


The Evolution of Property Rights in Indonesia

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Abstract

The article explains the rise of land property rights in Indonesia. Theoretically, the emergence of property rights in Java was institutional rather than spontaneous order. The study is conducted by tracing the handover traces of land policy development from each period of power ruler. The policy study begins in the period of Feudalism when the concept of the King's domain prevailed. During this period, property rights awareness had not yet grown because the people considered the King to have the land. Javanese colonialism and its land policy started the seedbed for the emergence of land property rights. In the VOC period, the Priangan system began recognising land property for indigenous people. Raffles' land tax further solidified the awareness of land ownership rights. At the time, land distribution occurred to the local elite. The forced cultivation system policy during the Dutch colonial government reduced land possession for the Javanese people because the forced labor that had to be borne was under the amount of the cultivated land. Liberalism grew in Europe and influenced changes in land policy in Java. In 1870, the Dutch colonial government issued a land law recognising indigenous land ownership rights.

KEYWORDS *Property Right, Evolution of Property Right, Java, Colonialism*

Introduction

Individual property rights marked the development from feudal to modern society. In addition, development is also significant for modern economic systems that require the guarantee and protection of property rights as a prominent condition for economic growth.¹ On the other hand, development is also significant in assessing the inequality of resource distribution,² especially how the allocation, distribution, and access to resources can create prosperity³ as much as possible for all Indonesian people. The distribution issue must be given great attention to avoid agrarian social conflict.⁴ The ecological matters also need to be considered in understanding land property rights. The study of the emergence of property rights must consider its negative externality costs.⁵ It will encourage savings in using natural resources and prevent hydrometeorological disasters.

Property rights are a pervasive concept intertwined in a broad area, such as legal, economic, social, ecological, and cultural studies. Property rights involve socially recognized economic rights.⁶ However, property is not just an economic concept that only sees property as wealth. It also has social

¹ Hajime Sato, "The Emergence of 'Modern' Ownership Rights Rather than Property Rights," *Journal of Economic Issues* 52, no. 3 (2018): 676–93, <https://doi.org/10.1080/00213624.2018.1495989>.

² Jean-Marie Baland and Jean-Philippe Platteau, "Division of the Commons: A Partial Assessment of the New Institutional Economics of Land Rights," *American Journal of Agricultural Economics* 80, no. 3 (August 1998): 644–50, <https://doi.org/10.2307/1244574>.

³ Omotunde E G Johnson, "Economic Analysis, the Legal Framework and Land Tenure Systems," *The Journal of Law & Economics* 15, no. 1 (1972): 259–76.

⁴ Margaret Davies, *Property: Meanings, Histories, Theories*, 1st ed. (London: Routledge-Cavendish, 2007), <https://doi.org/10.4324/9780203937310>. Davies sees Property as a trigger for inequality in resource distribution. Davies understands property in social and political conditions born from liberal ideals of human self-determination. However, the existence of property is the basis of inequality and the inability to self-determine. According to Davies, "property both represents and destroys the individual and her rights. It is empowering and enabling for the proprietor, but often disempowering and disabling for the non-proprietor".

⁵ Massimo De Angelis, "Separating the Doing and the Deed: Capital and the Continuous Character of Enclosures," *Historical Materialism* 12, no. 2 (2004): 57–87, <https://doi.org/10.1163/1569206041551609>.

⁶ Bruce G Carruthers and Laura Ariovich, "The Sociology of Property Rights," *Annual Review of Sociology* 30 (2004): 23–46.

significance and is affirmed in legal concepts. In fact, according to Singer, property is a political agenda.⁷ Examining property only as an economic and legal concept will raise many unreachable issues. Law cannot be understood as something isolated from cultural and social systems because law serves many interests.⁸ As an economic concept, land possession requires social and legal legitimacy through moral values and the rule of law. Land property right is vulnerable to attacks and violations from others without the legal rule. Ultimately, the costs of defending and maintaining property are high.

The agrarian conflicts in Indonesia cannot be separated from the lack of understanding of property in a social context.⁹ Land property is only understood as an economic concept and formulated in the legal rules.¹⁰ In the end, enforcing land property without understanding its social concept tends to impose a foreign value that may conflict with the social order.¹¹ In simple terms, agrarian conflicts occur not because of defiance of state law but because the formulation of the juridical concept of property is different with the social value of property.¹² Ignoring the social concept of property by imposing a foreign

⁷ Joseph William Singer, *Entitlement: The Paradoxes of Property* (Yale: Yale University Press, 2000); Davies, *Property: Meanings, Histories, Theories*. Singer considers property to be a political agenda. The policy of deregulation, brought about by the neo-liberal agenda, offers the allocation of power over material resources in the hands of private ownership. The aim is to free owners from state-imposed restrictions so that they can utilise these resources according to their own tastes. On the other hand, they also receive protection from the state because their property rights are legally protected. Singer said: "what is left, in other words, is the institutions of private property".

⁸ Laura Nader, "Evolving an Ethnography of Law" in *The Life of the Law*, 1st ed., Anthropological Projects (University of California Press, 2002), 18-71.

⁹ Abraham Bell and Gideon Parchomovsky, "Property Lost in Translation," *The University of Chicago Law Review* 80, no. 2 (2013): 515-73. According to Bell, property rules are always limited to the social context and are always susceptible to incompatibilities with other property rules. To adapt local property rules to national jurisdictions, they must be translated.

¹⁰ We strictly separate between the rule of law of the state and the legal institutions of society. Two things that share the same space. The rule of law is produced by political institutions. Meanwhile, community legal institutions are formed due to natural factors as part of the community's adaptation process to changes that occur in its environment.

¹¹ Noer Fauzi Rachman, "Chain of Explanatory Conflicts Agrarian the Chronic, Systemic, and Widespread in Indonesia," *Bhumi* 12, no. 37 (2013): 1-14. One of the root causes of agrarian conflicts is the disregard of customary laws that apply among the people.

¹² By this We mean that the social concept consists of the values, norms and arrangements about property that a society believes in, practices and adheres to. Ignoring these three by imposing a certain value that is contrary to the values believed by the community will lead

value contrary to the community values will cause a conflict of values that impacts to factual conflict. This conflict occurs because the affected parties do not feel the benefits of property as formulated by state law, so they tend to use the property idea according to the social norms they believe in.¹³ Using force will not solve the problem of this value conflict, and it seems to be injustice.

The development of property rights in Indonesia can be entry point to understand the institution of property rights. This is because property rights have a dynamic and constant meaning at the same time. The meaning of property rights has shifted continuously. At the beginning of its emergence, property was interpreted as a right attached to an object. The development of industry and capitalism in Europe has shifted the meaning of property into material rights. This interpretation cannot be separated from the development of trade and industrial capitalism. The meaning of property as a right was deemed incompatible with economic needs because it could not be transferred flexibly. In the subsequent development, the property was interpreted as future income.¹⁴ In particular, a study of the emergence of land property rights in Indonesia will show how they shift the interpretation of land from the state power.

Harold Demsetz started the study on the emergence of private property rights in his article *Toward A Theory Of Property Rights* in 1967¹⁵ and expanded in 2002.¹⁶ Demsetz developed the concept of social cost from Ronald Coase¹⁷ to formulate the emergence of property rights as an internalisation of

to a conflict of values that results in factual conflict. The use of force will not resolve this conflict of values and may lead to injustice.

¹³ Thomas W. Merrill and Henry E. Smith, "What Happened to Property in Law and Economics?" *Yale Law Journal* 111, no. 2 (2001): 357-98, <https://doi.org/10.2307/797592>; Derek K. Yonai, "Conceptions of property rights and norms," *Constitutional Political Economy* 18, no. 3 (2007): 161-76, <https://doi.org/10.1007/s10602-007-9021-5>; Thomas W. Merrill and Henry E. Smith, *Property* (New York: Oxford University Press, 2010).

¹⁴ C. B. Macpherson, *Property: Mainstream and Critical Positions*, ed. by C. B. Macpherson, 2nd Revise (University of Toronto Press, 1999).

¹⁵ Harold Demsetz, "Toward a Theory of Property Right," in *Papers and Proceedings of the Seventy-ninth Annual Meeting of the American Economic Association*, vol. 57 (1967): 347-59.

¹⁶ Harold Demsetz, "Toward a theory of property rights II: The competition between private and collective ownership," *Journal of Legal Studies* 31, no. 2 (2002): 653-72, <https://doi.org/10.1086/342028>.

¹⁷ R H Coase, "The Problem of Social Cost," *The Journal of Law and Economics* 3 (1960), <https://doi.org/10.1086/466560>.

externalities.¹⁸ In addition, Leacock's anthropological writings provide a factual picture of the emergence of property in the Montagnais Indians.¹⁹

According to Demsetz, the emergence of property rights can be well understood because of new and different cost and benefit effects. There are external shocks that change the costs and benefits of old tenure regimes that are deemed inefficient.²⁰ Property rights emerge in response to the will of each interacting person to adjust to new benefit-cost possibilities. Demsetz further asserts that property rights evolve to internalise externalities. What Demsetz means here is that when the benefits of internalisation outweigh the costs of externalisation, then people tend to turn a resource into property. A person who feels that the costs incurred to maintain and guard a resource from infringement or attack by others are smaller than the benefits obtained in the future then people will choose to hold the resource.

Demsetz interprets externalities as overt effects of the evolution of production that others face. This effect results from an action taken by someone who does not bear the value consequences of the impact.²¹ Merrill and Smith try to understand Demsetz's concept of externality. For them, property rights are one way to internalise externalities in resource use. These property rights can exclude others from the use of resources. The holder will defend and protect the resource from others' infringement to incentivise itself. Merrill and Smith also assert that the emergence of property rights leads to the efficient and economising use of resources.²²

Internalisation occurs because of an increase in economic value due to technological change or the opening up of new markets. This development encourage a community to rethink the old meaning of resource because they

¹⁸ Fred S McChesney, "Coase, Demsetz, and the Unending Externality Debate," *Cato Journal* 26, no. 1 (2006): 179-200. Demsetz himself disagreed with Coase on externalities. Coase considers that low transaction costs allow for the internalisation of social costs. Thus, transaction costs will reduce the incidence of externalities. When transaction costs increase, the cost of externalities also increases. Demsetz disagrees with Coase on this point. Demsetz is concerned that focusing on transaction costs as the reason for the persistence of externalities provides a false rationale for government intervention that the market does not want.

¹⁹ Eleanor Burke Leacock, "The Montagnais 'Hunting Territory' and the Fur Trade," *American Anthropological* 56, no. 2 (1954): 1689-99.

²⁰ Stuart Banner, "Transitions between Property Regimes," *The Journal of Legal Studies* 31, no. S2 (2002): S359-71, <https://doi.org/10.1086/342024>.

²¹ Demsetz, "Toward a theory of property rights II: The competition between private and collective ownership." p. 656

²² Merrill and Smith, *Property*. p. 44

are old-fashioned. Demsetz asserts that technological change and new markets that increase the economic value of a resource are among the factors that lead to the development of property rights. Gradually evolving social order and legal precedents are also decisive factors. Thus, the internalisation of externalities is roll the dice .

Demsetz's thesis asserts that value enhancement that influences the human will in interacting with other humans is not the only way institutions are formed. It must adopt with moral values and authoritative affirmation from the law. While each individual has a will preference, moral values and protection from the law are needed, especially when it comes to the economic value of a resource that requires certainty. Legal certainty and moral foundation is necessary so that resource possession can be protect safely. Law and moral values guaranted for control over contested resources.

Demsetz illustrates the thesis of property right from Eleanor Leacock's anthropological study *The Montagnes "Hunting Territory" and Fur Trade*. Leacock's study makes a clear connection between the development of land property rights and the development of the beaver fur trade. The Montagnes Indian hunted beavers for food. the development of the market for beaver pelts has transformed hunting from a mere food item into a commodity. When the French came to buy otter pelts from the Montagnes Indians, the value of otter pelts increased. Ultimately, hunting was aimed at making beaver pelts a trade commodity. According to Demsetz, the situation had two consequences. Firstly, the value of fur to the Indians increased. Second, the scale of hunting activity increased sharply. Both of these lead to an increase in the scale of externalities associated with free hunting.

Some studies support Demsetz's thesis, which are drawn from North America and the UK.²³ Lee J. Alston investigated the Brazilian Amazon frontier. According to Lee J. Alston, the emergency of property rights is a way to avoid wasteful and destructive resource use. Without property rights, the tragedy of the commons would arise with wasteful short-term resource exploitation and conflict among settlers.²⁴

²³ Daniel Fitzpatrick, "Evolution and chaos in property rights systems: The Third World tragedy of contested access," *Yale Law Journal* 115, no. 5 (2006): 996–1048, <https://doi.org/10.2307/20455644>.

²⁴ Lee Alston, Gary Libecap, Bernardo Mueller, and Use: *The Development of Property Rights and Land Reform on the Brazilian Amazon Frontier* (Ann Arbor, MI: University of Michigan Press, 1999), <https://doi.org/10.3998/mpub.16208>. Property rights that emerge on the frontier occur through informal agreements. Increased population density, higher land values and intensified competition increase opportunities for ineffective

There have been many critiques of Demset's thesis, including the concepts offered and his treatment of a particular region. Epstein considers the illustration of the Montagne Indians to be an overly idealized parable or allegory. However, the transition process from open access to property rights tends to be controversial. The process of property entitlement never be complete.²⁵ Banner also questions the transition from open access to property rights. This transition process will not go convenient because it will inevitably face collective action. How the transition process will deal with this collective action, Banner considers that the property transition will likely lead to efficiency and inefficiency. There is no predictable pattern.²⁶ Wyman also highlighted the efficiency issue in Demsetz's thesis in his study of the iconic yellow taxis of New York City.

Contrary to Demsetz, who thinks property rights lead to efficiency, the emergence of property rights is unrelated to efficiency and inefficiency. Property rights emerge and survive because the state creates them. They are designed due to political decision-making processes influenced by interest group pressures.²⁷

Allen also recommended the need for a modification of Demsetz's thesis. In his study of intellectual property rights, he found that an increase in transaction costs accompanied a rise in value.²⁸ The issue of externality costs

resource management. Property institutions therefore require the state to provide formal tools.

²⁵ Richard A. Epstein, "The Allocation of the Commons: Parking on Public Roads," *The Journal of Legal Studies* 31, no. S2 (2002): S515–44, <https://doi.org/10.1086/342023>. Epstein tested Demsetz's thesis by examining the allocation of parking spaces on public roads.

²⁶ Banner, "Transitions between Property Regimes." This problem of collective action becomes an issue in the demsetz thesis. Who are the people who sacrifice their time and energy to oversee the transition process from A to B? Even though later this transition process will be enjoyed publicly. Even people who refuse to help will enjoy the results of this collective action.

²⁷ Shitong Qiao, *Chinese Small Property* (Cambridge University Press, 2017), <https://doi.org/10.1017/9781316810095>. pp. 15-16; although it does not directly address the evolution of property rights. Qiao's research on the real estate market in China also finds the emergence of property rights in a property market that is not supported by a legal system. The absence of property law is a result of restrictions on property ownership in the countryside. According to Qiao, in his study, the co-evolution of property laws and norms was shaped by economic constraints, communal arrangements and political interest groups. He calls integrated property the emergence of property rights.

²⁸ Douglas W. Allen, "The Rhino's Horn: Incomplete Property Rights and the Optimal Value of an Asset," *The Journal of Legal Studies* 31, no. S2 (2002): S339–58, <https://doi.org/10.1086/340411>.

also became the target of further criticism. Demsetz did not provide a detailed account of the factors determining externality costs and the mechanism used to determine that the benefits of property exceed its costs.²⁹

Another critique of Demsetz's thesis is that it does not work in developing countries with their plural legal character and post-colonial states.³⁰ Frizpatrick's findings suggest that increasing resource values tend to lead to open access in an institutional environment characterised by competing and norm-based legal systems. Platteau also highlights this problem of norms. Resource distribution that ignores social norms will increase transaction costs of search, enforcement and advocacy.³¹ According to Baland and Platteau, one of the shortcomings of the Demsetz thesis is that it ignores the role of social capital and the state in the distribution process. Political actors in the state power structure tend to determine the final outcome of resource distribution.³²

The Emergence of Property Rights in Java

There are several studies on the emergence of property rights in Java. Lewinski's study on the emergence of property rights in Java was written in 1913.³³ Scheltema confirmed Lewinski's concept of the emergence of property rights in Priangan.³⁴ Lewinski reviews the emergence of property rights in general. At the same time, Scheltema confirms Lewinski's concept by looking at the development of property rights from early colonialism to the establishment of the 1970 *agrarisch wet*.

²⁹ Thomas W. Merrill, "Introduction: The Demsetz thesis and the evolution of property rights," *Journal of Legal Studies* 31, no. 2 (2002): 331–38, <https://doi.org/10.1086/374348>.

³⁰ Jean-Jean-philippe Platteau, "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment" 27 (1996): 29-86; Fitzpatrick, "Evolution and chaos in property rights systems: The Third World tragedy of contested access"; Baland and Platteau, "Division of the Commons: A Partial Assessment of the New Institutional Economics of Land Rights."

³¹ Platteau, "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment."

³² Baland and Platteau, "Division of the Commons: A Partial Assessment of the New Institutional Economics of Land Rights."

³³ Jan St. Lewinski, *The Origin of Property and the Formation of the Village Community* (London: Constable, 1913).

³⁴ A. M. P. A Scheltema, "De Ontwikkeling van de Agrarische Toestanden in Priangan," *Landbouw; Tijdschrift der Vereeniging van Landbouwconsulenten in Nederlandsch-Indië*, 1927.

A recent study on the emergence of property rights in Indonesia by Daniel Fitzpatrick rejects Demsetz's ideas. The emergence of property rights in Indonesia tends to be irregular.³⁵ Fitzpatrick does not explicitly refer to the development of property rights in Java, but he looks at property rights in Indonesia. Harto Juwono discusses the development of property rights in Indonesia from a history of land policy perspective.³⁶ Juwono's study is significant in understanding property rights development in the colonial period.

This study seeks to situate the development of property rights in Indonesia within the theoretical development of how property rights emerge. In particular, this study differs from Demsetz's study of the spontaneous emergence of property rights. Instead, the emergence of property rights in Indonesia, particularly in Java, occurred deliberately due to the state intervention, in this case, colonial state power, in creating property rights. This study aligns with other studies that provide the same view that property rights emerged due to state intervention in creating property rights. The study will explore the emergence of property rights by following the development of land policies in every ruler regime. The study begins in the Feudalism era, which did not allow property rights to exist. Colonialism introduced an awareness of ownership by eroding the feudal system. The need for labour to maximize revenue in the commodity trading sector forced the colonial power to distribute land to the population equally. This development was continued by collecting a head tax from each cultivated landholder. The establishment of property rights over land for the indigenous population began to be recognised when the colonial government introduced the *agrarisches wet* 1870. By the time of independence, efforts to distribute land to sharecroppers had expanded the range of land ownership rights. They established them in legal regulations that better-guaranteed land ownership rights.

A. Land Property Rights in Feudalism

The emergence of property rights in Indonesia, with preference to Javanese people, tends to be influenced by the role of power in interpreting land as a material source of property rights. During Feudalism, property rights hardly emerged because the king interpreted land as a way to control the people. The feudal land tenure system is essentially the control of the people as labor

³⁵ Fitzpatrick, "Evolution and chaos in property rights systems: The Third World tragedy of contested access."

³⁶ Harto Juwono, *Rights Property over Land* (Surakarta: Selaklali, 2023).

power. The *lungguh*³⁷ or apanage land system land was the pattern of land tenure during Feudalism. The King distributed large parcel of land to his *subjects* as a representation of feudal power. The land *was* divided by considering the number of *cacah*³⁸ or families of *sikep*³⁹ farmers and the fertility of the land. Mastery of a large area of land does not necessarily impact the amount of production generated from the control of the land. The factor of *sikep farmer families* and soil fertility determines the amount of land output.

In addition to the *apanage land* authorised to the obedient, the King owned *narawita*⁴⁰ land used for royal expenses. *Bekel* managed this land to produce food, snacks and other materials needed by the court. The pattern of power relations between *narawita* and *apanage land* is relatively fixed, between the obedient mediated by the *bekel*⁴¹ and the *sikep* farmers and family members who assist with land management.⁴²

Control over land is accompanied by the distribution of cultivation output. Each *patuh* will place a *bekel* to supervise and control the course of production and the delivery of tribute (*bhekti*) from *sikep* farmers to the *bekel* itself and *its patuh*. Each *sikep* farmer has to deliver *bhekti* amounting to 2/5 output to the *patuh* and 1/5 to the *bekel*. In addition, the submission of *bhekti* to the *patuh* is also carried out during religious and traditional ceremonies such as marriage, childbirth, death and other forms of existing ceremonies. It means that the land possession has given the burden of costs incurred by the *patuh* to *sikep* farmers. Therefore, Feudalism land tenure system more emphasis on the mastering of labour power than land. Without *sikep* farmers as a labour power, there was no land cultivation output.

The apanage system had become a means for the King to control the landlord and people, particularly over the *patrons* who controlled the *lungguh* lands and their ability to generate wealth. The ability of a *lungguh* to generate wealth could trigger resistance from peasants loyal to their *patuh* against the King. The pattern of controlling the power of the *patuh* by the King was made by enacted the *pancasan* system and *pisowanan agung*.⁴³ The latter pattern was

³⁷ Apanage, prebendal domain set aside for officials

³⁸ Corporate peasant household, unit of taxation

³⁹ Landowning peasant, head of household

⁴⁰ Land for the king and palace expenditures

⁴¹ Official collector of tax

⁴² Suhartono, *Apanage and Bekel, Change in Social Rural Surakarta 1830-1920* (Yogyakarta: Tiara Wacana, 1991), p. 31.

⁴³ Onghokham, "Change in Social Madiun During the Century 19th Taxes and Their Influence on Land Tenure," in *Two Centuries of Tenure Land*, ed. by M. P. Tjondronegoro Soediono and Gunawan Wiradi (Jakarta: Yayasan Obor Indonesia, 2008); Onghokham,

carried out by obliging the obedient to be present at a certain time in the kingdom to face the King. At this moment, the life of an obedient is at stake. The King could issue an order to execute an *patuh* because he was unsatisfied the king. Meanwhile, in the *pancasan* system, the *patuh*'s power was controlled by redistributing the *lungguh* holdings to other *patuhs*. The *pancasan* system also affects the cultivated land area for *sikep* farming families. The division can be in the form of reducing the amount of existing land area. The reduction of land affects the area of cultivated land for *sikep* farmers. The *pancasan* system is also carried out by replacing an existing *patuh* with another *patuh*. The change of *patuh* has an impact on the re-division of arable land for *sikep* farmers.

This apanage land tenure system hardly allows for land property right for the people. Land dispossession is not possible if there is no property right. The mention of hereditary property rights in the scholarly tradition of customary law shows how people's land "possession" can be passed down from parents to children. The apanage land tenure system is very vulnerable to changes in power. This change will trigger a redistribution of cultivated land from *sikep* farmers. Therefore, hereditary property rights in the apanage land tenure system do not mean ownership of land that is inherited or passed down to the next generation, but one's position as a *sikep* farmer. Children of *sikep* farmers inherit their parents' position as *sikep*. The child inherits his or her parents' *kesikepan* to work the land.

B. Seeding Land Ownership Rights in Java

When Crawford investigated land ownership in Pacitan, he did not doubt that the sultan owned all the land. It was not easy for the British colonial government to introduce the idea of property rights to the people. No idea was acceptable to the population other than the sultan's land ownership. Crawford candidly said: "*I am convinced it would be no easy matter to render intelligible to them any other notion of right in the soil*".⁴⁴ Crawford's view confirms that there was no notion of property rights in the minds of the Pacitan people. The idea in the people's minds was that all land belonged to the sultan.

The colonial rule has paved the way for the seeding of land ownership rights in Java. This seedbed can be traced to colonial land tenure policies that

Madiun in the Trouble of History, Priyayi and Peasants in the Prefecture Madiun 19th Century (Jakarta: KPG, 2018).

⁴⁴ John Bastin, *Raffles' Ideas on the Land Rent System in Java and the Mackenzie Land Tenure Commission* (Leiden: BRILL, 1954). <https://doi.org/10.1163/9789004286368>.

grew out of the *priangan* system, Raffles' land tax. The seeding of individual ownership rights over land experienced ups and downs along with the forced planting system policy. Individual ownership of land coincided with the burden of forced labour. The larger the area of land controlled by an individual, the greater the burden of forced labour that that individual must carry out. It encouraged individuals to relinquish their land ownership to the village to be distributed to members of the village community so that the burden of forced labour borne by each individual in a village could be evenly distributed. The 1870 *Agrarische wet* ended the forced cultivation system and enacted liberal land policies. The colonial government encouraged individual ownership of land for the indigenous population to increase their income and welfare. This and the following period solidified the seedbed of individual land ownership rights.

1. Priangan System

According to Jan Breman, Priangan was the frontier for an early colonial policy that transformed the VOC from a mercantilist to a commodity producer. Priangan was an abandoned area with a landscape of dense forests and swamps that humans had not touched. The population of Priangan was still tiny, with ten families for a *dusun* (*sub-village*). In 1686, there is 508 *dusun*, with 353 dukuhs occupied by at most ten families. The largest dukuh was only occupied by no more than 20 families.⁴⁵ The character of the Priangan population was that of farmers who cultivated land on a mobile basis.

Priangan was part of the Javanese Mataram Islamic kingdom. The apanage system was also applied under the rule of the Cirebon kingdom. The colonial government began to disarm Feudalism with the apanage system, which was considered less productive. The government introduced coffee cultivation to the people of Priangan and began to implement a sedentary system so that people no longer moved around in a specific area. Local officials helped people open new paddy fields and plantations to bind the population so they would not move around. They also promised security protection for those who settled down.

The population was forced to grow coffee, the produce of which had to be forcibly deposited with the colonial power. The proceeds from the coffee commodity became a substitute for the population's tax in cultivating the land. The colonial power considered itself the owner of the land in exchange for the conquered feudal power.

⁴⁵ Jan Breman, *Profits Colonial from Labour Forced* (Jakarta: Yayasan Obor Indonesia, 2014), p. 28.

The *priangan* system began the development of land property rights in Java, especially in the Priangan region. Power had forced the *tipar* (nomadic farmer) peasant population to become farmers with permanent land. The opening of plantation lands for coffee cultivation and the distribution of arable land to farmers changed the lifestyle of Priangan farmers.

Scheltema regards the Priangan system as a process of the emergence of property rights.⁴⁶ Scheltema uses Jan St. Lewinski's concept of the origin of ownership. According to Lewinski, as long as a person could take as much land as he wanted, it was impossible to mention the existence of property rights. Nomadic societies have no concept of ownership of land. Any land occupation (*appropriation*) requires special efforts to separate, protect and defend the land. Nomadic farmer do not make these remarkable efforts because if the land is lost, it can be easily replaced. This was because land was still plentiful and the population was still very sparse.⁴⁷ Therefore, when land was abundant, land ownership did not exist. Lewinski himself considers property rights to arise due to human endeavour. If he loses the fruits of that endeavour, he has to replace them with labour. In addition, scarcity also affects the emergence of ownership. If an item is limited in quantity, losing it will be difficult to replace. For Lewinski, the desire to own objects only arises from two causes, labour and scarcity.⁴⁸

Scheltema uses Lewinski's concept to explain the emergence of land ownership rights. Scheltema does not explicitly refer to the *priangan* system in explaining the emergence of property rights in Java. The emergence of property rights to land in Java spans time, from the *priangan* system to the 1870 *agrarisches* wet.

2. Raffles Landrent

Dutch colonial rule experienced a break in control with the British taking over Dutch rule in Java before it was returned to the Netherlands. During the British colonial rule in Java, Lord Minto appointed Raffles as Leutnant-Governor in Java in 1811. Before leaving Java to return to Bengal, Lord Minto left a message to Raffles to change the trade monopoly and contingency fee policies that had been in place. Minto considered this system very cruel and unfavourable to the Indigenous population. However, the process of changing

⁴⁶ Scheltema, "De Ontwikkeling van de Agrarische Toestanden in Priangan."

⁴⁷ Lewinski, *The Origin of Property and the Formation of the Village Community*, p. 9.

⁴⁸ Lewinski, p. 11.

policies needed to be considered gradually so as not to cause shocks to the local elite.

Raffles began land reform by establishing a land investigation commission known as the Mackenzie Commission. The commission worked to investigate the state of land in Java by studying records previously made by the Dutch. Mackenzie travelled along the east coast of Java to study the state of the land and asked the residents to provide the necessary information. When the Mackenzie Commission was formed, Raffles tried to convince the commission members that land reform would benefit not only for colonial trade but also the prosperity of the colonists. He raised the issue of the trade monopolies and contingency fees imposed by the regents before the British took control of Java. This system was considered to cause misery for the Javanese population. Raffles wanted the population to be able to carry out *free trade and free cultivation*, accompanied by fixed and regular taxation. When giving instructions, Raffles also touched on the benefits of distributing land to residents in small and large plots and giving ownership rights to land to residents of Java.⁴⁹

Land reform was hampered by the position of the indigenous regents who had been enjoying the benefits of the forced coffee cultivation system, trade monopoly and contingency levies. Land reform was considered a subversive step and could offend these regents.⁵⁰ Raffles and the commission members seemed to agree that the regents should get large tracts of land that could be passed down through generations. They also remained involved in the implementation of the tax collection policy. However, Raffles and his members were still unsure whether this offer would be acceptable to the regents. Security and order issues were a consideration in these doubts. They did not want the regents to fight back against British colonial rule.

The land rent system was introduced between 1811 and 1812, particularly in Banten and the territories transferred under British rule. The British's subjugation of the Yogya sultanate resulted in the dispossession of part of its territory to the British. The transferred territories included Pacitan, Kedu, Blora, Djipang, Wirasaba and Japan. Immediately after the transfer of territory, the British implemented a land lease system in these areas.

Banten became the first region to implement a land lease system after the British colonial power succeeded in subduing Pangeran Ahmad and seating Pangeran Bagus Muhammad as sultan. On Raffles' orders, the sultan's power

⁴⁹ Bastin, *Raffles' Ideas on the Land Rent System in Java and the Mackenzie Land Tenure Commission*, pp. 20-21.

⁵⁰ Clive Day, *The policy and administration of the Dutch in Java* (New York: Macmillan, 1904), p. 177.

was restored by granting land in the highlands as his territory. Raffles appointed two regents to manage the lowlands. The government paid the two regents and received a large plot of land as their property. Raffles also ordered that the relatives and family of the sultan be rewarded with large tracts of land in the areas they had previously controlled. In addition, Raffles forbade a return to the feudal patterns of control that had been in place. This prohibition was addressed explicitly to the two appointed regents.

Meanwhile, the British colonial government began to impose a land rent system in the newly transferred territories. Crawford oversaw the implementation of the land rent system in Pacitan and Kedu, two areas transferred after the sultanate of Yogya's defeat of the British. Crawford utilised the role of the *bekel*, who had been accustomed to collecting tribute under the apanage system. The role of the *bekel* in the earlier system could be used to collect rent from tenant farmers. In his report on the Pacitan region, Crawford addressed the *bekels*:

*I told them that they were now to enter into conditions with the British government on behalf of themselves, and the villages under their authority for one year, and that they were in future to be exempt from the payment of contingencies and forced services of all description, as knowing them to be burthensome and cezationous to the people, on payment of a fixed rent in money.*⁵¹

Crawford's statement indicates the abolition of Feudalism during the Mataram kingdom and the priangan system implemented during the VOC. Rental agreements were made between the English government and the inhabitants voluntarily. Rent payments were almost determined by the inhabitants' ability to pay the rent collected through the *bekel*.

In 1812, Crawford introduced a land rent system in Kedu. Conditions in Kedu were different from Pacitan, where the taxes borne by the population varied. The royal power of Mataram had imposed market and trade taxes on the population, which were contracted out to the Chinese. Crawford abolished these taxes and replaced them with land rent in the form of money. The land rent system in Kedu aimed to create "*a permanent interest in the occupation and possession of the soil*". A permanent interest in the occupation and possession of the land.

⁵¹ Bastin, *Raffles' Ideas on the Land Rent System in Java and the Mackenzie Land Tenure Commission*, p. 96.

In addition to Pacitan and Kedu, other areas also began implementing the land rent system, such as in Wirasaba, Djipang, Japang, Pekalongan, Grobogan and Wirosari. Land rent was paid to the *bekel* for cultivating the land. The amount of rent paid depended on the fertility of the land. The latter areas were known to be less fertile than Kedu. The rent given was smaller than in Kedu.

Raffles did not quite agree with Crawford's model of leasing land to the *agency of intermediate renters*. Raffles preferred to lease the land directly to the tenants. According to Raffles, Crawford's model would leave the tenant farmers at the mercy of the village authorities, who could potentially oppress the tenant farmers. Direct leasing to individual cultivators would make them more independent as taxpayers and able to enjoy their own income.⁵²

This land rent system removed the local elites, such as the *demang*⁵³ and *tumenggung*⁵⁴ who had enjoyed contingent fees from the tenant farmers during the Empire and VOC periods. The British government subjugated the local elites by giving them monthly salaries to maintain order and security in their respective areas.

Based on this fact, Raffles' land lease system did not assign ownership rights over the land to the tenant farmers. Instead, the *Bekel* was considered the person entitled to land ownership. The *bekel*'s position as a *mandor*⁵⁵ made it easier for the British colonial government to collect landrent. If the government distributed the land directly to tenant farmers, it could not guarantee the obtained target of landrent income. But at the very least, the land rent system provided a different notion of land ownership. During Feudalism, people had almost no idea of land property rights. For the people, land possession was only with the King, who passed it down to the nobles. Raffles' land rent system had opened up a new idea for Javanese on land property right beyond the notion of Feudalism in their minds.

3. Forced Cultivation System

During the forced *cultivation* system (*cultuure stelstel*), property rights experienced significant challenges. The forced cultivation system imposed forced labour on tenant farmers based on the size of the cultivated land. The larger the area of cultivated land, the more diverse the forced labour that must be done. Under these conditions, relinquishing land and redistributing

⁵² Day, *The policy and administration of the Dutch in Java*, p. 179.

⁵³ High-ranking official

⁵⁴ Title of high-ranking official, above the *demang*.

⁵⁵ Foreman, gang boss

cultivated land became a measure to reduce and distribute the burden of forced labour among villagers.

Before the forced cultivation system was implemented in 1830, the Dutch colonial government (1816-1829)⁵⁶ enforced a liberal land policy with *western-organised agriculture*. The policy gave freedom to the population to cultivate export commodities expected to increase productivity.⁵⁷ The spirit of liberalism at this time enveloped the Dutch royal court and the appointed General Commission. At the time of the appointment of the commissioners general, the King told them to protect the population from arbitrary power, improve their conditions, guarantee the fruits of their labour and share the happiness of their labour.⁵⁸

Liberal policies wanted to limit state interference in the economy. This allowed private initiative plantations to export commodities, especially coffee and indigo. Liberalisation opened the door for European migration to the Indies to obtain leased lands from the government. This was later unfavourable to the government itself and triggered resistance from the population due to oppression by private plantations.

After the brief British rule in Java (1811-1816), the Dutch colonial government was more or less influenced by the economic liberalisation envisaged by Raffles. The land tax policy was enacted more favourably for the population than in the previous policy. There were two policy changes in tax collection. Firstly, the tax was no longer charged to each landowner but to the village. Secondly, the calculation of the tax per village paid had to be reached by agreement with the village government through bargaining. Third, tax payments could be made in both money and goods.⁵⁹ There were four steps for the Dutch colonial government to carry out this policy. Firstly, it carried out the old practice of the *priangan* system by forcing the population to cultivate coffee and forced delivery to the government at a low price. Second, forced cultivation and shipping by providing wages to the population. Third, stop forced cultivation and shipping on coffee plantations, but offer a fair price for each product and the government will buy cultivation output. Thirdly, the

⁵⁶ This period is called the English Interegnum. There were two men who served as commission-generals, namely Elout, Baron van den Capelen and Buyskes. In 1924, the general commission ended and the Kingdom of the Netherlands appointed Viscount Du Bus de Ghisignies as governor general. During Du Bus's time, the Java War broke out.

⁵⁷ Daniel Wilco van Welderen Rengers, *The Failure of a Liberal Colonial Policy: The* (Dordrecht: Springer Science Business Media, 1947), pp. 59.

⁵⁸ Rengers, p. 55.

⁵⁹ Day, *The policy and administration of the Dutch in Java*, pp. 210-211.

government would hand over the plantation lands to the residents by making rules on the maintenance of cultivated crops, and giving the residents the freedom to sell their products after paying fair taxes. In the end, The Dutch colonial government eventually implemented the fourth plan in its fiscal policy on land.⁶⁰

Liberal policies seemed preferable to previous policies, but in practice, the population was still subject to oppression. The incomplete administration of tax collection and the legacy of oppression in the last period did not change the tax collection practices carried out by both official officials and informally involved local elites.⁶¹ Clive Day noted several oppressive practices that were inconsistent with the policies issued. Taxes imposed on villages were, in practice, collected individually. In practice, taxes that were supposed to be collected voluntarily were collected by coercion, which happened in Rembang.⁶²

This transitional policy also provided little benefit to the indigenous population and seeded land ownership rights. The land rent system imposed on the village has led the village fellowship to distribute communal lands to each resident so that the village can afford the tax burden it has to bear.⁶³ The village fellowship has distributed village lands to each resident on a regular basis. Land distribution can be done periodically. Each resident in the year's peak season cultivates the more fertile land. In the following season, he can cultivate less fertile land.⁶⁴ This practice would also remain in place during the forced cultivation system. Even the terms *sanggan* and *sanggem* are inseparable from land distribution and redistribution due to the burden of village taxes during the liberal policy period and forced planting in the later period. the terms *sanggem* and *sangan* in Javanese mean appointment. *Sanggem* and *sangan* land is land appointed to residents by the village to work on the land.

Private plantations have had a detrimental impact on the Dutch government. The oppression of the population by private plantations has led to

⁶⁰ Day, pp. 214-215.

⁶¹ Local elites began to reduce their authority over the population when Deandels came to power. At the time of Raffles, the landrente authority was transferred to the bekel or village head, with the Tumenggung, Demang and Bupati as hired government workers. By the time of the General Commission, the authority of the local elite over the population was almost completely reduced. However, they were able to work informally in support of colonial government policies.

⁶² Day, *The policy and administration of the Dutch in Java*, pp. 224.

⁶³ A. D. A. Kat De Angelino, *Colonial Policy*, vol. II (Dordrecht: Springer Netherlands, 1931), <https://doi.org/10.1007/978-94-011-8904-0>.

⁶⁴ F. D. E. van Ossenbruggen, *De Regeling van Het Desabeheer en van het Credietverband* (Leiden: Druk H. V. Marech, 1908).

disturbances in security and order. The apanage land leasing agreement also enjoyed the labour that was in it. Many people living on apanage land had to provide free labour on private plantations due to the leasing of apanage lands.

The van der Capelen government prohibited rental agreements between private capital and apanage landowners, especially in the Vorstenlanden region. Lease agreements that had been made had to be cancelled immediately, as well as the return of rent paid to the royal nobles. This condition had cornered many nobles who had used the rent money for other purposes. The nobles could not return the rent paid and forced the kingdom to deal with the problem. However, the impact of the policy of prohibiting the leasing of apanage land has led to dissatisfaction from the nobles towards the Dutch colonial government. According to Peter Carey, the abolition of the apanage land rent triggered the Javanese War (1825 to 1830).⁶⁵

The Java War had caused significant losses for the Dutch colonial government. The debt incurred during the five-year Java War amounted to 25 million guilders to the mother country. The financial pressures of the Java War forced the new governor-general to make policies that would increase colonial profits from the colonies.

The failure of the liberal policy and the outbreak of the Java War brought the Dutch colonial government into a dilemma. On the one hand, the liberal spirit wanted the colonial government to protect the indigenous population from oppressive practices. On the other hand, the colonies were required to provide profits to the mother country. The failure of the liberal policy led to a retreat from the Priangan system of the VOC. Van den Bosch (1830-1833) proposed *cultuurdiensten* or forced planting to increase agricultural productivity in Java. There were three forms of forced labour under the system. First, general forced labour (*heeren diensten*) to improve infrastructure. Secondly, pancen forced labour (*pancen diensten*), which is forced labour for indigenous chiefs. Lastly, *cultuurdiensten* or forced planting is deployed to work on land clearing, making irrigation channels, and transporting crops on government plantations.

The forced planting system imposed forced labour on people with land property, in exchange for paying land tax. The larger the cultivated land controlled, the more diverse and more significant the burden of forced labour that had to be performed. As for people with homesteads and houses, forced labour was performed in the house or yard of the native ruler. The period of forced cultivation placed heavy pressure and burden on land tenure. Ultimately, control over cultivated land was not profitable for the indigenous population.

⁶⁵ Peter Carey, *The Origins of the War Java* (Yogyakarta: LKiS, 2012), p. 30.

According to Kat de Angelo, land ownership had lost its attractiveness due to the burden of forced labour that had to be performed.⁶⁶

At the village level, the forced labour to be performed by all villagers demanded an equal distribution of cultivated land. For people with large tracts of land, relinquishing cultivated land to the village was a favourable option. The relinquished land and the opening of new plantation areas have led to the periodic land distribution to all villagers.

Peter Boomgaard argues that the forced cultivation system has encouraged land communalisation in Javanese society.⁶⁷ According to Boomgaard, the re-division of cultivated land accommodated new young families and newcomers who were to be included in forced labour. The re-division also facilitated a system of rotation of cultivated land into plots, some for rice and some for sugar and indigo. It did not require property rights, just regular rotation. Boomgaard's view is well-founded, given the burden of forced labour that villagers must carry out. The presence of new families and newcomers would increase the number of labourers who had to undergo the forced cropping system. The greater the number of labourers involved, the more dispersed the forced labour that villagers had to perform. The distribution of land to new residents and young families will give them the responsibility to carry out forced labour.

Similarly, Ong Hok Ham argued that the forced planting system had triggered internal conflicts within the village community. The landless people were charged to pay a tax of f1.25. The landless people did not want to pay the tax charged to them because they were not obliged to pay taxes. If they wanted to ask the landless people to pay taxes, the village had to distribute land to them. Landless villagers demanded the redistribution of land. The Regent accepted their demands by converting individual ownership into communal land.⁶⁸

The distribution of cultivated land to new residents can be seen from the number of tenant farmers involved in the forced planting system. According to data presented by van Niel, the number of people involved in the forced planting system was more than 125 per cent of the tenant farmers in Cirebon, Banyumas and Kedu. In Surabaya and Pasuruan, the number was more than 130 per cent. This percentage shows that landless people who should not have had to pay land tax were involved in the forced planting system. The village

⁶⁶ De Angelino, *Colonial Policy*, II: p. 436.

⁶⁷ Peter Boomgaard, "Land Rights and the Environment in the Indonesian Archipelago, 800-1950," *Journal of the Economic and Social History of the Orient* 54, no. 4 (2011): 478–96, <https://doi.org/10.1163/156852011X611337>.

⁶⁸ Onghokham, *Madiun in the Meltdown of History, Priyayi and Peasants in the Prefecture Madiun 19th Century*, p. 171.

government had distributed plots of cultivated land to new residents to divide the burden of forced labour that residents had to bear.⁶⁹

Land distribution to landless people also occurred due to the opening of new plantation lands. In the Kedu Karesidenan, the colonial government intensified forced labour by opening new rice fields. The landless population received land from the newly opened rice fields. This policy was beneficial for the colonial government. Besides intensifying the already cleared land, the government also received income from taxes obtained from the new landowners.⁷⁰

The forced planting system had a double effect on developing land ownership rights. On the one hand, the forced cultivation system transferred individual tenure to communal land. Individual cultivated land tenure was not profitable with the burden of forced labour that had to be borne in exchange for tax payments or land rent. On the other hand, the forced cultivation system dispersed cultivated land tenure more. This change has eroded the legacy of Feudalism in land tenure patterns. The distribution of cultivated land to all villagers further expanded the notion of ownership, which was almost unimaginable under Feudalism. This development seems only a matter of time, with subsequent policies that will protect individualised control over land. As commodity production declined during the forced cultivation period, the Dutch colonial government began to change its policy direction back to a liberal agricultural model.

4. Agrarisch Wet 1870

The political dynamics in Europe and the Netherlands influenced land policy development in the Dutch East Indies. The French Revolution influenced the ideas and thoughts of politicians in the Dutch parliament to fight for liberal values. These developments led to changes in the Dutch constitution concerning the colonies. Before 1848, the colonies were a matter for the colonial ministers who were not subject to parliamentary oversight. Budgetary demands forced the monarchy to start including the colonies as part of parliamentary oversight.

The development of printing and the invention of the steamship cut the travelling time from the colonies to the mother country. These two advances

⁶⁹ R. Van Niel, *Java under the Cultivation System* (Leiden: BRILL, 1992), <https://doi.org/10.1163/97890004486881>.

⁷⁰ Djulianti A. M Suroyo, *Exploitation Colonial Nineteenth Century Labour Compulsory in the Prefecture Kedu 1800-1890* (Yogyakarta: Yayasan untuk Indonesia, 2000), p. 109.

increased the flow of information from the colonies to the mother country and vice versa. The royal court could no longer stem the flow of information about the colonies. As a result, information about the condition of the colonies began to be accessible to the Dutch public. Vice versa, the increasingly routine transport of the information supplied access for the population in Java to obtain information about political developments in the Netherlands.⁷¹

The spirit of liberalism and the concern to improve the welfare of the colonised population encouraged the liberal parliament to start thinking about liberal policy changes. However, it took several years for the liberal parliamentary camp to compete with the conservative camp. Liberal policies became unstoppable as more liberal politicians entered parliament. This balance has made liberal policies in the colonies possible.⁷²

The concern of parliament, especially the liberal camp, was to reduce the state's role in the economy. The forced cultivation system had monopolised the state's role in the economy. It was not favourable for private capital, which soon wanted to invest in the plantation sector. Politicians in the Dutch parliament seemed unable to stem the liberal economic policies in the colonies. According to them, commodity production under the forced cultivation system should be ended and replaced with private capital in the plantation sector. The members of parliament seemed to have come to a common interest, namely, making the colonies a gold mine for the mother country.

Op den voorgrond stond bestendig, in de eerste plaats, de eisch der schatkist, die door Indisch goud moest gestijfd worden; verder het vooruitzicht dat de Nederlandsche nijverheid, handel en scheepvaart wel zouden varen bij eene vermeerderde bedrijvigheid in den Indischen Archipel. Werd aan dien eisch voldaan, was er kans dat vooruitzicht te verwezenlijken, dan, dacht men, zou er genoeg gedaan wezen, en indien men al eens ter loops van den zwijgenden Indischen onderdaan repte, he was om zich in de overtuiging te versterken, dat alle maatregelen die onze belangen

⁷¹ C. Fasseur, *The Politics of Colonial Exploitation: Java, the Dutch, and the Cultivation System*, ed. by R. E. Elson, Studies on Southeast Asia (Ithaca, N.Y.: Southeast Asia Programme, Cornell University, 1992), p. 8. In 1940, the two Dutch newspapers *Nieuwe Rotterdamsche Courant* (NRC) and *Algemeen Handelsblad* sent regular issues to Java.

⁷² Fasseur, *The Politics of Colonial Exploitation*.

*konden bevorderen, per se ook gunstig voor de zijne moesten uitvallen.*⁷³

In 1870, the Dutch parliament passed the *agrarischt wet* which became the basis for the fulfilment of private capital to obtain large areas of plantation land and provided certainty for indigenous land ownership. These two things differentiated land tenure between no man's land (*woeste gronden*) and land controlled by indigenous people. *Woeste gronden* became the basis for the government to lease large land for private plantations. Through *domen verklaring*,⁷⁴ the colonial government considered lands not managed by the indigenous population to be state domain. *Domain verklaring* became a target of criticism by customary law scholars. Vollenhoven vigorously opposed domain *verklaring* because it deprived indigenous communities of customary rights.⁷⁵

In addition to the policy of granting individual property rights to the indigenous population, the liberal camp also encourages land occupation regulated in customary law. Land clearing rights regulated under customary law will maintain the relationship between the indigenous people and their land. In addition, land clearing rights will preserve communal rights to the land.⁷⁶

The Agrarische wet was enacted in line with the liberal view of opening up land for individual ownership of the indigenous population and land occupation for private plantations. The government could grant leases to private capital for 75 years. The colonial government could lease land derived from state land or land owned by indigenous people that was leased voluntarily. The granting of land leases must not infringe on the land rights of the indigenous population (Article 2 AW 1870) and cultivated lands, pastures or other purposes owned by villages, except in the public interest (Article 3 AW). The

⁷³ "De Debatten Ovee De Agrarische Wet," *Tijdschrift voor Neerland's Indië*, 1870. Translation: "Foremost is, first of all, the demand for treasury, which must be fuelled by Indian gold; furthermore, the prospect that Dutch industry, trade, and shipping will benefit from increased activity in the Indian Islands. If this demand is met, if there is an opportunity to realise these prospects, then, it is thought, enough, and if the quiet Indian is mentioned in passing, it is to reinforce the conviction that all measures that can advance our interests must be in his favour.

⁷⁴ Agrarische Besluit No. 118 of 1870. Article 1 Subject to the second and third provisions of the aforementioned Act, it is hereby maintained that all land for which no title can be proved belongs to the State.

⁷⁵ Cornelis van Vollenhoven, *Indonesians and Their Land*, ed. by Upik Djalins (Yogyakarta: STPN Press, 2013).

⁷⁶ Juwono, *Rights Property over Land*, p. 80.

Agrarische wet gave an individualised character to the land of the indigenous population as it provided for inheritance and transfer within the limits set by the regulations (Article 4 AW).

Agrarische Besluit St. no. 118 of 1870 elaborated the Agrarische wet as its basic regulation. AB 118 recognised land rights for indigenous people according to customary law or custom, to the extent provided for in regulations. Article 3 of the AB regulates the opportunity for indigenous people to obtain a certificate of hereditary land rights. Article 5 of AB 118 regulates the leasing of indigenous lands to non-indigenous people.

Article 7 of the Agrarische Besluit regulates land clearing for indigenous people outside village land. This means that the colonial government provides opportunities for indigenous people to clear land on lands claimed as state domain. Land clearing on state domain land must be preceded by a land clearing permit issued by the local government.

The AW and AB regulations were in line with the policies that had been the subject of discussion in the Dutch parliament during the drafting of the Agrarische Wet. The liberal camp wanted individual property rights for the indigenous population to increase their income and welfare. Agrarian law accommodates Thorbecke's demands to provide opportunities for indigenous peoples to occupy land on state land. These policies formed the basis for establishing land property rights for the indigenous people.

Ontginnings-ordonnantie, or land occupation and land property conversion regulation translated the demand of liberal politicians.⁷⁷ The land occupation regulations explicitly stated that the right to land occupation for the indigenous population was a form of recognition of customary law. This regulation considers that customary law stipulates that “every *bumiputra* has the right to open land, which is not used by people for their livelihood, without having to pay anything to the Government”. Land clearing is done by obtaining permission from the governor-general to avoid excessive land clearing and harming the public interest. A person who gets permission to open land can make the land as heirloom land.

⁷⁷ Ontginning Ordonnantie, Staatblad 1886 No. 44; *Verandering van Comunaal in erfelijk individueel bezit* (converting village property into individual heritage property), Staatblad No. 102 van 11 April 1885. *Vervanging van Inlandsch erfelijk invidivueel gronbezit door eigendom* (converting own heirloom property into eigendom), Staatblad 1872 No. 117, 16 April 1887. See also Onghokham, *Madiun in the Meltdown of History, Priyayi and Peasants in the Prefecture Madiun 19th Century*. (Connecticut: Yale University, 1975).

The Emergence of Land Property Rights as an Institutional Order

The study of the emergence of property rights over land in Java shows institutional order rather than spontaneous order. It happened in societies where market forces had not yet developed. During Feudalism, Javanese people did not recognise land ownership rights. Colonialism introduced land property rights, as common issue in the developing countries.⁷⁸ In addition, the colonial government increased the monetary economy to encourage market growth for the indigenous people.

As Demsetz studies in Indian communities, the increase in beaver commodities was accompanied by beaver hunting because of its economic value. People started to enclose hunting lands because of their economic value. The opening up of commodity markets encouraged the occupation of land for commodity hunting. It was the origin of land property in Indian society. In Javanese society, the market had not yet developed. Trade productivity was only for the export market. The colonial powers forced the population to plant export crops. They monopolised the people's trade at low prices and confiscated their agricultural output. This condition is not profitable to the emergence of land property rights.

Early colonialism began to replace the land tenure system with failed liberal policy,⁷⁹ because of the farmers still had to do forced labour. Land property rights still did not promise benefits for farmers. Land distribution during the VOC era still imposed forced labour on farmers to cultivate the export commodities. Surplus agricultural harvests still could not be enjoyed by farmers due to the seizure of surplus by local elites through contingency payments. During the Raffles era, land distribution continued to increase farmers' productivity. Raffles hoped that land ownership would increase farmers' productivity, benefiting the British colonial government through land tax payments. Raffles made the mistake of charging land tax payments with money. The monetary economy was still undeveloped among Javanese people and only developed among Chinese and colonial traders. Money Payment of

⁷⁸ Peter James Eaton, *Land Tenure, Conservation and Development in Southeast Asia*, Routledge Curzon Contemporary Southeast Asia Series 1 (London: Routledge Curzon, 2005), p. 9; Boomgaard, "Land Rights and the Environment in the Indonesian Archipelago, 800-1950."

⁷⁹ Rengers, *The Failure of a Liberal Colonial Policy*.

land tax getting into debt farmers to Chinese traders. During this period, land ownership was still not profitable for Javanese farmers.

Farmers' forced labour burden peaked during the forced cultivation system. The larger area of land are controlled, the greater the burden of forced labour that landowning farmers must carry out. In the forced cultivation system, land communalisation occurred to avoid the heavy burden of forced labour on landowners. Land communalisation occurred by transferring privately owned land into village land. The village would redistribute land to members of the population who could work, thereby distributing the burden of forced labour to all villagers. The distribution of forced labour to all villagers without the accompanying land distribution resulted in conflict between landless people and local elites. Onghokham's study of land redistribution in Madiun demonstrates it.

Land ownership began to be well-established after the colonial government promulgated the agrarian law in 1870. This law introduced individual rights of land property to the indigenous people. Residents could apply for personal property rights over village land and state land.⁸⁰ Residents could also apply to the government for a land clearing permit to obtain ownership rights over land. Land property rights became favourable at this time. Landowners could cultivate land for their use. The liberal policies that drove the Agrarian Law were intended to create land property rights as a source of livelihood and improve the welfare of the indigenous population. The development of the sugar industry was also very profitable for landowners. Residents could lease their land for sugar cane cultivation.

The colonial land policy has prompted the indigenous people's awareness of land property rights. In the early days, state intervention in creating land property still did not create land property due to the workload factor that had to be borne in each land property. Agrarian Law 1870 was the state's intervention to create land property rights for the indigenous population. Unlike the previous period, land property right was not accompanied by the burden of forced labor that must be done.

Conclusion

Property rights developed after the colonial government introduced the coffee commodity policy. He distributed land to the natives to grow coffee. Property rights became more fundamental when raffles introduced the landrent.

⁸⁰ Juwono, *Rights Property over Land*.

During the forced cultivation system, property rights declined because property rights coincided with forced labor. Property rights began to establish when the colonial government introduced the agrarian law which recognized property rights over land for the natives. The emergence of property rights in Indonesia, with a preference for Java, developed during colonial rule. In the feudalism era, property rights did not develop because control over labor power and land was not a scarce commodity. The colonial government introduced property rights to maximize the amount of labor. The more property rights distributed, the greater the state's revenue in the tax sector and commodity production.

Although the state uses law to intervene in the emergence of land property, external factors determine the emergence of land property. At the beginning of the state's intervention to create property rights, people were still not eager to obtain property rights because of the burden of labor inherent in land property rights. In contrast, land property rights burdened with forced labour have shifted private property into communal property. Land property rights began to emerge when state intervention to create property rights was accompanied by the benefits and advantages. It encourages the people to occupy the waste land for the livelihood.

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Angela Davis

An American Marxist and Feminist Political Activist

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