainty and equal opportunities for all parties.

Attracting investment involves several key factors, including having a solid regulatory framework, quality services, and a transparent process. However, while it is important to not hinder investment, it is equally important to prioritize the protection of people's interests. This means ensuring that any investment policies enacted are fair and balanced. In Indonesia, Article 9 of the Basic Agrarian Law (BAL) guarantees every citizen the opportunity to own and benefit from land. However, access to land is often challenged by private parties and the government, who hold different bargaining positions. With rapid development, the conversion of agricultural land to non-agricultural land for businesses becomes more prevalent. In reforming land law policies, a religious approach is recommended which is in line with national law based on Pancasila. The religious approach is used to provide guidance in building national laws and renewing the national legal system in accordance with three pillars of Pancasila: Religious, Humanistic, and Democratic, Populist, and Justice (Sumardjono, 2001). Overall, it is important to balance investment opportunities with the protection of people's interests, particularly in terms of equitable access to land. In reforming land laws, a religious approach can be utilized to ensure the legal system is in line with national values and principles (Arief, 2011).

The Indonesian national land law includes a strong religious element, as it states that the earth, water, space, and wealth therein are gifts from God Almighty to the Indonesian people (Harsono, 2007). This religious communalistic conception of national land law allows for individual mastery over agrarian resources, particularly land, while also emphasizing togetherness and the importance of acknowledging a power outside of human beings (Cahyana, 2017). The law's emphasis on the religious nature of national land is further demonstrated through its reflection of the core values of

Pancasila, Indonesia's official philosophical foundation. The content of these values in the national land law reflects the relationship between God, land, and the Indonesian people, highlighting the inseparable unity of these entities (Sumarja, 2012). This religious component of Indonesian land law is significant for the country's legal system and social fabric. It not only acknowledges the importance of religion in the formation of national identity but also reinforces a sense of communal responsibility and respect for natural resources. It also reflects a unique blend of Islamic, Hindu, and Buddhist influences that have shaped Indonesia's history and culture over the centuries. Emphasizing the religious nature of national land helps to reinforce the value of solidarity and togetherness among the country's diverse population, making it an essential component of Indonesian legal and cultural identity.

Handoko (2014) presents the three pillars of Indonesian society as being democratic, populist, and social justice-oriented. These pillars are meant to guide the people in achieving their goal of living a happy life. However, it is stressed that this happiness cannot be attained through an individual perspective, but through a sense of national identity based on deliberation and people's sovereignty. In particular, the concept of social justice encompasses both general justice and distributive justice, and the fifth precept of Pancasila, "Social Justice for All Indonesian People," reflects this idea. Kaelan (2013) further emphasizes that this precept is an integral part of the state philosophy, and it works in conjunction with the other precepts to create a systemic unity. In other words, the Indonesian people strive for a happy life through three guiding principles: democratic, populist, and social justice. These principles emphasize that individual happiness cannot be achieved without a sense of national identity based on people's sovereignty and discussions. Furthermore, social justice is a key component of this philosophy, encompassing both general and distributive justice. This is reflected in the fifth precept of Pancasila, which is viewed as a fundamental part of the Indonesian state philosophy. All of these ideas work together to create a cohesive and systemic approach to achieving a happy, just, and equitable society.

According to Kaelan (2013), the core of the precepts for social justice for all Indonesian people is based on the value of justice, which should guide the administration of the state. The purpose of justice is to create a society that is fair and orderly, where all citizens have an equal opportunity to improve their lives, and support is available to those who are vulnerable. The role of the government is to promote equitable welfare and develop structures that provide equal opportunities, access facilities, and meaningful participation in decision-making for everyone. The principle of social justice applies to both social and economic fields, where freedom and the power of attack are balanced with human nature as a social being. Notonagoro (1988) suggests that the principle of social justice is based on the principles of balance, harmony, and alignment. Each government policy should maintain balance in various dimensions, guided by these principles of balance. Pancasila is central to this approach, as it places balance at its core. Therefore, the government should focus on creating fair relations at all levels of society, providing equal opportunities, and supporting meaningful participation in decision-making. Thus, social justice is an essential principle that should guide the administration of the state in Indonesia. The government has a duty to ensure equitable welfare, and development structures are in place to provide equal opportunities, access facilities, and inclusive decision-making processes. The principles of balance, harmony, and alignment must be maintained in all government policies, guided by Pancasila, to create a society that is fair, and where all citizens have the opportunity to build decent lives (Panjaitan, 2013).

The fifth precept of social justice outlines the goals and direction to be achieved in achieving social justice in the Republic of Indonesia. The principle emphasizes the need to eliminate poverty in society. Social justice is a collective effort towards establishing a fair and prosperous society where everyone can enjoy a modern and comfortable life. In pursuit of this principle, Indonesian culture attributes great significance to the spirit of "gotong royong" (Basarah, 2016). In the present era of globalization, the state plays a crucial role in promoting social justice. If left to market forces, society cannot compete with the powerful forces of capitalism. Capitalism has significant control over economic, social, legal, cultural, and other spheres. The impact of globalization on a



nation's values and awareness can influence the development of national law, making laws that resonate with the country's awareness and culture vital. Thus, social justice should be a primary objective of any modern state that values the welfare of its people. Egalitarianism, the elimination of poverty, fair distribution of wealth, and basic human rights should be promoted as cornerstones of social justice. In conclusion, the implementation of social justice may be challenging, but it is necessary for the sustainability and development of any nation (Sudaryatmi, 2012).

Indonesia's legal system requires a fresh approach to establish equilibrium. Lawrence M. Friedman (1975) identified three key components of the legal system: legal structure, legal substance, and legal culture. He proclaimed, "the heart of the system is the way it turns input into output," implying that the core of a system is how it converts information into results. Friedman's (1975) interpretation of legal structure is that it is a fundamental and obvious aspect of the legal system, consisting of the number of judges, court jurisdiction, the hierarchy of courts, and the individuals affiliated with various courts. Thus, the establishment of the judicial system is the groundwork of the legal system. Regarding the Indonesian context, this suggests that the framework of law enforcement institutions should be included in the conversation about legal structure. To bring a balance to the Indonesian legal system, a re-examination of its legal structure is crucial, considering its lack of efficiency in providing justice to its citizens. Friedman's (1975) views reveal that legal structure is the foundation of any legal system and must be updated regularly to ensure effective and just legal operations. With an innovative approach to legal structure, policymakers can guarantee that Indonesia's legal system will provide justice to its citizens effectively.

According to Friedman (1975), the legal substance is made up of both substantive rules and rules related to the behavior of institutions. This substance is comprised of regulations and provisions that dictate how institutions must behave. In contrast, legal culture is an aspect of social attitudes and values. Although social forces do not directly impact the legal system, they do influence the legal culture of a society. To ensure fairness and justice in land tenure and use, it is important to focus on the legal substance of the law. This requires regulations that balance the interests of investors with the needs of all segments of society. One potential solution is the implementation of plasma plantations for investors who wish to invest in large-scale plantations. Through this approach, investors can benefit financially while also incorporating the needs of local communities and the environment. This means that both legal substance and legal culture are essential elements in shaping the laws and regulations that affect society. By prioritizing fairness and justice in legal decisions, we can create a more equitable and sustainable future for all.

The practice of plasma plantations is the act of cultivating and conducting industrial plantation businesses in smallholder plantations. These plantations are owned by individuals on land that is either privately owned or owned by usufructuary companies and plantation companies. The process of cultivating and processing the products, from planting the seeds all the way to marketing, is carried out by the owners or tenants of these small plantations. This form of plantation development was outlined in the Minister of Agriculture's Decree No. 940/KPTS/OT.210/10/97, which establishes guidelines for agricultural business partnerships. The People's Nucleus Company Pattern, or PIR, is a system for developing plantations, which utilizes larger plantations as a nucleus, and surrounds the smaller swampy plantations with mutually beneficial and sustainable cooperation patterns. The PIR pattern was initially implemented in Indonesia in 1986 through Presidential Decree No. 1 of 1986. However, it is no longer enforced and was replaced by the Member Primary Cooperative Credit (Kredit Koperasi Primer Anggota/KKPA) pattern, which is based on the Joint Decree of the Minister of Agriculture and the Minister of Cooperatives and Small Entrepreneur Development Number 73/KPTS/KB.510/2/1998. The plantation revitalization program is currently being implemented, following the Minister of Agriculture's Regulation 33/Permentan/OT.140/7/2006.

The findings highlighted that there needs to be mandatory regulations for investors who want to open a plantation business. These regulations would require them to become large plantations, known as nuclei, to guide the community's small plantations, or plasma. Investors are currently

more focused on owning assets and expanding land to maintain control rather than empowering the community as workers, and this is due to the lack of binding regulations. These rules should be directed at the Minister of Agriculture, which should mandate using the nucleus and plasma plantation systems for plantation companies. Meanwhile, the National Land Agency should be responsible for issuing a Decree on Cultivation Rights for land controlled by investors. Obligations to develop smallholders can be coordinated by the minister, the Provincial Plantation Office, the Regency/City Plantation Service, and investors using this system. It is essential to implement these binding regulations to ensure the proper empowerment and development of smallholders.

### CONCLUSION

The research showed that the implementation of universal principles in industrialized societies would result in the adoption of capitalist ideology within land law policies. Consequently, land would be valued primarily for its economic function and subjected to the market forces, leading to a growing disparity from the concept of social justice. Policies that promote industrialization may facilitate reciprocal interactions between stakeholders, but they tend to prioritize bureaucracies that support capitalists and a liberal economic system that positions land in an economic function and market mechanisms, resulting in an imbalanced control of land. Consequently, plantation industries are more likely to exploit land without regard to social justice, resulting in a further separation from the notion of equality in society.

Achieving a balance between corporate interests and community benefits when it comes to land tenure and use requires a system of justice that ensures fairness for all. It is important to emphasize the content of the law for the benefit of both the community and investors. The idea of plasma plantations for large-scale plantation businesses is one such concept. Suggestions for reforming the legal system should focus on the legal substance, which includes regulations that hold investors accountable for their actions in the plantation industry and provides guidance to the local community during implementation.

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