

State Actors in Agrarian Conflicts: A Judicial Review in Rule of Law Perspective

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Abstract

This study focuses on the involvement of state actors in agrarian conflict. Various policies have been introduced in order to resolve the agrarian conflicts. However, the existence of these policies did not necessarily bring about positive changes in the subsequent years. From 2012 to 2022 agrarian conflicts have become increasingly uncontrollable. Throughout the year 2022, there were at least 212 eruptions of agrarian conflicts in various investment and corporate-based business sectors. Permits, concessions, and land rights continued to be granted to companies, even though these companies had caused numerous agrarian conflicts within the community. The implementation of the rule of law concept has not been able to be fully realized as it should. The ongoing agrarian conflicts have demonstrated how the state acts based on power when directly dealing with the community. Using the theories of legitimacy and space production, the issues regarding agrarian conflicts and the state actors involved will be analyzed in-depth.

Keywords: *Agrarian Conflict, State Actors, Rule of Law*

I. INTRODUCTION

The current agrarian conflict situation is a topic of discussion and continues to be a spotlight in society. In every agrarian conflict that occurs within community, the government's response is mostly focused only on criminal aspects. In reality, agrarian conflicts also involve civil disputes that occur between individuals or between individuals and legal entities, whether related to physical land data, juridical data, or legal actions

taken concerning the land. The root of the current agrarian conflicts lies in the existence of neglected agrarian disparities without resolution and solutions, leading to the resurgence of agrarian conflicts. In 2012¹ there were 198 agrarian conflicts throughout Indonesia, with a total conflict area of more than 963,411.2 hectares and involving 141,915 households (HH) in agrarian conflicts.

Various policies have been introduced in order to resolve the conflicts that have arisen, including: Law Number 2 of 2012 on Land Acquisition for Public Purposes and Presidential Regulation Number 71 of 2012 on Land Management for Public Development. Furthermore, in 2012, the Constitutional Court of the Republic of Indonesia also annulled provisions in sectoral laws deemed incompatible with the constitution, such as the Forestry Law and the Oil and Gas Law. However, the existence of these policies did not necessarily bring about positive changes in the subsequent years. From 2012 to 2022, agrarian conflicts have become increasingly uncontrollable. Conflict resolution has reached a deadlock and appears to be challenging to break through due to the entrenched sectoral egos among Ministries/Agencies. Throughout the year 2022², there were at least 212 eruptions of agrarian conflicts in various investment and corporate-based business sectors. These conflicts occurred in 459 villages and cities across Indonesia. Permits, concessions, and land rights continued to be granted to companies, even though these companies had caused numerous agrarian conflicts within the community.

Agrarian conflict is defined as a situation in which two or more parties have conflicting claims regarding land rights and/or issues of agrarian injustice experienced by the community as a result of policies/decisions made by authorities. Structurally, it represents the confiscation of the people's land by the state or private companies, which is accommodated by legal mechanisms and then controlled by groups of investors. Agrarian conflicts pose a threat to and/or confiscate the constitutional rights of the people to natural resources. Agrarian problems are also structural in nature, experienced by farmers, indigenous communities, and agrarian communities who directly face pressure in the form of permits and land rights from a group of businesses and companies, whether state-owned or private, as well as government agencies and state institutions.

1 Out of the 198 cases that occurred in 2012, 90 cases occurred in the plantation sector (45%); 60 cases in the infrastructure development sector (30%); 21 cases in the mining sector (11%); 20 cases in the forestry sector (4%); 5 cases in the coastal shrimp/farming sector (3%); and 2 cases in the marine and coastal area sector (1%). Refer to the *Buried Agrarian Justice for the People through Agrarian Reform, 2012 Final Report of the Agrarian Reform Consortium*, by Agrarian Reform Consortium (2012) at 1.

2 In total, the outbreaks of these conflicts occurred on a land area of over 1 million hectares, precisely 1,035,613 hectares, in a state of conflict throughout the year 2022. Meanwhile, the communities affected by agrarian conflicts number at least 346,402 households (HH). Refer to the *Embers of Agrarian Conflict: PTPN Untouched, Criminalization of People Increases, 2022 Final Report of the Agrarian Reform Consortium*, by Consortium for Agrarian Reform (2022) at 16.

The involvement of state actors is considered to be part of agrarian conflicts. In 2021³, there were land issues between the residents of Burau District, South Sulawesi, and the Limited Liability Company Plantation Nusantara (hereinafter abbreviated as PTPN) XIV. Additionally, conflicts arose over the lands of the Indigenous Coastal Communities in Raja⁴ that were unilaterally claimed by PTPN V. Productive gardens owned by the local residents, including rubber plantations that have been converted into oil palm plantations, have been a cause for concern not only in 2021 but throughout 2022 as well. The local communities have faced various cases initiated by state-owned enterprises that have become increasingly intimidating towards the local population. One such conflict is between farmers in Gurilla Subdistrict, Siantar District, Pematang Siantar City, who have been facing threats of eviction and intimidation by PTPN III for several months since October. Currently, a topic widely discussed in the public domain is the land acquisition for the State Capital City (IKN) project, where the Ministry of ATR/BPN has proposed to the public the direct grant of Building Rights for a period of 160 years⁵, aiming to attract investors to invest in the IKN area. The introduction of various policies related to agrarian issues, natural resources, and food, as well as the Job Creation Law and various related regulations, has not made the community feel secure and comfortable. On the contrary, challenges and discrimination continue to emerge when communities seek to defend their land rights⁶, Siantar District, Pematang Siantar City, who have been facing threats of eviction and intimidation by PTPN III for several months since October. Currently, a topic widely discussed in the public domain is the land acquisition for the State Capital City (IKN) project, where the Ministry of ATR/BPN has proposed to the public the direct grant of Building Rights for a period of 160 years, aiming to attract investors to invest in the IKN area. The introduction of various policies related to agrarian issues, natural resources, and food, as well as the Job Creation Law and various related regulations, has not made the community feel secure and comfortable. On the contrary, challenges and discrimination continue to emerge when communities seek to defend their land rights.

It must be understood that the existence of a state inevitably has goals and functions, as it would be impossible for a state to exist or be established without clear objectives and functions. If laws exist or are intentionally created with clear goals and functions, the same applies to the state.⁷ In Indonesia, it is clarified in Article 1 paragraph (3) of the

3 Eko Rusdianto, "Residents' Land Dispute vs State Palm Oil Company in East Luwu", (2021), online: <<https://www.mongabay.co.id/2021/07/18/sengkarut-lahan-warga-vs-usaha-sawit-negara-di-luwu-timur/>>.

4 Suryadi, "The land conflict between the Pantai Raja customary community vs PTPN V has never ended", (17 April 2021), online: *Mongabay.co.id* <<https://www.mongabay.co.id/2021/04/17/konflik-lahan-masyarakat-adat-pantai-raja-vs-ptpn-v-tak-kunjung-usai/>>.

5 Yulianna Fauzi, "Ministry of ATR about HGB Investor IKN Can be 160 Years: Not Violating the Law", *CNN Indonesia* (2022), online: <<https://www.cnnindonesia.com/ekonomi/20221026173503-92-865764/kementerian-atr-soal-hgb-investor-ikn-bisa-160-tahun-tak-menyalahi-uu>>.

6 Consortium for Agrarian Reform, *supra* note 2 at 9.

7 Nurul Qamar et al, *State of Law or State of Power (Rechtsstaat or Machtstaat)* (Makassar: CV. Social Politic Genius (SIGn), 2018).

1945 Constitution, which states that 'Indonesia is a state based on the rule of law (rechtstaat), not on the power of the state (machstaat).' Within these two concepts⁸ namely the rule of law and democracy, the protection of citizens' rights is introduced, as the protection of human rights is one of the elements in the ideal of a state based on the rule of law, and the protection of citizens' rights is a manifestation of the people's sovereignty, which is an essential component of the concept of democracy. The concept of the rule of law⁹ is intended as an effort to limit the power of the state authorities from abusing their power to oppress the people. By enforcing just laws, it is hoped that everyone in the country will be subject to the law, ensuring that each person has an equal standing in the eyes of the law that does not favor any particular group. It also restricts the authority of the government based on the principle of the distribution of power, preventing arbitrary actions by the government and protecting the rights of the people in line with their democratic capabilities and roles.

In fact, in the agrarian conflicts that occur every year, the state tends to neglect its obligation to ensure the people's rights to effective legal protection in peacefully challenging the state's neglect, which can result in human rights violations.¹⁰ Because in the 1945 Constitution, it is explicitly stated that 'Every person has the right to recognition, guarantees, protection, and legal certainty that is fair and equal treatment before the law. (Article 28D paragraph (1)).' Equal treatment before the law or non-discriminatory actions in law enforcement are constitutional rights or human rights of every citizen.

Harvey¹¹ in his book 'New Imperialism,' describes what is happening today. He narrates the oppression of the people by neoliberal projects. The expansion and geographical reconstruction threaten the values that have become fixed in the space attached to the land. Agrarian spaces are reorganized, transformed from natural resources into global commodities. The expansion of the extensive production system requires the reorganization of specific spaces to enable the geographic expansion of the production system. This reorganization of space forces the lives of agrarian communities to transition from rural, agricultural, and farmland conditions into industrial areas. Ultimately, this spatial reorganization displaces and marginalizes agrarian populations from their land and living spaces. Spatial conflicts are a problem resulting from the interpretation of space as a production arena. Then, this space is conceptualized according to capitalist and governmental interests because space serves as the locus of production or the place where the process of production for profit accumulation occurs. Space is a prerequisite for capitalism in its economic control efforts. Therefore, territorial authorities need policies for spatial control.

8 Muhammad Asrun, "Human Rights Within the Framework of the Ideal of a Legal State" (2016) 4:1 Journal of Legal Aspirations.

9 Nur Rohim Yunus, *Basic Theory of Constitutional Law Research* (Jakarta: Poskolegnas, 2017).

10 Ria Casmir Arrsa, "Indications of Criminalization of Human Rights Defenders in Agrarian Disputes" (2014) 7:1 Judicial Journal 53-69.

11 David Harvey, *The New Imperialism*, Clarendon Lectures in Geography and Environmental Studies (Oxford: Oxford University Press, 2005).

Enforcement, sanctions, and permit revocation are mere words; the policies introduced have not been able to address the pressing issues surrounding agrarian conflict in society. Unclear concession data, incomplete legal mechanisms used in on-site execution enforcement, and the lack of transparency in the entire process from initial permits to land rights and other authorizations are evident. There is a need for clarity regarding the relationship between efforts to resolve agrarian conflicts and Agrarian Reform activities. The approach employed by state actors seems to be well-understood by the public, as they use a repressive approach to deal with the community and manage agrarian conflicts in the field. Specifically, the signing of agreements involving regional police in each province is intended to quell agrarian conflicts. Data accuracy, including accuracy in land history, is one of the crucial requirements in the Agrarian Reform agenda¹² because it can either trigger or exacerbate existing conflicts.

Based on the background, I formulate two research questions that will be elaborated on in the subsequent subsections, including the role of State Actors in Agrarian Conflict and the legal basis of legislation related to various theories, such as Carl Schmitt's theory of legitimacy and David Harvey's theory on agrarian conflict issues linked to spatial production. In the final section of the research, a summary will be presented in the form of conclusions based on the discussions in the subsections.

II. STATE ACTORS IN AGRARIAN CONFLICT

Concrete cases related to agrarian conflicts have become topics of discussion in various media and among the public. The exploitation of natural resources has sharply increased and is occurring throughout Indonesia. Faced with the continuous emergence of these problems, it seems that there is no solution capable of resolving them. This has had a negative impact on the wider society, leading to a tendency to be pessimistic and even skeptical. However, among the many problems, state actors play a crucial role in society. They strive to encourage the public to think optimistically in the long run, but in reality, the public is often used as a shield to evade responsibility for addressing and resolving agrarian conflict issues. There has been a shift in values and a change in normative systems within the institutional configuration that is fundamental and comprehensive in the course of communal, national, and state life.

In agrarian conflicts, there are several state actors caught in agrarian conflicts. They directly face the issues of agrarian conflicts in almost all sectors. These state actors include State-Owned Enterprises and Private Enterprises, the Central Government and Local Governments, as well as law enforcement agencies such as the TNI/Polri (Indonesian National Army and National Police). Farmers and Indigenous communities often become victims and are involved in structural agrarian conflicts. From the stage of defending their land to their efforts to resist the control of actors/interests outside their

12 *The Urgency of People's Testimony to Resolve the Kalibakar Plantation Conflict*, by Ahmad Hamdani & Syaokani Ihsan (Sajogjyo Institute, STPN, 2021).

group. Businesses that enter the areas of community plantations or forests are parties that have obtained permits, rights of control, and concessions from local and central governments. Incompatibilities related to licensing and control rights over community land eventually lead to agrarian conflicts, turning them into horizontal conflicts. An actual example of an agrarian conflict occurred between the residents of Tegalrejo Village¹³, Sumbermanjing Wetan Subdistrict, Malang Regency, and PTPN XII Pancursari. Furthermore, in West Kalimantan¹⁴ there is an agrarian conflict between Wilmar International Plantation and the residents of Sebatih in Sangah Subdistrict and Penyahok Dangku Village in Ngabang Subdistrict, Landak Regency.¹⁵

Table 1. The Top Five Provinces Contributing to the Largest Agrarian Conflicts¹⁶

No.	Provinces	Number of Conflict Eruptions
1.	West Java	25
2.	North Sumatra	22
3.	East Java	13
4.	West Kalimantan	13
5.	South Sulawesi	12

Table 2. The Top Five Provinces with the Largest Conflict-Affected Areas¹⁷

No.	Provinces	Total Conflict Area (Hectares)
1.	North Sumatra	215.404
2.	West Kalimantan	161.262
3.	East Kalimantan	128.249
4.	Central Sulawesi	108.125
5.	Jambi	79.334

Normatively, Article 33 of the 1945 Constitution is often understood as an economic system suitable for use by the Indonesian nation. For example, in Article 33, Clause (1), it states that the national economy is organized as a collective effort based on the principle of kinship. This principle can be seen as a collective principle that, in the current context, implies brotherhood, humanism, and humanity. This means that the economy is not seen as a manifestation of a liberal competitive system like in the West, but there is a moral and collective nuance as a reflection of social responsibility. However, based on

13 Redaksi Lentera Today, "Warga Tegalrejo dan PTPN XII Pancursari Terlibat Sengketa lahan Sejak 2016", *Lentera Today* (25 July 2022), online: <<https://lenteratoday.com/warga-tegalrejo-dan-ptpn-xii-pancursari-terlibat-sengketa-lahan-sejak-2016/>>.

14 Dismas Aju, "Dayak Rejects Replanting of Wilmar International Plantation in West Kalimantan", (6 February 2022), online: *Dio-TV.com* <<https://www.dio-tv.com/international/pr-5043567831/dayak-tolak-replanting-wilmar-international-plantation-di-kalimantan-barat>>.

15 In addition, there are at least 5 (five) WIP companies in Landak Regency, namely PT. Agronusa Investama with a concession area of 2,548 hectares, PT. Daya Landak Plantation with an area of 2,321 hectares, PT. Pratama Prosentindo (PP) with a land area of 1,257 hectares, PT. Putra Indotrovocal (PI) with a land area of 3,640 hectares, and PT. Indonesia Putra Mandiri (IPM) with a land area of 1,750.03 hectares. See the KPA Consortium's notes for the year 2022, page 31.

16 Consortium for Agrarian Reform, *supra* note 2 at 29.

17 *Ibid.*

the data above, it is known that agrarian conflicts have a significant impact on the local community. Various social structures change, and farmers are transformed into wage laborers under the pretext of being partners with companies. In the context of developments in the agrarian sector¹⁸, land has become an increasingly vital asset. Land has transformed from a means of subsistence production for the people into a means of production for capitalist production organizations.

The theoretical understanding of the state's authority over agrarian resources derives from the people's known as the nation's rights. In this regard, the state is viewed as an entity with the character of a public institution, granting it the authority or power to regulate, manage, maintain, and oversee the intensive utilization of all potential agrarian resources within its territory, but not as an owner, as the owner is the Indonesian Nation. The connection between the state's authority and the goal of maximizing the welfare of the people gives rise to the state's obligation to regulate¹⁹:

1. All forms of utilization of land and water and the resulting outcomes of natural resources must effectively enhance the prosperity and well-being of the community.
2. Protecting and ensuring all the rights of the people pertaining to land, water, and various specific natural resources that can be directly produced or directly enjoyed by the people.
3. Preventing any actions by any party that may deprive the people of their opportunity or result in the loss of their rights to enjoy natural wealth.

Farmers/indigenous communities that have been in productive control of their land for years do not receive legal certainty guarantees. The existing Agrarian Law (UUPA) has so far not been able to function optimally in strengthening the rights of local communities whose land is caught in agrarian conflicts. Land containing mineral resources is often contested by interested parties, leading to conflicts. Mineral resources attract various interest groups, including the military, international entrepreneurs, political elites, criminal groups, local and international civil societies,²⁰ and multinational corporations seeking profits.²¹ State actors continue to attract investors to expand their presence in community areas.²² Moreover, the policies introduced actually make it easier for state actors and investors to acquire shares in their industries or businesses, even if they have to operate on productive lands that have been cultivated by local communities.

18 Noer Fauzi Rachman, *Farmers and Rulers: Dynamics of the Journey of Indonesian Agrarian Politics* (Yogyakarta: InsistPress, 2017) at 6.

19 Firman Muntaqo, *Political Character of Land Law in the New Order and Reform Era* (Semarang: Print 1, 2010).

20 Raymond L. Bryant & Sinead Bailey, *Third World Political Ecology* (London: Routledge, 1997) at 24.

21 Abiodun Alao, *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (New York: University of Rochester Press, 2007) at 67.

22 For example: Due to the development of the National Capital City (IKN) and other national strategic projects that expedite land acquisition on a large scale, the actual practice neglects the constitutional rights of citizens to land. This includes domestic industrial development like the construction of the National Capital City (IKN), which is planned to rely heavily on electricity-based transportation. The Minister of Agrarian and Spatial Planning (ATR/BPN) openly asserts that his ministry will facilitate land affairs, spatial planning, and business permits to attract investors to invest in the IKN.

The state, which should condition the interests of other actors in its interaction with the environment, finds itself in a dilemma. On one hand, the state needs to engage in economic development to generate state revenue, but on the other hand, it must protect the environment from damage. Here, the state becomes an 'mixture' that prioritizes institutional interests. The state rarely speaks in a unified voice when environmental degradation occurs, leading to ambiguity in its function, oscillating between being an 'environmental developer' or 'environmental destroyer'.²³

The increasing agrarian conflicts are also related to the accelerated project execution targets set by various regulations. These regulations are designed to streamline the land acquisition and clearance processes, expediting the realization of challenging projects. It all began with Presidential Regulation No. 109 of 2020 on the Acceleration of National Strategic Projects Implementation. More than 200 massive business projects owned by entrepreneurs were claimed to serve the public interest. Subsequently, in September 2021, the government issued Ministerial Regulation Number 7 of 2021 concerning Changes to the National Strategic Projects List, intended to ensure the smooth implementation of all projects.²⁴ After the enactment of the Omnibus Law on Job Creation in 2020, several Government Regulations were issued, such as Government Regulation Number 64 of 2021 concerning Land Banks, Government Regulation Number 19 of 2021 concerning Land Acquisition, and Government Regulation Number 42 of 2021 concerning National Strategic Projects.

In practice²⁵, state control rights tend to be interpreted as state ownership rights. The phrase 'controlled by the state' implies that the people, collectively constructed by the 1945 Constitution, grant the state the mandate to formulate policies (*beleid*) and engage in administrative actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for the maximum welfare of the people. We can see in the constitutional explanation of Article 12 paragraph (1) of the Investment Law²⁶ that it does not solely depend on whether a sector is declared open or closed to investment. Rather, it hinges on a much more fundamental issue, which is whether the state will be able to carry out administrative actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) if a sector is declared open to investment, thereby ensuring the goal of maximizing the welfare of the people.

Land is often viewed as a natural resource that must be preserved for future generations.²⁷ However, the development of corporate power is related to the

23 Devy Dhian Cahyati, "Fighting Actors in the Conflict over Land Control and Iron Sand Mining in Urut Sewu" (2014) 39 BHUMI: Jurnal Agraria dan Pertanahan 369-386 at 372.

24 *Final Notes 2021: National Scale Evictions (PSN), Launch Edition of the Conflict Situation Report and Agrarian Policy for the Second Year of the Pandemic*, by Consortium for Agrarian Reform (2021) at 12.

25 Lijan Poltak Sinambela et al, *Public Service Reform Theory, Policy and Implementation* (Jakarta: Bumi Aksara, 2008) at 78.

26 Constitutional Court of the Republic of Indonesia, *Summary of Decision in Case Number 21-22/Puu-V/2007 Concerning State Power in Investment Activities* (2007) at 4.

27 Alao, *supra* note 21 at 67.

development of global capitalism and tends to drive environmental degradation. In the era of globalization, corporate groups are integrated into TNCs (*Transnational Corporations*). These companies exploit natural resources in Third World countries and have a significant impact on environmental and social issues. Local company capital does not always come from local individuals but from transnational companies that invest indirectly on behalf of local companies. When talking about the global capitalist system, there are several key themes to explain this process. First, there is a tendency for society and the environment to be gradually incorporated into the global capitalist market to meet the needs of capitalist entrepreneurs. Second, companies conduct market activities and operations with the logic of capital accumulation. Third, the logic of capital accumulation leads to social and ecological contradictions that threaten the Earth.

Elite capture is the ability of those who have power and wealth to take advantage of new opportunities and increase their power and wealth.²⁸ The actions of these elites can lead to environmental conflicts, as expressed by Paul Robins, where environmental conflicts occur when scarcity increases through the appropriation of resources by state authorities, private companies, and social elites, thereby accelerating group conflicts.²⁹ There are four situations in the political elite circle that can create opportunities for such interactions between the state and society, namely the openness of access to power elites, the presence of influential elites, shifts in alignment among elites, and divisions within and between elite groups. The presence of one or more of these situations can create conjunctural opportunities that can be exploited even by politically weak groups.³⁰ In turn, such conjunctural opportunities can be utilized by social movements to push for reform agendas with government actors through various lobbying, pressure, and negotiation efforts.³¹

Marger³² and Scott³³ argue that elite groups, both politically and economically, occupy the top positions in society, allowing them to sustain their dominance in the power and wealth structure. They make all the crucial decisions in allocating values related to politics and exercise power, influence, and control over resources within government organizations and society. They can impose explanations and justifications for their power over the political and economic domination system onto society as a whole. Referring to the above, it can be assumed that the distortion in the form of

28 Doris Capistrano & Carol J Pierce Colfer, "Decentralization: Issues, Lessons, and Reflections" in Doris Capistrano & Carol J Pierce Colfer, eds, *The Politics of Decentralization: Forests, Power and People* (Bogor: Center for International Forestry Research (CIFOR), 2006) 367 at 370.

29 Raymond L Bryant & Sinead Bailey, *Third World Political Ecology* (London: Routledge, 1997) at 173.

30 Sidney Tarrow, "Social Movements in Contentious Politics: A Review Article" (1996) 90:4 *The American Political Science Review* 874-883.

31 Ilham Rizkia Maulana & Mohamad Shohibuddin, "Zone of Political Interaction and Government Actor Responses: The Case of Agrarian Struggle in Nanggung, Bogor Regency" (2022) 13:1 *Politika: Jurnal Ilmu Politik* 75-100.

32 Martin N Marger & Phillip J Obermiller, "Emergent ethnicity among internal migrants" (1987) 7:1-17 *Ethnic Groups*.

33 Alwyn Scott, *The nonlinear universe: chaos, emergence, life* (Berlin: Springer, 2007).

misinterpretation³⁴ occurs in all actor segments, starting from the authorities responsible for land reform, which then extends to political elites, proponents of land reform (farmers' movements and civil society), and then the subjects receiving the implementation of land reform. The banality of land reform is caused by the fact that the conception and implementation of land reform are carried out according to their own interpretations and interests, without considering the actual standards of land reform.

In translating government authority³⁵ it provides the ability to carry out specific legal actions (actions intended to create legal consequences, including the emergence and disappearance of certain legal consequences). The state's authority³⁶ to fulfill its obligations in accordance with existing instruments in order to achieve justice and collective prosperity.³⁷ Power, strength, and authority are closely related to coercion, including legal sanctions. The authority possessed by state officials must be exercised according to the law. The authority to regulate is held by the state in the realm of public law. The state can establish legal relationships like individual entities. The legal relationship between the state and land falls into categories such as property or land used for public purposes such as public roads owned by the state and land used for public service purposes such as government office buildings, in which case the land becomes state-owned. The definition of "state ownership" is not only based on authority determined by law but also encompasses competence with the ability to assume rights and obligations. The state is seen as a legal subject on par with its citizens.³⁸ The involvement of legal authorities in resolving agrarian conflicts is left unchecked, supported by state actors, and even acts on behalf of the state. The lack of state accountability in the resolution of agrarian conflicts actually turns state actors into perpetrators in these agrarian conflicts.

This is what causes people with limited access to their land to trigger agrarian angst³⁹, especially when it is accompanied by the context of extreme political injustice in land allocation. For example⁴⁰, the existence of large-scale land concessions granted by the state to large commercial entities, such as the case of abandoned land rights by PT.

34 *Agrarian Reform: Returning to Khittah*, by Barid Hardiyanto (Sajogiy Institute, STPN, 2022) at 132.

35 Lukman Hakim, "State Organ Authority in the Administration of Government" (2011) 4:1 Jurnal Konstitusi.

36 Moh Mahfud MD, *Building legal politics, upholding the Constitution*, first edition ed (Jakarta: LP3ES, 2006).

37 Winahyu Erwiningsih, "Implementation of regulations on state control rights over land according to the 1945 Constitution" (2009) 16:Special Issue Jurnal Hukum IUS QUIA IUSTUM.

38 *Ibid.*

39 Dominique Caouette & Sarah Turner, *Agrarian Angst and Rural Resistance in Contemporary Southeast Asia* (London: Routledge, 2009).

40 Saffon Sanin & Maria Paula, *When Theft Becomes Grievance: Dispossession as a Cause of Redistributive Land Claims in 20th Century Latin America* Columbia University, 2015) [unpublished].

Hevindo in Bogor Regency, is a prominent case in recent years.⁴¹ This agrarian unrest⁴², in turn, can give rise to various "political reactions from below," including agrarian struggle movements in their various spectrums mobilized by farmer communities.⁴³ Related to the "access struggle", grassroots social mobilization by farmer communities is often carried out through actions such as land occupations of disputed lands, the formation of farmer unions or indigenous community organizations, the development of networks and supporting alliances, mass actions, and negotiations with the government.⁴⁴ In general, the outcome of this "access struggle" is the demand for reforming the skewed and unfair land ownership structure. The target of this reform can either be agricultural land (land reform) or forest areas (forest tenure reform).⁴⁵

However, these reform demands can only be realized when conditions such as strong political will from the government and independent farmer organizations can be implemented. It is not surprising that the implementation of land reform is often studied based on these two actor-based approaches. The first approach emphasizes the role of the government in planning and implementing public policies, which is also referred to as "reform by grace." On the other hand, the second approach places more emphasis on the role of the community through social mobilization from below, called "reform by leverage."⁴⁶ Both of these approaches, when taken separately, cannot be relied upon. The first approach is highly vulnerable because it depends on the political market, which can change from one regime to the next. Similarly, social mobilization from below alone is not sufficient because the implementation of land reform by definition requires an active role from the state. Therefore, rather than viewing the two approaches above as opposing currents, it would be more accurate to understand them within the framework of dynamic state and society interaction with diverse manifestations.⁴⁷

There is a need for serious efforts and coordination among relevant ministries or institutions to resolve agrarian conflicts related to community rights without sectoral egos. Positive interactions can occur when the combination of social movement demands from

41 The case of the peasant movement in three villages in the Nanggung Subdistrict, Bogor Regency, which fought for their control of land in the location of PT. Hevea Indonesia's (PT Hevindo) 271.5014-hectare Hak Guna Usaha (HGU) land. This HGU land had long been neglected by its owner and was subsequently cultivated by local farmers. The momentum for the birth of this peasant movement occurred in 2010 when PT Hevindo, together with the National Land Agency (BPN) West Java Regional Office, conducted land measurement in the disputed location in order to extend the HGU, which was set to expire in 2013. Referenced in Maulana & Shohibuddin, *supra* note 31.

42 Fidel Budy, "Political reactions from below to Sime Darby land grab: Generational shift, geographical reach, rural influencers and multi-stakeholder alliance" (2020) 76 *Journal of Rural Studies*.

43 Rosanne Rutten et al, "Smallholder bargaining power in large-scale land deals: a relational perspective" (2017) 44:4 *The Journal of Peasant Studies* 891-917.

44 Noer Fauzi, *Understanding Third World People's Movements*, Herlily, ed (Yogyakarta: Insist Press, 2005).

45 Myma A Safitri et al, "Towards Tenure Certainty and Justice" (2011).

46 Gunawan Wiradi, *The Ins and Outs of Agrarian Problems: Agrarian Reform and Agrarian Research* (Bogor: SAINS Press, 2009).

47 Marian Negoita, "The Always Embedded State: Six Types of State-Society Interaction" (2018) 8 *International Review of Social Research* 172-184.

below and the reform initiatives of government actors from above relate to each other. Depending on the specific conditions⁴⁸ this "state-society" interaction can take the form of "state-NGO," "state-farmer movement," or "state-NGO/farmer movement."⁴⁹ Several empirical cases in Indonesia indicate that the neglectful attitude of government actors towards agrarian struggles pushed from below is one of the factors that have perpetuated conditions of injustice and agrarian conflicts in the country.⁵⁰ Agrarian cases from the past until now are considered to have made no progress in their resolution. The government often continues to grant permits and decisions to private companies and state-owned enterprises (BUMN) to operate and control the lands of the local communities despite protests from the local population. Violence and criminalization are not meant to resolve the issues but rather to silence and force the community to submit to capital and state actors under the pretext of investment and infrastructure development. Based on the presentation of various facts and data above, it can be concluded that without a strong government commitment and a reputable political correlation between local community movements and state actors, the success of the government's presented programs will be difficult to achieve.

III. A JURIDICAL REVIEW IN THE PERSPECTIVE OF THE RULE OF LAW

A rule of law state⁵¹ is a state where its government serves the needs of the majority of its people without discriminating based on their origin, religion, or social strata. Governance is carried out not based on power but on authority or the accumulation of rights and responsibilities. Conversely, in a power-based state, governance is carried out by the hands of those who claim to be within the circle of power, so it does not serve the people but is served by the interests of the people. Policies of a rule of law state tend to be compromise-oriented and realistic to meet the basic needs of the people and society as a whole. In contrast, in a power-based state (*machtstaat*), state policies are indicated to be repressive or constraining, even involving terror to ensure that the people fulfill the ruler's desires. The prevailing legislation⁵² will limit authority based on location, duration, specific tasks or objects, and designated implementing subjects for that authority. The authority granted to government officials to formulate legal policies and implement those legal policies is constrained by the legislation that shapes it. Legal policies must align with

48 Charles D Brockett, "The Structure of Political Opportunities and Peasant Mobilization in Central America" (1991) 23:3 *Comparative Politics* 253.

49 *Democratic Land Governance and Some Policy Recommendations*, by Saturnino M Borras & Jennifer C Franco (United Nations Development Program-Oslo Governance Center Democratic Governance Group Bureau for Development Policy, 2008).

50 Noer Fauzi Rachman, "The Chain of Explanation of Chronic, Systemic, and Widespread Agrarian Conflicts in Indonesia" (2013) 37 *BHUMI: Jurnal Agraria dan Pertanahan* 1-14.

51 Qamar et al, *supra* note 7 at 2.

52 Vera Soemarwi, "Legitimizing State Action Based on Power (*Machtstaat*): Review of Decision Number 95/B/2017/PT.TUN.JKT" (2019) 12:2 *Jurnal Yudisial* 141.

the specific actions taken by government officials, thus creating a sequence of legal actions and concrete measures that result in legal certainty.

Factual reality exhibits contradictory phenomena; the law serves as a tool of legitimization for plunder and exploitation of space itself within a more subtle framework. This indirectly reveals the imbalance in the interaction between humans and their living space through the instrumentalization of the law. The relationship between humans and their external world has shifted from a mutually supportive interaction since ancient times to spatio-cide, which is the plundering of space and widespread environmental destruction, disrupting the dialectical development between living beings and their living space in an exploitative and expansionist system. The fundamental idea of a rule of law state is that the state's laws must be effectively executed, meaning they align with what society expects from the law, and just. The principle of a rule of law state integrates or combines elements from various different concepts, namely elements from Rechtsstaat and the Rule of Law. The principle of legal certainty in Rechtsstaat is harmonized with the principle of justice in the Rule of Law; legal certainty must be upheld to ensure that justice prevails within society as well.⁵³ In Article 1 of Law Number 39 of 1999 concerning Human Rights, human rights are defined as a set of rights inherent to the essence of human beings as creatures of the One Almighty God and are His blessings that must be respected and upheld by the state, the law, the government, and every individual for the dignity and protection of human beings.⁵⁴

Law enforcement in Indonesia is based on the fifth principle of Pancasila: social justice for all the people of Indonesia. This means that all the people are treated fairly in the fields of law, politics, economics, culture, and spiritual needs, thus creating a just and prosperous society.⁵⁵ However, in reality, the face of the law is moving further away from a sense of justice. The law, as represented in the enforcement of laws, has moved away from its essence, which is justice. Since ancient times, the legal world has believed in the truth of the statement⁵⁶ that the principle of law is justice, in addition to utility and certainty. Indeed, it is designed such that it is impossible for the law to fulfill all three principles simultaneously. However, for Gustav Radbruch, if the principles of certainty and utility cannot be upheld, justice should take precedence. Gustav Radbruch stated, "recht ist wille zur gerechtigkeit" (law is the will for justice).⁵⁷

53 Arief Hidayat, *Governing the State is Not Easy, in the Perspective of Politics and Law* (Semarang, 2010).

54 Yahya Ahmad Zein & Dewi Nurvianti, "Conceptions of Indigenous Peoples' Rights as Human Rights" (2017) 3:2 *Veritas et Justisia* at 415.

55 Agus Riwanto, *Legal Politics of the Indonesian Welfare State Post-Reformation*, first printing ed (Mojolaban Sukoharjo: Oase Pustaka, 2018) at III.

56 Gustav Radbruch, "Law's Image of the Human" (2020) 40:4 *Oxford Journal of Legal Studies* 667-681.

57 E Fernando M Manullang, *Corporatism and the 1945 Constitution: Legal Interpretation of the Text of the 1945 Constitution and the Proceedings of the Investigating Body for Independence Efforts (BPUPK) and the Preparatory Committee for Indonesian Independence (PPKI) on the Influence of Corporatism Values* (Jakarta: Nuansa Aulia, 2010).

The agrarian regulations in the early days of Indonesia's independence were drafted based on the aspirations of independence and a deep understanding of the lives and suffering of the people due to the politics of agrarian feudalism and colonialism. The original intent of agrarian regulation and the enactment of Law Number 5 of 1960 on the Basic Agrarian Principles (widely known as UUPA 1960), was clearly to govern in accordance with the constitution of the 1945 Constitution, particularly Article 33 paragraph 3, which states, "The land, water, and the natural wealth contained therein shall be controlled by the state for the greatest prosperity of the people." In this article, there are three fundamental⁵⁸ components: the first component in the phrase "The land, water, and the natural wealth contained therein" explains the ontological aspect of agrarian philosophy. The second component in the phrase "shall be controlled by the state" elucidates the constitutional mandate to the state in the agrarian domain, the execution of which depends on the epistemological aspect of agrarian philosophy. Lastly, the third component in the phrase "shall be used for the greatest prosperity of the people" represents the goal that the state must achieve as the executor of the constitutional mandate, essentially affirming the axiological aspect of agrarian philosophy.

The 1945 Constitution is an agrarian constitution that contains principles and norms regarding the relationship between the state and its citizens in the ownership of land and natural resources. However, from a textual perspective, the norms regarding agrarian reform in the 1945 Constitution are still too thin and vague, often leading to interpretations that do not direct them toward the realization of agrarian justice and the empowerment of the people as the rightful owners of Indonesia's land and natural resources, making them the primary actors in land and natural resource management and utilization activities. Hence, there is a need for a new approach to strengthen agrarian constitution into a land reform constitution. However, the existing legislative regulations are in stark contrast to the facts on the ground. The confiscation of people's land is systematically designed by various regulations to facilitate the reorganization of spaces for new capital accumulation. Monoculture plantation development, infrastructure development, special economic zones, and food estates have become forms of this spatial reorganization, positioning Indonesia further as a provider of raw materials, cheap labor, a user of dirty energy sources, and a market for global manufacturing industries. The land confiscation and the natural wealth it contains not only trigger agrarian conflicts everywhere but also contribute to environmental degradation, massive deforestation, climate change, and ecological crimes in Indonesia. The smoothness of land confiscation and natural resource extraction is supported by increasingly interconnected infrastructure networks.

The Agrarian Law that we currently employ⁵⁹ fundamentally aims to safeguard the interests of large private capital over the interests of the Indonesian people themselves by granting special privileges to foreigners regarding land, thereby disregarding the rights

58 *Agrarian Philosophy: Constitutional Perspective*, by Mohammad Shohibuddin (Sajogyo Institute, STPN, 2022) at 4.

59 Mochamad Tauchid, *Agrarian Problems: As a Problem of Livelihood and Prosperity of the Indonesian People-Book II* (Jakarta: Tjakrawala Djakarta, 1953) at 51.

of the people. Additionally, there are various customary land rights recognized within Indonesian society. Such a situation should not exist in a country that is supposed to ensure the prosperity of its people. Agrarian law and its implementation by agrarian institutions in the form of programs are not neutral in interests.⁶⁰ In fact, they contain specific interests as the intended goals and social values as the foundation. These interests and social values result from choices made by the ruling regime. The choices of interests and social values can change in accordance with shifts in the economic development policy orientation of the ruling regime.

Politics is no longer solely associated with the system of governance but is broadly defined. In this context, politics⁶¹ pertains to matters of social relations. Therefore, anything related to relationships with others, whether it be law, culture, and so forth, is political. Inefficiency and even the tyranny of a parliamentary majority pose a danger to the power of the demos, strong leaders can redeem a decaying republic. As Schmitt puts it in the conclusion to *Legality and Legitimacy*⁶²:

“The people can only respond yes or no. They cannot advise, deliberate, or discuss. They cannot set norms, but can only sanction norms by consenting to draft sets of norms laid before them. Above all, they also cannot pose a question, but can only answer with yes or no to a question placed before them... In terms of its significance, the process is no longer an election, but rather a plebiscite.”

Standardization is a process of inclusion. Standardization is aimed at normality. Normality is what the power structure desires. However, inevitably, within normality, there are always those who are excluded. This is where the process of the relation of exception (inclusion-exclusion) comes into play. Those who are excluded are highly likely to experience violence. Anyone whose life is deemed "unworthy of living" (bios) will automatically be marginalized, which often involves violence. So why does power, which should protect, turn against humanity itself? The relationship between power (normality) and the violence by power (fascism) is a concept that Agamben draws inspiration from the debates of Carl Schmitt and Walter Benjamin. Both philosophers discussed the state of exception and the status of violence exercised by power. Regarding the inevitability and absolute power of the state of exception, Carl Schmitt⁶³ elaborated:

“The (state of) exception cannot be categorized within the legal order. It is a pure and absolute decision. Sovereignty creates and ensures the situation in its entirety. It has a monopoly on the final decision.

60 Nurhasan Ismail, *Land Law Development: An Economic-Political Approach* (Yogyakarta: Collaboration between Human Relations and Master of Law UGM, 2007).

61 Martin Suryajaya, *History of Classical Political Thought: From Prehistory to the 4th Century AD* (Tangerang: Marjin Kiri, 2016) at 3.

62 Carl Schmitt, *Legality and Legitimacy* (Durham: Duke University Press, 2004) at 90.

63 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2006).

Sovereignty not only confirms rules but rules derive their existence from sovereignty (the state of exception).”

Thus, there is actually a gap between norms and decisions. Norms can be interpreted as constituents namely the life of society. Meanwhile, decisions can be interpreted as constituted power, which is the legal order/constitution that governs the exercise of power, which in the modern democratic system is the separation of powers. The combination of these two gives rise to a legal order that originates from society. However, in practice⁶⁴, constituents are not truly within the legal order. This is because legal decisions have always been in the hands of sovereignty. However, the certainty possessed by sovereignty only becomes evident in a state of emergency. In a state of emergency, the aspirations of constituents are no longer considered because what needs to be done is to take actions for normalization. For normalization, the executive is authorized to do anything to protect constitutional sovereignty. This means that sovereignty becomes overt when it has to protect its own structure, like the constitution. Sovereignty is what creates decisions in the state of exception.

The implementation of the Rule of Law in Indonesia is based on the provisions in Article 1 paragraph (3), Article 27 paragraph (1), and Article 28D paragraph (1) of the 1945 Constitution. As a country based on the rule of law (*rechtstaat*) rather than on power (*machtstaat*), according to Jimly Asshiddiqie⁶⁵, the content of this formulation indicates the fulfillment of the concept of the rule of law in Indonesia includes: 1) Recognition of the principles of the supremacy of law and the constitution; 2) Adherence to the principles of separation and limitation of powers; 3) Guarantee of human rights; 4) The existence of impartial and non-partisan judiciary that ensures equal treatment of citizens before the law and guarantees justice for everyone, including against abuses of power by those in authority. However, when connected to the facts on the ground, the concept of the rule of law has not been implemented as it should. The ongoing agrarian conflict that continues to occur has demonstrated how the state acts on the basis of power when dealing with the community. Permits on paper issued by the Regional Government become a weapon for companies to take over community-owned land. Disregarding the process consisting of many stages to obtain the Right to Cultivate (HGU) from the National Land Agency. Communities who firmly refuse to surrender their land are considered rebels who hinder the development process and are labeled as opponents of government policies.

In Indonesia⁶⁶, the power relationship between capital and the state to solidify the political-economic framework of capitalism has been ongoing since colonial times, as evidenced by the state's role as an instrument in the penetration, accumulation, and

64 Muhammad Satria Abdul Karim, “The Immanence of Fascism and Sovereignty: Giorgio Agamben’s Critique of the State of Exception” (2020) 5:2 JAQFI: Journal of Islamic Aqidah and Philosophy 154-171.

65 Jimly Asshiddiqie, *Indonesian Constitution and Constitutionalism* (Jakarta: Sinar Grafa, 2005) at 69.

66 Sartono Kartodirdjo & Djoko Suryo, *History of Indonesian Plantations: A Socio-Economic Study*. (Yogyakarta: Aditya Media, 1991).

expansion of resource-based capital. As a result, two poles of power have emerged: 1) corporations and the state that seek to position capitalism as the sole political-economic force, and 2) social forces adversely affected by capitalism. These two forces converge in the competition for: 1) physical space and means of production; 2) control over policymaking; and 3) discourse for social legitimacy. In the power contest between the political-economic force of capitalism and contending social forces, structural conflicts are born and come to the forefront. The power struggle between capitalism and the people is often accompanied by a discourse war that determines social legitimacy: who is socially justified to determine environmental and social changes, and then reproduce that discourse for their own interests? According to Peluso and Ribot⁶⁷, if property rights are controlled by a group of rights, then access is controlled by a group of powers. Power plays a more significant role than claims in benefiting from a resource. A group of people may not have legal rights according to applicable law, but the power inherent in them enables them to access resources, even make ownership claims, or determine the structure of resource control. Power then becomes an essential concept for examining resource control structures from a class perspective, the realm where conflicts over resource control often occur.⁶⁸

With such a perspective, all existing policies⁶⁹ and legislative regulations, including various government programs in the agrarian sector that claim to serve the interests and well-being of the people, whether in rural areas, plantations, forestry, or other agrarian sectors should undergo a re-evaluation. It should be assessed whether the regulations and policies⁷⁰ made thus far have been able to provide solutions to the ongoing agrarian conflicts in society, capable of changing the fate of a vulnerable group without the legal protection that should shield them, capable of altering the structural agrarian inequalities,

67 Jesse Ribot & Nancy Peluso, "A Theory of Access" (2003) 68:2 *Rural Sociology* 153-181.

68 Kus Sri Antoro, "Anatomy of the Concept of Agrarian Conflict Resolution: A Comparative Study Between the Policy Realm and the Agrarian Struggle Realm" (2013) 37 *BHUMI: Jurnal Agraria dan Pertanahan* 28-48.

69 The proliferation of investments, which has become the government's primary instrument for national development, needs to be balanced with policies that care for the marginalized and landless communities. Therefore, the government's efforts in agrarian reform in the social forestry sector need to be enhanced, particularly the expedited and simplified recognition of customary forests while also slowing down or imposing a moratorium on the growth of extractive and extensive investments. See Sukirno, "Reconstruction of Regulations for the Acceleration of Customary Forest Recognition" (2019) 7:1 *Progressive Law Journal*.

70 Generally, the content of policies outlined in the legal system is placed in the "consideration" section, while its concretization is enshrined in its articles, primarily evident in the established objectives. To meet the above requirements seems not easy, given that legislative regulations contain "logical defects," such as ambiguity both semantically and syntactically. This can occur because the intent to be conveyed through the formulation of the policy is not understood by the legislators, as they themselves do not yet comprehend or possess a clear concept of the matter to be regulated. Refer to Reed Dickerson, *The Fundamentals of Legal Drafting*, first edition ed (Boston, Toronto: Little, Brown and Company, 1965); Esmi Warassih, *Legal Institutions: A Sociological Study* (Semarang: Pustaka Magister Publishers, 2016).

and whether the prosperity of the people is indeed the ultimate goal of the various policies and regulations or merely a service to state actors.

IV. CONCLUSION

The current agrarian conflict is caused by several factors, such as land claims by various parties legitimized by the government, neglected agrarian disparities without resolution and solutions, thereby causing agrarian conflicts to resurface repeatedly. The approach employed by state actors seems to have been anticipated by the public, using a repressive approach towards the community and addressing agrarian conflicts in the field. In terms of space production, the opening of new and affordable resource complexes, the establishment of new areas as dynamic spaces for capital accumulation, and the penetration of existing social formations have become ways to absorb surplus labor. However, such geographical expansion and reconstruction threaten the fixed values that have become "embedded" in the space associated with the land. The concept of the *rule of law* cannot yet be implemented as it should be.

The ongoing agrarian conflict has demonstrated how the state acts based on power when dealing with the community. Permits on paper issued by the local government become a weapon for companies to take over community-owned land. In the power contest between political-economic forces and social forces, structural conflicts arise and come to the forefront. The power struggle between state actors and the community is also enlivened by a discourse war that will determine legitimacy: who is socially justified to determine environmental and social change, and then reproduce that discourse for their own interests? From here, the facts indicate that a country is not serious in addressing agrarian conflicts occurring within society. The state should play a role as an actor in preserving agrarian and environmental sustainability. However, due to being entangled in the system, the state tends to prioritize the interests of its actors.

BIBLIOGRAPHY

- Agrarian Reform Consortium, *Buried Agrarian Justice for the People through Agrarian Reform*, 2012 Final Report of the Agrarian Reform Consortium, by Agrarian Reform Consortium (2012).
- Aju, Dismas, "Dayak Rejects Replanting of Wilmar International Plantation in West Kalimantan", (6 February 2022), online: Dio-TV.com <<https://www.dio-tv.com/international/pr-5043567831/dayak-tolak-replanting-wilmar-international-plantation-di-kalimantan-barat>>.
- Alao, Abiodun, *Natural Resources and Conflict in Africa: The Tragedy of Endowment* (New York: University of Rochester Press, 2007).

- Antoro, Kus Sri, "Anatomy of the Concept of Agrarian Conflict Resolution: A Comparative Study Between the Policy Realm and the Agrarian Struggle Realm" (2013) 37 *BHUMI: Jurnal Agraria dan Pertanahan* 28-48.
- Arrsa, Ria Casmi, "Indications of Criminalization of Human Rights Defenders in Agrarian Disputes" (2014) 7:1 *Judicial Journal* 53-69.
- Asrun, Muhammad, "Human Rights Within the Framework of the Ideal of a Legal State" (2016) 4:1 *Journal of Legal Aspirations*.
- Asshiddiqie, Jimly, *Indonesian Constitution and Constitutionalism* (Jakarta: Sinar Grafa, 2005).
- Borras, Saturnino M & Jennifer C Franco, *Democratic Land Governance and Some Policy Recommendations*, by Saturnino M Borras & Jennifer C Franco (United Nations Development Program-Oslo Governance Center Democratic Governance Group Bureau for Development Policy, 2008).
- Brockett, Charles D, "The Structure of Political Opportunities and Peasant Mobilization in Central America" (1991) 23:3 *Comparative Politics* 253.
- Bryant, Raymond L & Sinead Bailey, *Third World Political Ecology* (London: Routledge, 1997).
- Budy, Fidel, "Political reactions from below to Sime Darby land grab: Generational shift, geographical reach, rural influencers and multi-stakeholder alliance" (2020) 76 *Journal of Rural Studies*.
- Cahyati, Devy Dhian, "Fighting Actors in the Conflict over Land Control and Iron Sand Mining in Urut Sewu" (2014) 39 *BHUMI: Jurnal Agraria dan Pertanahan* 369-386.
- Caouette, Dominique & Sarah Turner, *Agrarian Angst and Rural Resistance in Contemporary Southeast Asia* (London: Routledge, 2009).
- Capistrano, Doris & Carol J Pierce Colfer, "Decentralization: Issues, Lessons, and Reflections" in Doris Capistrano & Carol J Pierce Colfer, eds, *The Politics of Decentralization: Forests, Power and People* (Bogor: Center for International Forestry Research (CIFOR), 2006) 367.
- Consortium for Agrarian Reform, *Embers of Agrarian Conflict: PTPN Untouched, Criminalization of People Increases, 2022 Final Report of the Agrarian Reform Consortium*, by Consortium for Agrarian Reform (2022).
- , *Final Notes 2021: National Scale Evictions (PSN), Launch Edition of the Conflict Situation Report and Agrarian Policy for the Second Year of the Pandemic*, by Consortium for Agrarian Reform (2021).

- Constitutional Court of the Republic of Indonesia, Summary of Decision in Case Number 21-22/Puu-V/2007 Concerning State Power in Investment Activities (2007).
- Dickerson, Reed, *The Fundamentals of Legal Drafting*, first edition ed (Boston, Toronto: Little, Brown and Company, 1965).
- Erwiningsih, Winahyu, "Implementation of regulations on state control rights over land according to the 1945 Constitution" (2009) 16:Special Issue *Jurnal Hukum IUS QUIA IUSTUM*.
- Fauzi, Noer, *Understanding Third World People's Movements*, Herlily, ed (Yogyakarta: Insist Press, 2005).
- Fauzi, Yulianna, "Ministry of ATR about HGB Investor IKN Can be 160 Years: Not Violating the Law", *CNN Indonesia* (2022), online: <<https://www.cnnindonesia.com/ekonomi/20221026173503-92-865764/kementerian-atr-soal-hgb-investor-ikn-bisa-160-tahun-tak-menyalahi-uu>>.
- Hakim, Lukman, "State Organ Authority in the Administration of Government" (2011) 4:1 *Jurnal Konstitusi*.
- Hamdani, Ahmad & Syaokani Ichsan, *The Urgency of People's Testimony to Resolve the Kalibakar Plantation Conflict*, by Ahmad Hamdani & Syaokani Ichsan (Sajogyo Institute, STPN, 2021).
- Hardiyanto, Barid, *Agrarian Reform: Returning to Khittah*, by Barid Hardiyanto (Sajogyo Institute, STPN, 2022).
- Harvey, David, *The New Imperialism*, Clarendon Lectures in Geography and Environmental Studies (Oxford: Oxford University Press, 2005).
- Hidayat, Arief, *Governing the State is Not Easy, in the Perspective of Politics and Law* (Semarang, 2010).
- Ismail, Nurhasan, *Land Law Development: An Economic-Political Approach* (Yogyakarta: Collaboration between Human Relations and Master of Law UGM, 2007).
- Karim, Muhammad Satria Abdul, "The Immanence of Fascism and Sovereignty: Giorgio Agamben's Critique of the State of Exception" (2020) 5:2 *JAQFI: Journal of Islamic Aqidah and Philosophy* 154-171.
- Kartodirdjo, Sartono & Djoko Suryo, *History of Indonesian Plantations: A Socio-Economic Study*. (Yogyakarta: Aditya Media, 1991).
- Manullang, E Fernando M, *Corporatism and the 1945 Constitution: Legal Interpretation of the Text of the 1945 Constitution and the Proceedings of the Investigating Body for Independence Efforts (BPUPK) and the Preparatory Committee for*

- Indonesian Independence (PPKI) on the Influence of Corporatism Values (Jakarta: Nuansa Aulia, 2010).
- Marger, Martin N & Phillip J Obermiller, "Emergent ethnicity among internal migrants" (1987) 7:1-17 *Ethnic Groups*.
- Maulana, Ilham Rizkia & Mohamad Shohibuddin, "Zone of Political Interaction and Government Actor Responses: The Case of Agrarian Struggle in Nanggung, Bogor Regency" (2022) 13:1 *Politika: Jurnal Ilmu Politik* 75-100.
- MD, Moh Mahfud, *Building legal politics, upholding the Constitution*, first edition ed (Jakarta: LP3ES, 2006).
- Muntaqo, Firman, *Political Character of Land Law in the New Order and Reform Era* (Semarang: Print 1, 2010).
- Negoita, Marian, "The Always Embedded State: Six Types of State-Society Interaction" (2018) 8 *International Review of Social Research* 172-184.
- Qamar, Nurul et al, *State of Law or State of Power (Rechtsstaat or Machtstaat)* (Makassar: CV. Social Politic Genius (SIGn), 2018).
- Rachman, Noer Fauzi, "The Chain of Explanation of Chronic, Systemic, and Widespread Agrarian Conflicts in Indonesia" (2013) 37 *BHUMI: Jurnal Agraria dan Pertanahan* 1-14.
- Rachman, Noer Fauzi, *Farmers and Rulers: Dynamics of the Journey of Indonesian Agrarian Politics* (Yogyakarta: InsistPress, 2017).
- Radbruch, Gustav, "Law's Image of the Human" (2020) 40:4 *Oxford Journal of Legal Studies* 667-681.
- Redaksi Lentera Today, "Warga Tegalorejo dan PTPN XII Pancursari Terlibat Sengketa lahan Sejak 2016", *Lentera Today* (25 July 2022), online: <<https://lenteratoday.com/warga-tegalrejo-dan-ptpn-xii-pancursari-terlibat-sengketa-lahan-sejak-2016/>>.
- Ribot, Jesse & Nancy Peluso, "A Theory of Access" (2003) 68:2 *Rural Sociology* 153-181.
- Riwanto, Agus, *Legal Politics of the Indonesian Welfare State Post-Reformation*, first printing ed (Mojolaban Sukoharjo: Oase Pustaka, 2018).
- Rusdianto, Eko, "Residents' Land Dispute vs State Palm Oil Company in East Luwu", (2021), online: <<https://www.mongabay.co.id/2021/07/18/sengkarut-lahan-warga-vs-usaha-sawit-negara-di-luwu-timur/>>.
- Rutten, Rosanne et al, "Smallholder bargaining power in large-scale land deals: a relational perspective" (2017) 44:4 *The Journal of Peasant Studies* 891-917.
- Safitri, Myrna A et al, "Towards Tenure Certainty and Justice" (2011).

- Sanin, Saffon & Maria Paula, *When Theft Becomes Grievance: Dispossessions as a Cause of Redistributive Land Claims in 20th Century Latin America* Columbia University, 2015) [unpublished].
- Schmitt, Carl, *Legality and Legitimacy* (Durham: Duke University Press, 2004).
- , *Political Theology: Four Chapters on the Concept of Sovereignty* (Chicago: University of Chicago Press, 2006).
- Scott, Alwyn, *The nonlinear universe: chaos, emergence, life* (Berlin: Springer, 2007).
- Shohibuddin, Mohammad, *Agrarian Philosophy: Constitutional Perspective*, by Mohammad Shohibuddin (Sajogyo Institute, STPN, 2022).
- Sinambela, Lijan Poltak et al, *Public Service Reform Theory, Policy and Implementation* (Jakarta: Bumi Aksara, 2008).
- Soemarwi, Vera, “Legitimizing State Action Based on Power (Machstaat): Review of Decision Number 95/B/2017/PT.TUN,JKT” (2019) 12:2 *Jurnal Yudisial* 141.
- Sukirno, “Reconstruction of Regulations for the Acceleration of Customary Forest Recognition” (2019) 7:1 *Progressive Law Journal*.
- Suryadi, “The land conflict between the Pantai Raja customary community vs PTPN V has never ended”, (17 April 2021), online: [Mongabay.co.id](https://www.mongabay.co.id/2021/04/17/konflik-lahan-masyarakat-adat-pantai-raja-vs-ptpn-v-tak-kunjung-usai/) <<https://www.mongabay.co.id/2021/04/17/konflik-lahan-masyarakat-adat-pantai-raja-vs-ptpn-v-tak-kunjung-usai/>>.
- Suryajaya, Martin, *History of Classical Political Thought: From Prehistory to the 4th Century AD* (Tangerang: Marjin Kiri, 2016).
- Tarrow, Sidney, “Social Movements in Contentious Politics: A Review Article” (1996) 90:4 *The American Political Science Review* 874-883.
- Tauchid, Mochamad, *Agrarian Problems: As a Problem of Livelihood and Prosperity of the Indonesian People-Book II* (Jakarta: Tjakrawala Djakarta, 1953).
- Warassih, Esmi, *Legal Institutions: A Sociological Study* (Semarang: Pustaka Magister Publishers, 2016).
- Wiradi, Gunawan, *The Ins and Outs of Agrarian Problems: Agrarian Reform and Agrarian Research* (Bogor: SAINS Press, 2009).
- Yunus, Nur Rohim, *Basic Theory of Constitutional Law Research* (Jakarta: Poskolegnas, 2017).
- Zein, Yahya Ahmad & Dewi Nurvianti, “Conceptions of Indigenous Peoples’ Rights as Human Rights” (2017) 3:2 *Veritas et Justisia*.

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