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Post- Undang-Undang No. 5 Tahun 1960 tentang peraturan dasar pokok agraria: A normative analysis of land ownership justice in Indonesia

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Abstract
This study examines agrarian law reform following the enactment of UUPA, with a focus on equity in land tenure and the problem of disharmony among sectoral regulations. It departs from the empirical reality that, despite the UUPA enshrining the principle of the social function of land, limits on land control, and a normative orientation in favour of smallholders and indigenous peoples, levels of land concentration and agrarian conflict remain high. The research employs a normative juridical method through an analysis of legislation, legal doctrine, and relevant court decisions, and relates these to the Pancasila concept of social justice, John Rawls' theory of justice as fairness, and the notion of distributive justice in Islamic law. The findings indicate a significant gap between the UUPA's normative framework and actual land tenure practices, a gap exacerbated by the proliferation of sectoral statutes and policy instruments such as omnibus laws that tend to favour investment interests. The study recommends repositioning the UUPA as the overarching agrarian legal framework, harmonizing cross-sectoral regulations, strengthening the recognition of the rights of indigenous communities and smallholders, imposing stricter limits on large-scale land holdings, and designing conflict-resolution mechanisms oriented toward the restoration of substantive justice.

Keywords: Agrarian law reform, equity in land tenure, regulatory disharmony

Introduction

Reform of agrarian law in Indonesia stems from long-standing structural inequality in land tenure rooted in the colonial period, when agrarian law was dualistic and favoured colonial interests and large capital owners, while the majority of peasants were merely cultivators without secure rights over the land they worked (Isnaini, 2022) [6]. Undang-Undang No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok Agraria (hereinafter referred to as the Agrarian Law/UUPA) on Basic Agrarian Principles was conceived as a landmark of national agrarian law reform intended to eliminate the colonial legal legacy, end feudal patterns of exploitation, and realise a fairer distribution of land for the people (Isnaini, 2022; Fajar, 2022) [4, 6]. Normatively, the UUPA embeds key principles such as social justice, utility, and nationalism, positioning land as an instrument for achieving the general welfare rather than merely a tradable economic commodity (Anam, 2024; Isnaini, 2022) [1, 6].

Nonetheless, more than six decades after the UUPA came into force, empirical realities still show a wide gap in land control and persistent agrarian conflicts across regions (Aprianto, 2014) [2]. KPA data indicate a continuing rise in agrarian conflicts: in 2023 there were at least 241 cases, and in 2024 this increased by around 21 per cent to 295 conflicts, affecting more than 1.1 million hectares and involving tens of thousands of peasant households, urban poor communities, and indigenous peoples (GoodStats, 2025) [5]. This empirical situation reflects a serious gap between the agrarian justice ideals mandated by the UUPA and actual land-tenure practices, which remain dominated by large corporate interests, large-scale infrastructure projects, and various forms of natural resource concessions.

From a normative perspective, the UUPA explicitly vests the State with the authority to control land for the greatest prosperity of the people, while at the same time regulating limits on landholding and priority for smallholders as a manifestation of the principle of justice (Anam, 2024; Isnaini, 2022) [1, 6]. Key provisions related to agrarian reform such as maximum landholding limits, the obligation to cultivate land personally, and the prohibition of land abandonment are designed to prevent accumulation of land in the hands of a few (Aprianto, 2014; Fajar, 2022) [2, 4]. However, various studies show that these normative arrangements have not been consistently implemented, thereby allowing ongoing concentration of land ownership and control that is misaligned with the UUPA's social-justice objectives (Asrullah, A., et.al, 2024) [3].

Post-UUPA agrarian reform programmes, institutionalised through instruments such as People's Tap MPR No. IX/MPR/2001 and Peraturan Presiden Nomor 86 Tahun 2018 tentang Reforma Agraria, are in principle aimed at reducing land inequality, resolving agrarian conflicts, and improving people's welfare. Agrarian reform is defined as restructuring the ownership, control, use, and utilisation of land, accompanied by strengthening agrarian access for vulnerable groups such as small farmers and indigenous communities. Yet critical analyses emphasise that implementation often remains partial and administrative, insufficiently addressing structural roots of injustice, so its impact on improving equity in land control remains limited.

Recent academic work underscores that the justice principle in the UUPA provides a strong normative basis for more equitable land distribution, including through restricting land concentration and recognising the rights of indigenous peoples (Anam, 2024) [1]. Several studies indicate that integrating justice concepts from Islamic law and Pancasila values with the UUPA's conception of justice can enrich the agrarian justice paradigm, particularly in preventing land accumulation and ensuring adequate access to land for vulnerable groups (Anam, 2024; Isnaini, 2022) [1, 6]. Nevertheless, weaknesses in technical regulations and law enforcement mean that many agrarian-justice norms remain

largely declaratory and have yet to be translated into everyday land-governance practices (Isnaini, 2022) [6].

These conditions create an urgent need for deeper normative analysis of the concept of justice in land tenure under the UUPA and subsequent regulatory developments, in order to assess the extent to which the current legal framework is consistent with principles of social justice and the right to land for citizens (Aprianto, 2014; Fajar, 2022) [2, 4]. A normative juridical approach is particularly relevant because it enables systematic examination of principles, norms, and the hierarchy of agrarian legislation, as well as scrutiny of legal disharmony that risks perpetuating inequality in land control (Isnaini, 2022) [6]. Through comprehensive analysis of agrarian laws and their implementing regulations, it becomes possible to identify areas of legal reform needed to strengthen protection of land rights and ensure fairer distribution (Anam, 2024) [1].

Against this background, the study titled "Agrarian Law Reform after Law No. 5 of 1960: A Normative Analysis of Equity in Land Tenure in Indonesia" is crucial to bridge the gap between normative ideals and the realities of land control (Aprianto, 2014) [2]. The research is expected to elaborate critically how the UUPA and subsequent agrarian regulations govern equity in land tenure and to identify normative factors that hinder the realisation of substantive agrarian justice at the community level. In this way, the findings will not only contribute to the development of agrarian law scholarship, but also serve as a reference for policymakers, law-enforcement officials, and affected communities in advancing agrarian legal reform that is more human-centred, inclusive, and socially just.

Research Methods

The normative juridical research method is a legal research approach that rests on the examination of positive legal norms as set out in legislation, court decisions, legal doctrine, and other official legal sources (Juliardi *et al*., 2023) [7]. Within this approach, law is understood as a set of legal norms (law in the books), so the analysis focuses on the consistency, coherence, and harmony of these norms with fundamental legal principles, including justice, utility, and legal certainty in the national agrarian system. The researcher examines primary legal materials (the 1945 Constitution, the Basic Agrarian Law, sectoral statutes on land, government regulations, presidential regulations, and other implementing regulations) as well as secondary legal materials (literature, journal articles, research reports, and scholarly opinions) in order to construct a legal argument that is logical, critical, and systematic (Syarif *et al*., 2024) [12].

In its application to the theme of agrarian law reform, normative juridical research is conducted through several stages, including the inventory and classification of legislation governing land tenure, interpretation of key norms, and analysis of the consistency of these norms within the hierarchy of laws and regulations. The researcher then assesses whether the existing normative construction is aligned with the objective of equity in land tenure mandated by the Basic Agrarian Law and identifies forms of disharmony, gaps, or weaknesses in regulation that may generate agrarian injustice. The results of this normative analysis form the basis for formulating law-reform recommendations that are more responsive to the demands of social justice for farmers, indigenous peoples, and other vulnerable groups in relation to the control and use of land.

Results and Discussion

Land Ownership Justice within the Normative Framework of the UUPA

Equity in land tenure in the context of agrarian law reform after UUPA is understood as a systematic effort to correct structural inequalities rooted in the colonial period and reproduced in the era of developmentalism, when land was predominantly controlled by large capital interests and state enterprises, while small farmers and indigenous communities occupied a subordinate position (Isnaini, 2022) [6]. The 1960 Basic Agrarian Law (UUPA) was enacted with the mission of restructuring the relationship between people and land on the basis of Pancasila and the Constitution, particularly Pasal 33 ayat (3) UUD 1945, so that land would no longer be treated merely as a commodity but as a means to realise social justice for all Indonesians. Within this framework, the idea of equity in land tenure goes beyond the formal legal categorisation of land rights and instead interrogates how land distribution and use contribute to poverty reduction, the strengthening of smallholders, and the protection of historically marginalised indigenous peoples (Anam, 2024; Aprianto, 2014) [1, 2].

Normatively, the UUPA embodies fundamental justice-oriented principles, including the principles of nationality, social justice, the social function of land, and the people's prosperity, explicitly linking land regulation to the constitutional aspiration of social justice (Isnaini, 2022) [6]. The principle of the social function of land affirms that every land right has a social dimension, such that right-holders may not use, neglect, or transfer land arbitrarily in ways that conflict with the public interest and distributive-justice considerations (Isnaini, 2022; Aprianto, 2014) [2, 6]. At the same time, the concept of the "right of the State to control" land is not meant as a licence for state monopoly, but as a constitutional mandate to regulate, administer, and supervise land use so that it serves the greatest prosperity of the people, aligning the UUPA's normative framework with distributive-justice theories that emphasise fair allocation of resources to secure basic needs.

In terms of modern theories of justice, the normative configuration of the UUPA can be read through John Rawls's justice as fairness, which holds that social and economic inequalities are only acceptable if they result in the greatest benefit to those who are worst off (Rawls, 1971) [9]. Applied to the agrarian sector, this implies that land-tenure policies including the granting of large-scale Hak Guna Usaha (HGU) concessions should be assessed by the extent to which they improve the position of small farmers, agricultural labourers, and indigenous communities who have historically been the most disadvantaged. Rawls's principle of fair equality of opportunity further suggests that agrarian policies must ensure meaningful access to sufficient land for citizens to farm and live with dignity, rather than merely providing legal certainty for large investors. In this way, the Pancasila principle of social justice and the constitutional mandate in Pasal 33 resonate with contemporary justice theory and offer a normative benchmark for evaluating whether post-UUPA agrarian law and policy are moving toward substantive justice.

Normative studies that integrate national law and Islamic law perspectives show that the UUPA contains elements of both distributive and corrective justice, which can be enriched by the principles of justice in fiqh muamalah (Anam, 2024) [1]. Concepts such as the prohibition of

excessive land accumulation and the obligation to redistribute resources to those in need well-established in Islamic legal literature are consistent with the UUPA's ideas on maximum landholding limits and the obligation to cultivate land personally (Anam, 2024) [1]. This integration opens the possibility of developing an agrarian-justice model that is not merely legal-formal but also rooted in a living social ethic of justice, so that agrarian reform does not stop at administrative redistribution but also transforms underlying power relations over land. From a legal-political perspective, the success of agrarian reform therefore requires political-legal consistency with constitutional values especially the social function of land and people's prosperity so that agrarian policy does not devolve into a mere instrument of capital accumulation.

Despite this progressive normative framework, various studies point to a degradation of agrarian justice in practice, particularly after the proliferation of sectoral statutes and omnibus-law-type legislation that expands the space for large-scale investment. This degradation is reflected in the weakening of protection for indigenous peoples and smallholders, the massive expansion of HGU concessions and other land-use permits in forestry, plantation, and mining sectors, and the rising number of agrarian conflicts in many regions (GoodStats, 2025 [5]. Data compiled by KPA and monitoring institutions show a steady increase in conflicts, with large areas affected and victims including farmers, indigenous communities, and coastal populations, indicating that regulatory fragmentation and overlap have shifted the UUPA's orientation away from social justice toward the use of land as an instrument of growth that insufficiently accounts for vulnerable groups.

Within a normative juridical framework, this regulatory disharmony can be analysed using statute, conceptual, and historical approaches to trace shifts in agrarian policy orientation over time. The statute approach enables systematic mapping of the hierarchy of agrarian-related laws from the UUD 1945, UUPA, Tap MPR No. IX/MPR/2001, Peraturan Presiden No. 86 Tahun 2018 tentang Reforma Agraria and various sectoral laws so as to test their consistency with the goal of equitable land tenure. The conceptual approach clarifies key concepts such as the State's right to control, the social function of land, agrarian justice, and agrarian reform, and then links them to Rawlsian justice and Islamic distributive justice to build a coherent analytical framework. Meanwhile, the historical approach traces how the justice orientation of the UUPA has been reinterpreted through successive political regimes from the Old Order and New Order to the reform era to explain why many agrarian-justice norms remain weak in implementation.

Normative analysis informed by justice theory ultimately suggests that genuine agrarian law reform requires repositioning the UUPA as the foundational agrarian statute guiding all sectoral policies and a systematic reconstruction of subordinate regulations to align them with social justice, Rawls's difference principle, and Islamic distributive justice (Anam, 2024) [1]. This agenda entails strengthening recognition and protection of indigenous and smallholder land rights, enforcing stricter maximum limits on large-scale landholdings, implementing the social function of land consistently, and creating transparent, accountable, and participatory mechanisms for land redistribution. In addition, agrarian conflict-resolution mechanisms must be oriented toward restoring substantive justice for affected communities, rather than merely achieving administrative closure, by using social justice and the protection of the most vulnerable as primary reference points. In this way, normative juridical research on agrarian law reform after the UUPA not only illuminates the gap between norms and practice but also provides a robust conceptual and legal basis for designing agrarian policies that are more human-centred, inclusive, and socially just.

Regulatory Disharmony and Challenges of Agrarian Law Reform

Regulatory disharmony in Indonesia's agrarian sector is rooted in the fact that the 1960 Basic Agrarian Law (UUPA) has never been consistently treated as an overarching umbrella act for all norms governing land and natural resources. Normative studies show that, after the UUPA was enacted, the State produced a series of sectoral laws on forestry, mining, spatial planning, investment, and natural-resource management that rest on principles and policy orientations quite different from those of the UUPA (Widjaja, 2025) [14]. Forestry, mining, and spatial-planning laws, together with associated licensing regimes, are largely built on a conservation–exploitation and pro-capital logic, whereas the UUPA emphasises the social function of land, a bias in favour of smallholders, and agrarian justice. This divergence of principles has generated legal disharmony and overlapping competences, so that the agrarian-justice objectives that form the normative core of the UUPA are repeatedly reduced by sectoral interests oriented toward economic growth and investment.

In practice, this disharmony manifests clearly in overlapping regulations and the granting of large-scale land-use rights to corporations through instruments such as Hak Guna Usaha (HGU), forest-utilisation permits, and mining licences which frequently override the rights of indigenous peoples, small farmers, and local communities (Rahadiyan Veda Mahardika *et al*., 2022) [8]. Research on agrarian regulatory disharmony notes that such permits are often issued over customary (ulayat) lands or long-cultivated plots without adequate legal recognition and protection for the existing occupants. In the forestry sector, for instance, the designation and release of forest areas, when not synchronised with land and spatial-planning policies, has generated overlapping claims, institutional conflicts, and increased opportunities for corruption and abuse of licensing discretion. Similar patterns are evident in mining and plantation sectors, where sectoral statutes grant extensive, long-term concessions while recognition of indigenous and smallholder rights is minimal or merely declaratory.

The direct consequence of this regulatory disharmony is the proliferation of both normative conflicts and on-the-ground agrarian conflicts, because norms on protection and empowerment of communities are often weaker than norms facilitating resource exploitation. Studies on agrarian conflicts show that disputes between communities and plantation, mining, or forestry companies typically stem from overlapping legal claims and non-transparent licensing procedures, in which business permits are issued without meaningful consultation with affected communities. From the standpoint of justice theory, this situation reflects the State's failure to fulfil its constitutional obligation to guarantee citizens' rights to land as part of the right to a decent livelihood, and it contradicts John Rawls's difference

principle, which requires that social and economic arrangements benefit those who are worst off (Rawls, 1971) [9]. When sectoral regulations favour investment and capital accumulation while access and legal protection for small farmers and indigenous peoples remain weak, the legal structure systematically reinforces agrarian injustice.

The pattern of inequality has become even more pronounced following the adoption of the Omnibus Law on Job Creation (Undang-Undang Cipta Kerja), which amends numerous provisions on land and natural-resource licensing. Normative analyses conclude that the Job Creation Law extends and facilitates the renewal of HGU and HGB, simplifies licensing for businesses, and strengthens the role of the Land Bank, but does not provide commensurate guarantees for local community rights or for substantive agrarian reform. Critical commentators go so far as to characterise the law as "anti–agrarian reform" because it treats land primarily as a factor of production for investment, distancing policy from the UUPA's aims and the mandate of Article 33(3) of the 1945 Constitution on people's prosperity (Hukumonline, 2021). In terms of Pancasila-based social-justice theory and Rawlsian justice as fairness, this configuration deepens structural inequality by enabling further concentration of land in the hands of oligarchic groups rather than redistributing it to those who are most vulnerable.

From the perspective of legal theory, these problems can be explained using Hans Kelsen's concept of the hierarchy of norms (Stufenbau des Recht) and the doctrine of constitutional supremacy. In principle, statutes should not contradict the Constitution or basic laws such as the UUPA that embody foundational principles of agrarian justice. In reality, however, many sectoral laws contain principles and norms that deviate from the spirit of the UUPA and Pasal 33 of the Constitution for example, by ignoring the social function of land, privileging extractive resource exploitation, and minimising recognition of indigenous communities (Suhenriko, 2023) [10]. This inconsistency generates "vertical conflicts" between norms, encouraging law-enforcement bodies and bureaucracies to defer to powerful sectoral regimes rather than to the agrarian-justice principles embedded in the UUPA. Regulatory disharmony is thus not merely a technical drafting issue; it indicates a broader shift in legal-political orientation from social justice toward growth-driven policies that entail high social costs.

In terms of law reform, these findings demonstrate that agrarian law reform cannot be achieved solely through administrative programmes such as land redistribution, asset legalisation, or designation of agrarian-reform sites, without addressing the root causes of regulatory disharmony. Normative juridical research highlights the need for comprehensive harmonisation of laws relating to land and natural resources, using the Ketetapan MPR No. IX/MPR/2001 tentang Pembaruan Agraria dan Pengelolaan Sumber Daya Alam and Natural-Resource Management as principal references. Such harmonisation should include aligning fundamental principles and objectives, restructuring cross-sectoral competences, and revising provisions that enable large-scale land concentration contrary to the social function of land and agrarian justice. Consistent with Rawls's theory, this process should ensure that the basic structure of agrarian law and policy organises land-rights distribution in a way that maximally benefits those who are least advantaged, rather than entrenches existing inequalities.

Norm reconstruction in this sense involves more than formal synchronisation; it also requires strengthening recognition and protection of the rights of indigenous communities, smallholders, and local communities as primary subjects of agrarian reform. Literature on agrarian conflict stresses that recognition of customary (ulayat) rights and fair recognition of de facto cultivation rights are key to reducing structural conflict and achieving substantive justice (Syahril, M. A. F., et.al, 2025) [13]. From the perspective of Pancasila-based social justice and Islamic distributive justice, reconstruction must focus on limiting large-scale landholdings, enforcing the social function of land, and establishing transparent, participatory, and pro-poor mechanisms for land redistribution (Anam, 2024) [1]. Academic proposals have also called for the establishment of specialised agrarian courts to handle land conflicts in a manner that is more comprehensive, timely, and sensitive to social context, thereby giving real effect to agrarian-justice principles in the UUPA and the Constitution.

Accordingly, agrarian law reform grounded in normative juridical analysis must not only identify and describe regulatory disharmony but also provide a conceptual foundation for designing reforms that are more coherent, human-centred, and socially just. This approach enables reconstruction of the agrarian legal system by treating agrarian justice as fairness integrating Pancasila values, the UUPA, Rawlsian justice, and distributive-justice principles as a benchmark for assessing every sectoral policy on land and natural resources. If regulatory harmonisation, strengthened protection for marginal agrarian subjects, limits on land concentration, and restorative conflict-resolution mechanisms are not pursued seriously, land inequality and agrarian conflicts will continue to recur despite ongoing administrative reform programmes. Conversely, when agrarian law reform is grounded in a robust normative-justice framework, law can function as an emancipatory instrument to correct historical injustices and build a more equitable and sustainable agrarian order.

Conclusion

UUPA already embodies robust foundations for agrarian justice through the principles of the social function of land, limits on landholding, and an explicit orientation in favour of smallholders and indigenous peoples. However, these ideals have not been realised in practice because implementation of the UUPA is obstructed by fragmented sectoral regulations, weak law enforcement, and policy orientations that prioritise investment and capital accumulation, resulting in persistent land-tenure inequality and high levels of agrarian conflict. Viewed through the lens of Pancasila's social-justice ideals, Rawlsian justice, and Islamic legal conceptions of distributive justice, this situation indicates that the agrarian legal structure has not yet succeeded in ensuring that the greatest benefits accrue to the least advantaged groups.

The study further concludes that agrarian law reform cannot rely solely on administrative programmes such as land redistribution and asset legalisation but must be accompanied by comprehensive restructuring of the normative framework. Key steps include harmonising legislation by reinstating the UUPA as the umbrella agrarian statute, strengthening the recognition and protection of indigenous and smallholder rights, imposing stricter limits on large-scale landholdings, and designing

conflict-resolution mechanisms that genuinely restore justice for affected communities. With such an orientation, agrarian law can function as a truly transformative instrument that advances a more equitable, human-centred, and sustainable order of land tenure.

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