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## **The Politics of Agrarian Law in the Idea of Forming A Special Agrarian Court**

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**Abstract:** The idea of a special agrarian court is really needed considering that up to now, various agrarian disputes or conflicts have not yet had a definite resolution. Agrarian is a field of science that has specificities, so it is not uncommon for problems regarding agrarian to be complex, because in one object the agrarian conflict may be related to several aspects simultaneously, for example criminal and civil aspects, not just administrative aspects. So we need a court institution with specialization in the agrarian field, consisting of competent experts in the agrarian field with the hope of being able to resolve agrarian conflicts and disputes that have not found a solution to date. Hoping that a special court in the agrarian sector exists, it will be able to function in providing justice, benefits and legal certainty for the community and The goal is to establish a fair and successful community that aligns with the ideals and goals.

**Keyword:** Political Law, Agrarian, Special Agrarian Courts.

### **INTRODUCTION**

The land is space for human life. Land is also a resource to support people's living needs. Land for the Indonesian people has an eternal relationship, is magical and religious, and must be protected, managed, and utilized well (Bernard Limbong, 2012). Apart from that, the land also has social functions and economic value. Undang-Undang Nomor 5 tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (about Regulations on Basic Agrarian Principles), or UUPA, is the body of regulations that govern land law in Indonesia. UUPA serves as the legal foundation for a number of land-related policies, laws, and regulations. A manifestation of the social function and economic value of land is that the UUPA classifies land based on the type of land rights. The UUPA's Article 4 governs the existence of rights to what is known as land—the earth's surface. The term "land" used here refers to rights in the legal sense rather than a physical location (Urip Santoso, 2019). These land rights can be obtained through Government Determination; Conversion Assertion; Transfer of Land Rights; or Granting Rights.

One of the UUPA's tenets, the Right to Control the State, grants the state the power to oversee and control how land is designated and used, which gives the state the authority to regulate

land rights. Although the state has the authority to govern the state, it does not necessarily own all of the land; rather, it is tasked with managing it properly and fairly for the good of the community. Before the enactment of the UUPA, land law in Indonesia was regulated by colonial law. After Independence, legislators created the UUPA in the hope of unifying the two types of agrarian law that had been in effect, namely those based on customary law and those based on former colonial legal rights. Policies that control land conversion confirmation, land rights transfer, land ownership, land redistribution, and other related activities are used to accomplish this.

However, these efforts appear to have not been optimal for land management by the state in order to realize community prosperity as envisioned by the drafters of the UUPA. Apart from that, the history of legal dualism regarding land also remains in various types of conflicts and land disputes. The causes of land disputes and conflicts include: First, the issue of land administration which is not well managed. An unbalanced ownership structure of land is the second issue. Third, the one-map policy is not ideal, particularly when it comes to lining up land boundary maps with government area boundaries (villages, sub-districts, districts/cities, and customs). Fourth, the legality of land ownership is only based on formal evidence (certificates), disregarding land productivity (Ministry of Home Affairs, 2024).

One way that can be taken to resolve disputes or conflicts is through judicial institutions. Barda Nawawi Arief asserts that the judicial system and the law enforcement system are the same because the judicial process is essentially a means of upholding the law (Arief, 2011). As a country of law, Indonesia guarantees its citizens to obtain legal certainty and justice in accordance with applicable positive law through judicial power and judicial institutions. Until now, the resolution of land disputes and conflicts through judicial institutions is carried out in district courts and state administrative courts. An agrarian court that specifically handles agrarian issues does not yet exist in Indonesia's general judiciary.

As state of the art, namely a comparison with other journal manuscripts, from several searches, namely the one written by (Rachim et al., 2022), entitled "Reconceptualization of the Establishment of Agrarian Courts in Indonesia: Efforts to Protect Citizens' Rights to Land", which was written with a statutory regulation approach, and a comparative case study of countries in Australia. Then written by Sarah D.L. Roeroe "Enforcement of Agrarian Law and Settlement of Land Disputes in the Judicial Process". Which discusses mediation and court as alternative solutions to land conflicts (Sarah DL, 2013). Written by Ahmad Bilaldzy and Relys Sandi Ariani "Critical Review of the Urgency of the Establishment of Agrarian Courts: Efforts to Handle the Ineffectiveness of Agrarian Conflict Resolution in State Administrative Courts and General Courts" Critical Review of the Urgence of the Establishment of Agrarian Courts: Efforts to Handle The Ineffectiveness Of Agrarian Conflict Settlement In State Administrative Courts And General Judge", regarding the authority of the State Administrative Court and General Court in the realm of agrarian conflict, as well as regarding the urgency of establishing an Agrarian Court (Bilaldzy & Ariani, 2022).

The difference between these journal texts is that this journal article examines special agrarian courts from the perspective of Lawrence M. Friedman's legal system theory which will discuss the role of legal politics in the idea of establishing an Agrarian Court in the national land law system.

## **METHOD**

Normative juridical legal research methods, such as legal principles, legal systematics, and the degree of synchronization of law with a statutory approach, will be used to write this essay. These methods involve looking through all laws and regulations and researching pertinent legal issues..

## RESULTS AND DISCUSSION

### The Politics of Agrarian Law in the Idea of Establishing a Special Agrarian Court

The term politics is always closely related to the word law. The Big Indonesian Dictionary (Kamus Besar Bahasa Indonesia / KBBI) defines politics as: (knowledge) about state administration (such as about the government system, the basis of government); all affairs and actions regarding state government or against other countries; how to act (in facing or dealing with a problem); wisdom (KBBI, n.d.). The word "legal politics" comes from the Dutch word *rechtspolitiek*, which is derived from the words "recht," which means "law," and "politiek," which means "policy." (Moechthar et al., 2021). Moh. Mahfud MD Legal politics can be defined as legal policy or an official stance on the law that will be upheld by new legislation or by superseding existing legislation in order to accomplish state objectives (MD, 2009). Legal politics has 3 (three) reflections, including; the ideals of the policies and regulations that are made; in every process of discussion and ratification of laws and regulations, political interactions are always followed; applications or interpretations that are needed and can be monitored depending on the policies created (Sari et al., 2022). Legal politics, to put it briefly, is the study of legal policy, which is a body of ideas and precepts that serve as the framework for work plans, leadership styles, and other behaviors in the legal sector (Hajati et al., 2020). The purpose of the existence of legal politics is to provide direction for the regulations or policies that are being created. According to E. Utrecht, since legal politics looks into what needs to be changed to the current legal system to make it more in line with social reality, its purpose is to establish norms that will govern how people should behave. (Moechthar et al., 2021).

After understanding the meaning of the term legal politics mentioned above, we will further discuss agrarian legal politics. Government policy in the land sector that aims at the allocation and use of land authorities or landowners, the allocation of land use to guarantee legal protection, improve welfare, and stimulate economic activity through the enactment of laws on land and their implementing regulations, is referred to as land legal politics (agrarian) (Sulistio, 2020). When examining the politics of land law found in the UUPA, the general explanation of the Act suggests that the following are among its goals:

1. Establishing the groundwork for the drafting of national agrarian law, which, within the confines of a just and prosperous society, is a tool to bring prosperity, happiness, and justice to the State and the farming community.
2. Establishing the framework for land law's unification and simplicity.
3. Establishing the framework necessary to give the populace as a whole legal certainty regarding their land rights.

These three things have been attempted by the government since the UUPA was established, but until now, various problems in the land sector are still ongoing, as expressed by Rully Chairul Azwar, that the current reality is: a. The existing land is mostly controlled by large capital owners, b. The land becomes an object of trade which is largely exploited by private business forces as a tool to pursue profits, c. The state is unable to exercise control over land control in a monopolistic manner and c. The land and all the natural wealth inherent in it have not been able to realize the goal of maximizing the prosperity of the people (Sekarmadji & Moechthar, 2023).

Because issues pertaining to land rights can arise in the administrative, civil, or criminal domains or possibly all three at the same time the land problems are complicated. Actually, the land rights based on the customary law under the owner's control are not substantiated by written documentation, just as the unwritten customary law. In contrast to land rights based on previous western civil law rights, which are issued on a written basis after the owner registers their land at the cadastral office, this type of land rights are not recognized from the outset (Usman, 2020). So land rights based on former western civil law rights are technically easier

to prove to convert. The emergence of problems related to land cases cannot be separated from aspects of control that are not comparable to aspects of legality. On many occasions, the community understands that land ownership is simply physical control (Panjaitan, 2020), whereas based on the UUPA land ownership is based on land rights attached to the land object, including those based on customary law, which determines customary property rights, ulayat, foundations, groups, and so on and which are based on former western civil law rights, which stipulate property rights, postal, erfpacht, gebruik (usage rights), and so on (Antonius Teddy Darmawan, 2024). Meanwhile, land rights have a social nature as stated in Article 6 of the Agrarian Law, so that apart from being owned by each individual, land is personal property and the function of land is also social if its designation is used for the public interest and the wider community (Kristianingsih et al., 2020). So the government is also faced with overcoming the problems of the large need for land which has the impact of creating development gaps, including : (Ginting, 2021).

1. The availability of land for development is very limited.
2. There is inequality in land ownership and land becomes the object of speculators so that land prices are out of control.
3. There is a lot of potential for idle land and abandoned land that has not been optimized.
4. National Strategic Projects (PSN) such as infrastructure development, energy and other development programs.
5. New city development and 1 million houses program for MBR.

Provision of land to facilitate investment to increase economic growth.

Agrarian legal politics refers to the principles adhered to by the UUPA. If land law is understood as a system of norms, then every legal regulation from the highest down to the lowest legal regulation must form an intertwined system that must not conflict with one another (Handoko, 2014). The Legal System Theory, developed by Lawrence M. Friedman, contends that a legal system functions as a complex organism in which structure, substance, and culture (culture) interact. (Lawrence M. Friedman, 2009). According to Friedman, the legal structure "...is one of the basic and real elements of the legal system" (Lawrence M. Friedman, 2009) in other words, it includes institutions and institutions which include organizations, functions and systems, in this discussion the court as a supporting institution in the operation of the legal system.

The idea of the need for a court institution that specifically handles cases in the agrarian sector has three aspects in realizing legal objectives as stated by Gustav Radbruch, namely justice, expediency and certainty. The justice aspect refers to the aim of justice, namely promoting goodness in human life, while certainty refers to the guarantee that the law is actually followed as a rule. Meanwhile, expediency contains an element of justice (Bernard L. Tanya, 2010).

The next component is legal substance, Friedman states as "... another element of the legal system" (Lawrence M. Friedman, 2009). This understanding of legal substance includes legal rules and norms that apply as positive law that applies in society and is related to how these legal rules and norms apply to the legal structure. This substance must rely on the principles adopted by UUPA as the legal umbrella in national land law.

Efendi Wargan explained the structure of land law in Indonesia into two classifications, namely, First, Administrative Land Law; the state as ruler; Second, Civil Land Law; Individuals and/or legal entities (Ramadhani, 2020). UUPA regulates the reform of unequal land structures to make them fairer, resolve land disputes and increase legal certainty for the community (Margaretha Boru Sitanggang, 2024), but there are various obstacles in the effort to realize it, agrarian problems which are caused by problems of policy and institutional sectorialism regarding with the management of land resources such as infrastructure development, expansion of the scale of plantation land, and others, this is the accumulation of problems of inequality regarding control or ownership and unfair use of land (Earlene & Djaja,

2023). Agrarian conflict is caused by at least two factors. The first is the absence of clear laws and regulations. issues pertaining to agriculture, including opinions on land, its ownership and status, rights over it, and the means of securing those rights. Second, the land dispute resolution procedure's injustice and slowness, which eventually sparks conflict (Sinaga, 2020).

The emergence of land cases is normatively due to welfare problems, namely that in general many arise and develop in locations where the community is not yet economically prosperous. The limited community access to land resources as the only economic source often leads to many disputes. The emergence of struggles over ownership/control of land in locations with less or less prosperous communities over legal or illegal land (Wirawan et al., 2021). Inequity in land ownership for the community will present an opportunity for certain groups to engage in unrepresentative actions in order to acquire land from the community. Conflict arises from the pluralistic structure of society, and it is a phenomenon that often occurs throughout human life. Conflict cannot be separated from social life, regardless of the angle we look at it (Utomo, 2020).

The final component is legal culture/culture. Friedman said legal culture/culture is "...an element of social attitudes and values" (Lawrence M. Friedman, 2009). This means that attitudes and values are part of the legal system. According to Satjipto Rahardjo, legal culture serves as the foundation for whether or not positive law is applied in society since people's attitudes, beliefs, and values greatly influence how positive law is applied (Rahayu & Pujirahayu, 2014).

Indonesia as a legal state whose members are legal communities which are communities that create, bind and are subject to their own legal system recognizes the unity of the customary law community system through Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia that "The State recognizes and respects the unity -the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law." Customary law communities are communities that arise spontaneously in certain areas, without being regulated or ordered by higher authorities or other authorities (Ginting, 2012). The juridical consequence of recognizing the unity of indigenous communities is that the state must provide full protection for the implementation of the unitary system of indigenous communities in their respective customary territories (Hilmy, 2020).

In order to achieve legal unity, Customary Law regarding land is used to form national agrarian law. Most Indonesians follow customary law, so customary law is important in making national Agrarian Law (Hastarini, 2022). It can be understood simply that the constitutional guarantee along with statutory regulations for the existence of indigenous people and the rights it carries are generally quite strong. However, this does not mean a guarantee that problems will not arise in the future (Permadi & Muttaqin, 2023).

There are two types of land rights: those based on traditional law and those based on western civil agrarian law. In reality, just like customary law is not written down, land rights that the owner controls are not supported by written proof. One of the things is customary rights. Muchsin defines customary rights as the rights that communities governed by customary law have over specific areas that make up their living environment and allow them to utilize local natural resources, such as land, for survival and subsistence (Veronika & Winanti, 2021). Ulayat Rights are a series of authorities and obligations of a customary law community, which relate to land located within its territorial environment. As long as they do in fact still exist, ulayat rights are acknowledged for their existence within a specific community governed by customary law. The UUPA was passed with the intention of defending the rights of indigenous peoples, particularly with regard to collective and ulayat land. However, there are still conflicts regarding customary rights, both vertically, namely with the government as the authority holder, and horizontally, namely with the indigenous communities themselves (Wangi et al.,

2023). From Friedman's theory, it can be concluded that these three elements of law must work together so that the law created to uphold justice can be effective, and the justice felt by society is regulated by the law itself (Suyatno, 2023).

### **The Concept of a Special Agrarian Court Required in the National Land Law System**

Seeing the government's need to unravel and resolve problems in the field of land law and because of the complexity of land law itself, in the field of agrarian law a special judicial institution is needed that handles law enforcement in the agrarian field. Based on the ideal characteristics that differentiate agrarian politics/strategy, namely: land control; labor, and responsibility or decision making regarding production, investment and capital accumulation, 3 (three) agrarian political systems can be distinguished, namely: 1. Capitalist agrarian strategy/politics, namely agrarian politics which places the means of production/land under the control of individuals are not cultivators. 2. Socialist Agrarian strategy/politics, where land and other means of production are controlled by an organization (usually the state) in the name of a working group. 3. Populist or Neo Populist Agrarian Strategy/Politics, placing the family as the unit of business. Because of this, control of land and other means of production is spread among the majority of farming families (Setiawan et al., 2023). The UUPA has embraced populist/neo-populist agrarian politics, which acknowledge individual rights to land but also give these rights a social purpose. This agrarian politics is based on the three agrarian political systems mentioned above. Because Indonesians are monodualists—that is, both individuals and social beings—the government is required by the Right to Control the State to ensure that land is used for the greatest prosperity of the people (in terms of quantity and quality). Individualist ideology is therefore inappropriate. the basis of Indonesian agrarian politics (Setiawan et al., 2023).

There are several causes or factors that lead to land disputes. Due to faulty regulations, noncompliance with regulations, and a lack of response from land authorities regarding the quality and quantity of available land, these factors are highly prevalent in all land disputes. contains false information. Inaccurate land transactions, insufficient and incomplete land data, applicant lawsuits, and comparisons with other authorities are all examples of issues pertaining to land. This leads to duplication of authority. Land disputes that occur in Indonesia are usually related to land ownership agreements, transfer of rights, transfer of rights, and control of previously privately owned land. To use land as an agricultural resource fairly, transparently and productively, Customary rights and the presence of communities governed by customary law need to be considered. In addition, The inventory data, quantity/area, and management status must be complete and up-to-date to make a regional spatial plan that is harmonious and balanced (Sukmawati, 2022). A guarantee of constitutional rights is needed which is the State's commitment to guaranteeing the upholding of the rights of Indonesian citizens, especially the welfare of customary law communities. Article 2 paragraph (3) of the UUPA also regulates the state giving authority to customary law communities. Article 3 of the UUPA is a requirement for state recognition of customary rights. Therefore, the state is obliged to provide recognition and protecting the rights of traditional law communities in managing and using the land they own (Salam, 2023).

In undeveloped areas, land dispute resolution is usually done by community figures who are respected by local residents. Community leaders also help to determine how land is used by local residents. This is because local traditional leaders usually know how much land there is in their areas and how local residents use it (Kaunang, 2021).

The courts are similar to the "judicial power system" in that they have the power to enforce the law (Arief, 2011). The 1945 Constitution of the Republic of Indonesia, Article 24 paragraph (1) emphasizes that judicial power is an independent power to administer justice to uphold law and justice. The Supreme Court is the highest state court in the judiciary and is free from

interference in its work. Regarding judicial power, it is regulated in Undang-Undang Nomor 48 Tahun 2009 about Judicial Power. Regarding general justice, it is regulated in Undang-Undang Nomor 2 Tahun 1986 jo. Undang-Undang Nomor 8 Tahun 2004 jo. Undang-Undang Nomor 49 Tahun 2009 about General Courts. In this Law, Courts are district courts and high courts that deal with general justice. Then in Article 8 it is stated that within the general justice environment special courts can be established as regulated by law. To date, various special courts have been established to meet the legal and justice needs of society, For example, there are Children's Court, Commercial Court, Human Rights Court, Corruption Crimes Court, Industrial Relations Court, and Fisheries Court. A Special Court is a court that can look into, try, and decide certain cases. It can only be set up in one of the courts under the Supreme Court as specified by law. The priority for settlement outside of court is peace and not finding out who is right or wrong. If you have to decide who is right and who is wrong, it will not help the parties in the dispute (Ahmad & Wulandari, 2023).

The agrarian courts are really needed considering the many complex agrarian disputes or conflicts, because they can contain criminal and civil aspects, not just administrative aspects. Settlement of land cases in positive law is regulated in Peraturan Menteri ATR/BPN Nomor 21 Tahun 2020 concerning Handling and Settlement of Land Cases. The ministerial regulation explains that there are two ways to resolve land cases, namely handling them directly through deliberation and handling them through the judiciary. Outside of court, handling of land cases can be carried out through mediation which can be carried out by the Ministry of ATR/BPN, Regional Offices, Land Offices as appropriate or by individuals or institutions based on conflicting wishes. Apart from that, it can also be resolved through customary institutions based on local wisdom which can be ratified in the form of an authentic deed and/or registered in court where the decision can be followed up by the Ministry of Lands and the like. If a land case is resolved through a judicial institution, it can be carried out in two ways, namely it can be tried at the State Administrative Court (PTUN) if the object of the case is a TUN decision issued by an agency or official, in this case the National Land Agency (BPN), such as a land certificate or document. proof of land rights. Thus, the court was formed to uphold the good for the people against an unlawful decision. If there are individuals who feel that their interests have been harmed as a result of this decision, they can file a lawsuit with the PTUN. Apart from that, it can also be resolved through general court when someone feels that their interests have been violated over a land ownership right by filing a lawsuit with the district court (PN). In reality, there have been various efforts to resolve land cases that have never been resolved properly (Rizqila & Taupiqqurahman, 2024).

In "Circular Letter (SEMA) No. 7 of 2012 concerning Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guide to the Implementation of Duties for the Court" issued by the Supreme Court, it was emphasized that there is still a need to confirm the limits of competence in handling agrarian cases, especially land (Koeswahyono & Maharani, 2022). The idea of the need for a court institution that specifically handles cases in the agrarian sector has three aspects in realizing legal objectives as stated by Gustav Radbruch, namely justice, expediency and certainty. The justice aspect refers to the aim of justice, namely promoting goodness in human life, while certainty refers to the guarantee that the law truly functions as a rule that is obeyed. Meanwhile, expediency contains an element of justice (Bernard L. Tanya, 2010). The special court in the agrarian sector, in its position as a state representative institution, must be able to function in providing justice, benefit and legal certainty for the community. In this case, agrarian legal politics plays a role in providing direction and a construction picture regarding what and how the implementation of a combination of the principles of the UUPA and the legal foundations and ideals and ideology of the nation and state can be applied in the formation of special courts in the agrarian sector later for the community. It is hoped that the existence of a special court in the agrarian sector

in the renewal of the national land law system will be an institution that will have the potential to unravel various national land problems that can provide a sense of justice, usefulness and legal certainty in its duties as a national judicial institution. This special agrarian court is really needed considering the difficulty of resolving structural agrarian conflicts which are a meeting place for various interests, apart from that, agrarian conflicts are different and have specificities when compared with other social conflicts, and the recognition and protection of the rights of customary law communities in the constitution is wrong. a reflection of a modern state (M. Naufal Al-Hadi Kasuma, 2022).

## CONCLUSION

Agrarian law politics is how the government decides what to do to achieve its goals. They want to create a law that protects the rights of people and respects their customs. Creating legal certainty and usefulness in agriculture based on justice and UUPA. Realizing the government's interests in economic development, carrying out certain functions within the scope of the land law system and creating a conducive government atmosphere without ignoring individual rights in the agrarian sector.

Agrarian courts are really needed considering the many complex agrarian disputes or conflicts, because in one object the agrarian conflict can contain criminal and civil aspects, not just administrative aspects. So we need a court institution with specialization in the agrarian field, which consists of competent experts in the agrarian field with the hope of being able to resolve agrarian conflicts and disputes that have not found a solution to date. It is hoped that a special court for agriculture will help the community by giving justice, benefits, and legal certainty. This will help create a fair and prosperous society that matches the goals of the UUPA.

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