RECONSTRUCTION OF LEGAL DEVELOPMENT IN INDONESIA: LAWS ON LAND

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Session Title:

"Rethinking of Law Reform Assistance by Japan in Southeast Asia: Case Studies regarding land grabbing and disputes in Cambodia, Mongolia and Indonesia"

This session deals with Law & Development Study (LDS). It intends to contribute to understanding negative impact of law reform assistance without due care of the local context. Land grabbing and disputes in Cambodia, Mongolia and Indonesia are examined as case studies. Law reform providers, including Japan, have assisted these countries to introduce modern law and judicial system to suit market economy for development as global standard. Such market driven law and system is prone to conflict with local traditional practice. Thus, it simply does not work at practice as it is intended. Rather, as unintended consequences, it even justifies land grabbing by powerful families at sacrifice of vulnerable people's human right.

Based on her own experience since Meiji Restoration, Japan has been committed to such law reform assistance in Asia since late 1990. Its approach is difference from those given by Western countries and international organizations. Nevertheless, the recent independent evaluation of the Japan's ODA-based law reform assistance reveals several issues to be addressed. Referring to such issues, this session examines the Japanese approach in her law reform assistance in these Southeast Asian countries. Theoretical argument, based on constructivism, will be presented. Practical implication should be also expected as a result of the discussion in this session. Korea has recently joined providers of law reform assistance in Asia. This session is also intended to address harmonisation of law and cultivate environment for establishing the rule of law to share in Asia for equitable and sustainable development in this region.

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RECONSTRUCTION OF LEGAL DEVELOPMENT IN INDONESIA: LAWS ON LAND

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ABSTRACT

Law and development has been coloring the developing countries in South East Asia, especially Indonesia, since colonial time. Within the broad theme, this paper is going to trace the path of law and development in the field of land law in Indonesia from colonial time until now. Using the historical approach, this paper is going to analysis the involvement of foreign country, both as colonial power and developed countries, in Indonesia law and development struggle focusing on land law. In this regard, development of land law has been influenced by market driven pressure for investment and economic development. This has been problematic since the transplantation seldom to consider the special characteristic of Indonesia legal system and the surrounding influence such as customary law. Thus giving danger to sustainability of comprehensive development of legal system in Asia especially Indonesia.

South East Asian, especially Indonesia, trully has been suffered from long period of land conflict, affecting many peoples and nation wealth, lasting since the post independence to the present. The continuing conflict has been rooted from the non-involvement of local legal system into law and development agenda, and the lack of comprehensive legislation on land law. This has been true in case of never ending conflict of communal rights versus plantation company in Indonesia.

This condition is doubled with the wrong diagnostic of legal assistance from International donors. While international donors has been focusing on the judicial reform through so called access to justice, the law development thus neglecting the importance of legislation development, especially in country with strong tradition of civil law tradition such as Indonesia. I argue that this wrong diagnostic of international donor shall be corrected, and the legislation development shall be reconstructed. The most important point for country like Indonesia is how to develop the comprehensive legislation integrating the modern system and local system. Within the context, the paper will discuss the current development of land law reform in Indonesia.

The paper finally conclude that Indonesia still need assistance in the process of that reconstruction of law, but the changing perspective shall be considered. The assistance shall give more room to developing country to send the voice more. The paper suggest that that evolution of law and development from legal transplantation into legal cooperation will be important for law and development agenda in the future.

PART I
INTRODUCTION

Land has a strategic position in various aspects of life. This is very true in case of most Asian nation, especially Indonesia. Because of its importance, the state must make arrangements and the good management of the control and ownership of land rights in efforts to achieve legal certainty and welfare. Thus, the arrangements on the land needs shall be a major concern in the formulation of national law.

For Indonesia, the formulation of land law is affirmed in Article 33 paragraph (3) of the Indonesia 1945 Constitution which reads: "Earth, water, and natural riches contained therein controlled by the state and used for the welfare of the people". In this arrangement, land law is part of agrarian law family.

Thus, the agrarian law shall be the basic for other provisions in the law related to the agrarian law of natural resources (water, agriculture, plantation, mining, fisheries, forestry). In essence, the agrarian laws governing the rights of tenure of land, natural resources, and space. But basically, is narrowly agrarian law has a meaning as the law of the land. Therefore, the development of agrarian law is to be seen in conjunction with the development of the land law.

This narrow concept of agrarian law has been used in Indonesia since the enactment of 1960 Basic Agrarian Law (BAL). BAL in its provision still less complete in regulating many faces of natural resources. There have been many regulations implementing the BAL but two fundamental problems still remaining, namely unclear blueprint of a comprehensive land policy and direction as well as the improvement of the BAL. On the new order, Various sectoral laws in the field of natural resources formed under Article 33 of the Constitution of 1945 to promote economic development. This causes BAL degraded into sectoral laws governing the land. Massive formation of sectoral laws turned out to cause soil settings overlap with each other. This has led to legal uncertainty in the field of natural resources. That's the root of agrarian conflict in Indonesian society.

Various conflicts of land unfinished indicates that the issue of justice and the rule of law has not been achieved in Indonesia. Various land conflict causes people feel that they are not protected by the law. Therefore, the development of agrarian law in Indonesia must always be reconstructed and rectified to achieve justice for agrarian rights for all people of Indonesia, as well in order to realize agrarian reform. This goal is mandated by MPR Decree No. IX of 2001 on Agrarian Reform and Natural Resources Management (SDA).

With the mandate, reconstruction of legislation on land law was begin. This proces of reconstruction is very important but somehow was not regarded as important by donors in field of law and development. While international donors has been focusing on the judicial reform, the law development thus neglecting the importance of legislation development. I argue that this wrong diagnostic of international donor shall be corrected. Within the context, the paper will discuss the past law development of land law and the reconstruction of land law development in Indonesia focusing on legislation development.

PART II
DEVELOPMENT OF LAND LAW IN INDONESIA

Colonial Period

Developmen of land law can be traced back far from the colonial era in Indonesia. [1] The colonial period may be classified into period of VOC, British, and Dutch Government. During the period of VOC, Little was done and colonial law was not yet fully established in the archipelago. However, the activity of land registration had been started especially within the boundary of VOC power. After the abolition of VOC, the Dutch government assumed control of the VOC's affairs and assets. But almost immediately there followed an interlude induced by the Napoleonic Wars during which the VOC's Indies possessions were administered for several years by a French governor general, Marshall Herman Willem Daendels, and then by the British lieutenant governor, Thomas Stamford Raffles, from 1811.

British Government through Raffless then laid the foundation of landrente where landowners have to pay taxes because the land is basically the government's land. [2] Muntinghe, the right hand raffles had opinion on political character of raffles, "all actions intended to strengthen and expand the power of the west and push all the dangerous and detrimental influence of Muslim rulers; Western powers must be directly connected with the people. Rafless in this case want to link government body to people, stepped heads native.[3] British Government administration was only lasting 5 (five) years until 1816, which then replaced by Dutch Government.

The period of dutch government was the era of farming and plantation. These economic activity requires the land as the important factor of farming and plantation. This period marked the beginning of land law development in Indonesia by the enactment of 1870 Agrarische Wet (Agrarian Law). The 1870 Agrarian Law was, in fact, introduced with the idea that the Dutch government had to open the Netherlands East Indies for foreign investment, and that Dutch and other European capitalist class had rights to invest in and reap colonial surpluses from the Indonesia. It was enacted to give the Dutch Government The ability to lease the land to foreigners by natives.[4]

The form of rights conferred by the Government of the Netherland East Indies to the investor was the right erfpacht or the rights of tenure by long lease. Article 720 and 721 BW stated that the rights of the erfpacht is property rights providing the broadest authority to the holder's right to fully enjoy the use of land belonging to another party. [5]

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[1] Soepomo dan Djokosutono, Sedjarah Politik Hukum Adat, Penerbit Djambatan, p. 1.; see also A.D.A De Kat Angelino, Colonial Policy, Volume II The Dutch East Indies, The Hague Martinus Nijhoff, 1931, p. 8; see also Drs. G.J. Wolhoff, introduction of Indonesia Constitutional Law; see also Soetandyo Wignjosoebroto, Dari hukum colonial ke hukum nasional, Dissertation Airlangga University, 1992

[2] Raffles, *ibid*, hlm 88

[3] Soepomo dan Djokosutono, op. Cit. P. 67

[4] Soekanto, op. cit. p. 133

[5] Supriadi, Hukum Agraria, Sinar Grafika, p. 48

Based on the principles of Agrarisch Wet, Agrarische Besluit 1870 Statute No. 118 had been enacted. What was important in this Agrarische Besluit was the creation of Domein Verklaring stating that all land without the evidence of civil law ownership of property rights (based on Western colonial law) shall belong to the state (in private law term). Together with the provision of Domein Verklaring, article 1 of Agrarische Besluit also provided the guarantee of indonesia people right. The Domein principle, was also contained in the forestry laws of 1874, 1875 and 1897. Domein verklaring declared that free lands (woeste gronden) and land which was not held in ownership or under ownership-like rights, were deemed to be state property. Thus, Land under communal property or other forms that did not recognize individual owners were claimed under this law as state property and thereby making legally available any lands in which the colonial government wished to invest. [6]

Based on this law, various concessionary rights for plantation/estates were given to foreign corporations for operation on lands claimed as state-owned property. Domein verklaring in this case function as legal basis for colonial government to regulate the land with western property rights under civil code.[7] For more than seventy-years (1870 –1942) the "state domain" was the hegemonic legal political concept that served the colonial government in facilitating European private corporations with seventy-five year concessionary rights (erpacht recht), as a legal basis for their operation in Netherlands Indies.[8]

POST INDEPENDENCE AND THE CREATION OF BAL 1960

When Indonesia became independent, Indonesian founding father and lawyers with nationalist spirit trying to build Indonesia's national law in a way move away from the colonial law, which was not easy. The difficulty arises not only because of the diversity of the legal system, but because of the legal system had been already created as a colonial legacy. The other problem was that the creation of national law could not be achieved in a quick and short way.

Thus, to fill out the vacuum of law in newly Independent Nation, 1945 Constitution had the safeguard in Article II of the Transitory Provisions, which stipulated that all laws and legislation existing under the Dutch colonial administration automatically became the laws and legislation of the Republic of Indonesia, until repealed, revoked or amended or found to be contradictory to the Constitution. As consequence, Colonial law still applies due to transitional provisions in our constitution. Article II of the Transitional Provisions of the 1945 Constitution provides a legal guarantee for transitional colonial law into national law. Therefore, the regulations in Indonesia after independence remained the same as the

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[6] Soekanto, op. cit. p. 134

[7] Supriadi, op. cit. p. 49

[8] Van Vollenhoven's wrote the book "The Indonesian People and Its Land" directed at the Netherland East Indies government's agrarian policy. Van Vollenhoven argues that adat law especially what he calls "beschicking recht" (right to control and allocate customary lands among community members) held by customary community must be taken into account by the government if it truly intends to design land related law based on Indonesia's legal system. Van Vollenhoven repeatedly stated his opinion that the adat community rights certification is very important for the sake of legal certainty, and this has become a political purpose of Agrarische Law 1870. Moreover, there is 1870 KB that allows the conversion of the land rights of the Bumiputera into land rights according to Western law. Most of the Bumiputera deny this. This phase is the phase at an important crossroads that ultimately lead to the effects of prolonged legal uncertainty for bumiputera community. See Van Vollenhoven, Indonesia and Its land, p. 46

legislation enacted in colonial times, such as Civil Code (Burgerlijk Wetboek), the Commercial Code (Wetboek van Koophandel) and the other colonial laws, until amended by new laws in accordance with constitution.

Colonial law was chosen as the law of the transition on the one hand serves to prevent a legal vacuum during the process of unification of law, but on the other hand prevent the struggle for influence by various interest and political power such as islam and communist. Advocate of Islamic law and customary law has long been known to explore the possibility of raising the legal system of their choice as the basis of national legal systems.[9]

In addition, the process of acculturation Dutch legal tradition in the early decades of Indonesian independence had been on a massive scale, especially in the substantive aspects of criminal and civil law, including commercial law, so that the actual Netherland law has been mixed with Indonesian law. [10] At the time of the Dutch East Indies rule, colonial law which was secular and neutral can mediate and prevent any intention to impose Islamic law while it is able to co-opt the customary law as part of the colonial law. [11]

Daniel S Lev[12] argue that the choice to use Transition Article of 1945 Constitution was not merely a matter of convenience nor was it simply because no one had any ideas but because the colonial law provided an available and apropriate framework and because colonial law was a secular neutrality between religious and social groups.

After the relatively calm condition after the long struggle defending the independence, National Legal Development Agency (LPHN) was created in 1958 as the first state instution focusing on legal development in Indonesia. Its first task was to implement 1960 MPRS (Temporary People General Assembly) guidelines that national law should be coordinated with state policy and based on an adat law which would not impede the development of a just and prosperous society vide article 33 0f 1945 Constitution. LPHN in 1960 thus established that the development of national law must be built by accumulating specific areas of law within the legal codification. While the unwritten law is recognized to the extent not inhibit the formation of Indonesian socialism and the judge has the function of guiding towards the uniformity of the law through jurisprudence.

Agrarian reform in the period of post independence had been move forward with the formation of agrarian ministry in 1955. [13] This Ministry initiated the establishment of legal unification in the field of agrarian. Responding to the intention of Agrarian Ministry, Agrarian Law committee had been formed to conduct preparation on the draft of the law, resulted in several recommendations:

1. Abolition of domein verklaring and recognition of customary rights, which must be subordinated to the public interest;
2. Domain verklaring should have been replaced with State Control Doctrine;
3. Elimination of the principle of dualism in land law;
4. Variety of land rights shall be formed including ownership rights as the strongest and social functioning, right effort, the right building and the right to use;
5. Only citizens who are entitled to have the ownership rights;
6. Land registration and land use planning should be held.

The 1960 BAL were replacing the state domain principle (Domein Verklaring), set forth from Agrarisch Besluit 1870, with a new called State's rights to control (Hak Menguasai dari Negara). The 1960 BAL was the first national agrarian law that originally intended to operationalize the philosophical basis of the Indonesian state (Pancasila) and the

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[9] Soetandyo, op. cit p. 304
[10] Tanno Lukito, Legal Tradition in Indonesia
[11] Daniel S Lev, Judicial Unification in Indonesia,
[12] Daniel S Lev, Judicial Unifification in Indonesia
[13] Kepres Nomor 55/1955 tanggal 29 maret 1955

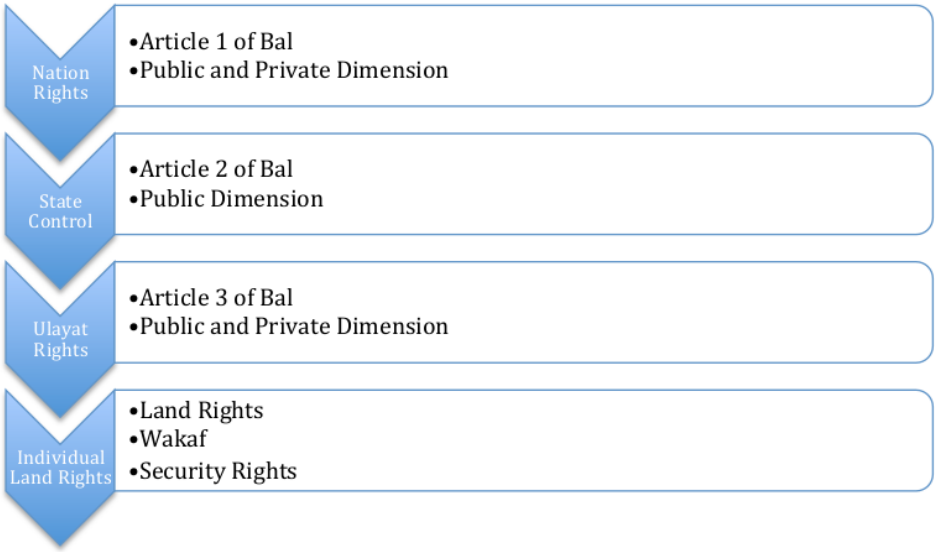
provision of article 33 section (3) of the 1945 Indonesian Constitution.[14] State's right to control over all resources provides authority to the government to manage all rights related to land.

BAL drafters, influenced by euphoria of nationalism, They didn't like the structure of colonial land policy and its detrimental effects on Indonesian rural societies. They understood the significance of dismantling the Dutch colonial Agrarian Law of 1870 (Agrarische Wet) which had been a landmark of the liberal era in which colonial rulers facilitated European corporate. Basic Agrarian Law had purpose on land reform in order to protect farmers from capitalism, however the intended land reform was requiring the readiness of government. This was became the obstacles of BAL implementation for 5 years since the enactment.[15] Implementation of land reform was also colored by political battle in the early days of the adoption of BAL.[16]

Even though the intention of BAL creation in the beginning was the abolishment of the colonial legal system, the drafter in the end could not use or find the legal argument for the Indonesia's land title based on adat law. Therefore, in the end, BAL drafter could not accommodate the communal rights based on adat law. While Indonesia had an enough time to prepare the draft, BAL used the land rights based on western law.

1960 Bal recognize different level of agrarian rights. Philosophically, the hyrarchie of rights maybe ranked as follow:

Figure 2.
Hyrarchie of Land Rights under BAL



BAL resulted in the unification of the law of agrarian and land reform. On the unification of the law, BAL had convert old right into new rights consist, among others: the

[14] The land, the waters and the natural riches contained therein shall be controlled by the State and exploited to the greatest benefit of the people."
[15] Achmad Sodiki, Politik Hukum Agraria, p. 156
[16] Lihat pengakuan algojo G30SPKI

western rights such as eigendom, Agrarische eigendom, and the sovereign grant into ownership rights. Individual adat rights such as yasan, gogolan, sanggan, and pekulen was also converted into ownership rights. While the others western rights such as *vruchtgebruik* and *gebruik* and adat rights such as bengkok, lungguh, and angaduh into right of use. Erfpacht rights (right to rent for 75 years) and concession rights had been converted into the right to cultivation. [17]

Regarding to adat rights, Bal philosofically had been clear to be based on the adat law. BAL acknowledge adat rights and put it in the higher rank of rights above the individual rights. The problem remained that this system did not accomodated the communal rights under the positive rights. The drafter of the BAL admitted that there was possibility that adat rights may be disappear during the modernization and when that condition occur, the remnants of adat rights will be accomodated in the state control.

Adat law principle affected the national law in two important respects, namely: Social Function and the Principle of Horizontal Separation Principle. Western rights under BW Recognizes eigendom or ownership rights as absolute rights upon land, while BAL respect the social function of the land. The other difference lies in the using of horizontal separation principle in which the property rights above and under the land was not in one package. [18]

The array of different types of rights under BAL has been established such as – hak milik (right of ownership),[19] hak bangunan (right of building),[20] hak guna usaha (right of exploitation),[21] hak pakai (right of use).[22]

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[17] Arya Wirayudha, dari klaim sepihak hingga land reform, STPN Press. 2011. P. 96.

[18] Ibid. p. 193

[19] Hak Milik is a right of (freehold) ownership and is the fullest right a person can possess over land in Indonesia. This specific right has no time limit and extends to all fixtures on the land. It is, however, possible to have horizontal separation between the owner of the Hak Milik and the owner of a building on the land. Only Indonesian citizens and certain Indonesian legal entities (badan hukum) may hold a Hak Milik. A Hak Milik is freely transferable among Indonesian citizens and certain legal persons. The holder of such a right can convey the land to other persons. If the holders are foreigners including PMA companies then they must convert the Hak Milik other rights, such as a Right to Build, Right of Use, or Right of Cultivation.

[20] A HGB is a leasehold interest for up to 30 years authorizing the holder to build and possess a building on land. A HGB can be extended for an additional 20 years with the possibilities for renewal. The title is granted by and registered at the Land Office. This right is intended for utilization of land as the location for buildings or facilities as opposed to the use of land for agricultural purposes as mentioned below. A HGB may be held only by Indonesian citizens and Indonesian corporations incorporated in Indonesia, which have their legal domiciles in Indonesia, including PMA Companies. Investors constructing industrial projects on industrial land in Indonesia generally seek a HGB title over the land. A HGB may be transferred to third parties during the term of its existence. A HGB is conveyed by executing a Sale and Purchase Agreement (Akta Jual Beli) in the form of a notarial deed, after which it must be registered with the Land Office.

[21] A HGU is generally issued on the State owned land specifically granted for estate or plantation activities. It is limited in duration, usually 25 and at most 35 years, with the possibilities for renewal. The HGU title is granted and registered with the Land Office. A HGU may be held by Indonesian individuals or legal entities, including PMA companies. The same rules as for the transferability of HGB apply. HGU may be transferred to third parties during the term of its existence by executing a Sale and Purchase Agreement (Akta Jual Beli) in the form of a notarial deed, after which it must be registered with the Land Office which completes the transfer registration.

[22] A Hak Pakai is the right to use and/or to collect produces from land administered by the State or owned by other person. Hak Pakai is limited in duration by the contract or decree, as the case may be, granting the right, usually for a 25-year period with the possibility for renewal, and is ordinarily subject to specific restrictions on the intended use of the land. The extent of the holder's right and obligations is stipulated (i) for State land, in the decision granting this right by an authorized government official and (ii) for private land, in the agreement with the owner of the land. Indonesian citizens, Indonesian corporations, foreign residents and foreign corporations can, under the Basic Agrarian Law, hold a Hak Pakai. The transfer of a Hak Pakai over State land requires the permission of the relevant authorized officer. The transfer of a Hak Pakai over land owned by private citizens is allowed if it is so agreed in the contract granting the right.

PART III
DEVELOPMENTAL STATE AND THE SEED OF LAND GRABBING

The Root Of Law Sectoralization

With the advent of new order authoritarian regime since 1966, economic development policy had been pushed foeward by opening the entry of foreign capital. While BAL 1960 has been clear that its enactment is intended for agrarian law unification, the sectoralization of law cannot be avoided. In 1965-1970, other laws relating to land were enacted without considering the BAL, consequently some laws and regulations dealing with land are contradictory. Legal conflict and confusion produces problems and impacts on disparity of land holding, land ownership, land use and utilization, slow implementation of agrarian reform, land disputes and conflicts, abandoned land, etc.

In regards with Forestry Law, along with plantation land, lands within the forest category were also excluded from the land reform program of 1960-1965. The forestland in Java had been regulated by a distinct legal arrangement since colonial times. The management of Java forest by distinct institutional arrangements was mandated by various forestry codes from the middle of the nineteenth century through the early twentieth century. A landmark was initially made five years before the 1870 Agrarian Law was enacted, i.e. when the colonial government released the forestry law of 1865. The 1865 forestry law deepened what the colonial government had been practicing for more than a half-century since Governor General Daendels organized exploitation of Java's teak forest in 1808.[23] This condition prevailed until independence time brought demarcation line among the regulation of each resources related sector.

Therefore, the history has formed the tradition of law and policy for land law and forestry law within Indonesia law development. The forestry laws and the BAL were two sets of laws that had completely different trajectories of authority and territorial reference. The separation of forestry from agrarian spheres was widened after New Order signed the Basic Forestry Law (BFL) of 1967 (Law No. 5/1967), which did not refer to the 1960 BAL, as part of a package to facilitate foreign and domestic capital investment. The chaotic of land law had been widened The 1967 Forestry Law revived the state domain principle declaring that the state is the owner of forest, and the Minister of Forestry has an authority to determine which areas are included within the so-called "state forest zone" (article 1 of the 1967 nBFL). Based on this declaration, the Minister had the authority to give logging concessions to private, foreign, and domestic companies (article 14 of the 1967 BFL, and Government Regulation No. 21/1970).

Unlike the BAL, the BFL did not include provisions for the recognition of traditional rights. Instead, it created a system in which all forest areas would be under the management of the government. The forestry law revives the "state domain" principle declaring that any land within the so-called "forest territory (kawasan hutan)" is state-owned forest, and underscores the legitimate authority of the Ministry of Forestry to determine and define "forest territory." The authority vested in the Ministry of Forestry through the Forestry Law of 1967 led to both land and forest enclosures that planted the seeds of deep agrarian resistance.

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[23] Peluso

The government, by the law, promptly entered into contracts with private companies whereby land concessions were granted for logging, agricultural, mining and other uses. As the principal architect of the 1967 investment regime state:[24]

> "When we started out attracting foreign investment in 1967, everything and everyone was welcome. We did not dare to refuse; we did not even dare to ask for bonafidity of credentials. We needed a list of names and dollar figures of intended investments, to give credence to our drive. The first mining company virtually wrote its own ticket. Since we had no conception about mining contract we accepted the draft written by company, as the basis for negotiation and only common sense and the desire to bag the first contract were our guidelines"

Throughout the New Order, 1960 BAL Principle State's right to control had been used to achieve the developmental goals. Using the BAL principle, authoritarian government took control of the country's resources and directs them towards his goal of "development." The authoritarian regyme using resources and development benefits in a manner that would bring stability to a country as an appeasement for the people. I would argue that domein verklaring or state domain from colonial rule had been survived in this period.

State Control Doctrine, taken from the provisions of Article 2 Paragraph (1) and (2) BAL, is essentially a reflection of the implementation of the values, norms and configuration of state law governing the acquisition and utilization of environment and natural resources, or an expression of ideology which gives the authority and legitimacy of the state to control and utilize the environment and natural resources including land tenure within its sovereign territory.

Relating with the State Control Doctrine, The New Order Government under former President Suharto considered land as an economic asset that is indispensable to efforts to integrate the Indonesian economy into a capitalist economic system. A concrete manifestation of this policy has been the deregulation of the countrys land market in favor of private, particularly foreign, investors. Thus, Laws, ministerial decrees, and local regulations related to land affairs and exploitation of other natural resources have been formulated to create a more conducive environment for free investment and market creation activities. This legal system was used to facilitate the entry of capital. This legal instrument that systematically express the government's power and displacing then ignore the existence of other systems that live in the community such as indigenous people have the right to land, which is called the land titles of indigenous peoples.

Beside Forestry Law, opportunity for foreign investors to develop the company in Indonesia given through various regulations that allow managing agrarian resources, namely Law No. 1 Year 1967 concerning Foreign Investment (FDI Act), Law No. 11 Year 1967 on

[24] Rudy, Investment Laws and Policies in Indonesia Decentralization. Thesis, Kobe University, P. 54; Indonesia is endowed with an extensive tropical forest resource covering 143 million ha. It is the prevailing land cover on the large islands of Sumatra, Kalimantan, Sulawesi and Irian Jaya as well as the smaller, but less populated, islands. For centuries, however, commercial forest management concentrated on the island of Java, Indonesia's fifth biggest and most densely populated island (900 persons/km2). The vast forests of the outer islands had remained virtually untouched by the forestry sector due to lack of technical expertise and infrastructure. To utilize the forest resources of the outer islands for national economic development, the government created incentive systems for local and foreign forest harvesting operators. The Forestry Act of 1967, more commonly known as Undang-Undang (Law) No.5/1967, was particularly aimed at stimulating investment in forestry. Within five years of the promulgation of the act, annual log production from the outer islands increased sharply

Basic Provisions of Mining. Coupled with various other sectoral legislation on oil-gas and water, and it turns out all of these laws do not make BAL as its base, these regulations also overlapping and inconsistent with one another. In such circumstances, BAL has been degraded into sectoral law.[25] In this condition, BAL was forgotten as the basic regulation on agrarian law.

Under the Name of Economic Development

During this period, the law was not regarded as the norm as living in the community, but as a means to achieve development goals. In this period, the law as a means of development into become the mainstream school of law development in Indonesia In this period, the school of law development appeared very famous in that era. During 1970-1990, the idea of law as a tool social engineering was used to serve development programs all over the country. [26] The school of law development was the result of the changing paradigm from supremacy of politic to supremacy of economy. The economic downturn in the old order became the basis for the justification of the school of law development. The choice of economic supremacy requires the specific law to accelerate the development of economic growth.[27]

During the New Order, the Department of Agrarian Affairs was placed under the Department of Home Affairs which was led by an army general. Agrarian officials tried to maintain the basic functions of a land office including land use arrangements, land reform, land acquisition, land registration, and land law and regulation development. For twelve years (1969-1982) the General Directorate of Agrarian Affairs released 682 units of "rights of exploitation"91 for more than 938 thousand hectares; 4.736 units of "rights of building"92 for more than 24 thousands hectares; 3,119 units of "rights of use"93 for more than 80 thousands hectares; and 161 units of "rights of management"94 for more than 522 thousands hectares (see Table 3.1). Each right has its own scope, duration and subject who hold the rights (for detailed descriptions of these use rights, see: Gautama and Harsono 1972:64- 77; and Parlindungan 1990:126-160).95

After Suharto was re-elected by the People's Representative Assembly (MPR) for the fifth term in 1988 he made a decision to review status, tasks and functions of the General Directorate of Agrarian Affairs, the Department of Interior, and to upgrade it into an agency that handled the land sector nationally. The official reason for the decision to have such an agency, called Badan Pertanahan Nasional (BPN) or National Land Agency (NLA), was (a) "that in implementing national development the need for, control over, and use of land were felt to increase, including for development interest"96 and (b) "that with the increasing need of, control over, and use of land especially for development will also increase land-related issues" 97 (the Consideration section of Presidential Decision No. 26/1988 on National Land Agency).

The most important policy NLA produced in the context of deepening land-fordevelopment policy regime was location permit (ijin lokasi). During the five-year period, from 1993 to

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[25] Elza Syarief, *Op.Cit.*, hlm.123
[26] Lihat GBHN 1970-1979
[27] Lihat Achmad Sodiki, Politik Hukum Agraria, p. 103.

1998, the total permits released by the NLA numbered 13,036 permits for 9,673,456.15 hectares of land for the purposes of industrial parks, housing, agriculture, services, and other types of project;

PART IV
ECONOMIC CRISIS, DECENTRALIZATION, AND THE RISE OF LAND CONFLICT

A. ECONOMIC CRISIS AND THE EMERGENT OF CONFLICT

Indonesia has undergone dynamic changes in the late 20th century following the 1997 economic crisis and the fall of new order government in 1998. One of the so called big bang changes was involving the transition from sentralization to decentralization.

Various rural movement groups in Indonesia seized the political opportunity of the eighteen-month political transition period (May 1998 to November 1999) that followed to launch land occupations over land previously under the control of State Forestry Corporation (SFC) and private-and state-owned plantations.

The hegemony of state in forest management is truly providing benefits and facilities for the state to manage the forest. State divides forests by function, imposes limits and calculate its economic benefit. At the same time, the state is also providing access for parties to take economic advantage from the forest. However, Indonesia's forests are very wide and varied with functions that can not only be calculated scientifically, but also has the spiritual meaning for many people who live in it. The state also does not take into account the existence of forest management practices and existing land tenure in a forest area. This is true in case of Indonesia, especially in the period of developmental state.

This has made the problem of agrarian law as a classic story in Indonesia. The story spreaded to many arches as the result of changing regyme of law development through the ages.
During new order, there are at least fives classification of land conflict such as:

1. Land taking for development purpose;
2. Land taking for plantation;
3. Land taking for forest exploitation;
4. Land taking for national parks;
5. Land taking between farmer and resort investor;

Within those classification, land conflict may be further classified based on following groups:

Table 1.
Land Conflict Groups

No	Cause	Percentage
1	Ownership status	22,6
2	Land Tenure	31,5
3	Land Acquisition	34,7
4	Status of Use	11,3

It is generally known that those conflicts were begun from small conflict into complicated conflict during the time. The conflict become bigger because under the authoritarian regime, the conflict had been pressed so that it was not emerged into public. This was coupled with the weakness of judiciary in defending people rights.

Agrarian Performance Consortium (KPA) has recorded thousands of cases of agrarian conflicts that have occurred in Indonesia in the form of structural agrarian conflicts, namely conflicts between communities dealing with capital strength, and/or instrument state. According to data of the KPA, until today there are more than 1,700 cases of agrarian conflicts have not been resolved either at the level of the High Court to the Supreme Court. Those agrarian conflict covers area reaching 1.281.660.09 hectares, and involves 139.874 households. Based on the sector, the conflict occurred in the estate as much as 108 conflicts (48.78 per cent), infrastructure conflicts 105 (28.46 percent), mining conflict 38 (10.3 percent), kejutanan 31 conflicts (8.4 per cent), coastal 9 conflict (2.44 percent and the remaining 6 conflict (1.63 percent). Ten provinces that experienced agrarian conflict are: North Sumatra (10.48 percent), East Java (10.57 percent), West Java (8.94 per cent), Riau (8.67 percent), Central Sulawesi (3.52 percent), and Lampung (2.98 percent). The fall of the agrarian conflict deaths this year has also increased dramatically, as much as 525 percent. [28]

In other side, BPN in 2007 received 2615 cases; in 2009, the number jumped 300 percent to more than 7000 cases throughout Indonesia. National Land Agency recorded a total of 7491 cases covering a land area of 7491 hectares, but only 1778 cases can be solved (BPN Strategic Plan 2012-2014).[29]

On the other hand, the National Commission on Human Rights (Komnas HAM) said more than 90% (Ninety) percent of cases of human rights violations are closely related to agrarian conflict. Of the conflict, there are at least 731 342 smallholder families who lost their land throughout 2004-2012, which reached more than 2,399,314.49 hectares.[30] Dari

Data obtained from other conflict monitoring results DPD to land or agrarian conflicts are most severe in the period from January to December 2012 which reached 198 cases. If the calculated average of at least 1 times agrarian conflicts occur within 2 days and 1 person was detained farmers in 2 days. [31] While Sawit Watch noted land conflicts in oil palm plantations throughout Indonesia reached 663. The agrarian conflicts involving private companies and state-owned plantations, mining companies, National Parks, and Perhutani. HuMa[32] also observed that almost every conflict, there is the involvement of the security

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[28] KPA data.

[29] Bernhard Limbong, Politik Pertanahan, Jakarta: Pustaka Margaretha, 2014, h 74.

[30] Tak perlu diragukan lagi, bahwa kasus-kasus hilangnya hak rakyat atas tanah dan sumber daya alam lain yang menyertainya merupakan salah satu masalah Hak Asasi Manusia yang utama di Indonesia. Tak heran, manakala dalam Laporan Tahunan Komnas HAM semenjak berdirinya hingga saat ini, pengaduan kasus–kasus ini senantiasa menempati urutan teratas. Atas dasar itu pula, da lokakarya Komnas, mulai dipelajari bagaimana cara menyediakan keadilan bagi mereka yang kehilangan hak atas tanah dan sumber daya alam lain yang menyertainya akibat praktek-praktek pelanggaran HAM (Fauzi, 2001; Soliman, 2001; Sumardjono, 2001; Moniaga, 2001), lihat dalam Noer Fauzi, *Quo Vadis Pembaruan Huku Agararia Perspektif Transitional Justice Untuk Menyelesaikan Konflik*, Jakarta : Huma, 2002, hlm. 7

[31] FX Sumarja, *Op.Cit.*, hlm. 1

[32] HuMa adalah organisasi non pemerintah (*non governmental organization*) yang bersifat nirlaba yang memusatkan perhatian kerjanya pada isu pembaharuan hukum (*law reform*) pada bidang sumberdaya alam (SDA). Konsep pembaharuan hukum SDA yang digagas oleh HuMa menekankan pentingnya pengakuan hak-hak masyarakat adat dan lokal atas SDA, keragaman sistem sosial/budaya dan hukum dalam pengusaan dan pengelolaan SDA, dan memelihara kelestarian ekologis.

forces such as the police and military. [33] Throughout 2013, the Agrarian Reform Consortium (KPA) noted that there are 369 While the data from the Justice for the Poor Project on Conflict and Dispute Resolution in Indonesia, The World Bank, 2011, in the case of an average new land 58 cases were unreported, with the highest completion rates in Sulawesi 76 cases, NTB-NTT 74 cases were reported on and handled (Justice for the Poor Project Report 2011 hlm.17).

B. ASSESSING THE ROOT OF CONFLICT

Democratization in Indonesia gives freedom for long oppressed people relating with land conflict. The economic crisis before the democratization in reformation era shattered many companies. Forestry companies also suffered the same conditions. The crisis results made many lands with concession rights being ignored. In another side, the democracy wave encouraged people, who lost their lands for some reasons or had economic difficulty reasons in New Order era, to work in lands that they considered as being ignored, including lands in forest areas. These phenomena widely occur in Indonesia. The land conflict in this regard become huge cases such as Register 45 Mesuji Lampung, [34] Sungai Sodong cases also in Mesuji, Sritanjung case, Mining case in East Indonesia show us how complex the root of agrarian conflict in Indonesia.

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[33] http://huma.or.id/pembaruan-hukum-dan-resolusi-konflik/mesuji-cermin-konflik-agraria-yang-kronis-1.html (diakses pada Kamis, 28 Agustus 2014, 15.18 WIB)

[34] The effects of economic crisis were also experienced by PT. SIL t[30]the government revoked permission of its right of industrial plant forestry business (HPHTI) in 2002 by the Decree of Minister of Forestry number 9983/Kpts-II/2002. The revocation was conducted for two reasons. First, PT. SIL was considered to be no longer eligible in conducting activities in development of industrial plant forest either technically or financially (PT. SIL did not fulfill its financial liabilities as well as other liabilities according to applied regulations). Second, PT. SIL had never submitted annual working plan and five years working plan since 1999. However, the company submitted a law suit upon this Decree to the court and prevailed. Minister of Forestry then issued Decree of Minster of Forestry number 322/Menhut-II/Kpts-II/2004 about Revocation of Decree of Ministry of Forestry number 9983/Kpts-II/2002 and reenactment of Decree number 93/Kpts-II/1997 about giving the right of industrial plant forestry business (HPHTI) upon 43,100 hectares of forest areas to PT. SIL. Strangely, in that Decree number 322, the width of the right of industrial plant forestry business (HPHTI) for PT. SIL turned into 42,762 hectares.23 The obscurity of Register 45 area width and many problems of provision of forest area in the past became the roots of agrarian conflicts in the future. Besides Moro-Moro people, another group of traditional people also claimed that Register 45 forest area expansion was taking their traditional lands. The traditional people that considered their traditional lands were taken during Register 45 forest area expansion attempted some efforts from law suit to the court to land occupation. The problem of Register 45 forest expansion from 33,500 hectares into 43,100 or 42,762 hectares. This problem was considered as taking lands possessed traditionally by people, so that traditional people were dissatisfied and it ended with conflicts between traditional people and the company. This situation raised claims amongst related parties about status of forest area expansion. Since 2006, traditional people have been repeatedly attempting to reoccupy Register 45. But, many times they were also evicted by teams formed by the company and government. Ironically, the expulsion and eviction did not resolve the conflicts. Many times of evictions did not make the people wary to reenter this forest area. The author recorded more than 15,000 families have been evicted in the process of agrarian conflicts in Register 45 area since 2006. Since 2006, government had been attempting to banish Moro-Moro people living in Register 45 forest area. Repressive actions, over and over again, occurred by involving security apparatus from varying task-force units. Autonomous security units were even involved in banishing these people. So far, those efforts were not successful and conflicts continued to occur. Government was persistent the policy that people living in that area were illegal residents and forest encroachers. Meanwhile, the people demanded solutions with justice and to get protection of constitutional rights.

PART V
LEGAL DEVELOPMENT RECONSTRUCTION: RECENT DEVELOPMENT

A. CONSTITUTIONAL ARRANGEMENT

Constitutionally, system of Indonesian economic development is based on principles of balance, certainty and fairness and then, those are managed and regulated by the state. With such understanding that this nation has a common goal of holding the right of economic sovereignty in nation and state life. Accordingly, the right of economic sovereignty can be seen explicitly in Article 33, paragraphs 1, 2, and 3 of the 1945 Constitution that can be used as an orientation of the Indonesian economic system wholly and thoroughly. The constitutional mandate can be understood that it is not only intended as a juridical base of Indonesian economic system, but also as a foundation of implementation of democracy of the Indonesian economic development.

When pay attention to the basic concept of Article 33, paragraphs 1, 2 and 3 of the 1945 Constitution in a progressive legal framework, actually it is still in a sociological optic that the law is intended to serve public. Just as mentioned in the constitutional mandate "that the earth, water and natural resources as well as branches of productions that are essential for the life of people are controlled by the state and used for the greatest prosperity of the people. Basically, the idea is a process of giving shape to a number of needs for economic sovereign right of Indonesia nation. Thus, the more important is to make a building of regulations with orientation of economic development policy with rational structure and based on a picture of social structure of people. In facing a problem, such paradigm is, of course, paying attention to the problem's source

Despite the clarity of form and purpose of the economic development system of Indonesia, a case would need to be confirmed here. With the enactment of Article 33, paragraphs 1, 2 and 3 of the 1945 Constitution as the basic concept of Indonesian economic development purposes, it is not necessarily a rejection of the absence of foreign investors to conduct economic activities through a company other than the State Owned Enterprises (SOEs). But the problem is: the presence of foreign companies doing exploration and exploitation of natural resources of the country is, in fact, causing Article 33 UUD 1945 to be no longer have legitimacy of democratic economic sovereignty. Because realization of the ideals of democratization of a people-based economic development as mandated by the constitution will always be contrary with reality that foreign companies are, so far, taking our natural resources without giving contribution equally to the nation's rights. Of course, the nation should not always ignore about a portrait occurred in Papua with its abundant natural resources, and Freeport as a USA-based foreign companies exploited the natural resources and contributed only a small percentage of the mining profits to be enjoyed by people of Papua . Evidently, phenomenon of malnutrition poses a threat to people of Papua, and the issue is an indicator of failure of economic development system failure at present.

As had been discussed in previous chapter that the policy of new order had made the destruction of adat structure leading to the lost of adat community and adat rights. By this condition, the new order have left conflict legacy over land involving the traditional rights. The Asian Crisis brough back the need of adat identity given rise to local rights including adat rights. The advent of traditional structure in the end of 20th century, supported by the constitutional protection gave chance to adat community to voice their rights.

Constitutional amendment, followed by the enactment of Law No. 22/1999 on Local Government, gave implication on the rise of the local rights. More organized nationwide movement took off in 1999 with the founding of the National Alliance of Indigenous Peoples (Aliansi Masyarakat Adat Nusantara, AMAN). AMAN quickly moved the agenda beyond community forest management to campaign for an end to state control over customary land. It defined indigenous peoples (*masyarakat adat*) as "communities living on the basis of ancestral origins in an *adat* region, that have sovereignty over land and natural resource wealth; a sociocultural life regulated by *adat* law; and an *adat* council that manages the daily life of its people."

The new Basic Forest Law, passed in 1999, appears to recognize traditional communities that live within State forest lands, and acknowledges that adat forests are the home of traditional communities. At the same time, however, it decrees that all lands that are not covered by proprietary rights are considered as State forests. Thus, it denies ownership to communities even as it allows them to use, access, and manage the land.

The Minister of Agrarian/Head of the National Land Agency Regulation No. 5/1999 on The Guidelines of Adat Ulayat settlement is one breakthrough from Government to implement communal rights as stipulated in Article 3 of the BAL. However, in fact, these provisions are not optimal when dealing with the real conflict involving ulayat rights. berobjekkan conflict customary rights. Sectoral laws also regulate customary rights. Sectoralization of laws made the problem more complicated.

A study on land law and regulation specifically on land registration found 585 legal documents, comprising 12 laws, 48 government regulations, 22 presidential decrees, 4 presidential instructions, 243 ministerial/head of NLA regulations, 209 circular letters of minister/head of NLA, and 44 instructions of minister/head of NLA. These include many overlapping or contradictory regulations, and even unimplemented regulations.

In another form, there are efforts to accommodate and to respect the existence of adat peoples through the efforts initiated by AMAN. One of the effort is to encourage the assurance of the existence of adat rights through a Memorandum of Understanding between National Land Agency and AMAN in 2011 on The Registration of Adat Land. The MoU needs to be appreciated, but in the perspective of the law will lead to legal uncertainty especially with aspects of legal formality that should be taken into consideration. Memorandum of Understanding is not legal product, and the current legal regime tends not give space to form agreements-agreements in the form of MoU to collectively binding.

AMAN, in 2013, representing adat people put petition on Constitutional Court to remove the legal position of adat forest from state forest. Indonesian Constitutional Court in May 2013 granted the petition to remove customary forests from state control, although implementation

remains a long way off.[35] In case of Indonesia, legislation on adat communities is needed for court to implement the judgment.

B. Legislation Development

The long journey proved that legal pluralism can not be replaced with the unification of national laws, particularly the law of the land. Unification efforts conducted so far has been denying the adat law, but I believe that the unification of law is a necessity. The world has been highly developed and highly developed law by passing national borders. Inevitably adat law should be integrated with national law.

Regarding the agrarian law reforms, In 2001, General People Assembly (MPR) passed a decree on Agrarian Reform and Natural Resources Management (MPR Decree No. IX/2001). The Decree identifies the problems faced by rural communities (i.e., inequality of land ownership; land and natural resource conflicts; and destruction of the natural environment) and puts the blame on government policies in the last 30 years. The MPR Decree instructed following legal reforms such as:

1. Review of relevant laws related to Land and Natural Resource Management;
2. Provision of resources from the national budget for agrarian reform; and (3)
3. The resolution of agrarian conflicts.
4. Strengthening the land institution

In May 2003 the government issued Presidential Decree No. 34, which, among other things, instructs the BPN to prepare a draft law that would update and possibly replace the existing Basic Agrarian Law. The purpose of land policy reform is to improve land administration for social welfare, sustainability and social harmony. This reform includes reconstruction of land law and regulation and improvement of land policy for implementation of agrarian reform.

Legal reconstruction aims at:

a. Improving land's people rights;
b. Solving existing land problems;
c. Handling and settling of land lawsuits, land disputes and land conflicts systematically and;
d. Implementing all land laws and regulations consistently.

Agrarian reform in general is necessary to:

a. Foster equalities in land holding, land ownership, land use and utilization;
b. Reduce poverty;
c. Create employment;
d. Improve people access to economic political resources, especially land;
e. Minimize land disputes and conflicts;
f. Recover and protect environment; and
g. Enhance security of household food and energy.

Efforts to improve land legal policy include:

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[35] See the annex of constitutional court judgment no. 45.

a. Preparation of academic manuscript draft on Land Law (RUU Pertanahan),
b. Preparation of academic manuscript draft on Agrarian Reform Law (RUU Reforma Agraria),
c. Preparation of Draft on Agrarian Special Court Law

The author will attempt to classify these differences into four categories reflecting different stances on the primary rules, as well as the corresponding role of the judiciary as a secondary rule in the Hartian sense (see Chart-1), namely: (i) reforming the formal law so as to conform to social norms; (ii) overriding social norms by rigorous enforcement of the formal law; (iii) separating the areas where either the formal law or social norms are independently applied; and (iv) integrating social norms into the formal legal system.

Chart-1: Choice of Response to Normative Gap and Corresponding Judicial Role

Primary Rules on Norms	(i) formal law reform closer to social norms	(ii) overriding of social norms by formal law	(iii) separation of formal law regime and social norms	(iv) integration of social norms into formal law regime
Secondary Rules on Judicial Role	instrumental role to enforce formal law (thin)	instrumental role to enforce formal law (thin)	formal law enforced by judiciary (thin); social norms enforced by ADR	judicial lawmaking for normative interaction (thick)

The choice of (i) is an extreme option that might be favored by Asian value fundamentalists, but could well be an unrealistic choice in the days of globalization. On the other hand, it seems natural that such leading international agencies as the World Bank Institute and/or the Private Sector Development Group at the World Bank tend to choose option of (ii) to override social norms, since their intention lies in the 'transplantation' of uniform global standards (Santos, supra at p.279-281). Since the normative choice among primary rules is this simple, accordingly, the corresponding judicial role is typically a 'thin' version deemed merely to be an instrument for enforcing the transplanted formal law. However, such unilateral promotion of formal law enforcement without regard to local social norms actually creates serious enforcement problems, which then requires all the more enhanced need for 'good governance'[36].

In contrast, choice (iii) which separates the formal law and social norms in parallel is often a favorite choice of legal sociologists who take a communitarian view, since this choice is expected to help local social norms survive in the face of changing socioeconomic conditions[37]. Empirical evidence, however, also suggests the difficulties of survival inherent in this approach. Especially when a social norm conflicts directly with the formal law in the boundary between them, which often occurs in the area where civil law issues and commercial law issues interact each other, such as land law[38]. For instance, although the

[36] It is ironic that in the course of reforming the formal law, the more 'transplantation' is successfully carried out, the greater becomes the need for 'good governance'.
[37] Japanese scholars belong to the stream of Professor Y. Chiba's 'legal pluralism' (see Chiba 1989; Yasuda 2005) often empathies this need to separate and preserve the customary law regimes.
[38] In this connection, the economists' favorite view on the 'complementary' role of customary orders to harmoniously supplement, rather than substitute, the formal law is a phenomenon within the commercial field

Legal Vice Presidency of the World Bank is recently known for promoting this parallel approach in the area of land law, the outcome has so far been a lawful usurpation of existing rights in the guise of preservation policy[39].

Rather, choice (iv) which incorporates social norms into the formal law regime could be a more realistic way of preserving the chances for social norms to survive, since this is the only choice that entails the possibility of rewriting the formal law in a bottom-up initiative by the society, in obvious contrast to the top-down approaches assumed in choices (i) and (ii).

In order to incorporate social norms into the formal regime, the judicial system must play an important catalytic role as a major mode of 'secondary rule' to extract the ultimate normative choice out of the interaction between the formal and informal orders. Though the ADR (alternative dispute resolution) can play the same catalytic role, perhaps from a position much closer to that of social norms, judicial procedures (or more specifically litigation) can impact the outcome to a greater extent in the sense that judicial decisions are directly capable of changing the interpretation of formal law. Accordingly, when this catalytic role is targeted by judicial reform, it becomes an indispensable task of the judicial assistance service to articulate the necessary institutional conditions needed to enable judicial lawmaking.

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under the same capitalist norm, which should never be generalized in areas involving genuine forms of normative tension.

[39] The author can add cases of land law implementation in Asia, partly discussed in Kaneko (2008), and to be further discussed in an upcoming article.

PART VII
CONCLUSION

Experiences from some conflicts of using agrarian sources suggest that they often end with stories of ignoring citizens' constitutional rights. Agrarian conflicts in some places make farmer position in Indonesia to be more marginalized. Year by year, agrarian structure disparities result in monopoly on agrarian sources, and this causes slump and setback of farmer's life in all aspects; social, economy, politic, and culture.

One of most important things in farmer's life is access to the land as a source to make living. People, especially farmers, need land for their living source and life continuity. Meanwhile in another side, the big corporations commonly need land for a huge scale of economic activities. Land monopoly becomes seeds of agrarian conflicts in many places.

In the next process, thing that makes situation to be more complicated in agrarian conflict involving corporation, private plantation and people is that the corporate attitude to "bribe cannon snout" . This condition encourages suspicious of security apparatus individuals' collaborations with particular parties in various agrarian conflicts. The tidy cooperation between profit hunters and decision makers plus authority abuse by security apparatus individuals make agrarian conflict settlement processes more difficult

The law instrument produced for forest management by government is likely to be government law; or in a more strict term is bureaucratic law – as it was produced by Ministry of Forestry, and it is not a state law as mandated by 1945 Constitution. This law government of bureaucratic law tends to be full of pressure, ignoring, eviction, and even freezing access and people rights upon forest resources.

Government superiority in forest management law policy provision, in forms of state corporatism, results in blunders. One of them was policy in industrial plant forest produced in 1990 through Government Regulation number 7 in 1990. This policy became a blunder for it confirmed forest corporation legalization in Indonesia and negated people's rights upon forests.

The consequence of economic intervention in law making is the birth of capitalistic law culture which has implication on weakening of state roles as protector and patron of people. Meanwhile, our constitution clearly and strictly regulates recognition and protection of human right and citizen rights. State must compulsorily give honor and protection without considering race, skin color, sex, language, religion, political or other views, nation or social origins, property, birth and other statuses.

In Moro-Moro case, the law, that was conceptualized to be government policies or decisions of authorized officials, factually was influenced by some factors; politic or business interest intervention. The law is indeed not an independent and free from values variable, but it is also a factor influenced by other factors outside the law.

RECONSTRUCTION OF LEGAL DEVELOPMENT IN INDONESIA: LAWS ON LAND

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