



## STRUCTURAL INEQUALITY OF LAND OWNERSHIP IN INDONESIA: A JUSTICE-BASED LEGAL PERSPECTIVE

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### ABSTRACT

Structural inequality in land ownership remains a pressing issue in Indonesia, where control over vast land areas is concentrated among corporations and elites, while many communities continue to face limited access to agrarian resources. This condition contributes to poverty, social vulnerability, and recurring agrarian conflicts across regions. This research aims to analyze the phenomenon of structural inequality in land ownership through a justice-based perspective, examining its root causes and assessing the effectiveness of existing agrarian policies. Using a normative juridical method with statute and conceptual approaches, the study reviews legal frameworks, policy documents, and academic literature to provide a comprehensive evaluation. The findings indicate that overlapping regulations, weak recognition of customary rights, pro-investment legal reforms, and limited public participation have hindered equitable land governance. Agrarian Reform policies have also fallen short, particularly in achieving meaningful redistribution, strengthening community rights, and providing adequate conflict resolution mechanisms. The study concludes that reducing structural inequality requires strengthening justice-oriented legal norms, improving coherence among agrarian regulations, enhancing recognition of local and customary rights, and ensuring more inclusive participation in policy implementation.

## 1. Introduction

On May 7, 2025, the Ministry of Agrarian Affairs and Spatial Planning/National Land

Agency (*Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional - ATR/BPN*) officially revealed that one family controls approximately 1.8 million hectares of land equivalent to three times the area of Bali. The same statement disclosed that of the 70 million hectares of non-forest land in Indonesia, 46 percent, or around 30 million hectares, are controlled by only 60 large corporate-owning families. What was long perceived as a developing public concern has thus been formally acknowledged by the state. This disclosure highlights a stark structural imbalance: while a handful of elites enjoy control over millions of hectares, millions of Indonesian families remain landless, lacking access to land for cultivation, housing, or livelihood security.<sup>1</sup>

Normatively, Indonesia's constitutional framework mandates equitable agrarian governance. The 1945 Constitution and the Basic Agrarian Law require the state to regulate land ownership, prevent monopolistic control, and ensure that agrarian resources are utilized for the greatest prosperity of the people. At the level of *das sollen*, the state bears a constitutional obligation to guarantee distributive justice, protect community rights, and ensure equal access to land. However, at the level of *das sein*, empirical reality reveals persistent structural inequality, where land concentration in the hands of a few corporations and families coexists with widespread landlessness and vulnerability among rural communities. This gap between normative commitment and empirical condition reflects not merely policy inefficiency but a deeper crisis of agrarian justice.

Empirical indicators further illustrate the severity of the problem. In 2023, the National Commission on Human Rights (Komnas HAM) recorded 1,062 complaints, of which 221 were related to agrarian issues.<sup>2</sup> The Agrarian Reform Consortium (*Konsorsium Pembaruan Agraria - KPA*) documented 2,939 agrarian conflict eruptions in 2023, covering 6,309,261 hectares and affecting 1,759,308 households.<sup>3</sup> These figures demonstrate that land is not only an economic asset but a fundamental basis of social stability and human rights. The prevalence of agrarian conflicts reflects a development paradigm that increasingly treats land as a mere commodity, reducing the complex socio-cultural relationship between humans and land to purely economic valuation.

Structural inequality in land ownership also intersects with food security concerns. Data from the Central Statistics Agency (*Badan Pusat Statistik/ BPS*) show that the national prevalence of food insecurity reached 8.49% in 2021, increasing from 8.34% in 2020 and 7.63% in 2019.<sup>4</sup> Rising food insecurity indicates that a growing

<sup>1</sup> Aznil Tan., Kemiskinan 60 Persen di Tengah Penguasaan Tanah 60 Keluarga, *Kompas*, 9 Mei 2025.

<sup>2</sup> Konsorsium Pembaruan Agraria., *Catatan Akhir Tahun 2023. Dekade Krisis Agraria: Warisan Nawacita dan Masa Depan Reforma Agraria Pasca Perubahan Politik 2024*, Jakarta, Konsorsium Pembaruan Agraria, 2023, page.30. See too, Aditya Nurahmani., Revitalisasi Kebijakan Reforma Agraria Dalam Rangka Penguatan Hak Perekonomian Rakyat, *Majalah Hukum Nasional*, Vol.53, no.2, 2023, page.299.

<sup>3</sup> Komisi Nasional Hak Asasi Manusia., Data HAM Aktual, *Komnasham*, February 2023. See too, Amaliyah, Muhammad Amar Ma'ruf, Novytha Sary, and Syahril Gunawan Bitu., Reforma agraria dan penanganan sengketa tanah. *Hermeneutika: Jurnal Ilmu Hukum*, Vol.5, no.1, 2021, page.34.

<sup>4</sup> Iwan Sukamto, and Yuwono Prianto., Ketimpangan Distribusi Tanah Dan Pengaruhnya Terhadap Ketahanan Pangan, *LITIGASI*, Vol.24, no.1, 2023, page.11.

percentage of the population consumes food below their required energy needs. This condition is closely linked to unequal access to productive land. When communities lose access to agricultural land due to corporate concentration or extractive allocation, they simultaneously lose their primary source of food production and income generation. Thus, land inequality is not merely a property issue but a structural determinant of welfare, livelihood sustainability, and social justice.

The persistence of inequality generates broader socio-political consequences. Local governments often face conflicts of interest, as investment-driven development becomes a major source of Regional Original Revenue (*Pendapatan Asli Daerah*/PAD), potentially marginalizing community aspirations.<sup>5</sup> Communities defending land rights are frequently subjected to criminalization or forced eviction through security apparatuses. Consequently, agrarian inequality produces not only physical conflicts but also deepening welfare disparities and erosion of social cohesion.<sup>6</sup>

From a theoretical perspective, Indonesia's agrarian inequality raises profound questions of distributive justice and the moral legitimacy of land governance. In *A Theory of Justice*, John Rawls<sup>7</sup> argues that social and economic inequalities are permissible only if they satisfy the difference principle, namely that they benefit the least advantaged members of society. When 68% of agricultural land is reportedly controlled by only 1% of the population, while millions of rural households face insecure tenure and limited productive access, such concentration is difficult to reconcile with Rawlsian fairness.<sup>8</sup> Rather than functioning to uplift vulnerable peasants and Indigenous communities, existing agrarian structures appear to entrench asymmetries of power and opportunity. Empirical studies demonstrate that land inequality in Indonesia correlates with persistent rural poverty and structural exclusion.<sup>9</sup>

Within Indonesia's constitutional order, distributive justice is not merely philosophical but normatively binding. The 1945 Constitution and Law Number 5

<sup>5</sup> Rifqi Syarifudin., Kebijakan Agraria di Indonesia: Antara Fragmentasi Regulasi dan Ketimpangan Kewenangan, *Jurnal Hukum dan Kebijakan Agraria*, Vol.8 no.2, 2021, page.445.

<sup>6</sup> Hariadi Kartodihardjo., *Politik Agraria: Dari Deregulasi ke Dekolonisasi*, Bogor, CIFOR, 2019, page.45.

<sup>7</sup> John Rawls., An Egalitarian Theory of Justice, In *Philosophical Ethics: An Introduction to Moral Philosophy*, edited by T.L. Beauchamp, 2nd ed., New York, NY: McGraw Hill, 1971, page.367.

<sup>8</sup> Zainal Said, Sih Natalia Sukmi, Rustam Magun Pikahulan, and Syafa'at Anugrah Pradana., Farming Justice on Economic Regulations in Indonesia and France, *Journal of Human Rights, Culture and Legal System*, Vol.5, no.2, 2025, page.663.

<sup>9</sup> Mohammad Zulfan Tadjoeuddin., Inequality and exclusion in Indonesia, *Journal of Southeast Asian Economies*, Vol.36, no.3, 2019, page.286. See too, Arief Anshory Yusuf, Reza Anglingkusumo, and Andy Sumner., A direct test of Kuznets in a developing economy: a cross-district analysis of structural transformation and inequality in Indonesia, *Regional Studies, Regional Science*, Vol.8, no.1, 2021, page.188; Bas Van Leeuwen, and Péter Földvári., The development of inequality and poverty in Indonesia, 1932–2008, *Bulletin of Indonesian economic studies*, Vol.52, no.3, 2016, page.385.

of 1960 concerning Basic Agrarian Principles Regulations, broadly known as Basic Agrarian Law (*Peraturan Dasar Pokok-Pokok Agraria/UUPA*) mandate that land and natural resources be controlled by the state for the greatest prosperity of the people. This embeds a social function of land and a duty to prevent monopolistic domination.<sup>10</sup> Contemporary scholarship frames agrarian reform as a human rights imperative grounded in equality, dignity, and the right to land.<sup>11</sup> International instruments such as UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples, 2007)<sup>12</sup> and UNDROP (UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, 2018)<sup>13</sup> further reinforce recognition of Indigenous and peasant land rights. However, doctrinal commitments often collide with policy realities, including liberal-capitalistic regulatory shifts such as the Job Creation Law, which critics argue prioritize investor access over community protection.<sup>14</sup>

Historically, agrarian inequality reflects colonial plantation legacies and post-independence reform failures.<sup>15</sup> Governance fragmentation, overlapping sectoral regulations, and bureaucratic inertia have undermined redistributive objectives.<sup>16</sup> Weak enforcement and corruption further distort land allocation, particularly in forestry and palm oil sectors.<sup>17</sup> Empirical political-economy analyses show how land acquisition for “public interest” development often marginalizes local communities, while sectoral incoherence in land-use planning exacerbates conflict.<sup>18</sup>

<sup>10</sup> King Faisal Sulaiman., Polemic of Land Social Function and State Control Rights Post Law Number 12 Year 2012 and Constitutional Court Decision Number 50. PUU-X/2012, *Jurnal Konstitusi*, Vol.18. 2021, page.244.

<sup>11</sup> Muhammad Ilham Arisaputra., Access Reform Dalam Kerangka Reforma Agraria Untuk Mewujudkan Kesejahteraan Rakyat, (PhD diss., Universitas Airlangga, 2015), page.53.

<sup>12</sup> United Nations General Assembly., Resolution 61/295: United Nations Declaration on the Rights of Indigenous Peoples, *United Nations*, September 13, 2007.

<sup>13</sup> United Nations General Assembly., Resolution 73/165: United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, *United Nations*, September 17, 2018.

<sup>14</sup> Emelia Kontesa, and Zico Junius Fernando., Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing, *Lex Scientia Law Review*, Vol.8, no.2, 2024, page.955. See too, Muh Afif Mahfud, and Naufal Hasanuddin Djohan., The expansion of investor access to cultivation rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia. In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.24, no.2, 2024, page.58.

<sup>15</sup> Slamet Widodo., A critical review of indonesia's agrarian reform policy. *Journal of Regional and City Planning*, Vol.28, no.3, 2017, page.208. See too, Anton Lucas, and Carol Warren, The land, the law, and the people." In *Land for the people: The state and Agrarian conflict in Indonesia*, Athens, Ohio University Press/Swallow Press, 2013, page.15.

<sup>16</sup> Hariadi Kartodihardjo, and Eko Cahyono., Agrarian reform in Indonesia: analyze concepts and their implementation from a governance perspective, *Jurnal Manajemen Hutan Tropika*, Vol.6, no.2, 2021, page.7. See too, Iwan Permadi, and Irham Azizi., Agrarian Reform: Implementation and Exploration of Land Conflicts in Several Countries (A Bibliometric and Content Analysis of International Research on the Agrarian Reform Concept), *WSEAS Transactions on Environment and Development*, Vol.20, 2024, page.826.

<sup>17</sup> Bayu Andrianto Wirawan, Yusni Ikhwan Siregar, Sukendi Sukendi, and Mulyadi Mulyadi., Legal and spatial perspectives on sustainable built-up land conversion control in Pekanbaru, *Jurnal Hukum*, Vol.41, no.4, 2025, page.54.

<sup>18</sup> Rebecca Meckelburg, and Agung Wardana., The political economy of land acquisition for development in the public interest: The case of Indonesia, *Land Use Policy*, Vol.137, 2024, page.107017. See too, Aartje Tehupeiory, Suwarno Suwarno, Ramisa Jahan, and Mohit Islam.,

The consequences extend beyond ownership statistics. Land-use change and plantation expansion have intensified rural inequality and ecological degradation.<sup>19</sup> Oil palm commercialization has contributed to structural transformation but also widened socio-ecological disparities.<sup>20</sup> Research on property rights demonstrates that insecure tenure can stimulate deforestation and elite capture rather than equitable intensification.<sup>21</sup> Moreover, land degradation and political land allocation intersect with food insecurity, linking agrarian justice to national welfare and sustainability.<sup>22</sup>

Customary (*adat*) land rights remain central yet vulnerable within this landscape. Despite formal recognition, dualism between adat and state law produces uncertainty and dispossession.<sup>23</sup> The invalidation of traditional land evidence under recent regulations risks deepening legal exclusion among Indigenous peoples.<sup>24</sup> Gender disparities in land rights further compound inequality, as women often lack formal ownership despite substantial agricultural labor contributions.<sup>25</sup> Thus, agrarian injustice is multidimensional—class-based, ethnic, gendered, and ecological.

Although numerous studies analyze agrarian conflicts, land grabbing, and reform implementation, fewer integrate these empirical findings within a coherent

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Land Acquisition for Public Interest: Balancing State Control and Individual Property Rights, *Jurnal Hukum UNISSULA*, Vol.40, no.2, 2024, page.183; Mutiara Panjaitan, Agus Sardjono, and Harsanto Nursadi., Ensuring land status security to accelerate the rejuvenation of small-scale oil palm plantations in Indonesia, *Jurnal Hukum Unissula*, Vol.40, no.2, 2024, page.89.

<sup>19</sup> Daniel Chrisendo, Hermanto Siregar, and Matin Qaim., Oil palm and structural transformation of agriculture in Indonesia, *Agricultural Economics*, Vol.52, no.5, 2021, page.854. See too, Jonida Bou Dib, Zulkifli Alamsyah, and Matin Qaim., Land-use change and income inequality in rural Indonesia, *Forest Policy and Economics*, Vol.94, 2018, page.58.

<sup>20</sup> Rosamond L. Naylor, Matthew M. Higgins, Ryan B. Edwards, and Walter P. Falcon., Decentralization and the environment: Assessing smallholder oil palm development in Indonesia, *Ambio*, Vol.48, no.10, 2019, page.1198.

<sup>21</sup> Christoph Kubitz, Vijesh V. Krishna, Kira Urban, Zulkifli Alamsyah, and Matin Qaim., Land property rights, agricultural intensification, and deforestation in Indonesia, *Ecological economics* Vol.147, 2018, page.315.

<sup>22</sup> Vellayati Hajad, Sri Handayani, Ikhsan Ikhsan, Deni Setiawan, Zuhri Fadhly, and Herizal Herizal., Land Politics and Food Security: A New Perspective on Land Degradation in Indonesia, *Jurnal Ilmiah Peuradeun*, Vol.13, no.2, 2025, page.23.

<sup>23</sup> Adriaan Bedner, and Yance Arizona., Adat in Indonesian land law: a promise for the future or a dead end? *The Asia Pacific Journal of Anthropology*, Vol.20, no.5, 2019, page.423. See too, Wiryani Fifik, Febriansyah Ramadhan, and Mokhammad Najih., Indigenous People's Land Rights in Post-Soeharto Indonesia: The Continuing Problem of Land Grabbing, *International Journal on Minority and Group Rights*, Vol.31, no.5, 2024, page.322.

<sup>24</sup> Octavia, Elfira Zahwa, Mohammad Hamidi Masykur, and Moh Fadil., Legal status of former customary land ownership evidence after its validity period expires: Assessment of the legal certainty over Indigenous peoples' land rights, *Law Human Environment*, Vol.3, no.16, 2025, 166.

<sup>25</sup> Caitlin Kieran, Kathryn Sproule, Cheryl Doss, Agnes Quisumbing, and Sung Mi Kim., Examining gender inequalities in land rights indicators in Asia, *Agricultural Economics*, Vol.46, no.1, 2015, page.121.

normative justice framework.<sup>26</sup> Existing scholarship tends to focus on governance deficits or economic efficiency, without systematically evaluating whether institutional arrangements satisfy constitutional distributive mandates. A Rawlsian-human rights synthesis suggests that agrarian reform must be assessed by its capacity to structurally improve the position of the least advantaged (peasants, smallholders, and Indigenous communities) rather than merely facilitating market expansion. Therefore, structural land inequality in Indonesia should be examined not solely as a developmental or administrative issue, but as a constitutional and moral failure to realize social justice.

This study seeks to address this gap by examining structural land ownership inequality through a justice-oriented normative analysis. Using a normative juridical approach that combines statutory and conceptual analysis, this research evaluates the extent to which existing agrarian governance structures align with constitutional mandates of social justice and distributive fairness. Accordingly, the central research question is: How does structural land ownership inequality in Indonesia reflect a failure of distributive justice within the constitutional agrarian framework?

The objective of this research is to identify and critically analyze patterns of structural land inequality, assess their compatibility with principles of distributive justice and constitutional mandates, and formulate a normative framework for advancing agrarian justice in Indonesia.

## 2. Research Methods

This study employs normative juridical (doctrinal) legal research, grounded in the premise that the core problem concerns inconsistencies and tensions within the substance of agrarian law and its regulatory framework.<sup>27</sup> The research focuses on examining legal norms governing land ownership, control, and agrarian reform, particularly their conformity with constitutional principles of social justice. As a prescriptive legal inquiry, this study does not merely describe existing regulations but aims to formulate normative arguments and recommendations to address structural inequality in land ownership from a justice perspective.

Two principal approaches are applied. First, the statute approach is used to systematically analyze primary legal materials, including Article 33 paragraph (3) of the 1945 Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), MPR Decree Number IX/MPR/2001, Law Number 6 of 2023 on Job Creation, and Presidential Regulation Number 62 of 2023 on the Acceleration of Agrarian Reform. These instruments are examined through techniques of legal

<sup>26</sup> Saim Aksinudin., Implikasi Pertanahan dalam Penanganan Konflik Agraria di Indonesia, *Litigasi*, Vol.24, no.2, 2023, page.193. See too, Junimart Girsang, Gunarto, And Al Amin., Criminological perspective in crime prevention of land grabbing, *Jurnal Hukum Unissula*, Vol.40, no.2, 2024, page.294; Abetnego PP Tarigan, and Mahawan Karuniasa., Analysis of agrarian conflict resolution through social forestry scheme, In *IOP Conference Series: Earth and Environmental Science*, Vol.716, no.1, IOP Publishing, 2021, page.2082; Kurnia Warman, and Titin Fatimah., Agrarian reform in the forests around vernacular settlements: Asset reform and access reform in Rural West Sumatra, Indonesia, *ISVS e-journal*, Vol.10, no.6, 2023, page.139.

<sup>27</sup> Zainudin Ali., *Metode Penelitian Hukum*, Jakarta, Sinar Grafika, 2011, page.23. See too, Soerjono Soekanto., *Pengantar Penelitian Hukum*, Jakarta, Universitas Indonesia Press, 2010, page.23.

interpretation (grammatical, systematic, and teleological interpretation) to assess their coherence, hierarchy, and alignment with the constitutional mandate of social justice and the principle of the social function of land rights.<sup>28</sup>

Second, the conceptual approach is employed to construct a normative framework of justice by engaging with theories of distributive justice and constitutional principles. This approach enables critical evaluation of whether existing agrarian policies reflect the state's obligation to ensure equitable land distribution and protect vulnerable communities.<sup>29</sup>

The research utilizes primary legal materials (legislation and constitutional court decisions), secondary materials (scholarly literature, journal articles, and policy critiques), and tertiary materials (legal dictionaries and explanatory texts). Analytical techniques are qualitative and normative, involving legal reasoning and argumentative analysis to identify normative gaps between *das sollen* and *das sein*. Through this method, the study seeks to articulate a justice-based reconstruction of agrarian governance capable of addressing structural land inequality.

### 3. Results and Discussion

#### 3.1. Institutionalized Patterns of Structural Land Ownership Concentration in Indonesia

Structural land ownership inequality in Indonesia is neither episodic nor incidental; it is historically entrenched, institutionally reproduced, and legally mediated. Empirical data demonstrate a highly concentrated agrarian structure. In 2025, the Ministry of ATR/BPN publicly disclosed that a single-family control approximately 1.8 million hectares of land an area roughly three times the size of Bali. More broadly, of approximately 70 million hectares categorized as non-forest areas, 46% (around 30 million hectares) are controlled by only 60 large corporate-owning families. Complementary research indicates that 68% of agricultural land is controlled by merely 1% of the population, with more than 3,200 agrarian conflicts recorded over the past decade, affecting approximately 1.8 million farming households.<sup>30</sup> Such figures confirm an extreme pattern of concentration consistent with earlier analyses of agrarian structure in small-scale food production regions and broader studies of inequality and exclusion in Indonesia.<sup>31</sup>

<sup>28</sup> Mahmud Marzuki., *Penelitian hukum: Edisi revisi*, Jakarta, Prenada Media, 2017, page.32.

<sup>29</sup> Ronny Hanitijo Soemitro., *Metode Penulisan Hukum dan Jurimetri*, Semarang, Ghalia Indonesia, 1998, page.23.

<sup>30</sup> Zainal Said, Sih Natalia Sukmi, Rustam Magun Pikahulan, and Syafa'at Anugrah Pradana., Farming Justice on Economic Regulations in Indonesia and France, *Journal of Human Rights, Culture and Legal System*, Vol.5, no.2, 2025, page.664.

<sup>31</sup> Aprilia Ambarwati, Ricky Ardian Harahap, Isono Sadoko, and Ben White., 12 Land tenure and agrarian structure in regions of small-scale food production, *Land and development in Indonesia: Searching for the people's sovereignty*, Vol.5, no.3, 2016, page.274. See too, Mohammad Zulfan Tadjoeddin., Inequality and exclusion in Indonesia, *Journal of Southeast Asian Economies*, Vol.36, no.3, 2019, page.288.

This concentration is not confined to ownership statistics but is reflected in patterns of control, use, and allocation. Large-scale concessions primarily through agricultural concession right (*Hak Guna Usaha* / HGU) and building use right (*Hak Guna Bangunan*/ HGB) form the principal legal instruments enabling corporate dominance. The enactment of Law Number 6 of 2023 on Job Creation (*UU Cipta Kerja* or Omnibus Law) extended the duration of HGU up to 60 years (with possible extension of 35 years) and HGB up to 50 years (extendable by 30 years), thereby strengthening long-term investor security.<sup>32</sup> This regulatory shift creates a dualism with the earlier spirit of the Basic Agrarian Law, which emphasized limits, redistribution, and social function. Socio-legal analyses highlight that expanded investor access to cultivation rights under Omnibus Law has deepened agrarian injustice by prioritizing capital accumulation over equitable distribution.<sup>33</sup>

Research on land-use change further illustrates how plantation expansion particularly oil palm has structurally altered rural landholding patterns. Oil palm commercialization has contributed to agricultural transformation but simultaneously widened inequality in income and land access.<sup>34</sup> Structural transformation, when coupled with unequal property rights, tends to reproduce disparities across districts.<sup>35</sup> Moreover, insecure or asymmetrical property regimes are associated with deforestation, elite capture, and uneven intensification.<sup>36</sup> Thus, agrarian concentration is closely tied to broader ecological and socio-economic restructuring.

Inequality also manifests in forest areas and customary territories. Although agrarian reform formally includes asset and access reform, its implementation faces structural obstacles, particularly in determining reform objects within forest zones.<sup>37</sup> Land reform object (*Tanah Objek Reforma Agraria*/ TORA) from forest areas is often limited to residual or unproductive lands rather than core concession territories. Critics argue that Presidential Regulation Number 62 of 2023 fails to set concrete targets for restructuring concentration and does not halt new allocations

<sup>32</sup> Gunanegara., Kebijakan negara pada pengaturan hak atas tanah pasca Undang-Undang Cipta Kerja, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.6, no.2, 2022, page.169.

<sup>33</sup> Muh Afif Mahfud, and Naufal Hasanuddin Djohan., The expansion of investor access to cultivation rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia. In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.24, no.2, 2024, page.59.

<sup>34</sup> Daniel Chrisendo, Hermanto Siregar, and Matin Qaim., Oil palm and structural transformation of agriculture in Indonesia, *Agricultural Economics*, Vol.52, no.5, 2021, page.855. See too, Jonida Bou Dib, Zulkifli Alamsyah, and Matin Qaim., Land-use change and income inequality in rural Indonesia, *Forest Policy and Economics*, Vol.94, 2018, page.59.

<sup>35</sup> Arief Anshory Yusuf, Reza Anglingkusumo, and Andy Sumner., A direct test of Kuznets in a developing economy: a cross-district analysis of structural transformation and inequality in Indonesia, *Regional Studies, Regional Science*, Vol.8, no.1, 2021, page.189.

<sup>36</sup> Christoph Kubitz, Vijesh V. Krishna, Kira Urban, Zulkifli Alamsyah, and Matin Qaim., Land property rights, agricultural intensification, and deforestation in Indonesia, *Ecological economics* Vol.147, 2018, page.317.

<sup>37</sup> Felishella Earlene, and Benny Djaja., Implikasi kebijakan reforma agraria terhadap ketidaksetaraan kepemilikan tanah melalui lensa hak asasi manusia, *Tunas Agraria*, Vol.6, no.2, 2023, page.156. See too, Kurnia Warman, and Titin Fatimah., Agrarian reform in the forests around vernacular settlements: Asset reform and access reform in Rural West Sumatra, Indonesia, *ISVS e-journal*, Vol.10, no.6, 2023, page.141.

to entrepreneurs.<sup>38</sup> The persistence of forestry and plantation concessions, combined with limited redistribution, suggests that reform mechanisms operate at the margins of structural inequality rather than addressing its center.

Customary land rights (*hak ulayat*) remain particularly vulnerable. Regulatory developments such as Government Regulation Number 18 of 2021 have imposed administrative validity limits on traditional land evidence, potentially invalidating long-standing customary claims.<sup>39</sup> This policy risks deepening legal exclusion among Indigenous communities with limited formal documentation. Studies on land legalization under conditions of rightlessness demonstrate how legality itself can reproduce inequality when administrative frameworks privilege state or corporate actors over smallholders.<sup>40</sup> Furthermore, dualism between customary and national law continues to produce uncertainty and dispossession.<sup>41</sup>

Gendered patterns compound these structural asymmetries. Empirical studies reveal persistent gender inequality in land rights indicators across Asia, including Indonesia, where women frequently lack formal ownership despite active agricultural participation.<sup>42</sup> Customary norms may further restrict women's access to home or inheritance rights.<sup>43</sup> Consequently, land concentration intersects with gender, ethnicity, and class, reinforcing multidimensional inequality.

Agrarian inequality is also reproduced through administrative weaknesses. The persistence of land mafia practices such as forged documents, collusion, and speculative manipulation reflects systemic flaws in land administration and enforcement.<sup>44</sup> Fragmented cadastral data and low compliance with spatial mapping standards exacerbate legal uncertainty and uneven control.<sup>45</sup> Where land registration systems operate with negative publication principles and incomplete verification, powerful actors are better positioned to secure formal recognition.

<sup>38</sup> Ady Thea D Achmad., KPA: Sepanjang 2022 Terjadi 212 "Letusan" Konflik Agraria, *Hukumonline*, January 23, 2023.

<sup>39</sup> Octavia, Elfira Zahwa, Mohammad Hamidi Masykur, and Moh Fadil., Legal status of former customary land ownership evidence after its validity period expires: Assessment of the legal certainty over Indigenous peoples' land rights, *Law Human Environment*, Vol.3, no.16, 2025, 168.

<sup>40</sup> Christian Lund., An air of legality—legalization under conditions of rightlessness in Indonesia, *Journal of Peasant Studies* Vol.50, no.4, 2023, page.1299.

<sup>41</sup> Sahlan, Nurul Miqat, and Susi Susilawati., Realizing "Deconstructional" Justice Through Agrarian Civil Law Reform: A Review of Jacques Derrida's Theory, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.12, no.3, 2024, page.589.

<sup>42</sup> Caitlin Kieran, Kathryn Sproule, Cheryl Doss, Agnes Quisumbing, and Sung Mi Kim., Examining gender inequalities in land rights indicators in Asia, *Agricultural Economics*, Vol.46, no.1, 2015, page.122.

<sup>43</sup> Napsiah, Muryanti Muryanti, and Yani Tri Wijayanti., Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung, *El-Ussrah: Jurnal Hukum Keluarga*, Vol.7, no.1, 2024, page.187.

<sup>44</sup> Vani Wirawan, Yusriyadi Yusriyadi, Ana Silviana, and Yeni Widowaty., Measuring the Land Maña in Indonesia: New Phenomenon of Extraordinary Crime, *Novum Jus*, Vol.18, no.1 2024, page.319.

<sup>45</sup> Dwi Budi Martono, Trias Aditya, S. Subaryono, and Prijono Nugroho., Cadastre typology as a baseline for incremental improvement of spatial cadastre in Jakarta: Towards a complete cadastre, *Land*, Vol.11, no.10, 2022, page.1735.

The result is a structurally skewed legal terrain favoring capital-intensive actors.

The politics of land law further entrench inequality. Legal politics determines which regulatory choices are prioritized, amended, or preserved.<sup>46</sup> Contemporary land governance demonstrates a tendency toward investment-oriented pragmatism rather than redistributive restructuring. Liberalization and agricultural policy shifts have historically influenced poverty and inequality trajectories.<sup>47</sup> Urbanization and regional imbalances further intensify land value disparities, reinforcing speculative concentration in strategic regions.<sup>48</sup> In agro-industrial contexts, economic liberalization regimes have facilitated land-use conversion in ways that privilege corporate agro-industry.<sup>49</sup>

The persistence of abandoned land illustrates another structural paradox. Millions of hectares remain underutilized by rights holders, yet redistribution processes face resistance and bureaucratic complexity.<sup>50</sup> While abandoned land legally reverts to state control, enforcement and reallocation remain inconsistent. Similarly, land acquisition for public interest projects often raises tensions between state control and individual rights, disproportionately affecting marginalized communities.<sup>51</sup>

Environmental governance dimensions reinforce structural inequality. Natural resource business policies have frequently prioritized centralized and instrumental regulatory frameworks, leading to environmental degradation, marginalization of Indigenous peoples, and human rights violations.<sup>52</sup> Ecological justice scholarship argues that land governance must integrate inventory, ownership, and utilization considerations to avoid perpetuating socio-ecological imbalance.<sup>53</sup> Rapid plantation expansion has generated intersectional impacts shaped by class, ethnicity, and gender, revealing how socio-ecological injustice is embedded in land allocation regimes.<sup>54</sup>

<sup>46</sup> Mahfud MD. Moh., *Politik Hukum di Indonesia*, Jakarta: PT. Rajagrafindo Persada, Cetakan ke-6, 2014, page.243.

<sup>47</sup> Peter Warr., Agricultural liberalization, poverty and inequality: Indonesia and Thailand, *Journal of Asian Economics*, Vol.35, 2014, page.96.

<sup>48</sup> Saratri Wilonoyudho, R. Rijanta, Yeremias T. Keban, and Bakti Setiawan., Urbanization and regional imbalances in Indonesia, *Indonesian Journal of Geography*, Vol.49, no.2, 2017, page.128.

<sup>49</sup> Aris Yulia, Fatma Ayu Jati Putri, and Erna Wati., Land use policies and tenure in economic liberalization regime: Land law in agro-industrial context, *Lex Publica*, Vol.10, no.1, 2023, page.19.

<sup>50</sup> Dian A. Mujiburohman, Abandoned land: Legal aspects and utilization in Indonesia, *Вестник Санкт-Петербургского университета Право*, Vol.16, no.1, 2025, page.223.

<sup>51</sup> Aartje Tehupeiory, Suwarno Suwarno, Ramisa Jahan, and Mohit Islam., Land Acquisition for Public Interest: Balancing State Control and Individual Property Rights, *Jurnal Hukum UNISSULA*, Vol.40, no.2, 2024, page.185.

<sup>52</sup> Indah Dwi Qurbani, and Ilham Dwi Rafiqi., Bisnis Sektor Sumber Daya Alam dan Hak Asasi Manusia di Indonesia: Realitas dan Tantangan, *Media Iuris*, Vol.5, no.2, 2022, page.261.

<sup>53</sup> Agung Basuki, Muhammad Zaid, and Alnour Abobaker Mohamed Musa., Establishing ecological justice in the governance of land inventory, ownership, and utilisation in Indonesia, *Journal of Law, Environmental and Justice*, Vol.1, no.2, 2023, page.139.

<sup>54</sup> Mukhlis, Nirwasita Daniswara, Abdilllah Abdilllah, and Siti Sofiaturohmah., The intersectional lens: Unpacking the socio-ecological impacts of oil palm expansion in rural Indonesia, *Sustainability*, Vol.17, no.23, 2025, page.10570.

Agrarian reform itself faces institutional dilemmas. Land Deed Officials (*Pejabat Pembuat Akta Tanah/ PPAT*) operate under high legal risk due to ambiguous procedures and inconsistent verification standards, particularly in conflict-prone areas.<sup>55</sup> Without coherent integration between central and local institutions, agrarian reform risks procedural formalism rather than substantive redistribution.<sup>56</sup> Comparative analysis demonstrates that countries such as France employ strong institutional mechanisms such as SAFER (*Sociétés d'Aménagement Foncier et d'Établissement Rural*) to regulate land transactions and prevent monopolies, allocating significant portions of land to smallholders.<sup>57</sup> Indonesia lacks similarly robust anti-concentration mechanisms.

Food security indicators reveal the socio-economic consequences of concentration. National food insecurity prevalence increased to 8.49% in 2021, reflecting structural vulnerability linked to unequal land access. Privately owned forest farmers and smallholders face persistent poverty and inequality due to limited productive control.<sup>58</sup> Absent equitable land distribution, agrarian transformation fails to deliver broad-based welfare gains.

In sum, the patterns identified reveal three interrelated characteristics. First, land ownership concentration is extreme and measurable, concentrated in corporate families and large concessions. Second, regulatory reforms particularly concession extensions and investment facilitation have institutionalized rather than mitigated this concentration. Third, agrarian reform mechanisms such as TORA and redistribution operate within constrained object pools, leaving core structures intact.

Therefore, structural land inequality in Indonesia is embedded within regulatory design. It is reproduced through concession regimes, extended tenure security for investors, limited redistribution targets, administrative fragmentation, and

<sup>55</sup> Siti Rahmah, Husni Jalil, and M. Yakub Aiyub Kadir., Legal dilemma for land deed officials in transferring land title within agrarian reform in Indonesia: A study in Aceh Province, *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.8, no.1, 2024, page.558.

<sup>56</sup> Hariadi Kartodihardjo, and Eko Cahyono., Agrarian reform in Indonesia: analyze concepts and their implementation from a governance perspective, *Jurnal Manajemen Hutan Tropika*, Vol.6, no.2, 2021, page.8.

<sup>57</sup> Zainal Said, Sih Natalia Sukmi, Rustam Magun Pikahulan, and Syafa'at Anugrah Pradana., Farming Justice on Economic Regulations in Indonesia and France, *Journal of Human Rights, Culture and Legal System*, Vol.5, no.2, 2025, page.666. See too, I. Botrel, L. Mercier, Y. Leger, and E. Dugleux., Water quality improvement: Land management tools. The SAFER and the Rhone-Mediterranean and Corsica Water Agency's support to local authorities. *Techniques - Sciences - Methodes*, 2009; A. Baysse-Lainé, Moving toward a fairer access to land fostering agroecological transition? A decade of legal change and reframing of debates around soil and climate in France, *Elementa*, 2024, page.75.

<sup>58</sup> Eva Fauziyah, San Afri Awang, Priyono Suryanto, and Budiman Achmad., Inequality and Poverty of Privately Owned Forests Farmers in Rural Areas of Indonesia, *Forest Science and Technology*, Vol.21, no.1, 2025, page.9. See too, Fitzpatrick, Daniel., Land, Custom and Law in Post-Conflict Reconstruction., *Asia Pacific Journal of Environmental Law*, Vol.6, no.1, 2002, page.472.

investment-oriented legal politics. The persistence of conflicts 2,939 eruptions covering over 6.3 million hectares and affecting more than 1.7 million households demonstrates that inequality is systemic. Rather than correcting historical imbalances, contemporary governance frameworks risk consolidating them. The agrarian structure thus reflects a legally mediated concentration pattern, sustained by institutional arrangements that prioritize capital stability over distributive restructuring.

### **3.2. Constitutional and Distributive Justice Assessment of Agrarian Governance**

Structural land ownership inequality in Indonesia must be assessed not merely as a socioeconomic phenomenon, but as a constitutional question concerning the meaning and implementation of state control over land. Article 33 paragraph (3) of the 1945 Constitution provides that “the earth, water, and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.” This provision forms the normative foundation of Indonesia’s agrarian regime and establishes a clear distributive orientation. As explained by Harsono,<sup>59</sup> the doctrine of state control (*hak menguasai oleh negara*) does not imply ownership by the state in a private law sense, but rather a public mandate to regulate, administer, manage, and supervise land resources in order to achieve social welfare. The Constitutional Court, in Decision Number 001-021-022/PUU-I/2003, further clarified that state control includes policy-making, regulation, administration, management, and supervision. These functions indicate that the state carries an active obligation to prevent monopolistic accumulation and to guarantee equitable access to land.

Within this constitutional framework, land governance must be oriented toward distributive justice. From a normative perspective, inequality in land ownership can only be justified if it demonstrably benefits the least advantaged groups in society. This reasoning is consistent with Rawls’ difference principle, which requires that social and economic inequalities improve the condition of those who are most vulnerable. In the Indonesian agrarian context, this includes smallholder farmers, indigenous communities, landless laborers, and rural households whose livelihoods depend on access to land. When land concentration instead marginalizes these groups and restricts their economic opportunities, such inequality becomes difficult to reconcile with constitutional mandates.

The Basic Agrarian Law of 1960 (UUPA) operationalizes Article 33(3) through the principle that all land rights carry a social function. Article 6 of the UUPA explicitly provides that land ownership cannot be exercised solely for private benefit, but must take into account broader societal interests. According to Harsono,<sup>60</sup> the social function doctrine was designed to dismantle colonial land hierarchies and to prevent the re-emergence of extreme concentration under a new economic order. The UUPA thus embeds a structural commitment to redistribution and limits on

<sup>59</sup> Boedi Harsono., *Sejarah Pembentukan Hukum Agraria, Isi dan Pelaksanaannya, Jilid I. Hukum Tanah Nasional*, Jakarta, Jambatan, Cetakan VIII, 1999, page. 51.

<sup>60</sup> Boedi Harsono., *Hukum Agraria Indonesia*, Jakarta, Djambatan, 2005, page.23. See too, Boedi Harsono., *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta, Djambatan, 2005, page.12.

accumulation. Land rights are conditional, not absolute; they are valid only insofar as they contribute to social welfare.

This redistributive orientation was reaffirmed by TAP MPR IX/2001, which mandates the restructuring of control, ownership, use, and utilization of agrarian resources. The decree directs the state to expand land access, reduce poverty, resolve agrarian conflicts, and prioritize marginalized communities.<sup>61</sup> Agrarian reform, therefore, is not merely an administrative program of land certification, but a structural transformation process. Arisaputra<sup>62</sup> and Lendong<sup>63</sup> emphasize that agrarian reform must include both asset reform (redistribution of land) and access reform (ensuring supporting mechanisms such as credit and infrastructure). Without these elements, reform risks becoming symbolic rather than substantive.

However, contemporary regulatory developments reveal growing tension between these constitutional commitments and policy implementation. The enactment of Law Number 6 of 2023 on Job Creation significantly extended the duration of HGU and HGB, strengthening long-term investor security.<sup>64</sup> While legal certainty is important for economic development, the extension of concession periods up to several decades effectively consolidates corporate control over large land areas. Mahfud and Djohan<sup>65</sup> argue that expanded investor access to cultivation rights may intensify agrarian injustice by reinforcing asymmetrical bargaining power between corporations and rural communities.

This development produces normative dualism within Indonesia's agrarian legal system. On one hand, the UUPA and TAP MPR IX/2001 emphasize social justice and anti-monopoly principles. On the other hand, recent reforms prioritize investment facilitation and regulatory simplification. Aprilliani et al.<sup>66</sup> note that overlapping and sometimes contradictory regulations can weaken the coherence of agrarian law. In terms of legal politics, Mahfud MD<sup>67</sup> explains that the direction of law reflects policy choices about whose interests are prioritized. In this case,

<sup>61</sup> M. Nazir. Salim., *Reforma Agraria: Kelembagaan dan Praktik Kebijakan*, Yogyakarta, STPN Press, 2020, page.62.

<sup>62</sup> Muhammad Ilham Arisaputra., *Access Reform Dalam Kerangka Reforma Agraria Untuk Mewujudkan Kesejahteraan Rakyat*, (PhD diss., Universitas Airlangga, 2015), page.54. See too, Ni Luh Ariningsih Sari, and I. Wayan Suwanda., *Kebijakan di Era Pemerintahan Joko Widodo dan Jusuf Kalla (Perspektif Politik Hukum dan Agraria)*, *Ganec Swara*, Vol.13, no.2, 2019, page.241.

<sup>63</sup> Roman N. Lendong, *Konsolidasi Gerakan petani Bagi Percepatan Reforma Agraria*, *Jurnal Analisis Sosial*, Vol.7, no.3, 2002, page.54.

<sup>64</sup> Gunanegara., *Kebijakan negara pada pengaturan hak atas tanah pasca Undang-Undang Cipta Kerja*, *Refleksi Hukum: Jurnal Ilmu Hukum*, Vol.6, no.2, 2022, page.170.

<sup>65</sup> Muh Afif Mahfud, and Naufal Hasanuddin Djohan., *The expansion of investor access to cultivation rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia*. In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.24, no.2, 2024, page.61.

<sup>66</sup> Rut Agia Aprilliani, Verlia Kristiani, and Katrine Novia., *Ketimpangan penguasaan tanah oleh korporasi dan warga masyarakat dalam optik politik pertanahan nasional*, *Binamulia Hukum* Vol.9, no.1, 2020, page.31.

<sup>67</sup> Mahfud MD. Moh., *Politik Hukum di Indonesia*, Jakarta: PT. Rajagrafindo Persada, Cetakan ke-6, 2014, page.245.

the regulatory trend indicates a shift from redistributive justice toward economic pragmatism.

Empirical evidence supports concerns regarding this shift. Persistent land concentration, agrarian conflicts, and disputes over customary territories demonstrate that redistributive mechanisms remain limited. Warman and Fatimah<sup>68</sup> show that in forest areas, land objects of agrarian reform (TORA) are often derived from marginal lands rather than from core concession territories, leaving structural concentration intact. Mujiburohman<sup>69</sup> further highlights the weak enforcement of abandoned land regulations, reducing opportunities to reclaim and redistribute underutilized land. These patterns suggest that agrarian reform operates within narrow administrative boundaries rather than confronting the root causes of inequality.

From a distributive justice perspective, three normative benchmarks can be applied. First, the principle of social justice embedded in the Preamble to the Constitution requires that state policies reduce structural disparities. Yet evidence of extreme land concentration indicates that benefits are disproportionately captured by a small group of actors.<sup>70</sup> Second, the anti-monopoly spirit of the UUPA implies limits on excessive accumulation. However, extended concession regimes and corporate expansion trends suggest consolidation rather than dispersion.<sup>71</sup> Third, the Rawlsian difference principle requires that inequality improve the welfare of the least advantaged. In reality, ongoing agrarian conflicts and criminalization of land defenders indicate that vulnerable communities often bear the costs of land-based development.<sup>72</sup>

The persistence of agrarian conflict further illustrates the gap between normative ideals and empirical realities. Bedner and Arizona<sup>73</sup> demonstrate how legal reforms can marginalize customary land claims when investor rights are prioritized.

<sup>68</sup> Kurnia Warman, and Titin Fatimah., Agrarian reform in the forests around vernacular settlements: Asset reform and access reform in Rural West Sumatra, Indonesia, *ISVS e-journal*, Vol.10, no.6, 2023, page.142.

<sup>69</sup> Dian A. Mujiburohman, Abandoned land: Legal aspects and utilization in Indonesia, *Вестник Санкт-Петербургского университета Право*, Vol.16, no.1, 2025, page.225.

<sup>70</sup> Emelia Kontesa, and Zico Junius Fernando., Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing, *Lex Scientia Law Review*, Vol.8, no.2, 2024, page.956. See too, Zainal Said, Sih Natalia Sukmi, Rustam Magun Pikahulan, and Syafa'at Anugrah Pradana., Farming Justice on Economic Regulations in Indonesia and France, *Journal of Human Rights, Culture and Legal System*, Vol.5, no.2, 2025, page.666.

<sup>71</sup> L. Leon, Adam Ramadhan, Citranti Hanifah Dewani, Fien Naufal Zaim Farhan, and Atik Winanti., Konflik Agraria dan Ketimpangan Struktur Kepemilikan Tanah: Studi Kasus Perkebunan Sawit di Kalimantan Tengah, *Media Hukum Indonesia*, Vol.3, no.2, 2025, page.153. See too, Ben White, and Marcus Taylor., Labour and land in Indonesia: An introduction, *Journal of Agrarian Change*, Vol.25, no.4, 2025, page.34.

<sup>72</sup> Wiryani Fifik, Febriansyah Ramadhan, and Mokhammad Najih., Indigenous People's Land Rights in Post-Soeharto Indonesia: The Continuing Problem of Land Grabbing, *International Journal on Minority and Group Rights*, Vol.31, no.5, 2024, page.324. See too, Trie Sakti, and Eliana Sidipurwanti., Conflict on the Land of Agriculture: Structural Land Disputes in Plantation Areas of Central Java, In *BIO Web of Conferences*, Vol.208, EDP Sciences, 2026, page.4002.

<sup>73</sup> Adriaan Bedner, and Yance Arizona., Adat in Indonesian land law: a promise for the future or a dead end? *The Asia Pacific Journal of Anthropology*, Vol.20, no.5, 2019, page.426.

Meckelburg and Wardana<sup>74</sup> show that land acquisition policies framed as serving the public interest may disproportionately disadvantage local communities. Hajad et al.<sup>75</sup> link land politics to food insecurity, suggesting that concentration undermines livelihood resilience rather than strengthening it. These findings indicate that inequality in land ownership does not generate compensatory benefits for marginalized groups; instead, it often exacerbates vulnerability.

The concept of constitutional deviation provides a useful framework for interpreting these developments. Although Article 33(3) remains formally unchanged, its substantive meaning may be diluted when implementing regulations prioritize capital stability over redistribution. Van Leeuwen and Földvári<sup>76</sup> highlight the deep historical roots of inequality in Indonesia, yet contemporary governance choices play a decisive role in either mitigating or reinforcing these patterns. Soedomo<sup>77</sup> characterizes this situation as a political economy trap, where institutional incentives align with elite interests and limit transformative reform.

In this context, the state's exercise of control risks becoming a mechanism of legalization for concentrated tenure rather than an instrument of distributive correction. Susanto<sup>78</sup> notes that formal legality does not necessarily equate to substantive justice. When concession extensions and investment frameworks strengthen corporate tenure security without parallel redistribution, the constitutional promise of social justice is weakened. The social function of land becomes secondary to economic growth objectives.

Therefore, structural land ownership inequality in Indonesia reflects more than a disparity in economic assets; it represents a misalignment between constitutional norms and regulatory practice. The constitutional agrarian framework mandates prevention of monopolies, enforcement of the social function of land, and restructuring of ownership patterns to achieve equitable welfare. Yet policy developments increasingly favor investment facilitation and long-term concessions, creating normative disharmony within the legal system. When assessed against principles of social justice, anti-monopoly safeguards, and Rawlsian distributive fairness, contemporary agrarian governance fails to provide

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<sup>74</sup> Rebecca Meckelburg, and Agung Wardana., The political economy of land acquisition for development in the public interest: The case of Indonesia, *Land Use Policy*, Vol.137, 2024, page.107017.

<sup>75</sup> Vellayati Hajad, Sri Handayani, Ikhsan Ikhsan, Deni Setiawan, Zuhri Fadhly, and Herizal Herizal., Land Politics and Food Security: A New Perspective on Land Degradation in Indonesia, *Jurnal Ilmiah Peuradeun*, Vol.13, no.2, 2025, page.25.

<sup>76</sup> Bas Van Leeuwen, and Péter Földvári., The development of inequality and poverty in Indonesia, 1932–2008, *Bulletin of Indonesian economic studies*, Vol.52, no.3, 2016, page.382.

<sup>77</sup> Sudarsono Soedomo., Political economy of land use in Indonesia: Trap and curse of natural forests, *Jurnal Manajemen Hutan Tropika*, Vol.27, 2021, page.46.

<sup>78</sup> Nur Agus Susanto., Dimensi Aksiologis dari Putusan Kasus "ST" Kajian Putusan Peninjauan Kembali Nomor 97/PK/Pid, *Sus/2012, jurnal Yudisial*, Vol.7, 2012, page.352.

adequate justification for persistent concentration.<sup>79</sup>

In sum, the constitutional doctrine of state control establishes a redistributive obligation that remains insufficiently realized in practice. Structural land ownership inequality persists not because of an absence of normative foundations, but because of regulatory choices that prioritize economic liberalization over agrarian restructuring. The resulting governance architecture stabilizes concentration while offering limited corrective redistribution. This condition underscores the need to reconstruct agrarian governance in a manner that restores coherence between constitutional mandates and distributive justice principles, ensuring that land truly serves the greatest prosperity of the people rather than the security of concentrated capital.

### **3.3. Towards a Justice-Oriented Reconstruction of Agrarian Governance**

The persistence of structural land ownership inequality in Indonesia demonstrates that incremental regulatory adjustments are insufficient to address deeply embedded injustices. What is required is not merely technical reform, but a reconstruction of agrarian governance grounded in constitutional supremacy, redistributive justice, socio-ecological responsibility, and human rights integration. Such reconstruction must reorient legal politics toward the original mandate of agrarian law: ensuring that land functions as a source of collective welfare rather than concentrated capital accumulation.<sup>80</sup>

First, constitutional supremacy must be reaffirmed as the primary normative anchor of agrarian governance. Article 33 paragraph (3) of the 1945 Constitution establishes that land and natural resources are controlled by the state for the greatest prosperity of the people. This constitutional clause is not symbolic; it imposes binding obligations on the state to prevent monopolistic control and to ensure distributive fairness. The interpretation of “right to control by the state” as encompassing policy-making, regulation, management, administration, and supervision (Constitutional Court Decision Number 001-021-022/PUU-I/2003) requires institutional coherence across sectors. However, contemporary land governance often reflects fragmentation, overlapping authority, and investment-driven prioritization, which dilute constitutional intent.<sup>81</sup> Reconstructing agrarian governance therefore requires restoring hierarchical consistency, where all sectoral regulations including those concerning investment, forestry, mining, and land banking are harmonized under constitutional social justice principles.

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<sup>79</sup> Abdul Wahid, and Adi Sulistiyono., Justification for the establishment of a land court in indonesia: realizing justice in land dispute resolution, *Masalah-Masalah Hukum*, Vol.54, no.2, 2025, page.182.

<sup>80</sup> Jazim Hamidi., *Teori dan Politik Hukum Tata Negara*, Yogyakarta, Total Media, 2009, page.23. See too, Mahfud MD. Moh., *Politik Hukum di Indonesia*, Jakarta: PT. Rajagrafindo Persada, Cetakan ke-6, 2014, page.248.

<sup>81</sup> Hariadi Kartodihardjo, and Eko Cahyono., Agrarian reform in Indonesia: analyze concepts and their implementation from a governance perspective, *Jurnal Manajemen Hutan Tropika*, Vol.6, no.2, 2021, page.10. Aris Yulia, Fatma Ayu Jati Putri, and Erna Wati., Land use policies and tenure in economic liberalization regime: Land law in agro-industrial context, *Lex Publica*, Vol.10, no.1, 2023, page.21.

Second, redistributive justice must move from rhetorical commitment to enforceable policy architecture. Comparative evidence indicates that concentration without corrective intervention entrenches inequality and social exclusion.<sup>82</sup> In Indonesia, empirical studies show that land-use change and agro-industrial expansion correlate with rising rural income inequality.<sup>83</sup> Agricultural liberalization without protective redistribution has also intensified disparities.<sup>84</sup> A justice-oriented reconstruction thus requires explicit regulatory ceilings on maximum land ownership and effective enforcement of minimum allocation standards for smallholders. Although such principles were envisioned in earlier agrarian frameworks, their operationalization remains weak.

Limiting excessive accumulation should include strict evaluation and periodic review of HGU and HGB. The expansion of investor access to cultivation rights has raised socio-legal concerns about deepening agrarian injustice.<sup>85</sup> Without transparent audits, concession extensions risk perpetuating structural inequality. Evaluating HGU/HGB must therefore incorporate social impact assessments, compliance with socio-ecological obligations, and respect for customary claims. Abandoned or underutilized lands should be systematically identified and reallocated to agrarian reform beneficiaries, supported by robust enforcement mechanisms.<sup>86</sup>

A temporary moratorium on new large-scale land allocations may also be necessary to prevent further concentration while redistribution is underway. Evidence suggests that continued allocation to corporate actors undermines reform credibility and exacerbates conflict.<sup>87</sup> Land-use governance must integrate spatial accuracy and cadastral reform to ensure transparency and prevent manipulation.<sup>88</sup>

<sup>82</sup> Mohammad Zulfan Tadjoeuddin., Inequality and exclusion in Indonesia, *Journal of Southeast Asian Economies*, Vol.36, no.3, 2019, page.289. See too, Arief Anshory Yusuf, Reza Anglingkusumo, and Andy Sumner., A direct test of Kuznets in a developing economy: a cross-district analysis of structural transformation and inequality in Indonesia, *Regional Studies, Regional Science*, Vol.8, no.1, 2021, page.190.

<sup>83</sup> Daniel Chrisendo, Hermanto Siregar, and Matin Qaim., Oil palm and structural transformation of agriculture in Indonesia, *Agricultural Economics*, Vol.52, no.5, 2021, page.857. See too, Jonida Bou Dib, Zulkifli Alamsyah, and Matin Qaim., Land-use change and income inequality in rural Indonesia, *Forest Policy and Economics*, Vol.94, 2018, page.61.

<sup>84</sup> Peter Warr., Agricultural liberalization, poverty and inequality: Indonesia and Thailand, *Journal of Asian Economics*, Vol.35, 2014, page.97.

<sup>85</sup> Muh Afif Mahfud, and Naufal Hasanuddin Djohan., The expansion of investor access to cultivation rights: A Socio-Legal Analysis on Agrarian Injustice in Indonesia. In *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, Vol.24, no.2, 2024, page.62.

<sup>86</sup> Dian A. Mujiburohman, Abandoned land: Legal aspects and utilization in Indonesia, *Вестник Санкт-Петербургского университета Право*, Vol.16, no.1, 2025, page.229.

<sup>87</sup> Kurnia Warman, and Titin Fatimah., Agrarian reform in the forests around vernacular settlements: Asset reform and access reform in Rural West Sumatra, Indonesia, *ISVS e-journal*, Vol.10, no.6, 2023, page.143.

<sup>88</sup> Dwi Budi Martono, Trias Aditya, S. Subaryono, and Prijono Nugroho., Cadastre typology as a baseline for incremental improvement of spatial cadastre in Jakarta: Towards a complete cadastre, *Land*, Vol.11, no.10, 2022, page.1738.

Without reliable spatial data, redistributive policy cannot be effectively targeted.

Third, agrarian governance must integrate a socio-ecological conception of land function. Land is not merely an economic asset; it sustains ecological systems and intergenerational welfare. Rapid expansion of extractive and plantation sectors has generated environmental degradation and socio-ecological conflict.<sup>89</sup> Sustainable governance requires embedding ecological justice into land allocation decisions. Mashdurohatun et al.<sup>90</sup> propose a policy blueprint emphasizing conservation-oriented land management to safeguard future generations. This perspective aligns with global human rights discourse recognizing environmental integrity as inseparable from distributive justice.

Moreover, land governance must address intersectional inequality. Gender disparities in land rights remain significant across Asia, including Indonesia.<sup>91</sup> Customary systems may reproduce exclusion, particularly regarding women's access to property. A justice-oriented reconstruction must therefore ensure gender-responsive land titling, recognition of collective rights, and equal access to agrarian reform programs.

Human rights integration represents another essential pillar. Agrarian reform is increasingly recognized as a human rights imperative rather than a discretionary policy.<sup>92</sup> International frameworks such as UNDRIP and UNDROP affirm the right to land for indigenous peoples and peasants. Domestically, land-related business practices frequently intersect with human rights violations, including displacement and environmental harm.<sup>93</sup> Incorporating due diligence obligations, restoration mechanisms, and victim-centered remedies into agrarian governance would strengthen alignment with human rights standards.

Protection for victims of agrarian conflict must be institutionalized. Criminalization, eviction, and intimidation undermine the legitimacy of reform. Criminological analysis of land grabbing demonstrates the need for preventive and punitive mechanisms against organized land appropriation (Wirawan et al., 2024).<sup>94</sup>

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<sup>89</sup> Mukhlis, Nirwasita Daniswara, Abdillah Abdillah, and Siti Sofiaturohmah., The intersectional lens: Unpacking the socio-ecological impacts of oil palm expansion in rural Indonesia, *Sustainability*, Vol.17, no.23, 2025, page.10571. See too, Agung Basuki, Muhammad Zaid, and Alnour Abobaker Mohamed Musa., Establishing ecological justice in the governance of land inventory, ownership, and utilisation in Indonesia, *Journal of Law, Environmental and Justice*, Vol.1, no.2, 2023, page.141.

<sup>90</sup> Anis Mashdurohatun, Muslimah Hayati, Saritua Silitonga, Zaenal Arifin, and Amanda Amanda., The Conserving Agrarian Land for Future Generations: A Policy Blueprint for Indonesia, *Jurnal Hukum Unissula*, Vol.41, 2025, page.13.

<sup>91</sup> Caitlin Kieran, Kathryn Sproule, Cheryl Doss, Agnes Quisumbing, and Sung Mi Kim., Examining gender inequalities in land rights indicators in Asia, *Agricultural Economics*, Vol.46, no.1, 2015, page.125. Napsiah, Muryanti Muryanti, and Yani Tri Wijayanti., Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung, *El-Usrah: Jurnal Hukum Keluarga*, Vol.7, no.1, 2024, page.189.

<sup>92</sup> Muhammad Ilham Arisaputra., Access Reform Dalam Kerangka Reforma Agraria Untuk Mewujudkan Kesejahteraan Rakyat, (PhD diss., Universitas Airlangga, 2015), page.56.

<sup>93</sup> Indah Dwi Qurbani, and Ilham Dwi Rafiqi., Bisnis Sektor Sumber Daya Alam dan Hak Asasi Manusia di Indonesia: Realitas dan Tantangan, *Media Iuris*, Vol.5, no.2, 2022, page.263.

<sup>94</sup> Junimart Girsang, Gunarto, And Al Amin., Criminological perspective in crime prevention of land grabbing, *Jurnal Hukum Unissula*, Vol.40, no.2, 2024, page.296. See too, Vani Wirawan, Yusriyadi

Strengthening the Anti-Land Mafia Task Force (*Satgas Anti-Mafia Tanah*) should be accompanied by procedural safeguards for communities and whistleblower protections. Transitional legal protection for customary land evidence, particularly where administrative validity has expired, is also necessary to prevent legal exclusio.<sup>95</sup>

Meaningful participation constitutes a further normative requirement. Policy formation without inclusive consultation weakens legitimacy and risks reproducing elite capture. Participatory governance mechanisms, including Free, Prior, and Informed Consent (FPIC), must be institutionalized in licensing and redistribution processes.<sup>96</sup> Jamilah et al.<sup>97</sup> suggest that alternative tenure models such as the Social Tenure Domain Model (STDM) can enhance inclusivity by recognizing informal and customary claims. Participation must extend beyond consultation to decision-making authority and monitoring oversight.

Reconstruction also demands administrative and institutional strengthening. The complexity of land registration and transfer procedures exposes officials and communities to legal risk.<sup>98</sup> Integrated village-based land databases and coordination with the National Land Agency could reduce procedural ambiguity and enhance legal certainty. Digitalization and spatial cadastre improvement are necessary but must be accompanied by equity safeguards.<sup>99</sup>

From a socio-economic perspective, redistributive agrarian reform should be linked to access reform, including credit, training, and infrastructure support.<sup>100</sup> Land ownership alone does not guarantee improved welfare if structural market barriers

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Yusriyadi, Ana Silviana, and Yeni Widowaty., Measuring the Land Maña in Indonesia: New Phenomenon of Extraordinary Crime, *Novum Jus*, Vol.18, no.1 2024, page.318.

<sup>95</sup> Octavia, Elfira Zahwa, Mohammad Hamidi Masykur, and Moh Fadil., Legal status of former customary land ownership evidence after its validity period expires: Assessment of the legal certainty over Indigenous peoples' land rights, *Law Human Environment*, Vol.3, no.16, 2025, 169. See too, Bayu Andrianto Wirawan, Yusni Ikhwan Siregar, Sukendi Sukendi, and Mulyadi Mulyadi., Legal and spatial perspectives on sustainable built-up land conversion control in Pekanbaru, *Jurnal Hukum*, Vol.41, no.4, 2025, page.56.

<sup>96</sup> Mukhlis, Nirwasita Daniswara, Abdillah Abdillah, and Siti Sofiaturohmah., The intersectional lens: Unpacking the socio-ecological impacts of oil palm expansion in rural Indonesia, *Sustainability*, Vol.17, no.23, 2025, page.10572.

<sup>97</sup> Lina Jamilah, and Arif Firmansyah., Preliminary Concept of Alternative Agrarian Reform for Justice: The Social Tenure Domain Model (STDM) Approach to Constructing a Just Society in Indonesia, *Jurnal Hukum*, Vol.39, no.2, 2023, page.183.

<sup>98</sup> Siti Rahmah, Husni Jalil, and M. Yakub Aiyub Kadir., Legal dilemma for land deed officials in transferring land title within agrarian reform in Indonesia: A study in Aceh Province, *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.8, no.1, 2024, page.559.

<sup>99</sup> Dwi Budi Martono, Trias Aditya, S. Subaryono, and Prijono Nugroho., Cadastre typology as a baseline for incremental improvement of spatial cadastre in Jakarta: Towards a complete cadastre, *Land*, Vol.11, no.10, 2022, page.1739.

<sup>100</sup> Kurnia Warman, and Titin Fatimah., Agrarian reform in the forests around vernacular settlements: Asset reform and access reform in Rural West Sumatra, Indonesia, *ISVS e-journal*, Vol.10, no.6, 2023, page.145.

persist.<sup>101</sup> Addressing inequality therefore requires integrating agrarian policy with rural development and social protection frameworks.

Theoretical reflection further supports deconstructive reform. Sahlan et al.<sup>102</sup> argue that agrarian civil law requires critical deconstruction to dismantle colonial legacies and normative inconsistencies. Lund<sup>103</sup> similarly illustrates how legality can be manufactured under conditions of rightlessness, highlighting the need for deeper structural change rather than formalistic compliance. Reconstructing agrarian governance thus involves reinterpreting legal doctrines in light of substantive justice.

Finally, a justice-oriented reconstruction must explicitly integrate distributive justice, human rights, and substantive agrarian reform into a unified normative framework. Distributive justice requires equitable allocation and corrective redistribution. Human rights demand protection of dignity, participation, and non-discrimination. Substantive reform entails restructuring tenure systems rather than merely formalizing existing patterns. These dimensions are interdependent: without redistribution, rights remain abstract; without rights protection, redistribution lacks legitimacy; without structural reform, both remain incomplete.

In conclusion, reconstructing agrarian governance in Indonesia necessitates a paradigm shift from investment-centered pragmatism to constitutionally grounded justice. This reconstruction should reaffirm constitutional supremacy, enforce redistributive ceilings, rigorously evaluate land concessions, impose temporary allocation moratoria, protect conflict victims, institutionalize meaningful participation, and integrate socio-ecological and human rights principles. Only through such comprehensive reorientation can agrarian governance fulfill its mandate to transform structural inequality into equitable and sustainable prosperity.

#### 4. Conclusion

The findings of this study confirm that structural land ownership inequality in Indonesia is not merely an economic disparity but a manifestation of normative inconsistency within the constitutional agrarian framework. The 1945 Constitution, particularly Article 33 paragraph (3), together with the Basic Agrarian Law (UUPA), establishes a clear mandate that land must be controlled by the state and utilized for the greatest prosperity of the people. This mandate embeds principles of distributive justice, anti-monopoly safeguards, and the social function of land. However, the analysis demonstrates a widening gap between these constitutional ideals (*das sollen*) and regulatory practice (*das sein*). Investment-oriented legal politics, expansion of long-term land concessions, and fragmented sectoral regulations—especially following the Job Creation Law—have strengthened

<sup>101</sup> Eva Fauziyah, San Afri Awang, Priyono Suryanto, and Budiman Achmad., Inequality and Poverty of Privately Owned Forests Farmers in Rural Areas of Indonesia, *Forest Science and Technology*, Vol.21, no.1, 2025, page.10.

<sup>102</sup> Sahlan, Nurul Miqat, and Susi Susilawati., Realizing "Deconstructional" Justice Through Agrarian Civil Law Reform: A Review of Jacques Derrida's Theory, *Jurnal IUS Kajian Hukum Dan Keadilan*, Vol.12, no.3, 2024, page.591.

<sup>103</sup> Christian Lund., An air of legality—legalization under conditions of rightlessness in Indonesia, *Journal of Peasant Studies* Vol.50, no.4, 2023, page.1300.

corporate tenure security while weakening redistributive commitments.

Although TAP MPR IX/MPR/2001 and subsequent agrarian reform initiatives were designed to restructure control, ownership, use, and utilization of land, their implementation has been limited in addressing core patterns of concentration. Regulatory instruments, including Presidential Regulation Number 62 of 2023, lack measurable redistribution targets, robust mechanisms for reclaiming excessive or abandoned land, and comprehensive protection for communities and indigenous peoples. As a result, structural inequality persists, contributing to poverty, food insecurity, socio-ecological degradation, and recurring agrarian conflicts, including criminalization of land rights defenders.

Therefore, agrarian governance must be fundamentally reoriented toward constitutionally grounded distributive justice. This requires harmonizing sectoral regulations under the supremacy of Article 33, enforcing limits on excessive land control, strengthening recognition of community and customary rights, and integrating human rights and socio-ecological safeguards into land policy. Only through coherent, justice-oriented reconstruction can agrarian governance fulfill its constitutional obligation to ensure equitable welfare and sustainable prosperity for all Indonesians.

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