

Antinomy Method Approach In The Reformulation Of Profit-Sharing System As An Option For Agrarian Conflict Resolution Of Former Erfpacht Rights Plantation Lands

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Abstract

The constantly changing and evolving configuration of land affairs dimensions have the implications of causing a lot of current and ongoing conflicts of interests; therefore, it is necessary to have a method for resolving disputes or conflicts which is oriented towards emphasizing social justice and legal certainty in a synergistic and proportional way. Essentially, land cases have contested social dimensions which proceed from the characteristics of the disputes over former erfpacht plantation lands. While dealing with such land cases, general and civil courts often view them solely from the formal side of their legal relations, so the rulings often contradict the public's sense of justice. Antinomy in law teaches that there are paired values that are philosophically contested to each other in order to find a harmony between them. Agrarian reform in this sense includes land consolidation, business consolidation, and the regulation of profit-sharing and leasing relations whose object is the rights to land. The concept of profit-sharing is an instrument which is open for application and development by making adjustments to conditions in the field, whether in the field of plantation business management, in farming business or livestock business. The adjustments of profit-sharing model to current socio-economic conditions include: first, conventional profit-sharing model that is based on gross profit-sharing (deelbouw) in the spirit of agrarian reform is transformed into net profit-sharing (deelwinning). Second, in accordance with the elements of interests contained in profit-sharing transactions, in the processes of agreement formation and implementation intervention from public institutions is deemed unnecessary. Third, the nature of reciprocal relationship between parties in conventional profit-sharing leans more toward the dominant position of landowners, otherwise in a socio-economic relationship is called patron-client relationship, hence in relation with the spirit of agrarian reform more emphasis should be given to the fact that it is the farmers who are more active in production processes and consequently they should have the bigger share of profit-sharing. Fourth, the environmental conditions at disputed plantation lands implicates a very large/massive number of populace around the lands, therefore local governments as the stakeholder has the obligation to mediate and to intensively disseminate the policy of equitable and modified profit-sharing model to the communities of farmers/growers /sharecroppers.

Keywords: Plantation Land Dispute, Antinomy Method, Equitable Profit-Sharing Model

1. INTRODUCTION

a. Background Of Study

Agrarian conflict is one the hard problems faced by Indonesian people which to date has not found satisfactory solutions. The surge of agrarian conflicts indicates a crisis in the constructs

of politics and agrarian law. The agrarian politics which have been developed and are still ongoing today are viewed by a number of writers as a pro-capitalism-neoliberal agrarian political entity that neglects the interests of farmers, fishermen, laborers and cultural communities (Aprianto, 2009, p. 3). As for the developed agrarian law, it is regarded to be influenced by the interests of big financiers that subsequently allow control of land and natural resources on a large and continuous scale (Khasanah, 2014, p.5).

The issuance of the Decree of People's Consultative Assembly No. 9 of 2001 on Agrarian Reform and Management of Natural Resources has become the most recent encouragement of agrarian reform, but so far the shape of such agrarian reform has not been clearly constructed. The pledge to redistribute 9.25 million hectares of state lands to underprivileged farmers, declared by President Yudhoyono on TVRI in early 2007 and followed by Presidential Decree No. 11 of 2010 on the Regulation and Utilization of Abandoned Lands, to date is still hanging up in the air. According to some reports on the results of monitoring and evaluation conducted by the National Development Planning Agency, in 2015 the outcome of the redistribution of state lands reached 85.415 fields, measuring 76.873,5 hectares. This means that of the target laid out in the Nine Ideals, the Ministry of Agrarian and Spatial Planning/National Land Agency could only distribute 0.85 percent of lands in a year (*Kompas*, May 7, 2016).

Throughout the history of Indonesian independence, the policies and implementations of land reform have always been influenced by politics or agrarian laws issued by the reigning regimes. In principle, the formation of agrarian politics is aimed to build a structure of an independent national economy and to provide legal certainty to Indonesian people. Compliant with the constitutional mandate, it is asserted that all agrarian sources must be utilized through state institutions for the realization of social justice for the entire Indonesian people and profusely so for the prosperity of the people. The government's strong intention to compile such agenda during the reformation era corresponded to the Decree of People's Consultative Assembly No. 9 of 2001 on Agrarian Reform and Management of Natural Resources.

Operationally, agrarian reform is aimed to restructure political systems and land laws, and it is implemented through land reform, that is, through the programs of restructuring the tenure, ownership, usage and utilization of agrarian sources as a precondition process for development. Land reform program is essentially not merely a land redistribution movement but should also be integrated with farmers' training activities, in order to prevent any negative effects. National Land Agency of the Republic of Indonesia responded to this by utilizing a more humane, wiser and more prudent option than security approach or the use of raw strength in resolving agrarian conflicts, i.e. through the declaration of National Agrarian Reform Program which takes the form of "Land Reform Plus", consisting of "Asset Reform" and "Access Reform". Land reform is the main component of the agrarian reform program that attempts to restructure the imbalanced tenure, ownership, use and utilization of agrarian sources, as well as an effort to develop the economic systems of rural communities.

Based on observations at the research site, the visible symptoms of the wave of land disputes in the region of South Malang, particularly in the vicinity of a plantation whose cultivation rights title is in the hands of PT Margosuko and which covers the areas of Jambangan and Pamotan villages in Dampit District, Malang Regency, indicated that the reasons for such disputes are: firstly, the lack of attention to the legal obligations of corporate social responsibility, as well as the corporation's own actions which ignored the environmental

development programs around the plantation areas. Secondly, the socio-economic gap factor among the communities around the plantation lands who do not own arable lands and live in a relatively non-sufficient condition, while the lands owned by the plantation company seemed to be so excessive that some of them are neglected. Due to this imbalanced socio-economic situation the local populace ventured to occupy and/or to work on the plantation lands. Thirdly, the external factors that encouraged the people to occupy, to cultivate and even to affirm their claim on lands they are now in control. These factors are mainly influenced by socio-political changes in reformation-democratization era, in addition to the experiences of redistribution of former *erfpacht* rights lands that had taken place in the same area in 2008, particularly in Summersuko village, Sukodono village and Srimulyo village, Dampit District, measuring of more than 300 hectares. Fourthly, the issuances of the certificates of cultivation rights title, certificate no. 3 for Jambangan village, certificate no. 14 for Pamotan village, certificate no. 15 for Pamotan village, certificate no. 17 for Pamotan village, and certificate no. 18 for Pamotan village, based on the application for renewal of licence submitted by PT Margosuko.

Land disputes around the plantation had become an urgent issue to be addressed, since delays in its resolution would result in the weakening of law enforcement function and assurance of legal certainty, and in turn it would smear the authority of law itself. One important thing to be addressed is to disentangle the roots of the legal problems via reconstructing the overlapping land-reform-related regulations as a result of sectoralism in legislation.

As a reference in the search for solution from legal aspects, an approach might be proposed within the context of agrarian reform. In general, agrarian reform could only be interpreted as a land reform, even in a narrower form as merely a redistribution of land. In fact the mandate of agrarian reform, particularly the part that touched on land as the principal object, in the “Opinion” part of the Agrarian Protection Law, point (d), it is stated that “.... the state is obligated to regulate land ownership and to direct its utilization, so that all lands across the sovereign territory of the nation are used for the greater prosperity of the people” After that, the essentials related to land are re-emphasized in the Decree of People’s Consultative Assembly No. 9 of 2001 article 5 point (b): “To carry out equitable rearrangement of tenure, ownership, usage and utilization of land (land reform) with due regard to land ownership for the people”.

Of the mandate addressed to the State – in which case the Government – to implement the agrarian reform, what steps should be taken in the pursuit of a socially equitable resolution for land disputes? The appropriate thing to do in the pursuit of an alternative to such dispute resolution is to ensure that no group should feel either disadvantaged or advantaged, whether it is the farmers/growers, the plantations, or the government. A good solution to all parties should take the form of a dispute resolution which embraces all related parties in order to achieve an agreement that does not result in the principle of “win-lose”, instead pays more attention to and appreciate the interests of all parties equitably, or by promoting the principle of “win-win solution”. Therefore, the most appropriate institution to resolve land disputes in the plantation sector is not an adjudication institution (i.e. the court), but non-adjudication ones such as mediation or conciliation institutions.

While the concept that becomes the basis for resolving disputes over lands with cultivation rights title on behalf of the plantation companies still attached to them is the concept of land reform, since it is not possible to redistribute the lands as is the case with free state lands

(*freelandsdomein*). Therefore, the approach of land tenure reform concept, when interpreted broadly, is the best solution with regard to the issues of social relationships with land. That is, agrarian reform can also take the forms of land consolidation, business consolidation, and regulation of land leasing and profit-sharing (Syahyuti, 2011, p. 9). The structuring of a more equitable profit-sharing system is an antinomic approach, as it is a quite important component within the context of land dispute resolution on the side of non-land-reform.

b. Problem Formulation

Based on the explanation of the background of the problem above, the research problems can be formulated as follows:

1. What is the model for the handling of disputes over plantation lands with cultivation rights title attached between farmers and plantation firms, in which antinomically the concept of formalistic legal enforcement is opposed to the approach of substantial justice?
2. How to reformulate an equitable concept of profit-sharing as the solution to the disputes over plantation lands with cultivation rights attached, based on the approach of value antinomy method?

c. Research Objectives

The solution to the disputes between poor farmers and plantation companies over plantation lands with attached cultivation rights title should be approached with a method that is based on local wisdom and is good for all sides. The method is intended as a form of dispute resolution by digging up the roots of the social and legal problem and by involving all concerned parties in order to obtain an agreement that does not lead to the “win-lose” principle, but is more concerned with and value all interests in a balanced manner, or by promoting the “win-win” solution. In line with those wishes, the objectives of this study is to determine the proportionality of the legal-formal element of land rights to the substantive justice element which adheres to the principle of land for farmers adopted in Basic Agrarian Law.

Meanwhile, this research is expected to contribute to the enrichment of knowledge for local government staff, in accordance with their authorities, functions and roles as mediator in the resolution of plantation land disputes/conflicts whose cases have taken a multi-dimensional nature.

d. Literature Review

Historical Study: The Rights of Indigenous Communities over Plantation Lands

Land is a very important natural resource since almost every aspect of life depends on its existence, therefore land is not only interpreted as an asset but also as an access to economic, social and political resources. As a consequence, the nuances and models of agrarian life in a society in a particular nation are highly dependent on the politics of agrarian law of that nation’s government (Nur, 2012, p. 23). During the pre-independence era, the developed agrarian politics were the colonial agrarian ones which placed the colonies as a source of wealth for the parent state. The agrarian policies applied were very unfair and they hurt the indigenous communities when their lands were seized and they themselves were forced to

become farm laborers used to grow crops which were that period's trading commodity. It was this colonial condition which initially triggered the onset of the turbulent resistance by Indonesian people (Mu'adi, 2008, p. 159).

The system of forced cultivation (*cultuurstelsel*) by van den Bosch was implemented via agrarian politics and it changed the structures of land ownership and rights to land, since all colonial lands became the property of the ruler, in this case the colonial government, and that village chiefs were regarded as renting village lands from the government and the peasants themselves were seen as borrowing from the village chiefs. Based on the reconstruction of the substance of *cultuurstelsel* it was determined that land owners no longer needed to pay land rents in the form of 2/5 of agricultural products, but 1/5 of lands under their control had to be used for growing certain commodity plants as desired by the government. At the time of *cultuurstelsel* a liberal movement in the field of agriculture emerged which demanded that: first, the government acknowledge the control of lands by natives as property rights (*eigendom*), allowing for the selling and leasing of lands since according to customary law lands under communal rights could not be sold or leased to outsiders. Second, in order to put plantation lands under the domain rights of the state, the government gave private entrepreneurs the opportunity to obtain concession rights to manage those plantation lands in long term and economically through the granting of *erfpacht* rights.

To provide a juridically stronger basis, the colonial government subsequently enacted the *Agrarische Wet Staatsblad* No. 55 of 1870, followed by the issuance of *Agrarische Besluit Staatsblad* No. 118 of 1870 which contained the principle of *Domein Verklaring*. This provision was a form of denial of the traditional rights of indigenous population to their ancestral lands, as well as the colonial government's legal basis to develop investment programs by granting *erfpacht* rights to private entrepreneurships.

For two and a half centuries of colonial period, feudalism and colonialism caused the indigenous people to live in poverty, oppression and inequality in the tenure/possession of rights to lands. This condition sped up the birth of a nationalist-independence movement, which attempted to radically transform the entire structure in order to achieve justice for all Indonesian people. Taking notes from more developed countries, Indonesian founders had realized from the beginning that it was necessary to have a development program based on realignment of agrarian sources, in particular land, before industrialization could be achieved. The post-colonial agrarian reform movement by the rural masses who demanded justice and prosperity was shaped by national politics, wherein the demands of the mass of peasantry in the 1950s were no longer sectoral in nature but were directed to the central government and had a very nationalistic theme such as, "the nationalization of all lands", "the rights of the state to all lands" and "lands for farmers" (Aprianto, 2009, p. 6). It was this movement that influenced the stance of the government of the Republic of Indonesia when issuing Emergency Law No. 8 of 1954, which regulated the settlements of occupations and cultivation of lands that used to be the plantation companies' property. This law was then amended and supplemented by the Emergency Law No. 1 of 1956, which was ultimately replaced by Emergency Law No. 51 of 1960 on the Prohibition of Use of Land without Permission from the Entitled Owners or Their Proxies, which among other things regulated the settlement of former plantation lands, former woodlands and other lands worked on by the local populace.

According to the legislation, any acts of occupation and cultivation of abandoned lands used to be the property of private Dutch plantation companies by masses of peasantry were not declared as an act of annexation which violated the law, but could be settled in the following two ways: first, the peasant masses who occupied plantation lands that were already possessed by the state were granted certain rights after they had qualified for the requirements stipulated by the Ministry of Agrarian Affairs. Second, based on Article 5, section 4 of Law No. 51 of 1960, plantation companies whose lands had been occupied without their permission were entitled to a settlement conducted through negotiations which should have been attended by the following elements: a Settlement Committee, the local Populace, and the Company. This legal legitimacy was also taken advantage of by farmers' political powers to carry out their acts of taking control of companies funded by Dutch colonialists. Ultimately, those acts were able to persuade Indonesian government to nationalize various companies funded by colonialists through the issuance of a government regulation in lieu of law which was ratified by Law No. 86 of 1958, LN 1958 No. 162 on the Nationalization of Dutch-Owned Companies in Indonesian Territory.

The formation of Law No. 5 of 1960 on Basic Agrarian Law (BAL), was followed by Government Regulation in lieu of law No. 56/PRP/1960 on the Determination of the Size of Agricultural Lands, in association with Government Regulation No. 224 of 1961 on the Implementation of Land Distribution and Compensation, otherwise known as the land reform program. This model of agrarian reform, with its background of the long process of BAL formation, has a populist trait and was meant to replace previous agrarian laws which did not side with the public. The land reform program which was followed by land redistribution as ruled by BAL was planned to be implemented in two stages: first, in the regions of Java, Madura, Bali, and Nusa Tenggara; second, in other regions of Indonesia, and the whole program was expected to be completed in 3 to 5 years time.

One of the reasons for the issuance of land reform program during the era of the Old Order was as an attempt to prevent post-independence conflicts and protracted disputes, but the program failed due to (Mu'adi, 2008, p. 169):

- a. the slowness of government practices in relation to the state's rights to control;
- b. the demands of peasant masses who wanted to redistribute lands speedily, resulting in unilateral actions;
- c. anti-reform elements that performed various mobilizations of power to foil land reform;
- d. the clash between anti- and pro-land reform factions which was an extension of the violent clashes at the state elites' level.

It is these impediments to land reform which were used by both pros and cons as the reason for unilateral actions, undertaken by both landless peasant masses and landlords and rich farmers who held large areas of land, which initiated land disputes in general including those over former *erfpacht* rights plantation lands which used to be Dutch plantation companies' property. Political conflicts during the leadership of President Sukarno from around 1959 to 1967 resulted in the cessation of land reform program in Indonesia until the end of the reign of the Old Order government.

Under President Suharto's leadership, the government set a new ideology, namely developmentalism, which was regarded as the new face of capitalism – since this

development strategy was performed by association with international capitalism – and which triggered the increase of land disputes. As a result, the New Order government had to practice violence and repression in resolving the disputes, under the pretext of creating national stability as the inseparable requirement for the achievement of economic growth and equity, also known as the development trilogy of the New Order.

The agrarian reform movement spearheaded by people's movement activists and students in the era that followed the collapse of the New Order regime gradually underwent a significant development. In the reformation era, the agenda of Indonesian agrarian reform as a mutual movement was derived from the government's strong will, whose implementation consistently adhered to the provisions of BAL, and which was a policy born of the philosophies of Pancasila and the 1945 Constitution, further strengthened by the Decree of People's Consultative Assembly No. 9 of 2001 which was placed as the postulate of equitable national development.

The Concept of Agrarian Reform and Antinomy Method in the Enforcement of Law in Agrarian Conflicts

Essentially, agrarian reform is the answer to the problems emerging in agrarian structures within any society, particularly in the anticipation and completion of agrarian transition, whether it leads to capitalism or socialism. Therefore, every program and agenda of agrarian reform always differs in accordance to the differences in its agrarian structure and political system. However, the fundamental similarity in the concept of agrarian reform in several countries refers, among other things, to the logic of equal distribution of resources. The terms 'agrarian reform' and 'land reform' can be used interchangeably as they have similar meanings, but in literature the concept of agrarian reform is strongly emphasized as a reformation effort or a social alteration which is deliberately undertaken to transform agrarian structure into a healthier and more equitable agrarian system for the sake of the development of rural agriculture and the welfare of rural populace. While land reform in its most minimal sense is defined as a land redistribution program and profit sharing regulation, or substantively as an allocation of land as the agricultural resource which embodies economic democracy (Mulyani et al., 2011, p.40).

Agrarian reform and natural resource management have been established by People's Consultative Assembly in the Decree of People's Consultative Assembly No. 9 of 2001 and have been set up as the political direction of agrarian law in the reformation era. This legislation has mandated agrarian reform which includes rearrangement of ownership, tenure, use and utilization of agrarian resources. This Decree of People's Consultative Assembly should be the government's guide in implementing agrarian law politics which are more responsive to the needs of the public.

Agrarian policies include two inseparable dimensions, namely political aspects and legal aspects. The position of law in a country is partly the result of political struggles, while the state itself is a community born of national legal order. Agrarian law politics were turned into a principle of positive law and the only existing framework in the society, and this condition would subsequently ignore other legal principles which do not require the existence of state authority as the determiner of their legality and yet have previously existed and entrenched in people's lives. It is this dichotomous atmosphere of the interpretation of essential rules which, among other, potential for generating prolonged conflicts (Imron, 2015, p. 238).

Agrarian conflicts are symptoms of a crisis in the structures of political and agrarian law; this situation was viewed by Satjipto Rahardjo as an anomaly which subsequently gave birth to the crisis. The old capitalist-liberalist agrarian law paradigm as well as its legal-positivistic justice system could not adapt to the progress of time thus requiring a new paradigm in order to view the world differently, that is, through a progressive law paradigm. In essence, progressive law paradigm puts more emphasis on the servitude of law in the society and is oriented toward the values of a substantial equitable law rather than procedural justice (Kusuma, 2009, p. 64). The emergence of the idea of a progressive law is certainly inseparable from Satjipto Rahardjo's brilliant achievement in opening the horizons of the study of law in Indonesia which initiated the birth of the idea of progressive law, due to a background of anxiety and concern over the failure of the enforcement of rule of law in Indonesia so far.

Satjipto Rahardjo asserted that in this world there was not only one type or way of observing the law. There were ways of observing the law which merely followed the sounds of legislation articles, but there were also others which made those legislations their inspiration and moral guidance to further act creatively. These options should be utilized. It is too costly for the state law of Indonesia to become a country that merely implements the words written in its legislations. In the current atmosphere of crisis and degradation, law needs to be implemented in a visionary way. For that reason there needs to be an audacity for rule breaking and coming out of the routines of law implementation, that is, out of the box lawyering. Law enforcement does not stop at enforcing the law as it is, within the call of law, but it has become a creative act, beyond the call of law (Rahardjo, 2010, pp. 168-169).

The configurations of the dimensions of land affairs are constantly changing and developing, with the implications of causing a lot of conflicts of interest that continue to the present. Therefore, there should be a method of settling disputes or conflicts which is oriented to pressing for social justice and legal certainty, in a synergistic and proportional way. Essentially, land cases contain social dimensions that are contested to each other, ranging from social relationships, continuity of communities, to self-respect and dignity. Proceeding from the facts in the middle of those conflicts, General and Civil Courts often handle the land cases from the side of the formality of legal relationships (tenure/ownership) between the person/community and the land alone.

Through the conceptual approach for the components of legal system in the enforcement of the rule of law in a country by Lawrence M. Friedmann (Abdurrahman, 1987, p. 86), experts argued that the failure of the enforcement of rule of law in Indonesia lay in the weakness of the cultural component of law, compared to the other two components i.e. substance component of law and structural component of law. And then, when viewed from scientific aspect by following the suggestions made by Thomas S. Kuhn that science developed cumulatively and revolutionarily, then one day there would be an anomaly that would give birth to a crisis. That is, when the old paradigm can no longer face a growing crisis a new paradigm will be born. If this was a proposition, what kind of legal paradigm in law enforcement is desirable in the crisis?

In such situation, Kusuma (2009, p. 6) suggested that legal paradigm has two merits: one, legal paradigm as a legal "railway" used to guide legal system in achieving the rule of law; two, the idea of progressive law which could make legal paradigm as the foundation of thinking in resolving the problem of the lack of law enforcement in Indonesia.

Satjipto Rahardjo's ideas about progressive law which were inspired by a few famous philosophers were basically also in line with the views of Nonet and Zelznick, particularly those related to the order of responsive law whose traits included: one, that law should be functional, pragmatic and rational, as well as having clear directions; two, that its purpose should be to set standards for criticisms against the occurring incidences (Sidharta, 1999, p. 52). The theory of responsive law essentially stresses that law should always be sensitive to developments in the society, and that its most prominent trait should offer more than procedural justice, be oriented to justice, be more attentive to public interest, and promote substantial justice.

Satjipto Rahardjo (2010, p. 192) in his orientation associated legal culture with the implementation of law as a manifestation the principles that surrounded law. When we want to ground the law the task is undertaken by the judiciary institution (the court) which interacts with its social environment; in other words, it is the court that concretize (*das sein*) law from its previous abstract state (*das sollen*). Through the organization of the judiciary institution the process is still ongoing and the public receives manifestations of legal objectives implicitly set out in its decisions. A progressive-minded judge would make themselves as part of the society and would always ask, "What role can I provide in this reformation era?" "What do my people want from this reform?" Thus they would refuse the assertion that their jobs are merely to spell out legislations. A progressive judge will always put an ear to the heartbeat of their people.

The practices of law as well as legalistic and formalistic law enforcement that are developing today are inseparable from the nature of modern law whose embryo originated in modern Europe and was formed through a long process that gave birth to a legal culture whose qualities include liberalism, capitalism and individualism. Implications of a rational and bureaucratic modern law are the emergence of branching or bifurcations in the terms of law and the court is no longer the place to seek justice but also to enforce regulations (Susanto, 2005, p. 158). This context affects the role of court by turning it to a bureaucratic and technical place to get winnings, and so whoever is the dominant and skilled one in playing with the rules they will be the victor.

The principle of progressive law paradigm requires that judges are not allowed to merely perform logical constructions in making decisions; they should be able to shed some light – through their decisions – to deliver the nation to its ideals of achieving a just and prosperous life. When judges are faced with the task of finding law in agrarian conflict cases, they were required to be able to unravel the very complex sources of conflicts, to constellate the actual incidences, to uncover the values and principles of law and the rules of law, and then to take a stand based on their conscience before making a decision.

Based on the adagium *ius curia novit*, judges are regarded as knowing and understanding law. The activity of finding law is a judge's task and not the obligations of all parties, so in deliberating their decisions judges are required by their office to complete the legal motives undisclosed by all parties (Article 176 section 1 of *Herziene Inlandsch Reglement/Revised Regulations for Inlanders [HIR]*). To complete those legal motives, judges should undergo the process of law finding and deal with systems of values and norms as an effort to obtain the objective of law, namely justice. Furthermore, to avoid allegations of arbitrariness judges are required to provide assurance of legal certainty. Legal certainty is a value which in principle provides legal protection for every citizen from arbitrary acts of the ruling power (Manullang,

2007, p. 95). With regard to the value of justice, there are diverse conceptions since the substance of the theory of justice was developed by diverse scholars, but in general the formal elements of justice according to Hans Kelsen and Rawls (Kusuma, 2009, p. 100) are: first, that justice is a value that directs all parties to protect the rights guaranteed by law (the element of rights); second, that this protection should ultimately benefit every individual (the element of benefit).

In the process of finding and enforcing law, judges face the fact that there exists an antinomy between the demand for legal certainty and the demand for justice. In the context of law enforcement, merely promoting the value of justice will not automatically provide legal certainty. Therefore, a definite law should also be just and a just law should also provide certainty. In such situation both values – philosophically contain the “good” and “bad” values – experience an antinomy, because at a certain level and significance the values of certainty and justice should be able to ensure the rights of every person impartially and on the other hand should benefit the concerned parties.

As outlined beforehand, agrarian conflicts in the history of Indonesia generally appear to outsiders as horizontal ones but in reality they are structural or vertical, since the involved parties are in fact associated with capital powers and/or the dominant political powers.

In truth judges and other law enforcers still have wide opportunities to do some rule breaking in resolving agrarian conflicts that are based on the antinomy of values by advancing more substantive justice, by aiming profusely for public welfare. Adhering to the principle of judicial independence, in certain cases a judge may decide on an unsolicited case of which several related jurisprudences are: 1) the jurisprudence of Supreme Court No. 556/Sip/1971 of January 8, 1971, which asserts that to concede more than what is claimed is allowed as long it is still appropriate to the material event; 2) the jurisprudence No. 610K/Sip/1968 of May 23, 1971, which asserts that *judex facti* decisions which are based on *petitum subsider* to be tried according to court wisdom (*ex aequo et bono*) are justifiable as long as they are still appropriate to the primary lawsuit.

Land disputes or agrarian conflicts that frequently happen in Indonesia are a kind of social conflict which stemmed from a wide range of issues and already involved political, economic and socio-cultural aspects. The efforts to resolve social conflicts from regulatory perspective have already been anticipated by the issuance of Law No. 7 of 2012 on the Treatment of Social Conflicts. The substance of this legislation includes conflict prevention, conflict cessation, post-conflict recovery, conflict state status, and the state apparatuses authorized to resolve the conflicts.

One of the provisions regarded as relatively progressive is the recognition of customary and social institutions as one of the instruments of conflict resolution. In fact customary law is in accordance with basic national agrarian law, thus even if it is not regulated in formal institutional regulations or conventions it will truthfully work on its own to resolve the ongoing conflicts. However, setting up this institution in a regulation will strengthen its position more (Nur, 2012, p. 28).

2. RESEARCH METHOD

The nature of this law research is socio-legal jurisprudence, in the form of a case study in order to find concepts related to the processes of the occurrence and the workings of law

within the society. The analysis is focused on the disputants' efforts to claim their rights over controlled plantation lands, via either formal paths or via unilateral actions based on the law arguments developing in the society.

In order to find a solution to agrarian conflicts the approaches used in the current research are conceptual and case approaches (Marzuki, 2007, p. 93). Conceptual approach was conducted in order to build a concept to be used as the stepping stone in understanding law phenomena as a system of discipline. Data collection or the collection of any information from a natural background is obtained completely and thoroughly from research subjects or informants using snowballing technique.

The collection of secondary data was conducted through a study on library materials or documentation study, by applying content analysis. The application of content analysis is meant to untangle law library materials from the primary data source, i.e. the legislations. The activity conducted to obtain secondary data sources in the form of non-legal library materials such as textbooks, journals of law and the internet, is placed as the main data source in the analysis of the case discussed in this research.

The processing and analysis of data in this study was conducted qualitatively. Presentation of the results of the study (the outcome of data processing) was combined with data analysis. This follows the suggestion made by Soekanto (1986, p. 68-69), that in normative studies that examined secondary data the presentation of data was done simultaneously with the analysis. That is, the collected data is fused with the analysis associated with the investigated case into a coherent whole and so as not merely descriptive in nature.

3. RESULTS AND DISCUSSION

a. General Description of Plantation Land Disputes in the South Region of Malang

Land disputes that take place in plantation areas can generally be categorized as social conflicts, either vertical or horizontal. From the perspective of law there are at least three categories of conflict, namely conflict of interests, conflict of values, and conflict of norms (Nurjaya, 2008, p. 13). Agrarian conflicts as the manifestation of conflicts in laws that regulate the issues of agrarian law, in particular of land, are mostly caused by conflicts of interests regarding objects in the form of land as the welfare-supporting resource. Plantation land disputes in addition to being a legacy of the past regime in which control over the rights to plantation lands was mismanaged, are also due to development policies which were based on development of plantation commodities that required the availability of land. In the process to make lands available for the aforementioned needs, local governments often have to sacrifice the interests of the local populace for the benefit of development.

Plantation land dispute cases which swept through South Malang indicate a type of latent dispute because the roots of the problem had emerged since the colonial period along with accompanying chain of socio-political and law events to the post-independence period. According to info obtained at research site, there was a dispute between the holder of cultivation rights title, PTPN XII of Kalibakar Estate, and the community of Ringinkembar Village who claimed that Kalibakar Estate used to be worked on by their predecessors by consent of the Japanese government in 1942, as it had been abandoned by the Dutch plantation company that held the *erfpacht* rights to it. The farmers protested to the government who had issued license renewal for cultivation rights No. 1 and 2 of 1992 to PTPN XII, and they demanded that Kalibakar Estate be returned to them. As a result of

communication deadlock between the disputing parties, the farmers from Ringinkembar Village and Tambaksari Village, Sumbermanjing Wetan District, made a direct confrontation by occupying parts of the *Afdeling* lands in Petung Ombo and TT Woodland claimed to be part of the villages' communal land.

Plantation land disputes that involved PTPN XII of Kalibakar Estate and the local populace in the region of South Malang have become widespread and will continue to heat up unless a solution is given. To date, as per collected data, the extent of the plantation land disputes between PTPN XII of Kalibakar Estate and local farmers comprises 6 villages in 3 districts, i.e. Tlogosari Village, Tirtoyudo Village and Kepatihan Village in Tirtoyudo District; Simojayan Village in Ampelgading District; Bumirejo Village and Baturetno Village in Dampit District, Malang Regency. To obtain a more comprehensive comparison, the map of land disputes in Malang Regency is described as follows:

MAP OF LAND DISPUTES AND CONFLICTS IN MALANG REGENCY*

No	Holder of Rights to Land	Size/ hectare	Location (District: Village)	Classification of Dispute	Typology of Case	Use
1	Indonesian State Forestry Company (Perhutani)	457,3405	Tirtoyudo: Taman Satryan	Perhutani vs. local populace	Control & ownership of land	Plantation & fields
2	PTPN XII	883	Wonosari: Bangelan	PTPN XII vs. local populace	Control & ownership of land	Plantation & fields
3	Pancursari Plantation	408,1503	Sumbermanjing Wetan: Ringinkembar, Tambaksari	PTPN XII vs. local populace	Control & ownership of land	Plantation & fields
4	The Defense Ministry of Republic of Indonesia, CQ the Army	581	Sumbermanjing Wetan: Ringinkembar	Indonesian National Military (the Army) vs. local populace	Control & ownership of land	Plantation & fields
5	The Defense Ministry of Republic of Indonesia, CQ the Army	482	Sumbermanjing Wetan: Harjokuncaran	Indonesian National Military (the Army) vs. local populace	Control & ownership of land	Plantation & fields
6	The Defense Ministry of Republic of Indonesia, CQ the Army	60	Lawang: Wonorejo	Indonesian National Military (the Army) vs. local populace	Control & ownership of land	Plantation
7	The Defense Ministry of Republic of Indonesia, CQ the Navy	4.811	Pagak, Bantur & Gedangan: Tlogorejo, Sempol, Pagak, Pringgodani, Bantur, Bandungrejo & Gedangan	Indonesian National Military (the Navy) vs. local populace	Control & ownership of land	Indonesian National Military combat training centre - Navy/Marine
8	The Defense Ministry of Republic of Indonesia, CQ the Air Force	13,5	Jabung: Kemantren, Sukolilo	Indonesian National Military (the Air Force) vs. local populace	Control & ownership of land	Indonesian National Military supporting facilities – Air Force
9	The Defense Ministry of Republic of Indonesia, CQ the Air Force	306,4620	Singosari: Dengkol	Indonesian National Military (the Air Force) vs. local populace	Control & ownership of land	Airfield facilities

*Source: Land Affairs Office of Malang Regency, 2013

The differences between the nature of the land dispute that involves PTPN XII of Kalibakar Estate in Sumbermanjing Wetan District and that of the land dispute that involves PT

Sumbersuko in Dampit District, both in Malang Regency, lies in social change factor which manifested in a typical reality, the defiance of farmer groups against the stagnated national agrarian policy (Sukardi, 2013, p. 10). PT Margosuko was formed and founded in 1923 and from the beginning it has been a local plantation company owned by a native named Abdoel Karim Kertosastro, who controlled a plantation area of 332 hectares located at Pamotan Village and Jambangan Village, Dampit District, Malang Regency. With regard to the enactment of Law No. 5 of 1960 on BAL and Government Regulation in Lieu of Law No. 40 of 1996 on Cultivation Rights Title, Building Rights Title, Usage Rights Title, which regulates the minimum and maximum limitations on the possession of cultivation rights area, a separation was made which then issued in 5 cultivation rights certificates. The company subsists to this day and its ownership is being held by the third generation.

The early symptoms which indicate the seeds of discord began to appear following the implementation of land reform program and redistribution of former *erfpacht* rights plantation lands in 2008, specifically at Sumbersuko Village, Sukodono Village and Srimulyo Village, Dampit District, Malang Regency, whose total size reached more than 300 hectares. Tensions mounted after a part of the rights to cultivation rights lands was given away and a portion of the plantation lands was abandoned, in addition to misuses of the plantation's business license, resulting in occupations of some of the plantation lands by farmers from around the estate. The land dispute has now become multidimensional and complex, as it is not only a legal issue but also contains social, economic and political elements, as well as embroiling various sectoral and law enforcement agencies.

Thus the manner with which to technically comprehend such agrarian conflict is through the willingness to acknowledge that land is a very important agrarian source and that nearly all aspects of life depend on its availability. With respect to this, land should be interpreted not only as an asset but also the basis for access to economic, social and political resources. The emergence of agrarian conflicts in a country is heavily dependent on the politics of the agrarian law of the ruling regime (Afrizal, 2007, p. 89). When the politics of agrarian law within the government are populist in nature, then siding with the public would minimize the occurrence of horizontal and vertical conflicts, and inversely when the agrarian law politics tend to side with the financiers conflicts might arise and continue for a prolonged time.

b. Proportionally Situating Agrarian Reform as Common Agenda

In principle, the basis of agrarian movement is a planned effort and activity which is carried out collectively and with the objective to overhaul social order in the field of agricultural affairs due to the existing social order been regarded as unfair and incompatible with the fundamental ideas of the improvement of public welfare. With regard to the fundamental goals, what is subsequently required is the formation of a collective awareness to not just view the agenda of agrarian reform as a government program but also as a national collective movement.

Investigation of the stagnation of agrarian reform program in Indonesia during the early periods of 1960 shows that it is apparently caused by the political volatility of that time as well as the political behavior of some elites who tried to derail the agenda of agrarian reform by refuting human values in 1965-1966 (Aprianto, 2009, p. 9). Misunderstandings of the nature of agrarian reform in the New Order era appear to be deliberately conditioned with the intention of transforming it into a five-year development program located in large-scale agricultural intensification projects funded by foreign aid.

The agrarian political atmosphere that was growing in Asia in that time was the beginning the green revolution movement derived from a pragmatic view interpreted as capable of increasing food production. In line with the policies of the New Order regime, the green revolution became central to the national development paradigm with the intention of removing issues of land from the memory of Indonesian people. In other words, the political regime of the New Order government had no intention to continue the agenda of agrarian reform and the consequences of such policies which utilized cutting corners approach were the emergence of various agrarian dispute cases that led to the occurrence of various forms of physical resistance by the people against the ruler.

The new agrarian reform movement gradually and autodidactically grew within the people's consciousness during the decade of the 1990s, driven by civil movement activists and student-activists, as a synthesis against various forms of oppression committed against Indonesian peasantry by their own brethren. As changes in political constellation in Indonesian democratic realm increased they initiated the beginning of a reformation movement which was related to agrarian reform, namely the Decree of People's Consultative Assembly No. 9 of 2001 on Agrarian Reform and Management of Natural Resources. The birth of the idea of an agrarian reform to this day is still relatively within the normative order because there is still no unified position among the bureaucracy or among the society on how to apply the concept of agrarian reform.

The meaning of agrarian reform is wider than land reform since it has two key objectives: first, how management of agrarian resources can achieve high productivity; second, how the activities of agrarian reform can achieve agrarian justice. Achieving the two main objectives is impossible without having a land reform first. In line with the provisions in Article 5 of the Decree of People's Consultative Assembly No. 9 of 2001, the objectives of agrarian reform are related to the aspects of "rearrangement of the control and ownership of rights to land" and "use and utilization of land" to increase the productivity of agrarian resources.

The issues emerging in the achievement of those objectives, among others, include discrepancy in the control and ownership of rights to farming and plantation lands, in particular in the shortage of land controlled privately by the public whereas private firms and state-owned enterprises are often criticized by agrarian activists for large-scale control of lands. Similar to plantation land disputes in South Malang between PTPN XII of Kalibakar Estate and growers/farmers from around Dampit District, Tirtoyudo District and Ampelgading District, which dispute 2.050 hectares cultivation rights plantation lands. Farmers made a one-sided claim that the abandoned plantation lands they were working on were state lands, while PTPN XII of Kalibakar Estate accused the farmers for stealing the lands they were controlling. The conflict over the plantation lands of PTPN XII of Kalibakar Estate has been boiling over since 1998 and today it is still unresolved, making it like a burning ember which could burst into flames any time.

The observable common indicator is the reduction of lands controlled by the public, particularly farmers/growers; this is not only due to internal problems within the public itself but also due to the capitalists' powerful influences within the political-economical constellation, as well as the state's huge authority in playing favorites in the mechanisms of formal law enforcement. In such situation, the bargaining position of farmers/growers is especially weak when faced with powerful private financiers or even the government itself. Based on the experiences of other countries with advanced industrial development, land

reform program is the right alternative to resolve the aforementioned situation and to eliminate economical power discrepancies in urban and rural areas.

Land reform in this context should be interpreted as a part of agrarian reform whose implementation should be both thorough and maintainable at the same time. Therefore its implementation should be supported by sufficient funding, starting from the planning phase, preparation, formation of executive organization, implementation, and finally the post-land-redistribution control phase. To this day land reform has not been made a definite program by the government; moreover, there have been no specific preparations for its financing budget. Land reform program is perceived as the most important element in the spirit and ideals of today's agrarian reform in the same way as the mandates of Article 5 of the Decree of People's Consultative Assembly No. 9 of 2001, which are as follows: first, undertaking a rearrangement of tenure, ownership and utilization of land in an equitable way by heeding land ownerships by the public; second, organizing data-taking of land through inventory and registration of control, ownership, use and utilization of land in comprehensive and systematic ways, for the sake of land reform. The main agenda of agrarian reform is formulated in Article 6 of the Decree of People's Consultative Assembly No. 9 of 2001 as follows: first, to undertake a review on a wide range of legislations; second, to undertake rearrangement of tenure, ownership, use and utilization of land; third, to reinstate data-taking of land; fourth, to resolve conflicts; fifth, to reinforce institutions; and sixth, to attempt to acquire financing.

In line with the government's determination to restructure tenure, ownership and use of lands, the implementation of land reform program is not only limited to the activities of land redistribution but also needs to be followed by supporting programs such as irrigation, loan, training, counseling, and agricultural market opportunities. The rearrangement of the structure of land tenure should not focus only on providing opportunities for the majority of the populace that still depend on the products of their farming lands to make a living, but land reform program is expected to become the foundation for sustainable economic and social development activities. That is, the implementation of a land reform program integrated with subsequent programs will open up opportunities for a process of capital formation in the rural areas which would serve as the basis for a solid industrialization process as well (Posterman, 2002, p. 5).

A similar land reform program was launched by the National Land Agency in 2005 on what was conceptualized as an Access Reform, namely the efforts to optimize the management of land reform object by the farmers or beneficiary growers. Access reform or land reform plus is in essence a series of interrelated and sustainable activities which include the following activities: a) providing infrastructure and production facilities; b) providing counseling and technical assistance to beneficiaries; c) providing assistance for capital support; and d) providing support in the form of market distribution and other supports.

With regard to these efforts of access reform development, beneficiaries can choose from the alternatives of managing the land individually or forming a joint venture or farmer group organization. If they choose to form farmer groups they will have to merge their lands to be used as activity lands for particular businesses through the method of land consolidation. Afterwards, those farmer groups could work together with local government, regionally-owned enterprises or private enterprises as investors to form a joint venture, e.g. a plantation business group. To support this joint venture, banks or other financial institutions are asked to provide capital support.

c. Reformulation of the Concept of Equitable Profit-Sharing as a Solution to Plantation Land Disputes

Agrarian reform, in addition to being a part of economic development program, is also significant as a political program to change the structure of control in the agrarian field through a movement of land redistribution to farmers or growers whose lives depend on agriculture products and yet are landless. Agrarian reform movement is expected to generate revitalization of agricultural sector and rural development. The indicator of such achievement is, among others, marked by assurance of the legal certainty of land tenure as well as livelihood security and assurance of employment opportunities for farmers starting with redistribution of land.

Rearrangement of agrarian structure is expected to be able to improve the management of natural resources as well as the preservation of environmental quality, food sovereignty, and farmers' production capability to bring about their families' wellbeing. Land redistribution is distribution of lands controlled by the state and which have been affirmed as objects of land reform, which are then given to farmers after they have fulfilled the specified requirements. While the broader meaning of land reform is the entire efforts to improve farmers' land tenure, both from the aspect of size and the aspect of the strength of tenure rights, whether for lands that belong to the state or those that do not. The size of the tenured lands should be adequate from the perspective of business efficiency, in particular in relation to the achievement of certain economic scales.

In certain circumstances there are regions with abundant agricultural labor but does not allow redistribution due to the fact that the plantation lands targeted as production object for the farmers are still under valid cultivation rights titles. Such situation is a form of 'delandreformisasi' (Syahyuti, 2012, p. 2), where there are processes or indicators that cause farmers to be unable to perform their activities as farmers due to the factors of law, policy stagnation, or socio-cultural environments of the local communities.

Disputed lands in the research sample are still regarded as plantation lands whose cultivation rights title is in the names of PTPN XII of Kalibakar Estate and PT Summersuko. They are located in South Malang, in the districts of Sumbermanjing Wetan and Dampit, of 740,15 hectares. *Mutatis mutandis*, they cannot be established as redistribution object. Thus the alternative solution to the disputes over the lands might take the approach of agrarian reform concept as stated by Cohen (1978): "...change in land tenure, especially the distribution of land-ownership, thereby achieving the objective of more equality". Agrarian reform in a wider perspective is interpreted as land reform and is not only associated with "use and utilization" of other people's lands but also includes all social relationships concerned with land (Syahyuti, 2012, p. 8). Therefore the meaning of agrarian reform in this understanding includes activities of land consolidation, business consolidation and regulation of profit-sharing and leasing relations whose object is rights to land.

Analogous with this line of thinking, alternative solution to disputes over plantation lands which are still under cultivation rights title owned by other parties, which means that any settlement through land reform approach will be a dead end, might use a more equitable profit-sharing approach. The concept of profit-sharing is an instrument which is open for application and development through adjustments with the conditions in the field, whether in the field of plantation product management, farming business, or livestock farming business.

Profit-sharing transactions in customary law are land-related transactions, but they cannot be said to have land as their object. In his description, Ter Haar (1976, p.125) stated the following: “I have a parcel of land but there is no prospect or chances to work on it by myself until it yields produce, nevertheless I made an agreement with someone else so that he would work on the land and cultivate it, and after harvest I will receive half of the yield as agreed upon”. In Javanese customary law, profit sharing (*deelbouw transactie*) is called *maro*, *mertelu*, *merpapat*, and is a kind of land-related transaction whose objects are labor and plants. At the beginning of the enactment of BAL the government has issued two laws on profit sharing, namely Law No. 2 of 1960 for farming profit sharing, and Law No. 16 of 1964 for profit sharing in fishing sector. However, the implementation faced many obstacles; from sociological perspective, the regulations are very weak since technically they are incompatible with the actual needs and conditions of the society at that time.

In line with the demands made of the current agrarian reform movement, activists and agrarian observers in Indonesia asked that profit-sharing model be adjusted to current socio-economical condition. A few of those adjustments are:

First, conventional profit-sharing model based on gross profit sharing (*deelbouw*) in the present spirit of agrarian reform is transformed into net profit sharing (*deelwinning*). According to the considerations of commutative equity, gross profit sharing which developed within customary traditions was based on strong social-solidarity and sense of justice when viewed from the aspect of resources used by both parties. Both sharecroppers with working investment capital and landowners with land investment suffer risks although in different intensity.

Second, in accordance with the elements of interest contained in profit-sharing transactions from the modern perspective of law, profit-sharing is included in the category of private legal relations so that in the process of agreement formation and implementation intervention from public institutions are not needed. Profit sharing in the context of alternative solution to plantation land disputes has both traits of horizontal and vertical conflicts, or has the attributes of multidimensional conflict, so the role of local government becomes very important, whether as a mediator in dispute settlements or as a custodian or a controller in the implementation of the already agreed-upon profit-sharing treaty.

Third, the nature of mutual relations between parties in conventional profit sharing leans to the dominant position of the landowners, or in socio-economical relations is called patron-client relationship, so in connection with the cultivation of the spirit of agrarian reform more emphasis should be given to the fact that the more active party in producing the shared farming/plantation products is the more important one.

Fourth, since environmental conditions around the disputed plantation lands involve a mass number of local populace the local government as a stakeholder is obliged to intensively disseminate the policy of equitable profit-sharing model to the communities of farmers/growers/sharecroppers. In order to gain an accurate understanding of the institutions and constructions of law it is necessary to have a good planning and preparation so that the model could be implemented and gain positive responses from the community.

In connection with juridical-philosophical analysis in the finding and enforcement of law in such agrarian conflicts, law officers are often faced with the reality of the existence of a

tension (antinomy) between the demands for legal certainty and the demands for justice. In order to enforce the law, promoting the values of justice does not automatically provide legal certainty. Therefore a definite law should also be just and a just law should also provide certainty. In such state the two values – philosophically contain the “good” and “bad” values – experience an antinomy, since according to a certain level and significance the values of certainty and justice should be able to guarantee the certainty of each person’s rights and on the other hand should also benefit those concerned.

The local government as the stakeholder in maintaining the stability of its region still has the quite wide space to perform rule breaking in resolving agrarian conflicts in South Malang, based on value antinomy and promotes substantive justice, as well as to implement an equitable profit-sharing model that orients to the greater welfare for all people. With regard to the authority of local government in agrarian affairs, viewed from concurrency perspective it is limited to the form and manners in cultivating or processing components of land, such as in agriculture, mining, forestry and plantations. While the issue of land ownership status which reflects the meaning of land as a symbol of the unity of the nation, it cannot be delegated to local governments or turned into the basis of regional autonomy operations.

4. CONCLUSION

1. The pattern of disputes over former *erfpacht* plantation lands in the region of South Malang which is between the farmers/growers and the government or between the farmers/growers and private plantation companies/state-owned enterprises, is distinguished based on the status of the land tenure. Disputes over former *erfpacht* plantation lands that are owned by the state are generally settled by using the approach of land reform program initiated by land redistribution. While former *erfpacht* plantation lands that are indirectly controlled by the state due to have had cultivation rights title attached to them can only be approached using land tenure programs that are characterized by cultivation of farming/plantation lands.
2. The configuration of the dimensions of land affairs constantly changes and evolves, having implications of causing many of the current and ongoing conflicts of interest. Therefore it is necessary to have a method of dispute or conflict settlement that orients to pressing for social justice and legal certainty in a synergistic and proportional way. Essentially, land cases contain contested social dimensions, ranging from social relations, religion, continuity of the community, to self-respect and dignity. Taking off from the facts among these controversies, general and civil courts often deal with those land cases merely from the side of formal legal relations (tenure/ownership) between the person/community and the land itself. Therefore, it is only natural that subsequent legal-formal settlements that result in court rulings often contradict the society’s sense of justice. Antinomy in law instructs that there are paired values that philosophically contest each other in order to find a harmony between them.
3. The disputed lands – in the research sample – which are still regarded as plantation lands in South Malang and still have cultivation rights title attached to them under the names of PTPN XII of Kalibakar Estate and PT Sumberuko, located in the districts of Sumbermanjing Wetan and Dampit and measuring 740.15 hectares, *mutatis mutandis* cannot be the object of redistribution. Therefore, the alternative solution to dispute

settlements may be the approach of agrarian reform but with a wider perspective, namely, land tenure reform. The concept is not only concerned with the relations of “use and utilization” with other people’s lands but also includes all social relationships with land. Hence the meaning of agrarian reform in this sense includes the activities of land consolidation, business consolidation and regulation of profit sharing and leasing relations whose object is rights to land.

4. The concept of profit sharing is an instrument that is open for application and development through adjustments with conditions in the field, whether in the field of plantation, farming or livestock farming. Adjustments of the profit-sharing model with current social-economical conditions includes: *first*, the conventional profit-sharing model that is based on gross profit sharing (*deelbouw*) in the spirit of agrarian reform is transformed into net profit sharing (*deelwinning*); *second*, in accordance with the elements of interest contained in profit-sharing transactions it is included in the category of private legal relations, so in the processes of agreement formation and implementation the intervention of public institutions is deemed unnecessary. Profit sharing in the context of an alternative solution to plantation land disputes has the traits of multidimensional conflict, therefore local governments have an important role, whether as a mediator in dispute settlements or as a custodian or a controller in the implementation of the agreed upon profit-sharing agreements. *Third*, the nature of reciprocal relations between parties in conventional profit sharing leans to the dominant position of landowners, or in socio-economical relationship is called patron-client relationship, so in relation to the spirit of agrarian reform more emphasis should be given to the fact that it is the farmers who are more active in production processes with the consequence that it is they who should have the bigger share of profit sharing. *Fourth*, the environmental conditions at disputed plantation lands involve a mass number of the local populace so local government as the stakeholder is obliged to intensively disseminate the policy of equitable and modified profit-sharing model to the communities of farmers/growers/sharecroppers.

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