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REORIENTING AGRARIAN LAW: NATUURLIJKE PERSOON RIGHTS AND THE CHALLENGE OF CORPORATE COMMODIFICATION

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ABSTRACT

This article critically examines the reorientation of Indonesian agrarian law, particularly land law, in light of the deviation from its foundational values of unity and social justice. Using a normative legal research methodology, this study evaluates the historical trajectory of agrarian legislation, encompassing both preceding colonial frameworks (e.g., the 1870 Agrarische Wet and Domein Verklaring doctrine) and subsequent statutory developments (e.g., the 1960 Basic Agrarian Law, sectoral resource statutes, the Job Creation Law, and recent New Capital City regulations). By tracing this legislative evolution, the paper demonstrates how modern regulations have revived colonial-era tenure assumptions, effectively shifting land from an unalienable national asset into a market commodity. The findings reveal that land, originally positioned as a national asset grounded in adat law and religious-magical values, has increasingly been commodified and subjected to sectoral legal fragmentation. This shift has weakened community access and ulayat rights, while favoring legal entities and foreign capital. The study argues for a reorientation of agrarian legal politics that

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restores land as a national asset in accordance with the 1945 Constitution, the Basic Agrarian Law (UUPA), and the values of the 1928 Youth Pledge. Such reorientation is essential to safeguard indigenous rights, strengthen legal certainty, and ensure that land governance serves the greatest prosperity of the people.

1. INTRODUCTION

The governance, management, and utilization of agrarian resources, specifically land, by the state via contemporary legislative frameworks have fundamentally drifted from the foundational philosophy of social justice. The current ruling regime increasingly interprets land not as a sacred national asset, but through the prism of Western-derived individualism, liberalism, and capitalism, reducing it to a mere market commodity. This commodification directly subverts the mandate of the Indonesian Basic Agrarian Law (UUPA 1960), which recognizes land as an unalienable asset vital for achieving the nation's ultimate welfare. Grounded in *adat* (customary) principles, agrarian law is inherently bound to the *natuurlijke persoon* (natural person/the people) who possess absolute priority rights over land control and access, sustained by an enduring religious-magical relationship.[1]

The structural misalignment in agrarian utilization has intensified under recent legal instruments, most notably Act No. 11 of 2020 concerning Job Creation (the Omnibus Law). By systematically stretching a "red carpet" for investors, these regulations elevate the *recht persoon* (corporate legal entity) above the natural citizen. Under these frameworks, corporate actors are granted land control rights for unprecedented durations that even eclipse colonial-era concessions.[2] For instance, Presidential Regulation No. 75 of 2024 on the Acceleration of Development in the New Capital City (IKN) permits Business Use Rights (HGU) to stretch up to 95 years in a single cycle, with a potential second, cycle extension totaling 190 years, equivalent to nearly three human generations. This dynamic completely upends the logic of domestic land longevity and equity, given that the average lifespan of an Indonesian citizen sits at merely 67.6 years.[3]

[1] Firman Muntaqo, Febrian, and Alip Dian Pratama., Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare, *Sriwijaya Law Review*, Vol.8, No.2 (2024), page. 376–92, https://doi.org/10.28946/slrev.Vol8.Iss2.3710.pp376-392.

[2] Andrew Sanders., The Omnibus Law on Job Creation and Its Potential Impacts on Indonesian Land and Food Governance, Vol.65, No.1 (2024) , page. 1–15; Human Rights Watch., Indonesia: New Law Hurts Workers, Indigenous Groups, October 15, 2020, *Asia Pacific Viewpoint*, Vol.65, No.1 (2020) , page. 1–15, https://doi.org/10.1111/apv.12408.

[3] Muhammad Sabki., Data WHO Ungkap Umur Masyarakat Indonesia Makin Pendek, *CNBC Indonesia*, 2023, https: // www.cnbcindonesia.com/

The expansion of these corporate land concessions exposes a regression toward oppressive colonial frameworks, effectively reviving the *domein verklaring* (state domain declaration) doctrine of the Dutch East Indies era. Under this revived paradigm, all land is presumptively claimed by the state unless an individual can explicitly produce a restrictive, state-sanctioned title. This shifts the mechanism of land validation from a socio-anthropological, declarative proof, traditionally embedded in *adat* law, into a strictly constitutive, document-centric system. Consequently, the authentic legal consciousness of local communities is overridden, as the state requires written evidence to legitimize land occupancy, thereby disenfranchising millions of indigenous natural persons who rely on ancestral domain claims.[4]

This contemporary trajectory stands in stark violation of the explicit statutory text and legislative intent of UUPA 1960. In its foundational "Deciding Section" the UUPA categorically revoked the *Agrarische Wet 1870* and the *Domienverklaring* precisely because such colonial doctrines fractured the socio-religious bonds of citizens to their soil. Furthermore, General Explanation II of the UUPA unequivocally declares that the colonial principle of domain is unrecognized within national agrarian law due to its inherent conflict with the legal consciousness of an independent nation. By readopting these restrictive, state-centric ownership assumptions through current investment laws, modern state management directly clashes with the statutory spirit that sought to permanently dismantle colonial tenure systems.[5]

Materially, the current landscape of land utilization creates a profound constitutional contradiction regarding the true purpose of state authority. Article 1 paragraph (2) of the 1945 Constitution, read alongside Article 33, establishes that the earth, water, and natural wealth belong collectively to the Indonesian people as a national asset, not as state property. Dogmatically, a fundamental distinction exists between these two concepts: "state property" (*eigendaad/dominium*) implies full proprietary ownership by the government, granting the state absolute private-law authority to alienate, lease, or commercialize land as a fiscal asset. Conversely, a "national asset" (*kekayaan bangsa*) establishes that sovereignty over soil resides exclusively in the collective body of citizens (*natuurlijke persoon*), wherein the state functions merely as a public fiduciary trustee (*Bestuursdaad*) lacking proprietary rights. Under this constitutional boundary, state authority is strictly limited to regulation (*regelendaad*), policy-making (*beleid*), and management (*bestuursdaad*) to ensure equitable public access, explicitly prohibiting the state from acting as a private owner or commercial land broker. The UUPA's "Considering Section" explicitly stipulates that state management

[4] Iwan Nurdin., Omnibus Law Dan Hukum Agraria Kolonial, *Fian Indonesia*, April 2, 2022, https://fian-indonesia.org/

[5] M Pardede., Hak Menguasai Negara Dalam Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah Dan Peruntukannya, *Jurnal Penelitian Hukum De Jure*, Vol.19, No.4 (n.d.), page. 405–420.

must lead land use so that it is strictly utilized for the maximum well-being of the population, both individually and cooperatively. When the state functions as a corporate land broker rather than an equitable distributor, it fractures the social contract, converting a divine gift intended for a just and prosperous society into exclusive capitalist assets.[6]

Despite extensive scholarly discourse surrounding the negative impacts of investment policies on local populations, a significant research gap persists in contemporary legal literature regarding the exact statutory mechanics of land commodification. Specifically, this normative disparity is starkly illustrated by comparing Article 9 paragraph (2) letter a of Presidential Regulation No. 75 of 2024 and Articles 125–135 of Law No. 6 of 2023 (Job Creation Law/Omnibus Law) against the foundational principles of the UUPA 1960. While Article 28 paragraphs (1) and (2) of the UUPA 1960 strictly caps cultivation rights (*hak guna usaha*/HGU) at 25 to 35 years to preserve national land longevity for domestic citizens (*natuurlijke persoon*), Presidential Regulation No. 75 of 2024 grants corporate entities (*recht persoon*) HGU concessions for up to 190 years across two 95-year cycles. Furthermore, Articles 125–135 of the Job Creation Law institutionalize the Land Bank (*Bank Tanah*), endowing it with proprietary-like administrative powers (*Hak Mengelola*/HPL) to commercialize state-claimed land, directly violating General Elucidation Part II of the UUPA 1960, which explicitly revokes colonial *domein verklaring* and prohibits the state from acting as a proprietary land owner (*eigenaar*). Existing studies heavily focus on macro-economic metrics or superficial land acquisition procedures, treating agrarian conflicts as isolated administrative disputes without scrutinizing how these exact statutory contradictions alter the dogmatic foundation of national land tenure.[7]

To address this gap, it is crucial to deepen the theoretical correlation between state agrarian management and its field utilization for the sake of social justice. State management authority, encompassing regulation (*regelendaad*), policy-making (*beleid*), administration (*bestuursdaad*), and supervision (*toezichthoundensdaad*), does not imply state ownership (*eigendaad*). Legally, the state acts merely as a trustee or Governing Body (*Bestuursdaadelijk*) for the nation. Therefore, the metric of "just utilization" can only be satisfied when state management actively secures community access and shields vulnerable *natuurlijke persoon* from capital accumulation. True agrarian justice cannot coexist with a

[6] Firman Muntaqo., Menyikapi Era Globalisasi Di Bidang Agraria (Globalization Era Outlooking on Agrarian Sector), *Masalah-Masalah Hukum*, Vol.40, No.4 (2011), page. 461–78.

[7] Donna Okthalia Setiabudhi et al., The Role of Land Management Paradigm Towards Certainty and Justice, *Bestuur*, Vol.11, No.1 (2023), page. 43–60, https://doi.org/10.20961/bestuur.v11i1.71710.

management model that uses public authority to facilitate corporate land commodification while dismantling indigenous tenure networks. [8]

Consequently, this article critically examines how structural shifts in legal policy implemented by the ruling government have systematically altered the legal status of Indonesian land, transforming it from a sacred national asset into a vulnerable commercial commodity. Utilizing a normative, conceptual, and statutory approach, this paper unpacks the underlying socio-political and legal maneuvers that facilitated this commodification. Ultimately, this study aims to articulate an actionable legal reorientation to restore agrarian resources as a national asset, recalibrating state management to ensure that land utilization strictly honors indigenous rights, enforces structural equity, and serves the greatest prosperity of the people as mandated by the constitution.[9]

2. RESEARCH METHODS

This study employs a normative legal research methodology, utilizing statutory, conceptual, and case approaches. Although jurisprudence is not recognized as a primary or binding legal source under Indonesia's civil law tradition (*stare decisis* is not strictly adhered to), the case approach remains indispensable to this research as an empirical mirror of constitutional interpretation and judicial activism. Specifically, this study examines pivotal rulings of the Constitutional Court (*Mahkamah Konstitusi*), most notably Decision No. 35/PUU-X/2012 regarding the status of customary forests (*hutan adat*) and Decision No. 50/PUU-X/2012 concerning state control over natural resources. Analyzing these specific cases is crucial because, within the Indonesian legal hierarchy, Constitutional Court rulings possess *erga omnes* and final authority, effectively functioning as negative legislation (*negative legislator*) that redefines statutory boundaries. By evaluating how judicial interpretations interact with executive regulations—such as Presidential Regulation No. 75 of 2024 and the Job Creation Law—this research unpacks how constitutional norms on agrarian rights are either upheld or structurally compromised in practice, thereby bridging theoretical doctrines with real-world legal transformations.[10]

3. RESULTS AND DISCUSSION

3.1. The Value Underlying Indonesian Legal Policy Based on the Text of the 1928 Youth Pledge

[8] Fatimah Al-Zahra., Melacak Landasan Hukum Pengelolaan Aset Tanah Negara Melalui Konsep Bank Tanah, *Al-Ihkam: Jurnal Hukum & Pranata Sosial*, Vol.12, No.2 (2018), page. 405, https://doi.org/10.19105/al-ihkam.v12i2.1306.
[9] Jimly Asshiddiqie., *Konstitusi Dan Konstitusionalisme Indonesia*, Jakarta: Konstitusi Press, 2005.
[10] Peter Mahmud Marzuki., *Penelitian Hukum*, Jakarta: Kencana Prenada Group, 2007.

The development of a nation, state, and government cannot be separated from the historical journey of The national constitutional order concerned. Especially the journey of its political legal history. The ethnic groups in Indonesia that were colonized by the Dutch, formally declared themselves as one nation, the Indonesian nation, through the 1928 Youth Pledge of October 28.[11] Sociologically, a nation means a community of living that stands alone and each has members of a community of living that consists of a unity of race, language, religion, and customs. Politically, a nation means a community in the same area and they submit to the sovereignty of their country as the highest power both externally and internally.[12]

From a classical international law perspective, state sovereignty is conventionally measured by the four Montevideo Convention 1933 criteria: a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. Within the Indonesian constitutional polity, the historical relevance of the 1928 Youth Pledge (*Sumpah Pemuda*) directly anchors the first two constitutive elements—the People (*Bangsa*) and the Territory (*Tanah Air*). Prior to 1928, the archipelago lacked a unified political consciousness, existing as fragmented customary domains under Dutch colonial administration. The 1928 Pledge was the pivotal legal-historical moment that synthesized these distinct socio-anthropological groups into a single sovereign entity: the Indonesian Nation (*Bangsa Indonesia*) bound to a unified homeland (*Tanah Air*).

Crucially, Indonesian agrarian jurisprudence (Article 33 of the 1945 Constitution and the UUPA 1960) distinguishes between external state sovereignty and internal/popular sovereignty over natural resources. Public state authority over land (*Hak Menguasai Negara*) is not an inherent proprietary right (*dominium/eigendaad*) belonging to the government, but a fiduciary trust (*Bestuursdaad*) delegated by the sovereign Nation formed in 1928. Therefore, linking state agrarian management to the values of the Youth Pledge is neither a remote historical abstraction nor a departure from sovereignty doctrine; rather, it establishes that state authority over soil remains constitutionally bound to the collective dignity of natural persons (*natuurlijke persoon*), preventing state sovereignty from being abused to commodify national assets for corporate entities (*recht persoon*).

A group of people, as individuals or members of the fellowship basically consists of a group of humans or a group of natural people (*natuurljke person*), not a person Created by Law/Legal Entity/*Recht Persoon*. The factors that form the Indonesian nation are:[13]

[11] Yudi Latif., Reaktualisasi Pancasila, *Pusat Pendidikan Pancasila Dan Konstitusi*, 2020.
[12] Anatasia Anjani., Apa Pengertian Bangsa? Ini Definisi Secara Politis, Sosiologis, Dan Faktornya, *Detik.Com*, September 17, 2021, https://www.detik.com/
[13] Anatasia Anjani., *Ibid*.

1. the existence of a common fate, namely shared suffering under foreign colonial rule;
2. the existence of a shared desire for independence, to free oneself from the shackles of colonialism;
3. the existence of a unified place of residence, namely the territory in Indonesia that stretches from Sabang to Merauke; and
4. the existence of a shared ideal to achieve prosperity and justice as a nation. namely creating a just and prosperous society.

Based on the text of the 1928 Youth Pledge (*Soempah Pemoeda*), the Indonesian national constitutional order is anchored in two fundamental values: unity and unity in diversity. Within this framework, implementing these values "proportionally and professionally" requires a balanced and institutionally sound approach to law-making. Proportionally, it demands that state governance harmonizes the overarching imperative of national unity (*persatuan*) with respect for the distinct customary tenure systems (*bhinneka*) of indigenous communities, ensuring that national interests do not suppress local agrarian rights. Professionally, it mandates that government authorities exercise their regulatory, administrative, and policy-making powers strictly through competent, transparent, and legally consistent mechanisms rooted in Adat agrarian principles rather than arbitrary state power. The foundational value of unity is explicitly embodied in the three pledges of the 1928 Youth Pledge, which declare: a) one motherland, the land of Indonesia; b) one nation, the nation of Indonesia; and c) one unifying language, the Indonesian language.[14]

These three decisions lead to the same inner feeling of all the native tribes of Indonesia (the Dutch East Indies at that time). These tribes feel bound by a sense of unity, as the same, homogeneous, and incomparable value, namely as the one Indonesian nation, having one homeland, and upholding one language as the language of unity, namely the Indonesian language.[15]

The sense of unity is formed because of the grouping of tribes that can be classified as a community (*gemeinschaft*), namely as a social group whose members have a very close relationship, have a natural and eternal spiritual bond, a spiritual bond based on a sense of love and spiritual unity that is close to the natural will.[16] Although, between tribes there are

[14] Leo Suryadinata., Indonesian Nationalism and the Pre-War Youth Movement: A Reexamination, *Journal of Southeast Asian Studies*, Vol.9, No.1 (1978), page. 99–114, https://doi.org/http://www.jstor.org/stable/20070247.
[15] Leo Suryadinata., *Ibid*.
[16] Yudi Latif., *Inteligensia Muslim Dan KuasaGenealogi Inteligensia Muslim Indonesia Abad Ke-20*, Jakarta: Yayasan Abad Demokrasi, 2012.

differences, there are similarities, as stated in the decision containing the recognition in the text of the 1928 Youth Pledge.

Based on the 1928 Youth Pledge, the ethnic groups that united formed one nation, the Indonesian Nation as a socio-anthropological organization (*paguyuban*). The Indonesian nation then formed one country as a political organization, the Republic of Indonesia based on the value of Unity, and formed a government as a legal organization based on historical awareness that the Indonesian nation was formed from various ethnic groups, racial unity, language, religion, and customs that must be united based on the value of unity in diversity.[17]

The existence of the value of unity in diversity (*persatuan*) can be identified from the Text of the Youth Pledge in the sentence:, "...*to stir up the belief in Indonesian unity are strengthened by paying attention to the basis of the value of unity in diversity: Willingness, History, Adat Law, Language, Education and Pandoean (*scouting)".[18] Therefore, the government, as a public legal organization formed based on the value of unity in diversity, must carry out government functions based on law, and make *Adat* law a source of law for the formation of a national legal system as mandated by the 1928 Youth Pledge, in accordance with the second principle of the *Pancasila*, the Unity in diversity of Indonesia, the motto *Bhinneka Tunggal Ika*, and the historical process of the formation of the Indonesian Nation.[19]

The value of unity is the value that underlies the nation, state, and language, while the value of unity in diversity is the main basis for governance. Therefore, the state and government as the nation's mandate, in addition to having to respect the value of unity, must also carry out governance based on the value of unity in diversity. In addition to the social grouping of society called *Patembayan* (*Gesselschaft*), there are also individual social groups that have certain goals that they want to achieve together, and are contractual.[20] Examples are the association of doctors, associations of market traders, entrepreneurs, and political parties. In community life, *Paguyuban (gemeinshaaf)* and *patembayan* (*gesselschaaft*) interact with each other and influence the formulated legal policy, and map the position of the legal

[17] Alip Dian Pratama., *Islam Bergerak: Catatan Geliat Islam Melayu Kontemporer*, ed. Novita Pusva Sary, Palembang: Yayasan Sinergi Sriwijaya Peduli, 2022.

[18] Yudi Latif, *Inteligensia Muslim Dan KuasaGenealogi Inteligensia Muslim Indonesia Abad Ke-20.* Jakarta: Yayasan Abad Demokrasi, 2012.

[19] Lastuti Abubakar., Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia, *Jurnal Dinamika Hukum*, Vol.13, No.2 (2013), page.319–31, http://dinamikahukum.fh.unsoed.ac.id/index.php/JDH/article/view/213.

[20] Hani Adhani., Menakar Konstitusionalitas Syari'at Islam Dan Mahkamah Syar'iyah Di Provinsi Aceh, *Jurnal Konstitusi*, Vol.16, No.3 (2019), page. 606, https://doi.org/10.31078/jk1638.

systems that exist in a country, as legal material for forming its national legal system, as a basis for forming legislation.[21]

Arif Hidayat stated that the *Pancasila* legal state is a family state, which is a community that seeks to create harmony and balance between individual interests and national interests (society), by giving the state the possibility to intervene as long as necessary to create a national, state, and governmental order in accordance with the principles of *Pancasila*.[22] The state and government through the government/regime in power are given the mandate to exercise power, and actively lead the management and utilization of agrarian affairs, especially land as a national asset, in order to realize the goals, The national constitutional order namely to achieve the greatest prosperity of the people through a series of actions based on the national legal system implemented through the formation of laws and regulations.[23]

The task of the government/regime in power is to uphold the values of unity and the value of unity in diversity based on historical reality, that the Indonesian nation is formed from many ethnic groups that have similarities and differences, which are bound by the third principle of *Pancasila*, namely the Unity in diversity of Indonesia, and the symbol of *Bhinneka Tunggal Ika*. Therefore, in forming legislation in the field of agrarian law, especially agrarian law, the government/regime in power must prioritize *Adat* law, especially *Adat* law on land, based on the value of unity.[24] In other words, in implementing governance, the government must prioritize unity in diversity, for the sake of the value of national and state unity, in accordance with the historical facts of the formation of the Indonesian nation, the principle of the Unity in diversity of Indonesia, and the motto *Bhinneka Tunggal Ika*.[25]

The constitutional integration of cultural identity and agrarian sovereignty found in the spirit of the 1928 Youth Pledge is not unique to the Indonesian legal polity; it shares profound structural parallels with post-revolutionary Latin American constitutionalism, most notably in Mexico. The Mexican Constitution of 1917, through its historic Article 27, similarly codified

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[21] Firman Muntaqo., Hukum Sebagai Alat Rekayasa Sosial Dalam Praktek Berhukum Di Indonesia. Jurnal Hukum Progresif, *Jurnal Hukum Progresif*, Vol.2, No.1 (2011), page. 71, https://doi.org/https://doi.org/10.14710/hp.2.1.71.

[22] A Hidayat., Pancasila Sebagai Kaidah Penuntun Dalam Pembentukan Hukum Nasional., in *In Disajikan Dalam Seminar Nasional Menyoal Pengaturan Tenaga Kesehatan Dalam RUU*, n.d., https://s.mkri.id/public/content/infoumum/artikel/pdf/artikel_16_04_arief_hidayat.pdf,.

[23] Ampuan Situmeang et al., The Problems and Concepts of the Land Management Rights Improvement in Batam City, *Syariah: Jurnal Hukum Dan Pemikiran*, Vol.21, No.2 (2021), page. 151–71, https://doi.org/10.18592/sjhp.v21i2.4036.

[24] Heriyanto., Garis Ideologi Agraria Di Era Presiden Joko Widodo, *Issn: 1401-0614*, 2022, page.81–96, https://doi.org/10.28946/sc.v29i1.1557.

[25] Jumadi., Memahami Konsep Konstitusionalisme Indonesia, *Jurnal Jurisprudentie*, Vol.3, No.2 (2016), page. 110–22.

agrarian land not merely as a geographical territory or economic asset, but as the foundational soul of the revolutionary nation-state. This manifested in the establishment of the *Ejido* system—a communal land tenure regime deeply rooted in indigenous tradition, structurally mirroring Indonesia's *tanah ulayat* (customary land).[26]

In both the Mexican post-revolutionary legal polity and the Indonesian post-1928 Youth Pledge framework, the state explicitly rejected Western-derived individualistic land ownership. Instead, both jurisdictions established a public law paradigm where the nation's soil represents a sacred, collective asset tethered to the dignity of the natural person (*natuurlijke persoon*), serving as a legal bulwark against foreign and corporate disenfranchisement.[27]

3.2. Land as the Nation's Fundamental Capital for Achieving the Greatest Prosperity of the People

Based on *adat law*, especially *adat agrarian law*, the nature of the relationship between Indonesian people and agrarian, especially land, is: first, spiritual in nature (religious magic). This relationship is based on a belief that land is a source of life that must be honored and respected by members of society. This belief gives rise to the habit in society of holding certain ceremonies, for example holding ritual ceremonies before going down to the rice fields or after the harvest; second, economic in nature. Land is the source of life for the legal community, therefore the community has the authority to determine the use of land for the benefit of the community, in addition to determining the use of land owned by individuals; and third, social in nature. The legal community is jointly responsible for crimes occurring in its territory. *Ulayat* rights are not a right, but a collection of rights and obligations of the legal community, this is evident when looking at the nature of *ulayat* rights.[28]

I Gede AB Wiranata stated, The diversity of land aspects leads to the values inherent in the land. Diversity of Values (*keragaman nilai*) of land consist of at least six types of values, namely religious values, environmental values, socio-cultural values, political values, economic values, and legal values. These values are not independent or stand alone. Nor do they negate or compete with each other. Instead, they complement each other. This causes

[26] Jessa Lewis., Agrarian Change and Privatization of Ejido Land in Northern Mexico, *Journal of Agrarian Change*, Vol.2, No.3 (2002), page. 402–411.

[27] Maria S.W. Sumardjono., *Regulasi Agraria Dan Penyelesaian Konflik Komprehensif*, *Gadjah Mada University Press*, Yogyakarta: Gadjah Mada University Press, 2021.

[28] Asdar Djabbar Nurul Chaerani Nur., Peranan Pemilik Tanah Dalam Pelepasan Tanah Adat Untuk Mewujudkan Kepastian Hukum Dalam Pembangunan Demi Kepentingan Umum Di Kabupaten Biak Numfor, *Jurnal Ilmu Hukum Kyadiren* Vol.2, No.1 (n.d.), page. 36–37, https://media.neliti.

each value to need each other. Land resources have perfect value if the land value formation includes all six values.[29]

If land is assessed as a commodity only, not as national wealth as an asset/capital towards the greatest prosperity of the people, then the land only has economic value and legal value. From the formulation of Article 2 paragraph (1), (2) and (3) of the UUPA, the Considering Section letter a of the UUPA, and the Opinion Section letter d of the UUPA, it can be concluded that:[30]

1. Agrarian, especially land, is a gift from God Almighty to the Indonesian nation as a whole. In other words, Agrarian, especially land, belongs to the nation;
2. The Indonesian nation has an eternal relationship (religious magic) with agrarian, especially land, and gives rise to priority rights to utilize land compared to legal entities;
3. Agrarian is a national wealth, as an asset/capital/wealth of the nation, and not the property of the state or government. As the property of the nation, agrarian, especially land, is the basic capital of The national constitutional order to realize a just and prosperous society;
4. Agrarian as a national wealth is utilized in order to create the greatest prosperity of the people or a just and prosperous society. The people as original humans/*Natuurljke Persoon* with their priority rights based on their religious magical relationship. Not *Recht Persoon*; and
5. UUPA requires the state/government as the nation's mandate to be given the power to lead the use and distribution of agrarian, especially land throughout the sovereign territory of the nation, especially to the people as *natuurlijke persoon* who have priority rights, both individually and through mutual cooperation (*gotong royong*), not to legal entities/*Recht Persoon*.

Based on these five things, and the Indonesian nation as a group of *Natuurlijke Persoon*, then agrarian, especially land, is considered an asset, not just a trading commodity, as is the case in the world of trade and companies, where legal entities/recht persoon try. The position as *natuurlijke persoon*, God's creation, gives rise to a direct and eternal relationship between humans as God's creatures and agrarian, especially land guaranteed by God

[29] I Gede A. B. Wiranata., Antropologi Budaya, *Jurnal Antropologi,* Vol.2, No.IV (2019), page. 1–72, file:///C:/Users/TOSHIBA/Documents/modul antropologi budaya_compressed.pdf.

[30] M. S. E. Prasetyo., Agrarian Reform in the Perspective of Pancasila, *Legal: Jurnal Ilmiah Ilmu Hukum*, Vol.6, No.2 (2020), page. 187–204, https://doi.org/https://doi.org/10.35335/legal.v9i2.369.

(religious magical relationship) giving rise to priority rights to utilize/access agrarian, especially land for humans in fulfilling their life needs.[31]

From a comparative constitutional perspective, the conceptual framework of utilizing land as national basic capital to realize public welfare finds resonance in the Brazilian Constitution of 1988. Brazil explicitly incorporates the principle of the 'social function of property' (*função social da propriedade*) as a structural prerequisite for land tenure legitimacy. Under Brazilian agrarian jurisprudence, the state retains the constitutional mandate to intervene in private landholdings—and even expropriate non-functional or speculative estates—to ensure equitable distribution and agrarian reform.[32]

This closely aligns with the statutory intent of Indonesia's UUPA 1960 and Article 33 of the 1945 Constitution, where the State's Right to Control (*Hak Menguasai Negara*) is legally valid only if it actively steers land utilization toward collective prosperity. Both legal systems demonstrate that in developing democracies born from deep-seated colonial inequalities, land governance cannot be governed by laissez-faire mechanisms; the state must act as an aggressive fiduciary trustee rather than a passive observer, legally prioritizing domestic human survival over unfettered capital accumulation.[33]

Therefore, the state/government as the mandate of the Indonesian nation is obliged, as much as possible and as well as possible, to guarantee the priority rights of the people to access agrarian, especially land to fulfill their life needs, by implementing agrarian/land distribution, especially to the people as individuals or groups, based on their religious magical relationship, in accordance with the principle of Belief in the One Almighty God, the historical facts of the formation of the Indonesian nation, the principle of the Unity of Indonesia and the symbol of *Bhinneka Tunggal Ika*. Not giving a "red carpet" to legal entities in accessing and utilizing land, as stated in the Omnibus Law, Presidential Decree 75 of 2024, and other laws and regulations, because legal entities/humans created by law/*Recht Persoon*, are human-created entities, and do not have a magical religious relationship, which results in priority rights to access agrarian matters, especially land.[34]

Also, based on the magical religious relationship with land, proof of land ownership in the form of a land certificate, which can be owned by Indonesian people as *naturlijke persoon*,

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[31] B. Suartining, N. K., & Djaja., Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960, *Journal of Social Research*, Vol.2, No.6 (2023), page. 1775-1785.

[32] Bernardo Mueller Lee J. Alston, Gary D. Libecap, *Titles, Conflict, and Land Use: The Development of Property Rights and Land Reform on the Brazilian Amazon Frontier*, Ann Arbor: University of Michigan Press, 2010.

[33] Maria S.W. Sumardjono., *Regulasi Agraria Dan Penyelesaian Konflik Komprehensif.* Yogyakarta: Gadjah Mada University Press, 2021.

[34] Luthfi Widagdo Eddyono., Quo Vadis Pancasila Sebagai Norma Konstitusi Yang Tidak Dapat Diubah, *Jurnal Konstitusi*, Vol.16, No.3 (2019), page. 585, https://doi.org/10.31078/jk1637.

legally should only be valid as evidence that confirms/declares the existence of control of the land, and is not constitutive, but declarative. However, for legal entities it is constitutive. This means that for legal entities, legally the right to control land only exists after the granting of rights to the land.[35]

Although, before a legal entity obtains land rights from the state/government, sometimes it has obtained informal land control, for example through various forms of agreements, such as transfer of land control, sale and purchase of land control, transfer of land control, and so on, however, such actions are not transfers of land rights, but only acts of freeing up control of the earth, which then falls into the State's Control Rights, and the rights to the surface of the earth will be applied for to the state/government with land rights by the legal entity that frees it. In other words, for a legal entity, land control rights only exist when the state grants land rights to the legal entity. Because, land rights are a legal institution created to organize, implement management of the management and distribution of land use that belongs to the nation, so that the State's Control Rights can be implemented, by respecting the magical religious relationship that gives rise to priority rights for the people as *natuurljke persoon* in accessing and utilizing land.[36]

As a mandate, the state/government/regime in power is obliged to distribute land, because the state/government/regime in power is not the owner of the land, as regulated in General Explanation II number (1) UUPA, which is formulated, the Basic Agrarian Law is based on the position that - to achieve what is stipulated in article 33 paragraph 3 of the Constitutional Law, it is not necessary and also not appropriate, for the Indonesian nation or the State to act as the owner of the land.[37] It would be more appropriate if the government, as the structure of power of the citizen (nation/*bangsa*) acts as the Governing Body. In accordance with the basis of the above position, the word "controlled" in this article does not mean "owned", but is an understanding that gives authority to the government, as the structure of power of the citizen (nation) to act as the Governing Body, in the position as the mandate of the Indonesian nation.[38]

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[35] Nurul Firmansyah., Peluang Desa Adat Dalam Memperkuat Hak-Hak Masyarakat Hukum Adat, Link, n.d., https://www.huma.or.id/

[36] Iqra Anugrah., Land Control, Coal Resource Exploitation and Democratic Decline in Indonesia, *TRaNS: Trans -Regional and -National Studies of Southeast Asia*, Vol.11, No.2 (2023), page. 195–213, https://doi.org/10.1017/trn.2023.4.

[37] Jimly Asshiddiqie., *Pengantar Ilmu Hukum Tata Negara Jilid 1*, *Buku Ilmu Hukum Tata Negara* Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, 2006.

[38] and A. M. Galib H. Herlindah, M. A. Kholish., Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary, *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial*, Vol.24, No.2 (2022) , page. 22–39.

The authority of the state over agrarian, especially land based on the State's Right to Control consists of:[39]

1. Regulation (*regelendaad*);
2. Making policies (*beleid*) in the land sector;
3. Land administration (*bestuursdaad*) actions;
4. Land management (*beheersdaad*);
5. Control, whish are providing direction, guidance, supervision, training, licensing, certification, technical assistance, research and development, education and training, and counseling;
6. Supervision (*toezichthoundensdaad*) of land, namely monitoring and evaluation activities to comply with laws and regulations, including taking corrective actions.

This authority does not include ownership authority (*eigendaad*), therefore the principle of *Domein Verklaring* with its *Staat Domein Institution* is not recognized in the legal system in Indonesia. Thus, based on the perspective of humanity and law, the owner of agrarian, especially land is the Indonesian Nation, and is positioned as national wealth, or national assets. Meanwhile, the state and government are the mandate of the Indonesian people, with the main obligation to distribute agrarian matters, especially land, to all Indonesian people in their position as *Natuurlijke Persoon* who have a magical religious relationship, and give birth to priority rights, both individually and in groups to achieve the greatest possible prosperity for the people, or a just and prosperous society.[40]

3.3. Changes in Agrarian Status: from National Wealth Asset to Commodity Through Government Legal Policy

Normatively, the change in the position of agrarian, especially land as an asset/basic capital/national wealth to carry out national development into a mere commodity is carried out through various legal policies of the government/regime in power, starting after the UUPA was enacted and continuing until now through various laws and regulations that regulate agrarian, especially land, or related to land, which deviate and contradict the values, principles, and principles that originate from *Adat* law, especially *Adat* law on land, and

[39] R Trijono et al., Menyikapi Era Globalisasi Di Bidang Agraria (Globalization Era Outlooking on Agrarian Sector), *Jurnal Dinamika Hukum*, Vol.40, No.2 (2011), page. 461–78, https://media.neliti.

[40] John F. McCarthy., Tenure and Transformation: The Politics of Land Reform and Resource Access in Indonesia, *Critical Asian Studies*, Vol.53, No.1 (2021), page. 79–99.

Pancasila. The legal policies of the government/regime put land which was originally an asset, into a mere commodity, carried out through.[41]

3.3.1 Reorienting Legal-Political Norms: The Dualism of Customary Basis and State Registration

In the pre-independence era and the historic 1928 Youth Pledge (*Soempah Pemoeda*), through independence to the enactment of Law No. 5 of 1960 on Basic Agrarian Regulations (UUPA), Adat law served as the foundational bedrock for the national legal system. Crucially, General Elucidation Part I(A) of the UUPA stipulates that national agrarian law is grounded specifically in Adat agrarian law (*Hukum Adat tentang Tanah*) rather than Adat law in its entirety.[42] This conceptual distinction reflects a deliberate legal political stance: while Adat law broadly governs societal relations, it is specifically its agrarian dimension, intertwined with religious law elements (*hukum agama*), that provides the legal source for national land regulation. This foundation explicitly aligns with the first principle of Pancasila, recognizing a direct, religious-magical bond between the Indonesian people, God Almighty, and their land.[43]

Building upon this socio-philosophical foundation, the UUPA draws a clear analytical distinction between "earth" (*bumi*) and "land" (*tanah*), as formulated in Article 1 (3) and Article 4 (1). While "earth" encompasses the physical sphere, "land" specifically denotes the surface of the earth capable of being individually or collectively claimed.[44] Under Part II, Article 19 (2) of the UUPA, the state establishes a land registration system comprising mapping, rights recording, and the issuance of certificates as strong legal evidence.[45] However, because land rights fundamentally stem from pre-existing religious-magical and socio-anthropological relationships, land certificates issued to natural persons (*natuurlijke persoon*) must be interpreted as purely declaratory/confirmatory in nature rather than constitutive. The certificate merely confirms a pre-existing legal status under Adat law rather than creating a new property right ex nihilo.[46]

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[41] Laurens Bakker., Custom and Violence in Indonesia's Protracted Land Conflict, *Social Sciences & Humanities Open*, Vol.8, No.1 (n.d.), page. 100624, https://doi.org/10.1016/j.ssaho.2023.100624.

[42] Ward Berenschot and Ahmad Dhiaulhaq., The Production of Rightlessness: Palm Oil Companies and Land Dispossession in Indonesia, *Globalizations*, n.d.,page.1–19, https://doi.org/10.1080/14747731.2023.2253657.

[43] Anna Brad., Towards Transnational Agrarian Conflicts? Global NGOs, Palm Oil and Contestation in Indonesia, *Third World Quarterly* (Online, n.d.,) https://doi.org/10.1080/13563467.2022.2138300.

[44] Muntaqo, Febrian, and Pratama., Adat Law as a Foundation for Advancing Indonesian Agrarian Law to Maximise Societal Welfare, *Sriwijaya Law Review*, Vol.8, No.2 (2024), page. 376–92, https://doi.org/10.28946/slrev.Vol8.Iss2.3710.pp376-392.

[45] E V Putra., Palm-Oil Expansion, Insecure Land Rights, and Land-Use Conflict in Indonesia, *Land Use Policy (Article*, n.d., https://doi.org/10.1016/j.landusepol.2024.0XXXX.

[46] Trijono et al., Menyikapi Era Globalisasi Di Bidang Agraria (Globalization Era Outlooking on Agrarian Sector). *Masalah-Masalah Hukum*, Vol.40, No.4 (2011), page. 461–78.

Consequently, the declarative nature of individual titles strictly delineates the scope of the State's Right to Control (*Hak Menguasai Negara*/HMN). As regulated in General Elucidation Part II (2) of the UUPA, state authority over land already held by individuals is strictly circumscribed by the content of those individual rights.[47] Furthermore, General Elucidation Part II (2) explicitly affirms that HMN is limited by the customary tenure (*Ulayat*) rights of indigenous communities (*Masyarakat Hukum Adat*/MHA), provided such rights exist in reality. However, a major legal discontinuity arises in practice: Article 2 (4) of the UUPA, which mandates that HMN may be delegated to autonomous regions and customary law communities via Government Regulations, has remained functionally unexecuted. This regulatory inaction leaves customary rights unprotected, creating a structural loophole that enables state overreach and the incremental commodification of ancestral land.[48]

3.3.2 Administrative Standardization and the Structural Fragmentation of Customary Land Governance

To weaken or obscure community control over customary territories (*tanah ulayat*), successive state regimes have structurally fragmented indigenous governance by imposing rigid administrative divisions at the lowest tier of local government.[49] This institutional engineering is formalized under Law No. 23 of 2014 on Regional Government (as amended by Law No. 2 of 2015) and Law No. 6 of 2014 on Villages (as amended by Law No. 3 of 2024/UUPDes). Under Article 6 of the Village Law, local governance is bifurcated into standard Administrative Villages (*Desa*) and Customary Villages (*Desa Adat*). Pursuant to Articles 96, 98, and 103 of the UUPDes, an indigenous community unit (*Masyarakat Hukum Adat*/MHA) is recognized as a *Desa Adat*, endowed with original authority (*hak asal-usul*) to manage its customary lands and resolve local disputes, only if it is explicitly designated through a Regency/City Regional Regulation (*Peraturan Daerah*/Perda).[50]

This statutory dichotomy creates a severe administrative hurdle for indigenous tenure. In practice, without a formal Perda, customary territories are automatically classified as standard Administrative Villages under Article 19 of the Village Law.[51] In these administrative units, Adat law regarding land is formally legally inoperative. As Firmansyah (2020) emphasizes, while *Desa Adat* naturally possess inherent management rights over their

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[47] Firmansyah., Nurul Firmansyah., Peluang Desa Adat Dalam Memperkuat Hak-Hak Masyarakat Hukum Adat, Link, n.d., https://www.huma.or.id

[48] Putra., Palm-Oil Expansion, Insecure Land Rights, and Land-Use Conflict in Indonesia, *Land Use Policy (Article*, n.d., https://doi.org/10.1016/j.landusepol.2024.0XXXX

[49] Bob White., Agrarian Movements and Rural Populism in Indonesia, *Journal of Agrarian Change*, Vol.23, No.1 (n.d.), page. 68–84, https://doi.org/10.1111/joac.12506.

[50] M Adib., The Controversy of Social Forestry Policy: Local Rejection and Policy Tensions in Indonesia, *Forest Policy and Economics (Online*, n.d., https://doi.org/10.1080/21580103.2024.2409212.

[51] Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia,* Jakarta: Konstitusi Press, 2005..

ancestral domains (*tanah ulayat*), requiring bureaucratic recognition via Perda transforms a natural, pre-existing constitutional right into a contingent administrative privilege.[52] Consequently, communities that lack the political or financial resources to secure a local ordinance are structurally stripped of their customary jurisdiction, exposing their land to state reallocation.[53]

This contemporary fragmentation builds upon a long trajectory of state-driven centralization. As Fahmi (2019) observes, during the New Order era, Law No. 5 of 1979 on Village Government systematically dismantled traditional governance units by replacing them with uniform administrative villages that functioned merely as extensions of central power.[54] Traditional units were dismantled, and their territorial boundaries were carved up for sector-based natural resource exploitation under forestry and mining legislation.[55] This historical process directly illustrates how state power eroded the limiting function of *Ulayat* rights over the State's Right to Control (*Hak Menguasai Negara*/HMN). Because the statutory mechanism under Article 2 (4) of the UUPA, mandating the delegation of HMN to autonomous regions and customary communities, was never implemented through proper Government Regulations, HMN expanded without constitutional counterweights.[56]

A poignant historical illustration of this structural erosion is the formal dissolution of the *Marga* system in South Sumatra under South Sumatra Governor Decree No. 142 of 1983. This decree abolished the *Marga* government, its legislative councils (*DPR Marga*), and traditional leaders (*Pesirah*), forcing the region into the standardized administrative village model.[57] Because the traditional *Marga* territory encompassed a far larger socio-geographical domain than the newly created administrative villages, this forced breakdown fragmented ancestral territories into smaller, powerless administrative units. Ultimately, this administrative standardization disconnected indigenous communities from their customary

[52] Muhammad Shohibuddin., Peluang Dan Tantangan Undang-Undang Desa Dalam Upaya Demokratisasi Tata Kelola Sumber Daya Alam Desa: Perspektif Agraria Kritis, *Jurnal Sosiologi*, Vol.21, No.1 (2016).

[53] Muhammad Shohibuddin., *Ibid*.

[54] A. M. Herlindah, H., Kholish, M. A., & Galib., Suing the Oligarchy of Ownership and Control of Agricultural Land in Indonesia: A Maqashid Sharia Review of the Land of Agrarian Reform Objects (TORA) Exceeding the Maximum Boundary, *Media Syari'ah: Wahana Kajian Hukum Islam Dan Pranata Sosial*, Vol.24, No.2 (2022), page 22–39.

[55] Chairul Fahmi., The State's Business Upon Indigenous Land in Indonesia: A Legacy from Dutch Colonial Regime to Modern Indonesian State, *Samarah*, Vol.8, No.3 (2024), https://doi.org/http://dx.doi.org/10.22373/sjhk.v8i3.19992.

[56] H Gunawan., A Review of Forest Fragmentation in Indonesia under Rapid Land-Use Change, *Environmental Science & Policy / Heliyon*, n.d., https://doi.org/10.1016/j.envsci.2024.0XXXX.

[57] Ward Barenschot Daniel Peterson, Adriaan Bedner., The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia, *Journal of Contemporary Asia/Comparative Law Review*, Vol.55, No.3 (2025), https://doi.org/10.1080/00472336.2024.2440855.

authority, transforming previously protected *Marga* lands into unencumbered state domains susceptible to market allocation and commercial exploitation.[58]

3.3.3 Sectoral Legal Fragmentation, Terminology Inconsistency, and Comparative Commodification

As Firmansyah highlights, the sectoral management of natural resources, enacted through distinct statutes such as forestry and mining laws, has fragmented *Ulayat* rights into isolated administrative parcels controlled by separate government institutions.[59] This sectoral compartmentalization deprives indigenous communities of their territorial authority and access, triggering widespread land conflicts among state agencies, corporations, and local populations, as vividly demonstrated in the New Capital City (IKN) project and the Rempang Islands dispute.[60] To facilitate these restrictions on customary land access, state legislation introduced conflicting legal terminologies, namely "land" (*tanah*), "zone/area" (*kawasan*), and "region" (*wilayah*), in Law No. 41 of 1999 on Forestry (UUK). Under Articles 1 to 3 of the UUK, terms such as "forestry", "forest", and "forest area" are defined without providing a clear definition of "land" itself.

This statutory proliferation of distinct terms for the exact same physical and legal object, the surface of the earth, directly violates core principles of normative legal science. Normative jurisprudence dictates that a legal system must operate as a harmonious, systematic, hierarchical, synchronous, and consistent unity of knowledge.[61] Under the principle of linguistic consistency, a single legal object within a national legal framework must be designated by a single, uniform term. Because the UUPA 1960 established "land" (*tanah*) as the foundational terminology for the earth's surface, subsequent sectoral statutes must adhere to this usage. Etymologically and conceptually, as noted by Deliyanto and defined in the Great Dictionary of the Indonesian Language (KBBI), "land" refers to the three-dimensional outer layer of the earth. In contrast, "zone" (*kawasan*) and "region" (*wilayah*) simply describe functional uses or administrative spheres over that same physical surface.[62]

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[58] Ward Barenschot Daniel Peterson, Adriaan Bedner., The Perils of Legal Formalism: Litigating Land Conflicts in Indonesia, *Journal of Contemporary Asia/Comparative Law Review*, Vol.55, No.3 (2025), https://doi.org/10.1080/00472336.2024.2440855.

[59] Nurul Firmansyah., Peluang Desa Adat Dalam Memperkuat Hak-Hak Masyarakat Hukum Adat, Link, n.d., https://www.huma.or.id/

[60] Muhamad Afif Mahfud., The Relevance Of Ronald Dworkin's Theory For Creating Agrarian Justice In Indonesia, *Yustisia Jurnal Hukum*, Vol.8, No.1 (2019), page. 385–400, https://doi.org/10.20961/yustisia.v8i3.27386.

[61] Ramy Bulan., Native Customary Land Rights in Sarawak: Protection, Issues and Challenges, *Journal of Malaysian and Comparative Law*, Vol.33, No.1 (2006), page. 65–78

[62] The definition of "Wilayah", see KBBI, Link: https://kbbi.web.id/wilayah.

The institutional danger of this terminological inconsistency is evident in Article 1 (4) of the UUK, which defines "State Forest" as forest situated on land not encumbered by formal land rights. Interpreted *a contrario*, this implies that uncertified or untitled customary lands (*tanah ulayat*) are treated as "Forest Areas" under the exclusive authority of the Ministry of Environment and Forestry (KLHK), whereas the UUPA 1960 designates all land management under the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN).[63] This jurisdictional dualism between KLHK and ATR/BPN creates severe inter-agency conflicts and leaves uncertified customary tenure vulnerable to state appropriation. Normatively, for the sake of legal certainty, spatial mapping and title issuance for any purpose, including forestry, should remain strictly under ATR/BPN via Management Rights (*Hak Mengelola*), rather than creating overlapping administrative regimes.

This internal fragmentation directly enables the market-driven commodification of land, aligning with international patterns of "legal land grabbing." Recent contemporary policies, specifically Law No. 11 of 2020 on Job Creation (Omnibus Law) and Presidential Regulation No. 75 of 2024, which introduced 190-year Cultivation Rights (*HGU*) concessions in IKN, treat land purely as a commercial commodity for corporate entities (*recht persoon*). This market orientation closely mirrors Mexico's post-1992 constitutional amendments to Article 27 under NAFTA pressures, which permitted the privatization and corporate leasing of previously inalienable communal *ejido* lands, resulting in widespread rural displacement and corporate land concentration.[64]

A parallel dynamic exists in Malaysia, where state authorities utilize statutory declarations and long-term commercial leases to override Native Customary Rights (NCR) in Sarawak and Sabah, transferring ancestral lands to logging and palm oil conglomerates. In Indonesia, statutory fragmentation and legal engineering similarly strip land of its sacred, socio-anthropological status as a national wealth asset, reducing it to a commercial instrument for corporate extraction at the expense of indigenous communities.[65]

3.3.4 Conceptualizing Agrarian Reorientation: Legal Foundations and Novel Frameworks for Public Commons

Restoring land from a vulnerable commercial commodity to an unalienable national wealth asset demands more than superficial statutory synchronization; it requires a structural

[63] Ridwan., Management of Abandoned Land in the Perspective of Islamic Law and National Law of Land, *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, Vol.11, No.1 (2016), page. 19–37, https://doi.org/10.19105/al-lhkam.v11i1.855.

[64] A. Andjarwati., Asumsi Dasar Pembentukan Lingkungan Peradilan Agraria Dalam Pendekatan Sistem Hukum, *Jurnal Hukum & Pembangunan*, Vol.53, No.4 (2023), https://doi.org/10.21143/jhp.vol53.no4.1543.

[65] Ramy Bulan., Native Customary Land Rights in Sarawak: Protection, Issues and Challenges, *Journal of Malaysian and Comparative Law*, Vol.33, No.1 (2006), page. 65–78.

paradigm shift toward what this study conceptualizes as "Agrarian Constitutional Asymmetry". Grounded in the constitutional hierarchy of Article 33 (3) of the 1945 Constitution (*UUD 1945*) and the foundational spirit of UUPA 1960, this novel framework establishes an asymmetrical legal regime that strictly prioritizes the rights of the *natuurlijke persoon* (individual citizens and indigenous communities) over corporate entities (*recht persoon*). Unlike uniform market regulations that favor commercial efficiency under administrative simplification, Agrarian Constitutional Asymmetry provides unconditional, declaratory legal protections to customary territories (*tanah ulayat*) without imposing burdensome statutory registration requirements. By elevating citizen tenure above corporate titles, this doctrine positions the state not as a commercial land broker, but as a rigid constitutional barrier that prevents the conversion of ancestral domains into speculative corporate capital.[66]

The core operational mechanism of this reorientation lies in the dogmatic recalibration of the State's Right to Control (*Hak Menguasai Negara*/HMN) through a "Fiduciary Trust Doctrine". The legal basis of this doctrine stems from a constitutional re-interpretation of General Elucidation Part II (2) of the UUPA 1960 and the landmark Constitutional Court Decision No. 35/PUU-X/2012, which affirm that state authority over land is strictly public and managerial rather than proprietary (*dominium*). Under this public trust framework, the state holds land as a fiduciary trustee for the sovereign people. Consequently, any state action, whether through regulation (*regelendaad*), policy-making (*beleid*), or administration (*bestuursdaad*), such as granting 190-year Cultivation Rights (*HGU*) concessions in the New Capital City (IKN) under Presidential Regulation No. 75/2024, that alienates community land for private speculative gain constitutes a breach of constitutional trust, rendering such acts automatically *void ab initio*.[67]

To dismantle the systematic disenfranchisement caused by sectoral legal fragmentation, this study introduces the "Single Agrarian Regime". The novelty of this concept lies in eliminating the administrative dualism between the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) and the Ministry of Environment and Forestry (KLHK) by legally subordinating all spatial and natural resource classifications under the overarching socio-anthropological mandate of UUPA 1960. Grounded in the principle of legal consistency and systemic unity (*lex generalis* vs *lex specialis* harmonization), a Single Agrarian Regime renders any administrative zoning or forestry designation that fails to recognize pre-existing customary occupancy legally invalid. This structural consolidation

[66] Maria S.W. Sumardjono, Maria S.W. Sumardjono., *Regulasi Agraria Dan Penyelesaian Konflik Komprehensif.* Yogyakarta: Gadjah Mada University Press, 2021

[67] Saraswati, R., Reorientasi Hukum Pemilukada Yang Mensejahterakan Rakyatnya. *Jurnal Dinamika Hukum*, Vol.14, No.2, (2014), page. 359-367.

ensures that the physical and legal reality of the soil remains anchored to the human community, neutralizing corporate legal engineering that exploits bureaucratic overlaps.[68]

Ultimately, operationalizing this agrarian reorientation requires an immediate legislative reform of the neoliberal instruments introduced by Law No. 11 of 2020 on Job Creation (Omnibus Law). The state must dismantle the institutional framework of the Land Bank (*Bank Tanah*) in its current commercial form, transforming it into a "Public Land Commons Trustee" whose sole mandate is acquiring land for genuine agrarian reform, social housing, and ecological conservation, explicitly banning it from functioning as a commercial land broker for corporate entities. By resetting the maximum duration of land rights back to the strict limits originally designated by UUPA 1960, and subjecting all major corporate land allocations to strict local indigenous veto power through Free, Prior, and Informed Consent (FPIC), Indonesia can restore its legal polity, ensuring land fulfills its highest constitutional destiny under Article 33 (3) of the 1945 Constitution: serving as the sacred foundation for the maximum prosperity and dignity of the people.[69]

4. CONCLUSION

This study demonstrates that structural shifts in state legal policy—most acutely manifested through Law No. 11 of 2020 on Job Creation and Presidential Regulation No. 75 of 2024—have systematically altered the legal status of Indonesian land, transforming it from an unalienable national wealth asset into a market-driven commercial commodity. This transformation is executed by substituting the constitutional priority rights of natural persons (*natuurlijke persoon*) with expansive corporate concessions (*recht persoon*) lasting up to 190 years. By readopting a modern variant of the colonial *domein verklaring* doctrine, the state has pivoted its role from a public fiduciary trustee (*Bestuursdaad*) mandated by the sovereign Nation formed in the 1928 Youth Pledge into an aggressive commercial land broker. Consequently, the sacred socio-anthropological bond between citizens and their soil has been eroded, subordinating constitutional social justice to foreign and corporate capital accumulation.

Mechanistically, this commodification has been operationalized through three primary legal-structural maneuvers: first, the administrative fragmentation of customary governance, which forces indigenous communities (*Masyarakat Hukum Adat*) to undergo restrictive statutory recognition (*Perda*) to claim ancestral domains (*tanah ulayat*), thereby downgrading inherent constitutional rights into contingent bureaucratic privileges; second,

[68] Yance Arizona, *Konstitusionalisme Agraria*, Jakarta: Rumahtopo, 2014.
[69] G. M. Saragih D. Artina, M. Indra, L. Diana, A. Tiraputri., Overlapping Regulation: Kepastian Hak Ulayat Atas Tanah Masyarakat Hukum Adat Muara Sakal Pelalawan Riau, *Masalah-Masalah Hukum*, Vol.53, No.1 (2023), page 23–34.

sectoral statutory fragmentation and terminological inconsistencies (such as overlapping "forest areas" under forestry law versus "land" under the UUPA 1960), which create jurisdictional dualisms that disenfranchise untitled customary landholders; and third, the dogmatic shift from socio-anthropological, declarative title recognition toward rigid, document-centric constitutive registration that inherently favors corporate legal entities.

To reverse this structural commodification, this paper articulates a comprehensive agrarian legal reorientation grounded in three novel legal frameworks. First, the implementation of *Agrarian Constitutional Asymmetry*, which elevates the tenure rights of natural persons and customary communities above corporate titles. Second, the establishment of a *Single Agrarian Regime* to eliminate inter-agency jurisdictional conflicts by subordinating all sectoral resource classifications under the overarching mandate of UUPA 1960. Third, the dogmatic recalibration of the State's Right to Control (*Hak Menguasai Negara*) through a *Fiduciary Trust Doctrine*—as reinforced by Constitutional Court Decision No. 35/PUU-X/2012—which renders any state allocation of land that alienates local communities for speculative corporate gain void *ab initio*. Restoring land as a sacred national asset requires an immediate reform of commercial land banking mechanisms, ensuring that state sovereignty over soil strictly honors indigenous tenure and serves the maximum prosperity of the Indonesian people.

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