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Resolution of Agrarian Conflicts on Plantation Land through Restorative Justice in Indonesia

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Abstract

The agrarian reform in Indonesia has not been effectively implemented, leading to significant challenges, particularly regarding the unresolved status of Right to Use Enterprises (HGU) held by plantation entrepreneurs. As a result, many plantation lands remain abandoned, which farming communities—lacking formal land ownership—subsequently cultivate. The government views this activity as unauthorized land occupation, commonly referred to as reclamation. Conflicts over plantation land arise from differing perspectives: while farming communities seek justice, the government perceives plantation land as state property that necessitates state control and management. This issue is further complicated by plantation entrepreneurs who believe they retain valid HGU rights. To address this multifaceted problem, a solution model is needed that engages victims, perpetrators, and community stakeholders to foster a sense of justice. This research employs socio-legal methodologies, utilizing an interdisciplinary approach that incorporates non-legal disciplines to enhance doctrinal analysis and better understand the legal realities faced by all parties

involved. The findings indicate that a restorative justice model for resolving conflicts between farming communities and HGU holders is highly appropriate, as it facilitates a sense of fairness for all stakeholders. By bridging the divergent understandings and paradigms of the farming communities and the government, restorative justice mechanisms can effectively restore the rights of those affected and promote peace in the resolution process.

KEYWORDS *Agrarian Conflict Resolution, Restorative Justice, Plantation Land, Indonesian Agrarian Conflict*

Introduction

Agrarian conflicts in Indonesia have occurred since the Dutch colonial period until now, because the Indonesian people have inherited the Dutch colonial agrarian structure originating from the *Agrarische Wet* in 1870 with the application of the principle of *domain verklaring* which ignores the rights of the people. This conflict stems from the right of the state which has a very large single authority to manage the distribution, control, use, and allocation of land which must be faced with the inherent human rights of citizens.[1] As in the conflicts that occurred on three small islands in the Tanibar, Aru, and Saparua Islands region.2 If this is not resolved immediately, then forced land grabbing or occupation can occur, even leading to bloodshed.

Agrarian conflicts are mostly experienced by vulnerable groups who rely on the survival of land and natural resources, such as farmers, fishermen, and indigenous peoples. The injustice experienced by these groups is in the form of exclusion, exploitation and oppression carried out by the state apparatus and giant corporations. Small and poor landless farmers are unfairly disenfranchised by those who use legal, political, bureaucratic and even military force. This is evident in the conflict cases involving communities and large-scale forest plantation companies in Sumatra, with the hope that democratization will open up a broader political space in framing agrarian justice.[3]

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[1] Azzahra Retnaning Basuki, Adnan Madjid, and Bayu Setiawan, "Resolusi Konflik Agraria Antara PT Sentul City Tbk Dengan Warga Desa Bojong Koneng Kabupaten Bogor," *Jurnal Damai Dan Resolusi Konflik* 7, no. 1 (2021): 64–91.

[2] August E Pattiselanno and Junianita F Sopamena, "Agrarian Conflicts in Islands Areas (Case Study in Maluku Islands, Indonesia)," *International Journal of Agriculture and Forestry* 8, no. 6 (2018): 197–203.

[3] Abetnego P P Tarigan and Mahawan Karuniasa, "Analysis of Agrarian Conflict Resolution through Social Forestry Scheme," in *IOP Conference Series: Earth and Environmental Science*, vol. 716 (IOP Publishing, 2021), 12082.

Agrarian conflicts that are left unchecked, will affect the stability of national security. Security is not only limited to the military dimension, but there are elements other than military in security matters. According to Buzan, the security sector is divided into five areas; military, political, environmental, economic and social, so that the military is only one part of the national security system. Barry Buzan's view of security is multifaceted and needs holistic frameworks [4]. Land disputes, in this case are agrarian conflicts based on economic sectors that will cause national insecurity. Even conflict can spill over into armed conflict, as armed conflict and mining occurred in northern Nimba County, Liberia that led to land use transitions [5].

The Agrarian Reform Consortium revealed that there were 241 cases of agrarian conflicts that in total occurred in 359 regions in Indonesia with 135,332 heads of families affected in 2020. Plantations were the site of the most conflict, accounting for 122 of the total conflict. There have been 87 more cases reported this year than in 2019, a 28% increase. There were 41 incidents of agricultural conflict in the forestry sector, the second highest number[6]. This number increased 100 percent in just one year, from 20 cases in 2019 to 40 cases in 2019. Around 30 agrarian disputes occurred in the infrastructure sector; 20 examples in real estate; 12 incidents in mining; 11 incidents at military installations; 3 incidents at the beach; and 2 incidents in the agricultural sector. Agrarian conflicts have decreased by 14% in terms of numbers, but the decrease is not significant and is not negatively correlated with economic growth. The main factors that determine the level of poverty are land ownership and access to land. However, granting access or rights to land to farmers alone is not strong enough to increase productivity[7]. It is clear from this depiction of agricultural conflict that large-scale plantation systems and practices in Indonesia have many severe and systematic structural difficulties. Although this is expected to happen in 2020, plantations have been a major source of agricultural disputes even in

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[4] Fred Jonyo, "The Role of Security Sector Reforms (SSR) in Sustainable Human Security," *NATIONAL SECURITY*, 2023, 168.

[5] G O Enaruvbe et al., "Armed Conflict and Mining Induced Land-Use Transition in Northern Nimba County, Liberia," *Global Ecology and Conservation* 17 (2019): e00597.

[6] Teddy Minahasa Putra, "Analisa Yuridis Penyimpangan Penegakan Hukum Pada Konflik Lahan Di Provinsi Jawa Timur," *Arena Hukum* 14, no. 1 (2021): 42–66.

[7] Rizka Amalia Nugrahapsari, "Kebijakan Sumber Daya Lahan dan Sistem Tenurial di Indonesia: Konsolidasi Lahan Melalui Pertanian Korporasi Untuk Peningkatan Skala Ekonomi, Efisiensi, dan Nilai Tambah Pertanian," in *Forum Penelitian Agro Ekonomi*, 40, 2022.

the last five years. In 2020, plantations and forestry continued to have the greatest levels of conflict, with a combined conflict rate of 69%.[8]

In Indonesia, inequality in the distribution of land ownership is a major trigger for conflicts over land. Especially in Java, land rights conflicts are mostly farming communities that have not shifted much from the lowest social stratification. In fact, Indonesia, which is an agricultural country, should guarantee living space for farmers and support farmers with policies that benefit farmers[9]. Therefore, research on resolving land occupation conflicts is an urgent need to be carried out. In this article, it is produced that the restorative justice settlement model is a very effective alternative solution because it uses a peace mechanism in restoring the rights of violated parties and bringing justice to the parties, especially for those who feel victimized. Recently, in 2021, Hazrati et al. examined the importance of restorative justice as a proactive policy approach to prevent harm and conflict in the energy sector. According to this study, conflict resolution with justise restoration model will focus more on the needs of victims as nations, citizens, and nature[10]. Restorative justice approaches are also used on corporate governance and ancillary environmental projects[11] as well as litigation cases on climate-related loss and damage[12]. In education and health, school-based restorative justice has become nationally recognized as an effective approach to disrupting the school-to-prison pipeline[13].

This study examines the relationship between law and justice. Debates and discussions about law and justice have long taken place ranging from philosophical to practical studies. This theme of the relationship between law and justice also gave birth to different schools of legal thought[14]. The school of

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[8] Damianus Krismantoro, "Sejarah Dan Perkembangan Hukum Agraria Di Indonesia Dalam Memberikan Keadilan Bagi Masyarakat," *Ijd-Demos* 4, no. 2 (2022).

[9] Arvian Messianik Putra, "Agrarianisasi Dan Konflik Agraria Mengubah Sosial Budaya Masyarakat Pedesaan," *Jurnal Dinamika Sosial Budaya* 25, no. 1 (2023): 126–31.

[10] Mohammad Hazrati and Raphael J Heffron, "Conceptualising Restorative Justice in the Energy Transition: Changing the Perspectives of Fossil Fuels," *Energy Research & Social Science* 78 (2021): 102115.

[11] Muhammad Nadeem, "Corporate Governance and Supplemental Environmental Projects: A Restorative Justice Approach," *Journal of Business Ethics* 173, no. 2 (2021): 261–80.

[12] Stacy-ann Robinson and D'Arcy Carlson, "A Just Alternative to Litigation: Applying Restorative Justice to Climate-Related Loss and Damage," *Third World Quarterly* 42, no. 6 (2021): 1384–95.

[13] Jelena Todić et al., "Reframing School-Based Restorative Justice as a Structural Population Health Intervention," *Health & Place* 62 (2020): 102289.

[14] Ridwan Arifin, "Capturing Various Ideas of Law and Justice in Indonesia and Global Perspective," *Lex Scientia Law Review* 6, no. 1 (2022): i–iv.

legal thought that will be studied in this study is the model of restorative justice settlement with socio-legal methods.

Socio-legal research methods are methods that use an interdisciplinary approach (non-legal disciplines) to sharpen doctrinal analysis, so as to unravel and solve problems or legal realities in the field. Socio-legal is a legal research approach that uses the help of social sciences. Socio-legal methodology is carried out by applying a social scientific perspective to legal studies. These social sciences include sociology of law, legal anthropology, legal history, psychology and law, the study of judicial political science, and comparative science. Before applying social science, the normative framework of each problem to be resolved will be discussed and resolved.

The essence of socio-legal studies is the combination of normative analysis and humanities social science approaches to answer and explain various legal problems, theoretically and methodologically. As was done in research on forest clearing into plantation land in the Marind tribe[15]. Socio-legal studies become a forum for legal sociology, legal anthropology, legal politics, gender and law, legal psychology [16], and so on. Socio-legal studies also greatly enrich the development of legal science both in the theoretical and practical realms. Theoretically, this is a space for the development of contemporary legal science with an interdisciplinary approach [17]. In practical terms, the results of his studies are mainly useful for the basis of legal and policy formulation, as well as judicial institutional reform.

Government Policies and Regulations Regarding Agrarian Reform in Indonesia

Agrarian reform is urgently needed for development purposes which aim to utilize land in an integrated manner and achieve improvements in the quality of space. Development and increased use of land is a step to fulfill needs and rights to land. With the formation of regulations in force to date that regulate land, water and space which are intended for the benefit of welfare and justice for the community. In this case, there is hope in the minds of the community

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[15] Erni Dwita Silambi et al., "Sosio-Legal Analysis of Forest Cleaning Process OnMarind Travel District Merauke," in *IOP Conference Series: Earth and Environmental Science*, vol. 235 (IOP Publishing, 2019), 12085.

[16] Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge New York, 2020).

[17] Naomi Creutzfeldt, Marc Mason, and Kirsten McConnachie, "Socio-Legal Theory and Methods: Introduction," in *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 2019), 3–8.

regarding regulations regarding the use of land as in MPR Decree No.IX/MPR/2001 concerning agrarian reform and management of natural resources [18].

According to Cohen, Agrarian Reform [19], or sometimes called agraria and agrarian reform (the official term as stated in MPR Decree Number/MPR/2001), has a broader meaning, which includes two main objectives, namely how to achieve higher production, and how to achieve higher justice is achieved. In the context of agrarian reform, increasing production will not be able to be achieved optimally if it is not preceded by land reform. Meanwhile, justice cannot possibly be achieved without landforms.

Land management in Indonesia currently does not show equality in accordance with its needs [20]. On the one hand, we see that there are many landless people who need land to support their lives. However, on the other hand, we see that there is large-scale land control owned by entrepreneurs through HGB (Building Use Rights) and HGU (Business Use Rights) which are often not utilized properly. So then abandoned lands appeared. We can also see other conditions in individual ownership of land which are no less ironic. Those who belong to the middle to upper economic groups often control large-scale land which sometimes only has speculative motives. This land ownership often exceeds the maximum land ownership limit, and many of them end up being absentees. This certainly reminds us of the nature of land, which for some people is considered a commodity that has high economic value.

Land acquisition often collides with land ownership rights and inconsistencies with the Regional Spatial Plan [21]. Communities have rights to land (property rights) and this is a human right that gives them the authority to use land for their welfare according to the limits regulated by law. However, based on UUPA, the government has an obligation to provide infrastructure and regulate the administration of land allocation, use, supply and maintenance.

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[18] M B Adi Wicaksono, IGAK Rachmi Handayani, and Lego Karjoko, "State Policy's Analysis in the Redistribution of Reformed Agrarian Lands From Forest Areas in Indonesia (Study of Presidential Regulation Number 86 Year 2018 Regarding Agrarian Reform)," in *3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)* (Atlantis Press, 2019), 174–78.

[19] Jeff Neilson, "Agrarian Transformations and Land Reform in Indonesia," *Land and Development in Indonesia*, 2016, 245–64.

[20] Natasya Aulia Putri et al., "Bridging the Gap by Exploring Inequalities in Access to Land and Disparities in Agrarian Law in Indonesia," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 1–16.

[21] Liping Shan, T W Ann, and Yuzhe Wu, "Strategies for Risk Management in Urban–Rural Conflict: Two Case Studies of Land Acquisition in Urbanising China," *Habitat International* 59 (2017): 90–100.

The land acquisition process, which often takes a long time, can also be caused by the community not being involved in the preparation of development plans. The community rejects an infrastructure development plan on the land it owns because of a lack of preliminary approach to the community. This condition is exacerbated by the compensation process in land acquisition which often does not consider the sustainability of community life after relocation and social compensation resulting from relocation.[22]

The inequality that exists in the land "control structure" is a very prominent agrarian problem in the country [23]. The meaning of this "control structure" is the arrangement, distribution or distribution, both regarding ownership (formal control), as well as effective control (cultivation/operational) of agrarian resources, as well as the distribution of allocation or allocation. Regarding the picture of inequality in the structure of control, complete, thorough and thorough statistical data is needed [24]. However, currently such data does not exist. even if there is basic macro data such as agricultural census data or BPS. Of course, this must be calculated specifically by yourself, and carefully, so that it is in accordance with the desired goals.

The configuration of the dimensions of land affairs that continues to change and develop will have the implication of giving rise to many ongoing conflicts of interest, therefore a resolution method is necessary. disputes or conflicts that are oriented towards providing pressure for social justice and legal certainty in a synergistic and proportional manner. Essentially, land cases contain contested social dimensions, starting from social relations, religion, community continuity, and self-respect and dignity. Based on the facts in the midst of this conflict, general courts and State Administrative Courts often, when handling land cases, only look at the formality of the legal relationship (control/ownership) between the person/community and the land. Therefore, it is natural that the resulting legal-formal approach is a "court decision," often contrary to society's sense of justice [25].

The KPK's pioneering efforts and initiatives in multi-party coordination in resolving natural resource conflicts have at least contributed to four things: 1) The importance of breakthrough forms of conflict resolution that are able to

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[22] Sofi Puspasari and Sutaryono Sutaryono, "Integrasi Agraria–Pertanahan Dan Tata Ruang: Menyatukan Status Tanah Dan Fungsi Ruang" (STPN Press dan PPPM, 2017).

[23] Nancy Lee Peluso, *Rich Forests, Poor People: Resource Control and Resistance in Java* (Univ of California Press, 2023).

[24] Craig A Mertler, Rachel A Vannatta, and Kristina N LaVenia, *Advanced and Multivariate Statistical Methods: Practical Application and Interpretation* (Routledge, 2021).

[25] Philip James Drake, "Beyond the Bounds of Formalism: Social Justice and Legal Education" (University of Huddersfield, 2020).

go beyond just 'case by case', but in legal policy; 2) the impossibility of resolving natural resource conflicts in Indonesia if the institutional authority for resolving conflicts is still inherited by 'sectoral ego' both between ministries/institutions and in terms of issues, for example: forestry, mining, maritime affairs, mineral and coal, etc. Because the trajectory of the conflict that occurs is also cross-sectoral and cross-issue. A strong and authoritative institution directly under the President is needed, so that it is able to directly coordinate the country's political power under one control; 3) The importance of a database with data on natural resource and agrarian conflicts whose quality can be a reference for multi-stakeholders who are concerned about resolving natural resource and agrarian conflicts, including government, academics, study centers, researchers, civil society, organizations people, communities, and can also be accessed by the public at large; 4) The presence of the state, even though it is symbolic, provides an important meaning for the defense of the basic rights of indigenous/local/other local communities. Because in the case of the National Inquiry coordinated by Komnas HAM and civil society in 2015-2016, it showed that indigenous/local/local communities had to face corporate (private) political forces that were intertwined with the psudo-state, along with their security forces (TNI and Polri). The presence of the state should be able to protect the basic rights of its citizens in line with the nation's constitution.[26]

The aim of Land Reform held in Indonesia is to increase the income and standard of living of farmers, as a foundation or prerequisite for carrying out economic development towards a just and prosperous society based on Pancasila. Boedi Harsono stated that the objectives of land reform are as follows: 1. To provide a fair distribution of the source of livelihood of the farming people in the form of land, with the aim of ensuring a fair distribution of the results. 2. To implement the principle of land for farming, so that land no longer becomes an object of speculation (a tool for extortion). 3. To strengthen and expand land ownership rights for every Indonesian citizen, both men and women who have social functions. 4. To end the landlord system and eliminate large-scale, unlimited ownership and control of land, by establishing maximum and minimum limits for each family. 5. In the interests of national production and encouraging the implementation of intensive farming through mutual cooperation in the form of cooperatives and other forms of mutual cooperation, to achieve prosperity that is equitable and fair, accompanied by a credit system specifically aimed at the farmer group.

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[26] Eko Cahyono, Sulistyanto Sulistyanto, and Sarah Azzahwa, "Resolusi Konflik Gerakan Nasional Penyelamatan Sumber Daya Alam: Lintasan Gagasan, Praktik, Dan Bentang Masalah," *Integritas: Jurnal Antikorupsi* 5, no. 2–2 (2019): 75–92.

Both agrarian reform (which in Indonesia is commonly translated as "agrarian reform") and reform of agrarian management are reform agendas regarding agrarian issues. Both, as just mentioned, even consist of several activity components that are similar (or even identical) to each other. Therefore, the implementation of one particular component of reform (correction of inequality in control, for example) may reflect the realization of both reform agendas simultaneously. Despite the similarities and overlaps above, the author still considers that these two agendas must be seen as two different things, even though in implementation they may not be separated from each other.[27]

Based on history, the Raffles government introduced the domain theory, which stated that all land in the Dutch East Indies belonged to the king [28]. On the basis of this theory, the British government as the successor to the King of Mataram implemented a tax collection system (*landrente*) with the assumption that the people were tenants while the land owner was the colonial government. Raffles' business did not last long (1811-1816) because the Dutch East Indies government took over power. The policy of forced cultivation (cultuurstelsel) and the tax system implemented by Van den Bosch since 1830 caused major changes in people's lives [29]. This policy forces farmers to plant one third of their land with crops determined by the government. They are also forced to do mandatory forms of work in exchange for taxes that should be paid to the state. Highly exploitative forms of coercion and collection are considered to damage the land ownership system in the village. The change of Dutch government from the hands of conservatives to the hands of liberals had an influence on the land policies implemented in the Dutch East Indies. The role of the state in the agricultural sector is being replaced by private capital owners. Through the Agrarian Law (Agrarische Wet) which was issued in 1870, foreign investors had ample opportunities to cultivate plantations in Indonesia. The colonial government established the Domein Verklaring principle which stated that all land that could not be proven to be someone's *eigendom* (owned) was considered *domein* or state property.

This rule was implemented so that the colonial government could own people's land, which at that time almost all still applied the customary law system. Ownership of land based on the customary system does not equate to *eigendom* rights so that customary land becomes state land and can later be freely rented out to plantation entrepreneurs who need it. In this case, the colonial

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[27] Mohamad Shohibuddin, *Perspektif Agraria Kritis: Teori, Kebijakan, Dan Kajian Empiris* (Sajogyo Institute and STPN Press, 2018).

[28] James David Wilson, "The Anglo-Dutch Imperial Meridian in the Indian Ocean World, 1795-1820," 2019.

[29] Robert Van Niel, *Java under the Cultivation System*, vol. 150 (Brill, 2022).

government with its growing capital power tried to remove farmers from their source of livelihood. The agrarian politics developed by the colonial government systematically weakened the socio-economic position of rural residents. Their position as farmers shifted to become laborers in rural areas. Forms of colonial exploitation, whether in the form of tax pressure, excessive deployment of labor, or oppressive regulations as part of colonial politics resulted in widespread poverty of the people. The reality of colonial power is not in accordance with the ideal social reality in traditional society. As a result, in the 19th and 20th centuries there was widespread peasant resistance. This is a form of reaction to excessive squeeze by the economy colonial, in this case exploitation by colonial government officials, capital owners, or cooperation between the two. According to James Scott, exploitation was a determining factor in the occurrence of peasant rebellions [30]. The rebellion was based on the subsistence of farmers who were disturbed by various colonial regulations which were burdensome for farmers, for example the tax burden that farmers had to bear.

Another populist land policy in the Old Order era was the issuance of the 1960 Basic Agrarian Law (UU No. 5 of 1960). This law was based on customary law which had been perfected so that all forms of land rights in the Dutch era were abolished. and converted into rights regulated by UUPA. The UUPA stipulates restrictions on land control so as not to harm the public interest, protects individual land rights which are placed in a functional dimension, which means land rights refer to the public interest. The implementation of the land reform program to limit the size of land ownership turned out to be experiencing obstacles. Landlords try to circumvent the provisions of the UUPA in various ways. Another interesting thing about the land issue at that time was the use of land reform as a PKI strategy to exert influence among rural communities [31]. The PKI used the issue of land reform to polarize the village population into two opposing classes, namely the "village devil" landlords and the peasants.

Land policy changes when there is a change in government. The New Order government tends to carry out development policies with the economy as its commander. This causes a change in perception of the function of land as a natural resource that is very unique in nature. Land is seen as a means of investment and a means of capital accumulation. This change took place in line with changes in land policy, namely from a policy that favored the interests of

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[30] Forrest D Colburn, *Everyday Forms of Peasant Resistance* (Routledge, 2016).

[31] Ricco Andreas, Luthfi Kalbu Adi, and Sri Sulastuti, "The Effect of Colonialism on Implementation of Agrarian Reform in Indonesia," *Fiat Justisia: Jurnal Ilmu Hukum* 13, no. 2 (2019): 101–14.

the people to a policy that favored the interests of capitalists. The UUPA is still maintained even though it is no longer the parent of all applicable regulations in the agrarian sector. Thus, the striking change in land disputes during the New Order era was the parties involved in the dispute. In this period, conflicts no longer involved small farmers or sharecroppers and landowners, but rather between land owners (farmers) and large capital owners and the state. The state can act as a facilitator who provides support to large capital owners and even the state itself, in the name of development, is the party that directly disputes with the people. Land disputes in the New Order era actually appeared with greater frequency for different reasons. Land disputes the plantations that often occur, especially in plantation enclaves such as Java and Sumatra, arise due to new stipulations, extensions or transfers of Cultivation Rights on plantation land and/or former plantation land that has been cultivated by the people.

Saturday, September 24 1960, was a very important day in the development of Indonesian law, especially in the field of Agrarian law. This historic date is the day Law No. 5 of 1960 (State Gazette No. 104 of 1960) which is known as the Basic Agrarian Principles Regulations which are widely known as UUPA. As we Indonesians know and have experienced for ourselves, before the promulgation of the UUPA, Agrarian Law inherited from the Dutch colonial government was implemented, especially in the land sector which was dualistic in nature, namely customary law and Western law. The Western law applied in Indonesia is colonial law which is very detrimental to the Indonesian people which originates from the Burgerlijk Wetboek and Agrarisch Wet of 1870 No. 55. With the promulgation of the UUPA which has been in effect since 24 September 1960, the Indonesian nation has its own agrarian law that has been unified and national in nature based on customary law that has been outlined[32]. UUPA contains the Five Programs, principles and basic provisions of Indonesian agrarian reform, UUPA does not only contain provisions regarding reforming old laws into new agrarian laws.

As the name suggests, the UUPA is a basic regulation on agrarian principles, of course containing other key agrarian issues. In fact, in the last four decades, the phenomenon of land disputes that have emerged has been extraordinary. These disputes occur between the community and the government, the community and investors, the community and the community itself, and even between the government and the government. Most of these problems arise as a result of land acquisition for the purposes of developing

[32] Sugina Hidayanti, Indra Koswara, and Yopie Gunawan, "The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)," *Legal Brief* 11, no. 1 (2021): 366–78.

infrastructure, industry, housing, tourism and large-scale plantations. Outside Java, for example, land disputes occur between indigenous communities who maintain customary rights to land and large capital owners who obtain concessions for forestry, mining, including oil and gas mining, and agribusiness development using the PIR (People's Core Plantation) pattern. The discussion of dispute resolution in this article is limited to matters related to efforts to obtain land for development projects which includes how to resolve land disputes and the application of the principles and provisions for resolving disputes over land controlled legally or illegally. How to resolve land disputes and apply the principles and provisions for resolving land disputes controlled between government agencies.

Law no. 5 1960 concerning Basic Regulations on Agrarian Principles Article 1 paragraph 1, "the entire territory of Indonesia is the unity of the homeland of all the Indonesian people, who are united as the Indonesian nation". Then verse 2 states: "The entire earth, water and space, including the natural wealth contained within the territory of Indonesia as a gift from God Almighty, are the earth, water and space of the Indonesian nation and constitute national wealth." Looking at the article contained in Law No. 5 of 1960 on Agrarian is interpreted broadly as involving land, both in the form of the surface, above the surface and the contents of the land itself.

According to Law No. 5 of 1960, agrarian is defined as earth, water and air. This understanding refers to the meaning of agrarian as space and its contents. Space can have physical dimensions, such as coastlines, riverbanks, cliffs, embankments, vegetation; and the imaginary dimension of administrative boundaries on maps. Meanwhile, the content of space refers to the material that occupies that space, better known as natural resources, including humans. Thus, the terms agrarian, space, and/or natural resources can be used interchangeably to denote the same meaning. Regional boundaries can indicate ecological identity, for example forest ecosystems and watershed ecosystems; can also have political meaning, for example national borders; can have sociological meaning, for example the boundaries of traditional stakeholders; it can also have an economic meaning, for example the boundaries of land owned/controlled by a party. Thus, agrarian means both material and immaterial, related to the authority of a party to access; manage; utilize, and claim a scope that is its territory (domain), and this authority usually leads to a form of sole control. Territorial boundaries automatically indicate a party's claim to power over material located in an area, and often these claims clash with the claims of other parties. As a result, conflicts over claims; access; management; and the use of natural/agrarian resources between the state and indigenous communities is inevitable. Agrarian is sometimes an irreplaceable living space. So, for its

meaning, agrarian will be maintained until the end of life. This meaning may be different for the state or private sector which considers agrarian resources to be economic assets, both for the purposes of economic growth and the accumulation of capital and profits. For the state and the private sector, because agrarian is an asset, providing compensation is an alternative resolution when structural agrarian conflicts occur.

Several languages use the term "land" or "parcel of land", including Latin. Agrarian refers to farmers, rice fields, or agriculture. This is called acre in Dutch, which means farmland. Agricultural land in Greek is called *Agros*. An agrarian is someone who owns land suitable for growing crops. "Agrarian" refers to the use and ownership of land in the Big Indonesian Dictionary. However, "agrarian" in the UUPA has a much broader connotation that includes the three elements of nature, as well as all the resources they contain. The term "earth" refers to the material covering the planet's surface, as well as the interior, subsurface, and oceans. The term "land" refers to the surface of the earth in question. Therefore, we can conclude that the definition of land includes both the land surface and the submerged surface of the earth, including the oceans. The agrarian scope can be summarized as follows, from these findings: a) The separation of the Indonesian continent as well visible in the world. As regulated in Law no. 4 of 1960, the Indonesian Continental Shelf covers all the seabed and subsoil that extends outside the territorial waters of the Republic of Indonesia to a depth of at least 200 meters. b) All water, whether on, over, or under the earth, falls under the definition of "water". Surface water, groundwater, rainwater, and seawater on land all fall under this definition. c) Petroleum, natural gas, minerals and coal are examples of the earth's natural resources. Mineral wax (ozokerite) and bitumen produced during the mining process are examples of crude oil, although they do not include coal and other hydrocarbon reserves found in solid form. Crude oil is a mixture of hydrocarbons under atmospheric pressure and temperature, and can be liquid or solid. This has nothing to do with the oil and gas industry. There is a difference between natural gas and oil. Natural gas is a byproduct of hydrocarbon extraction at atmospheric pressure and temperature. d) Fish and the natural resources they inhabit are water's greatest assets. Fish include a variety of organisms that spend all or part of their life cycle in water. e) In terms of natural resources, the term "Exclusive Economic Zone" (EEZ) refers to the area outside and bordering the Indonesian territorial sea which is established in accordance with Indonesian laws and regulations and includes the seabed, the land below it, and the waters above it , with a maximum distance of 200 nautical miles measured from the coast. f) The agrarian description of the logo is basically the same as the concept of space. In a broad sense, the term "space"

refers to geographic areas that include land, sea, and air, as well as areas within the earth's crust where life-supporting organisms such as humans and other animals can live, work, and ensure their own survival.

However, formally, Agrarian Reform has been institutionalized and legal infrastructure built in the context of resolving land conflicts, redistributing land to the community, and identifying RA objects. The issuance of Presidential Decree no. 88 of 2017 (and Presidential Decree No. 86 of 2018) aims to resolve the status of land in community-controlled forest areas. With the presence of this presidential decree, the organizational structure of the Inventory and Land Tenure Verification Team in Forest Areas (Inver Team [PTKH]) and the Agrarian Reform Task Force (GTRA) were formed to carry out the program which was then campaigned as a national strategic program. This agenda is the first time in the last twenty years that Agrarian Reform has been included in the priority program. The two big land redistribution agendas with the object of releasing forest areas and non-forest areas still encounter many problems, especially redistribution with the object of forest areas. Land redistribution targets with objects from forest areas (reservation and release of forest areas) are greater in number than with non-forest area objects. Based on official sources from the Ministry of Environment and Forestry (KLHK) in the Indicative Map which underwent its 5th revision in September 2020, there are around 4.8 million hectares of land targeted by the government (WebGis KLHK, 2021, Salim & Utami, 2019), while the official figure in the RPJMN is 4.1 million hectares. In fact, after five years, its achievements are still considered low. According to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (Ministry of ATR/BPN), until the beginning of 2021, only around 384,058 plots (covering an area of 211,035 Ha) or around 5.15% were distributed. The report from the Director General of Agrarian Management stated that only in 2019-2020 could redistribution of land from Agrarian Reform Object Land (TORA) be carried out to release forest areas. Unfortunately, the achievements above are not stated in detail as to which objects came from, whether they were all from the PPTKH program or land released from forest areas that had been released and had not been redistributed before the issuance of Presidential Decree No. 88 of 2017. Several districts carry out redistribution with the object of releasing forest areas but this is not the case. For example, the PPTKH program is Hulu Sungai Selatan and Musi Rawas Districts. Departing from the arguments above, this research wants to explain the problem of Agrarian Reform Object Land (TORA) from forest areas which are considered quite important (KLHK, 2018), even though the down streaming is carried out by the Ministry of ATR/BPN, the initial process and data provision are different. First, changes to forest area boundaries (which

originate from production forest areas or protected forest areas that have been controlled, owned, exploited and used for settlements, public facilities and/or social facilities, as well as cultivation land) are completed using the PPTKH scheme. The mechanism for releasing forest areas to change the designation of non-productive HPK areas to non-forest areas began with research by the Integrated Team.[33]

Resolving Agrarian Conflicts Using Restorative Justice in Indonesia

KPA Secretary General Dewi Kartika, at the launch of the 2023 Final Notes, in Jakarta, Monday (15/1/2024), said that the polemic of agrarian conflict in Indonesia had started since the colonial era. However, until now the government has not seriously handled national agrarian problems, including conflicts. When will it be resolved (the conflict), the conflict will continue to be passed down from generation to generation by the government. Later, the previous president accused each other of agrarian conflict. "In fact, the number of conflicts continues to accumulate and at any time there could be an explosion of multidimensional agrarian conflicts," he said.

For example, continued Dewi, the agrarian conflict in Batulawang Village, Cianjur, West Java, which has been a legacy since the New Order. This conflict involves residents and a company's land use rights (HGU). Because they could not find common ground, the former HGU land is now claimed to belong to the land bank after the introduction of the Job Creation Law. The incident in Batulawang is an example of the metamorphosis of an increasingly complex agrarian conflict. From the beginning it only involved residents and ex-HGU land, now there is a land bank, even a part of the police institution. "*The old conflict has not been resolved, new conflicts have emerged. The old conflict is getting more complicated, more chaotic*," he said. One of the new agrarian conflicts was triggered by a national strategic project (PSN). KPA noted that during the 2020-2023 period, there were 115 eruptions of agrarian conflicts due to PSN. At least PSN involves 516,409 ha of land and 85,555 families. Apart from conflict, victims of violence have also increased. During the era of President Joko Widodo, 3,503 people fighting for land rights became victims of violence and criminalization. A total of 78 people were shot and 72 people died.

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[33] M Nazir Salim et al., "Menyoal Praktik Kebijakan Reforma Agraria Di Kawasan Hutan," *BHUMI: Jurnal Agraria Dan Pertanahan* 7, no. 2 (2021): 149–62.

According to the Deputy Chair of Commission II of the People's Representative Council, Syamsurizal stated that agrarian conflicts are the result of structural injustice, but are still considered horizontal conflicts. The people's land was confiscated for the sake of a handful of oligarchic elites who were never satisfied. "It is recorded that 68 percent of the land in Indonesia is (only) controlled by 1 percent of business groups and large corporations, while more than 16 million farmers depend for a living on an average of just under half a hectare of land. The potential loss to the state from HGU management exceeding the permit limit reaches Rp. 380 trillion. Furthermore, Syamsurizal explained, in the last five years at least 2,288 agrarian conflicts occurred, as many as 1,437 people were criminalized because of it, 776 people were persecuted, 75 people were shot and 66 people died in agrarian conflict areas (4/4/2023).

Land disputes, akin to conflicts in other domains, can be resolved through two primary methods. The first involves direct settlement through deliberation, where parties engage in dialogue to reach a mutual agreement. This approach fosters communication and can often lead to quicker, less adversarial resolutions, allowing individuals to maintain relationships and avoid the burdens of formal proceedings.

The second method is judicial resolution, where disputes are escalated to the courts. In cases involving illegal land use, parties can submit their claims to general courts or state administrative courts, as mandated by Law No. 51/Prp/1960. This law prohibits the use of land without the rightful owner's consent, providing a legal framework for addressing conflicts. While judicial avenues are available for all land disputes, it is important to note that many individuals find this path to be less effective. Court proceedings can be lengthy, expensive, and fraught with complications, leading to frustration among those seeking resolution.

Analysis of numerous land dispute cases—spanning initial rulings, appeals, and cassation—reveals a critical need for greater understanding of the underlying issues. Many judicial decisions lack clarity on the core concepts, which can result in outcomes that do not fully deliver justice or legal certainty. By enhancing the comprehension of these fundamental aspects, the legal process could yield more equitable decisions that ultimately benefit all parties involved. This focus on understanding can empower justice seekers and contribute to a more effective resolution of land disputes.

If the required land is controlled illegally, if it cannot be resolved through deliberation, provisions are provided in Law 51/Prp/1960 mentioned above. Usually those who control the land do not realize that their control is illegal. They obtained it through payments to the party who previously controlled the

land in question. They feel that they have taken over the "right to cultivate" "legally", because it is not uncommon for the acquisition to be done in writing, which is known to the Village/Subdistrict Head and Subdistrict Head. Law 51/Prp/1960 gives authority to Regents/Mayors to wisely and judiciously resolve disputes over illegally controlled land, taking into account the factors that led to the possession and which includes the case at hand.

Settlement can be achieved through deliberation to reach an agreement regarding the vacation of the land in question. If deliberations cannot produce an agreement, the Regent/Mayor is given the authority to unilaterally decide on a settlement, but is obliged to submit a request without having to complain to the Court. In this case, rights are revoked, because there is no basis for land ownership. Can be ordered to vacate, with or without giving "severance pay". What is given is not compensation or compensation, except for buildings and plants which according to law belong to the party who controls the land. Emptying can also be accompanied by the provision of a new residence. However, both severance pay and the provision of a new place are solely the decision of the Regent/Mayor's discretion in resolving the case in question. Therefore, it is not an occupancy right that can be claimed for granting. Regarding dispute resolution, humanitarian considerations must still be taken into account, because the main basic principles originating from the Second Principle of Pancasila also apply in these cases. As stated above, according to Law 51/Prp/1960 criminal charges can be filed against occupiers. The use of the provisions of Law 51/Prp/1960 is generally carried out in an effort to resolve disputes regarding control of state land which includes many occupancies. Settlement of individual land control disputes is carried out through civil lawsuits in court.

The applicable principles regarding control and ownership of land and the protection provided by our National Land Law to holders of land rights, as the law of a "country based on law", as confirmed in the Explanation of the 1945 Constitution, namely:

1) Control and use of land by anyone and for any purpose must be based on land rights provided by our National Land Law;
2) Control and use of land without any basis for rights is not justified, and is even threatened with criminal sanctions (Law number 51 /Prp of 1960 concerning Prohibition of Land Use Without the Permission of the Authorized Person);
3) Control and use of land based on rights provided by the National Land Law, is protected by law against interference by anyone, whether by fellow members of the community or by the authorities/government, even if the interference has no legal basis;

4) By law, various legal means are provided to overcome existing disturbances: - disturbances by fellow members of the community, civil lawsuits through the General Court or requesting protection from the Regent/Mayor as regulated by Law no. 51 / Prp / 1960 above; – interference by the Authorities: lawsuit through the General Court or State Administrative Court;
5) Under normal circumstances, it is necessary for anyone and for any purpose (also for public interest projects) to acquire land to which someone has the rights, it must be done through deliberation to reach a mutual agreement. Both regarding the distribution of the land to parties who need it and regarding the compensation which is the right of the holder of the right to the land in question to receive it;
6) In connection with the foregoing, under normal circumstances, in order to obtain the necessary land, there is no justification for coercion in any form or by anyone on the right holder to hand over the land he owns and/or receive compensation that he does not agree to;
7) In compelling circumstances, if the land in question is needed for the implementation of public interests, where it is impossible to use other land, it can be taken by force. In the sense that it does not require the consent of the rights holder. The possibility was opened by Law 20 / 1961 mentioned above, using the so-called revocation procedure;
8) In acquiring or taking land, either on the basis of a mutual agreement or through revocation of rights, the land owner has the right to receive compensation or compensation;
9) The form and amount of compensation or compensation must be such that the former land owner does not experience setbacks, both socially and economically. This is a universal principle which is stated expressly in the General Explanation of Government Regulation 39/1973 concerning Procedures for Determining Compensation by the High Court in Connection with the Revocation of Rights to Land and Other Objects on It. The statement in the PP shows that in efforts to acquire land for carrying out public interests, this principle applies. In determining rewards as in compensation for losses, there is no difference in size, whether the land in question is needed for the implementation of public interests or not.

In Keppress 55/1993, which is one of the implementing regulations of the UUPA, an explanation is given regarding the nature of deliberation. In fact, the purpose of deliberation is not only to obtain agreement regarding the form and amount of compensation, but also to reach an agreement regarding the willingness of the party who owns the land to hand over the land to the party who needs it and an agreement regarding the compensation. Regarding

compensation, there are basic provisions in Article 18 of the UUPA which regulates the possibility of revoking rights to land for public purposes, namely that adequate compensation must be given.

The definition of proper is guided by the principle stated in the Explanation to PP 39/1973, that by the act of revoking the rights of the former owner/right holder there is no setback, both in the social field and at the economic level. PP 39/1973 regulates the method of determining compensation by the High Court, where the form or amount of compensation determined by the President is not approved by the party whose land rights are revoked for the public interest. This principle must be used as a guide for the High Court in determining the compensation in question. Our country as a rule of law, as stated in the 1945 Constitution of the Republic of Indonesia, recognizes and protects the rights of the people and customary law communities to land. However, if it is needed for a project that is in the public interest or national interest, the land owned must be handed over.

It is a general legal principle in living together that public interests and national interests must take precedence over personal and group interests; especially because the land owned is joint land of the Indonesian Nation, as stated in Article 1 of the UUPA. However, as stated in the General Explanation of the UUPA, this does not mean that their rights and interests are simply ignored. This is proven in the establishment of dispute resolution principles regarding the form and amount of compensation, which must be given to individual holders of land rights, as stated above. Customary law communities whose customary land is needed for development must be given recognition, as also stated in the General Explanation of the UUPA. Recognition is not given in the form of money, but in the form of building public facilities or other forms that are beneficial to local communities (Presidential Decree 55/1993 Article 14).

Disputes with legal communities generally arise because parties who need land do not pay attention to local customary provisions and customary law in their efforts to obtain it. They only act based on the rights granted by the decree they received from the Government and prioritize the target system. At least it should start with "*kulo nuwun*" as if someone were to enter another party's house/territory. Followed by carrying out ceremonies and other activities according to local customs and customary law. This principle must not only be guided by Court judges, but also by the Government and other parties who need land in resolving disputes regarding acquisition for any purpose and determining compensation.

In an effort to minimize land disputes, a comprehensive strategy is needed to anticipate and reduce the number of disputes in the land sector, so it is necessary to implement several strategic efforts as follows:[34]

a. State Administration Strategy, which really needs comprehensive/holistic (multidisciplinary) professionals which cannot be left to product-oriented professionals, changes in sectoral organizational structures not based on products (commodities) but organizational structures based on processes. This minimizes sectoral interests on the basis of products that have an impact. The policies made by the minister are actually only the result of one deputy whose main task is products, not processes that require multidisciplinary professionals). Now there is no difference between the format that occurs in universities and the division of faculties, is this the administrative format for all ministries in Indonesia? Administrative reform. What should be done specifically in the land sector?

b. The judiciary, to resolve overlapping legislation and recommendations for formulating an umbrella for State land regulations, can form a "KPN" State Land Commission which is a form of implementation of regulations on State power over State land, which is now carried out by government power and is only sectoral.

c. The legislative strategy (people's representatives) together with the president are obliged to regulate all policies related to state power, the RAPBN (revenue budget and State spending is correct, RPTPN (State Development Land Provision Plan) is not yet working legislatively, the executive has also handed it over to the controlling sector (administrative – BPN, dominant land control – Forestry). The question is whether forestry is not a commodity sector? Why does it control State land and all sectors? refers, if you don't want to say it, to be in conflict with control over forestry which is actually controlled by state power, so there is a big question about where democracy is for the people without working state power (executive and legislative related to land, why is the budget possible).

So far, the community has not considered resolving land issues through public justice institutions to be a failure for several reasons, namely:[35]

a. The length of the general judicial process. There is a public opinion that the court examination process takes quite a long time. This assumption is actually quite reasonable, especially for the examination of cases at the

[34] Salim et al.

[35] Imam Koeswahyono and Diah Pawestri Maharani, "Rasionalisasi Pengadilan Agraria Di Indonesia Sebagai Solusi Penyelesaian Sengketa Agraria Berkeadilan," *Arena Hukum* 15, no. 1 (2022): 1–19.

appeal and cassation levels, it is not uncommon for cases at both levels to take quite a long time.

b. Court costs are so expensive that the principle of fast, simple and cheap justice then only becomes a principle on paper.
c. The assumption that the court decision does not side with the people.
d. The Court's decision is considered not to fulfill the sense of justice in society. The proposal to establish a special agrarian court in Indonesia encourages the Government to take a greater role in responding to the challenges of changing the incomplete agrarian conflict resolution mechanism in Indonesia. It is hoped that with the establishment of this Court, complex and long-standing land problems will be resolved well, effectively and efficiently and can pave the way for confirming definite settlement time limits in this special court. The discourse of the Agrarian Court is considered by some groups to be in line with the concept of Indonesia as a rule of law, while at the same time realizing the ideals of fair law enforcement, certainty and benefit for the protection of the community regarding the issue of agrarian resources.

Agrarian conflicts can also be resolved through alternative non-litigation dispute resolution or out-of-court settlement through deliberation. In fact, the solution to this model is considered more harmonious and a win-win solution. The National Land Agency (BPN) actually has an important role in the context of out-of-court settlements. The pros and cons regarding the inevitability of an Agrarian Court in Indonesia were also stated by various parties, such as the Judges who are members of the Indonesian Judges Association (IKAHI), some of whom expressed their rejection of land courts on the grounds that it was difficult to find judges who had competence in the field of land as well as the technical factors involved in resolving disputes. is seen more as a matter for the National Land Agency (BPN) than a matter at court level. In academic circles, the idea of an Agrarian Court also has its pros and cons, especially when viewed from the perspective of jurisdictional limitations considering that there are points of contact between the general court, religious court and the State Administrative Court in land cases. In “Circular Letter (SEMA) No. 7 of 2012 concerning the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court" issued by the Supreme Court, it was emphasized that there is still a need to confirm the limits of competence in handling agrarian cases, especially land. The complexity of land issues is usually reflected in the nature of the land certificate, whether it is a declarative or constitutive decision. Apart from that,

it is important to study the concept of internal connectivity justice handling land disputes considering that land law in Indonesia is so complex and plural.[36]

In an effort to resolve criminal acts through the courts, the appropriate model is to use a restorative justice approach, because the restorative justice approach is the latest development of the justice paradigm that has existed in the world so far, successively, namely: starting from retributive justice, continued with rehabilitative justice, then alternative justice, improved again with transitional justice and finally replaced by restorative justice. Restorative justice is a demand from global society because it is seen as a complement to the criminal justice system and exists to perfect the traditional justice system. The vision of restorative justice is based on values that resonate with various factors that have an increasingly broad influence on individuals and communities throughout the world, thus presenting many opportunities to achieve justice.

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In general, imposing criminal sanctions on law violators is often considered the aim of criminal law [38]. Therefore, if the violator has been brought before a court and then given criminal sanctions, then the case for violating the law is considered to have ended. This view has positioned justice in criminal law and enforcement of criminal law as criminal sanctions as threatened in the

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[36] Salim et al.

[37] Muslim Zainuddin, *Restorative Justice: Pergeseran Orientasi Keadilan Dalam Penanganan Kasus Anak* (Zahir Publishing, 2023).

[38] Elena Maculan and Alicia Gil Gil, "The Rationale and Purposes of Criminal Law and Punishment in Transitional Contexts," *Oxford Journal of Legal Studies* 40, no. 1 (2020): 132–57.

articles that are violated. In criminal law, the threat of criminal sanctions not only functions as a coercive tool so that people do not violate the law, but also as a coercive tool so that everyone obeys other norms that exist in society. On this basis, criminal law is often referred to as sanctions law. If sanctions have been imposed on the violator, then the case is considered finished. With Thus, the imposition of criminal sanctions becomes a parameter of justice in prosecuting criminal law violations. Restorative justice is considered a modern and more humane model of punishment for children [39]. As a punishment that prioritizes recovery or compensation for losses experienced by the victim rather than punishing the perpetrator. The process of resolving children's criminal cases is not merely about punishing children, but is educational in nature and what is important is to restore conditions and restore them to the way they were before the crime occurred. Justice shifts the philosophical value of handling children from punishment to reconciliation, revenge against the perpetrator to healing of the victim, exile and violence to participation and kinship in society as a whole, negative destructiveness to repair, forgiveness filled with an abundance of love. A positive value that seeks to include broad recognition of human feelings, including repair and healing, forgiveness, compassion and reconciliation, including the provision of sanctions if this is necessary.[40]

There are two justice orientations in law enforcement, namely Formal Procedural Justice Orientation [41] and Restorative Justice Orientation [42]. These two forms of justice have very significant differences. Justice that is intended to be realized through formal procedural matters prioritizes law enforcement which is carried out in accordance with regulations. Each stage that is set must be passed one by one. Starting from the police, prosecutor's office, court to correctional institutions. In formal justice, efforts to provide punishment to perpetrators carried out by state institutions are very strong. State institutions will carry out in accordance with the duties and authority that have been given to them. The aim is to provide inner satisfaction to the victim by imprisoning the perpetrator. Although the victims were not given anything to cover their

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[39] Sanitiar Burhanuddin, "Model of Restorative Justice in the Era of the Industrial Revolution 4.0: An Effort to Make Justice in Children's Criminal Case Settlement," *Annals of the Romanian Society for Cell Biology*, 2021, 3029–36.

[40] Burhanuddin, pp. 66-67

[41] Kimberly Kaiser and Michael D Reisig, "Legal Socialization and Self-Reported Criminal Offending: The Role of Procedural Justice and Legal Orientations," *Journal of Quantitative Criminology* 35 (2019): 135–54.

[42] Jonlar Purba, "Law Enforcement on Ordinary Crimes in Minor Motive Using Restorative Justice: Perspective Criminal Law Reform," *The Southeast Asia Law Journal* 1, no. 2 (2017): 63–74.

losses. If such law enforcement is investigated in depth, it lacks justice for victims. The main concern is only for punishment and retribution, not restoration of the rights and losses experienced by victims. Orientation in the restorative justice process is the desires that want to be created by applying it to a case. The desire to be achieved by applying restorative justice has various dimensions, namely the subjectivity dimension of the perpetrator and victim, the environmental community of both and the dimension of local wisdom. The subjectivity dimensions of the perpetrator and victim are concretized through efforts to recover the victim from the actions that have been carried out by the perpetrator, the responsibility of the perpetrator for his actions which result in harm to other people. Meanwhile, the community dimension is to restore balance as a result of the shock caused by the perpetrator's actions which resulted in the community becoming disorderly, orderly and peaceful.[43]

Resolving agrarian conflicts using Restorative Justice can be achieved with the involvement of the National Land Agency. This task at the National Land Agency of the Republic of Indonesia is carried out by one of its deputies, namely the Deputy for the Study and Handling of Land Disputes and Conflicts who can be referred to as Deputy V. One of the functions of the Deputy for the Study and Handling of Land Disputes and Conflicts is as regulated in Article 345 of the Regulations Head of the National Land Agency Number 3 of 2006 is implementing alternative resolution of land problems, disputes and conflicts through mediation, facilitation and other forms. Apart from the National Land Agency, Agrarian Conflict Resolution can also involve local community leaders or local traditional institutions, such as in West Sumatra involving the Nagari Traditional Kinship Institution. The Nagari Adat Kerapatan Lambaga is an association of ninik mamak or headmen who represent their tribe or people which is formed based on local nagari customary law. The traditional institution in Bali that can be used to resolve the Gararia conflict is Pakraman Village. The existence of Bali Provincial Regional Regulation Number 3 of 2001 concerning Pakraman Village, which has been refined into Bali Provincial Regulation Number 3 of 2003, needs to receive widespread public attention and be addressed constructively while still emphasizing mutual support, mutual compassion, mutual care, gilik saguluk, and salunglung sabayantaka in dealing with problems that arise in society. Pakraman Village is also governed by traditions and manners. Traditions are noble habits from ancestors that are passed down from generation to generation,

An example of resolving an agrarian conflict using Restorative Justice is the long plantation conflict that has occurred since 1998 in Malang Regency.

[43] Purba, p. 39

The matter ended peacefully, after peace was agreed. The agreement was marked by the signing of a peace charter carried out by PTPN I Regional 5 Representatives and the Head of Bumirejo Village as representatives of farmers cultivating the land. The agrarian conflict that has been going on for a long time has never reached a resolution. Until the end of 2023, it was initiated by each party to agree to end the conflict with a win-win solution and supported by Forkopimda Malang Regency. The win-win solution in question is that both PTPN I Regional 5 and the farmers jointly commit themselves to a statement of a peace agreement that prioritizes the benefits of both parties.

There are four contents of the peace agreement, namely first, the resolution of land issues is carried out by deliberation and consensus to achieve a win-win solution. Second, the community recognizes that the land which is the object of the cooperation agreement is an asset belonging to PTPN I Regional 5. Furthermore, thirdly, PTPN I Regional 5 can give permission to the community to manage their assets in a pattern that benefits both parties in accordance with applicable regulations. Lastly, creating harmony, consistency and legal certainty in resolving agrarian conflicts.

Another example of resolving agricultural conflicts with restorative justice is that three workers who were harvesting oil palm on their land were reported to the police as palm fruit thieves by the company management of PT. Daria Dharma Putra (DDP). They were also asked to appear at the Muko-muko Police Station to be questioned as witnesses and on October 5 2022, the third worker who was employed on their plantation as a result of this case submitted that the third person was named a suspect and was subject to Article 363 of the Criminal Code concerning the Crime of Theft. The detention of these four people caused other farmers who had been in conflict with PT. DDP to spontaneously come to the police station to visit the four farmers. Several days earlier two other farmers were also arrested on the same charges. After meeting the Police Chief and explaining the chronology of the case, mediation was carried out between the farmer's attorney and PT. DDP representatives witnessed by the Chairman of the Muko-muko Regency DPRD. The mediation process took quite a long time but finally an agreement was reached to release the farmers through a restorative justice mechanism. One of the points of agreement reached was that there would be no legal settlement and it would be resolved peacefully.

The land conflict between the people of Malin Deman District and PT DDP has been going on for quite a long time. Land conflicts between PT DDP and farmers have occurred since 1986 when the Pekal Malin Deman traditional area was annexed into the PT Bina Bumi Sejahtera (BBS) HGU. In 1991-1992, PT BBS began carrying out land measurements despite objections from

residents. Furthermore, on August 1 1995, the North Bengkulu Regency land officer issued an HGU certificate in the name of PT BBS covering an area of 1,889 hectares with cocoa as the commodity. Of the HGU area, the company is only able to cultivate 340 hectares planted with cocoa. In 1997, PT BBS ceased its plantation activities and subsequently abandoned the land. In the aftermath, local residents began utilizing the abandoned area for the cultivation of oil palm, rubber, *jengkol*, durian, and other crops. Tensions escalated once again in 2005 when PT DDP emerged, claiming to have acquired PT BBS. Following this claim, PT DDP initiated operations on the land, leading to the eviction of farmers and pressuring them to accept compensation. Notably, PT DDP focused on oil palm cultivation, which differed from the cocoa commodity previously associated with PT BBS's HGU.

Conclusion

The aim of Agrarian Reform is to improve the living standards of the Indonesian people, including farmers, as a prerequisite for economic development towards a just and prosperous society. However, the implementation of this agrarian reform has not gone well, among others, marked by the unresolved issue of permitting the Right to Cultivate (HGU) of plantation entrepreneurs, so that many plantation lands are abandoned. Farming communities who take over the plantation land for cultivation and use are criminalized and considered reclamation. This is an injustice problem that must be resolved by taking into account the interests of the parties fairly.

In an effort to resolve agrarian conflicts, the right model uses a restorative justice model, because this model uses a social legal approach that involves victims, perpetrators, and elements of society related to peace mechanisms in restoring the rights of violated parties, thus giving birth to a sense of justice. Restorative justice is a demand of the global community because it is seen as a complement to the criminal justice system and exists to perfect the traditional justice system. The vision of restorative justice is based on values that resonate with the various factors that affect individuals and communities around the world, as it presents many opportunities to achieve justice.

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