



## DISPARITY BETWEEN CORPORATE AND COMMUNITY LAND TENURE AND NATIONAL LAND LAW ACCOUNTABILITY

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### Abstrak:

The presence of corporations has had adverse effects on society, leading to conflicting perspectives regarding the legal certainty of land ownership before the enactment of Law Number 5 of 1960 concerning the Principles of Agrarian Law. It is primarily because land represents an ecological relationship, which entails both natural and legal bindings. Therefore, implementing agrarian law aims to provide legal certainty and define land ownership rights for the community. Adhering to established regulations aims to promote welfare, justice, and prosperity within the community, thereby addressing the land tenure gaps caused by corporations. This study aims to delve deeper into the gaps in land tenure and legal accountability, enhancing public understanding of agrarian law. A normative approach through a literature review was employed to conduct this research. Various sources, such as journals, websites, books, and articles about agrarian law, were consulted as references. Through this investigation, it is expected to comprehensively understand the complexities surrounding land ownership rights and legal liabilities. By shedding light on these issues, it is hoped that this research will contribute to the body of knowledge in agrarian law and facilitate the resolution of land tenure disputes caused by corporate entities. Ultimately, the aim is to achieve a harmonious balance between societal needs, corporate interests, and the principles of justice and prosperity outlined in the agrarian law.

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## INTRODUCTION

The corporation is because it is very detrimental to the community. The existence of problems regarding agrarian law makes justice and the welfare of the people not considered because of the interests of capitalism. Thus the government should ratify the agrarian law and abandon the Dutch heritage law, but there are provisions in Article II concerning the transitional provisions of the 1945 Basic Law, which reads, "all existing business entities and regulations including regulations in the agrarian field are still in effect a renewal in 1948, with this statement the Indonesian government has begun to form the basics of agrarian law to replace the laws of colonialism that are still applied in Indonesia (Aprilliani, R. A. et al., 2020)

With the passing of Agrarian Law No. 5 of 1960, it aims to strengthen further and establish the basics of national agrarian law, which will later serve as a reference for the community and government to avoid land conflicts, especially those carried out by corporations, on the other hand, the law also aims to further prosper the community, prosperity and justice for the state and society, especially for farmers—referring to Law No. 5 of 1960, which was published in State Gazette Number 104 and took effect on 24 September 1960. It is based on Article 33, paragraph 3 of the 1945



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Constitution, which reads: that the earth, water, space, and the wealth within them are controlled by the state and managed for the needs of the people in the so-called National Land Policy.

They were looking from the aspect of the modern state, which states that all rights holders have the right to use or process the resources on earth and the resources in the hold. However, there is a renewal of the Basic Agrarian Law and the management of Natural Resources TAP MPR No. IX/MPR/2001 stipulates the direction of policy and the principles of agrarian renewal and natural resource management. Agrarian law has a close relationship with criminal and civil law. Sender agrarian law becomes a foundation regarding the principles, systems and functions of all of which are regulated in the Basic Agrarian Law (UUPA). However, the agrarian law in Indonesia is not carried out as it should be according to the applicable law. It is inseparable from an individual interest that does not see the impact that will occur.

The existence of this conflict then UUPA provides action to the government to provide us in the economic field to the community; with this UUPA being a progressive law, there are land problems that are increasingly experiencing problems, then the National Land Agency classifies cases to become benchmark material, among others: (1) control of land ownership (2) determination of land rights and registration of land ownership (3) limitation of land ownership position (4) customary land (5) demanding compensation for non-public use of land. (BAPPENAS, n.d. 2020). Business entities usually involved in corporations are publicly listed companies (PT).

It is a significant reason because PT has a large enough capital to develop its business, so that from this determination can injure justice and the welfare of the community in land tenure, but with this, there are positive and negative impacts when viewed from a positive perspective, land acquisition is faster because the source of funds generated is not through the APBN / APBD. Still, the funds obtained in land acquisition come from other parties concerned, namely corporations. However, it is inversely proportional when viewed from the opposing side that land acquisition by corporations in terms of public interest is included in the scope of corruption crimes. The problems that occur in Indonesia may be many corporations controlling land for personal gain so that it raises corrupt practices so that other corporations can take part in land acquisition.

However, according to the Secretary General of KPA, Dwi Kartika, what is happening now is that forestry corporations control 70% of the land in Indonesia, and plantation corporations control 23%. The community only gets 0.3%, which shows that the applied law cannot fulfill the welfare and justice of the people of Indonesia. The lack of assertiveness in the established laws contributes to a high rate of unemployment and poverty in Indonesia. Corporations must take more decisive actions to address this issue, ensuring that the laws align with the community's aspirations. Doing so can bridge the social gap and ensure fair and just treatment for all Indonesian people, as it should be (Alexander Haryanto, n.d. Accessed 13 September 2018).

Seeing from the land polemic that has occurred until now, basically, the land law is still unresolved; given the many elements involved in it, both from the government itself, this is what hampers enforcement in law, so to achieve the realization of welfare, justice and legal certainty related to society and land, what is needed in realizing it is not only the regulation of the law but also the government in addressing the polemic that continues to occur in Indonesian land, this is an essential task for the government.

Based on the background review, several problem formulations arise due to problems, among others, as follows: (1) What factors are behind the gap in land tenure by corporations and communities? (2) What are the legal efforts in dealing with and minimizing the gap in land tenure? (3) How is a legal liability in dealing with the gap in land tenure by corporations?



The primary objectives of this research, among others, are as follows: (1) To find out the impact that occurs due to the problem of land tenure carried out by corporations with the community (2) To find out the government's policy in providing penalties for corporations following the applicable land law (3) To know the legal efforts in overcoming the problem of land tenure by corporations within the scope of national land law. Based on the explanation above, the author has decided to conduct research titled "Disparity Between Corporate And Community Land Tenure And National Land Law Accountability."

## METHODS

In conducting this research, we employed the normative legal research method. This approach involves analyzing and synthesizing existing literature and secondary data, including primary legal sources such as laws and regulations. The research process encompassed a comprehensive review of relevant journals and an in-depth examination of books directly related to the topic under investigation. Additionally, online databases and digital resources were utilized to access pertinent information. The normative legal research method allowed us to examine and interpret the existing legal framework, principles, and concepts relevant to the subject matter. By critically analyzing and synthesizing the available legal literature, we were able to develop a comprehensive understanding of the topic and its legal implications.

To ensure the reliability and credibility of the research findings, we employed rigorous data selection criteria and applied systematic procedures in gathering and analyzing the literature. The selected sources were carefully evaluated based on relevance, authority, and credibility. Furthermore, the data obtained from these sources were thoroughly examined and cross-referenced to ensure accuracy and consistency. By employing the normative legal research method, this study aimed to contribute to the existing body of legal knowledge, provide insights into the topic, and generate recommendations for further development in the field. The comprehensive review of the literature and secondary data allowed us to gain a deeper understanding of the legal aspects of the research topic. They facilitated the formulation of informed arguments and conclusions.

## RESULT AND DISCUSSION

**Factors Behind the Gap in Land Tenure by Corporations and Communities.** With the existence of factors that become fundamental aspects of knowledge for the community, which then become learning materials for the community and the government to pay attention to aspects of land tenure carried out by corporations, so that the government provides strict action according to applicable regulations. The factors that become the background of the gap in land tenure by corporations include legal politics that regulate land tenure by corporations with the community, laws and regulations that the government does not strictly implement.

**The role of legal politics that regulates.** Talking about legal politics in Indonesia, Mahfud MD said that the Indonesian government carrying out legal politics had been fully implemented nationally in terms of building laws and reforms in law; this is done so that all provisions in the law can be carried out as the function of the law itself, discussing legal politics to achievement with common goals.

In its implementation, land law politics is one of the main factors in carrying out land tenure by corporations; in this case, Winardi also argues that according to Winardi in the context of land







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tenure, it is very unfair for the community, especially the control of agricultural land which is then controlled by corporations to become companies or even for other interests.

Furthermore, if we understand the politics of land law contextually in principle, namely for guidance in realizing a goal as described in the UUPA contained in Article 33, paragraph 3 of the 1945 Constitution, in this context, the principle of the UUPA itself is to develop a policy that is used as a regulation of national land law to realize welfare for the community. The UUPA principle also regulates the control and utilization of land in terms of economic progress following its use.

The existence of UUPA makes a benchmark for the community in obtaining welfare and justice in land ownership; UUPA itself becomes a binding law, or what is called prismatic law, in order to achieve an economic change in society through ownership of land and also to encourage people to move in the industrial sector but still see justice to avoid gaps in land tenure. (Nurhasan Ismail, n.d. 2012). Prismatic law has two elements in the UUPA: modern and traditional elements that follow Indonesian society because, historically, the land was inherent before independence. Looking from a social point of view that is following the principles of the UUPA is what is stated in Article 4 jo. Provides certain limitations in establishing a large-scale business on land ownership. Article 9 of the UUPA and Articles that regulate land rights, namely that every individual community has ownership rights to land, Articles 10, 13, and 15 of the UUPA explain that land utilization can produce increased production following intensive utilization methods; according to Articles 4 and 9 of the UUPA, it explains that land ownership in Indonesia does not discriminate in terms of both citizenship and gender; according to articles 28 and 35 of the UUPA, it explains that land ownership in Indonesia does not discriminate in terms of citizenship.

**Table 1.** Percentage of Land TenureLand Tenure Area

Land Ownership	Wide
Forestry	70%
Corporation	
Forestry	23%
Corporation	
Community	0,3%

Source: Hadi et al., 2018

However, on the contrary, if we examine it according to traditional aspects and the provisions of the Articles governing it, namely Articles 6 and 7 Jo, Article 17, which explain that it provides a limit to land ownership and social functions so that there is no absolute ownership carried out by individualization so that a handful of interests or people carries out no ownership; Articles 15 and 10 explain that it is obligatory for the community in terms of protecting natural resources and caring for them; Articles 11 and 17 explain that it gives special treatment to groups of people who have a weak economy and imposes on the government so that the government gives special attention aimed at stabilizing the economy and improving the economy; Articles 12 and 13 explain that the prohibition for companies from the industrial sector so as not to monopolize in terms of land tenure.

However, the current situation is inversely proportional to the concept of the UUPA, which is now experiencing quite drastic changes in its implementation, this is because the government does not always focus on a group of corporations in land tenure, but the government is now more likely to focus on overcoming problems that are confrontational and political so that the government does not have the power in dealing with problems that occur because it has interfered with political interests. The laws that have been established are difficult to find justice for the community.



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In 1958-1963 a policy emerged where nationalist land was managed by foreign companies both in terms of the economy and plantations. However, land ownership is no longer guaranteed, especially in the current era where control over land is predominantly in the hands of the military (ABRI). This situation has granted companies, particularly foreign ones, the freedom to develop their businesses. Regrettably, this has resulted in a multitude of issues within the community.

**Land Tenure by Corporations with the Community.** According to customary law, land rights are related to the environment or ecological relationships. The position of land has been attached to indigenous peoples in ancient times before colonization in Indonesia; according to its history, land in ancient times had a name as taken land, which means buffer. Moedjiono also argues that the meaning of pakulen land is a bonus or salary in the form of land by the government, not from the village apparatus; it is a form of appreciation given by the government to people who have services to the government (Sihombing, 2005)

Then this was inversely proportional to the colonialism era, where they changed the taken land into Bangkok land, which aimed at the land revenue received by the community. It starkly contrasts the colonial era, where confiscated lands were transformed into "Bosch" lands, primarily intended to generate revenue for the ruling power. Indeed, recognizing the harmful consequences of unrestricted land control and ownership led to establishing Article 7 in the UUPA (Land Law). This article limits such control to protect the community from the significant disadvantages of unchecked power wielded by land rulers. Now, 60% of farmers do not own land; most farmers only use other people's land to grow crops, most are only farm laborers and many more lack welfare. The impact occurs for farmers who lose their own land and land ownership.

**Legislation that the government does not strictly enforce.** The land is an investment in the development of natural resources both from the economic and welfare sectors; in Indonesia itself, the land is a pre-facility that is very important and needed for its existence as the main livelihood in finding food, seen geographically, Indonesia itself is an agrarian country which is a country rich in natural resources (Hadi et al., 2018)

Rural communities that utilize the land for agriculture most of the rural communities work as farmers. However, much land is now controlled by corporations and the state itself. It raises conflicts because most corporations utilize the land for business purposes and build companies, so many entrepreneurs in conflict want to utilize agricultural land because the land is vast. Referring to Law No. 56 Prp Year 1960 as the Landreform Law. There are issues contained therein, among others:

- a. It determines the maximum size of ownership and control of land in the agricultural land sector.
- b. Determining and prohibiting actions caused the division of rights and land ownership to a maximum small share.
- c. Redemption of mortgaged land already contained in Law 56 of 2016.

The above statement explains land ownership that the government has handled. However, the regulations made are not appropriately implemented under the law. In that case, the resulting impact is the gap in land control by corporations and the government. In 2017 President Jokowi issued Presidential Regulation No. 45 of 2016 concerning the government's work plan, which is expected to overcome corporations and land tenure so that land conflicts that occur in Indonesia are resolved immediately and with the presidential regulations issued can overcome poverty and improve welfare and economy in the community.

**Legal Efforts in Facing and Minimizing the Gap in Land Tenure.** Providing legal remedies for landowners is inseparable from the government's role and policies because the government has





a significant role in solving problems that occur, and the government can also appeal to corporations. With the existence of Law No. 56 of 2016, this should have been able to overcome the landowners. By increasing agrarian reform, it is hoped that able to will help the community return the land controlled by corporations to improve the welfare of the community.

In determining the land area, there must be laws that regulate it. The UUPA does not directly agree with this opinion without a law regulating it. However, the view of the Ministry of Agrarian Affairs is different in that it needs regulations regarding the follow-up of control over agricultural land both in legal entities and individuals. It is intended that the regulations issued by the agrarian ministry can also be a benchmark in the ownership of land boundaries. The goal is that The community can get welfare and avoid parties with significant capital controlling land. Article 3 paragraph 3 also explains that the individual limit in obtaining land area is not dense 20 hectares, less dense land 12 hectares, the densest land 9 hectares, and dense land 6 hectares; for legal entities, land ownership is regulated in Article 3 paragraph 4 that the area of land owned is following the decision of the land owner.

In this case, the community and individuals are obliged to provide reports on land ownership that exceeds the predetermined limits so that if this land ownership exceeds the maximum that has been determined, sanctions can be imposed on related parties; the sanctions given are 3 months imprisonment and a fine of Rp 10,000,000.00. However, if the position violates Article 3 that has been determined, then the land that exceeds the maximum is given to the state free of charge without paying compensation; the granting of land to the state, because the law can be interpreted in this case, does not require a judge's decision, namely after the court decides then the excess land owned is given to the state based on violations of Article 3.

**Legal entities or individuals may not hold land rights beyond the prescribed limits.** In terms of control of the land area, the UUPA has explained that each family or individual has a land area limitation of 20 hectares and is allowed to add land, namely 5 hectares, based on special regional conditions; in transferring the land, must also obtain approval from the land agency and the land transferred does not exceed 20 hectares and if it exceeds it can be criminally sanctioned, so that the position of the land if it exceeds 20 hectares, the implementation fails based on the law and then the land falls to the state.

In the transfer of control of agricultural land in carrying out the transfer must be in a different place or area because the land is also used for agriculture; this is under what is explained in Article 4 of Agrarian and Spatial Planning / Head of the National Land Agency No. 18 of 2016. However, contrary to the current situation, the problems that often occur now are many agricultural lands. Now that houses and offices are being built, this is due to people selling their agricultural land to legal entities, which is done for family financial reasons, so that the legal entity that buys the land is reused not for agriculture but is used in terms of development.

**Providing Justice for the Community.** When examining the fundamental aspects of justice in Indonesia, we find that it is rooted in Pancasila's fifth principle, which emphasizes justice for all Indonesians. However, the interpretation of justice in the country tends to be abstract. It is crucial to consider this, particularly in providing employment opportunities and ensuring a decent standard of living for all citizens. The problems in Indonesian land cannot be separated from social, economic and political relations to seek interests. It can lead to inequality in land use, such as the utilization of natural resources, which many rulers control vast land, and the community only has unlimited natural resources.





With this legal effort in overcoming the corporations that occur between the community, the government provides justice for the agricultural community so that with the existence of the gap control of agricultural land by corporations, it becomes the duty of the government to help the welfare and justice for the community. It has become a duty for the state to immediately take a wise decision in overcoming the problems that occur Law No. 41 of 2009 re food protection Persistent abbreviation PLP2B, broadly speaking Indonesia is an agricultural country considering a large number of farms This ensures security in the food sector, therefore, such as jobs and decent livelihoods for the community must be guaranteed. So the protection of cultivated land is essential. It is concerned with the administrative structure of regional conditions.

**Responsible Liability in Facing the Gap in Land Tenure by Corporations.** Land tenure in Indonesia itself is inseparable from legal politics. The corporate parties in their land tenure must be held accountable for their actions following the governing law; in this case, corporate parties who use the land for public interest are classified as corruption crimes because their land ownership exceeds the limits set according to the governing regulations. In this corporate crime, Mardjono Reksodiputro argues that the corporation is both the maker and the one responsible based on the doctrines that influence it. For example, the doctrine of direct criminal acts, the doctrine of substitute criminal liability, and the doctrine that is strictly following the law; this can happen because it has been contained in the Criminal Code so that in taking responsibility for corporate actions, punishment must be given because it has fulfilled the material and formal elements. There is already binding legal certainty, so the case can quickly provide evidence at trial (Aulia Ali Reza, 2015). However, where there is an understanding that justice is needed, responsibility must be taken. When the corporation goes more profound, the above doctrines and theories are used and applied as directed. Substantive rights, whether the act is unlawful, are not just an obligation to check compliance with the provisions of the law but must also be checked against general principles that are not following the grammar.

## CONCLUSION

So that in the explanation above, the tiering of land tenure carried out by corporations that occur in Indonesia causes problems and a terrible impact felt by the community so that people do not have land to grow crops. It significantly affects the economy and the welfare of the community. All efforts in agrarian change have been carried out, but this has yet to obtain maximum results in dealing with the problems. It should be the responsibility of the government that people get justice and that the UUPA that has been established is implemented as it should, not just thinking about personal interests to injure social justice for all Indonesian people. The National Land Agency is the main factor in eradicating the existence of corporations so that there are no more gaps in land tenure carried out by corporations, besides that the legal remedies determined have certainty and strength in justice as stated in Law No. 5 of 1960, besides that the agrarian performance is also carried out according to the contents written in it, with the improvement of agrarian performance following the UUPA, the land law in Indonesia is no longer a law that is only aspired to but has become a solid legal certainty and a benchmark in aspects of problems that occur in agrarian law.

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