

# The Development of Land Law Politics That Meet The Constitution, Justice and Welfare

Atik Winanti<sup>1</sup> Suhariningsih<sup>2</sup> Abdul Rachmad Budiono<sup>3</sup> Iwan Permadi<sup>4</sup>

1. PhD. Candidate, Faculty of Law, Brawijaya University

2. Professor of Agrarian Law, Faculty of Law, Brawijaya University

3. Professor of Labor Law, Faculty of Law, Brawijaya University

4. Lecturer, Faculty of Law, Brawijaya University

## Abstract

In order to realize one of the objectives of the Indonesian State Government, namely to realize public welfare, the government needs to develop the potential of natural resources in Indonesia. This is in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "the earth, water and natural resources contained therein are controlled by the state and are used for the greatest prosperity of the people". One of the natural resources possessed by the Indonesian people is the agrarian sector. Which is the very important and potential sector to be developed in the agrarian sector is plantations. The plantation business also proved to be quite resilient and withstood the storm of recession and the monetary crisis that hit the Indonesian economy. Plantation has an important and strategic role in national development so that it needs to be organized, managed, protected and utilized in a planned, opened, integrated, professional and responsible manner to improve the economy of the people, nation and state. To achieve this goal, a legal basis or legal protection is needed for plantations in Indonesia. This research was conducted to formulate how the Politics of Land Law should be built so as to fulfill the constitution, justice and prosperity of the people through the method of normative legal studies. The research was conducted with several approaches including statute approach, conceptual approach and comparative approach. The results of the study state that in order for the Land Law Politics to fulfill the constitution, prosperity and justice must be responsive. This means that in the making process of legal product must involve the community, through social groups (both NGOs, customary law communities and individuals in the community). Judging from its function, the law that has responsive character is aspirational that means it contains material that is generally in accordance with the aspirations or wishes of the people it serves, so that legal products can be viewed as a crystallization of the will of the people.

**Keywords:** Politics of Land Law, Constitution, Welfare, Justice.

## 1. Introduction

Indonesia as a country that adheres to the concept of a welfare state is required to provide prosperity and welfare for every citizen. This is as mandated by the Preamble of the 1945 Constitution of the Republic of Indonesia which states that the objectives of the Indonesia are:

- a. Protect all Indonesians and all of Indonesia's bloodshed
- b. Promote general welfare
- c. Enrich the life of a nation
- d. Participating in carrying out world order based on independence, eternal peace
- e. Social justice

In order to realize one of the goals of the Government of Indonesia, namely to realize general welfare, the government needs to develop the potential of natural resources in Indonesia. This is in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

One of natural resources owned by the Indonesian people is agrarian sector. A very important and potential sector to be developed in agrarian field is plantations. Besides, the plantation business also proved to be quite resilient and survived against the recession storms and monetary crisis that hit the Indonesian economy. It means that plantations have an important and strategic role in national development, especially in improving people prosperity and welfare, receiving foreign exchange, providing employment, adding value and competitiveness, meeting domestic consumption needs, industrial raw materials, and optimizing natural resource management sustainably. This is as stipulated in Article 3 of the Plantation Law, which states the implementation of plantations aims to:

- a. Increasing the welfare and prosperity of the people;
- b. Increase the country's foreign exchange resources
- c. Providing employment;
- d. Increase production, productivity, quality, value added, competitiveness, and market share;
- e. Increasing and fulfilling domestic consumption and raw material needs;

- f. Providing protection to Plantation Business Actors and the community;
- g. Managing and developing plantation resources optimally, responsibly and sustainably; and
- h. Increasing utilization of plantation services.

Therefore, plantations need to be organized, managed, protected and utilized in a planned, open, integrated, professional and responsible manner to improve the economy of the people, nation and state. To achieve this goal, a legal basis or legal umbrella for plantations in Indonesia is needed.

From the explanation above, the problem will be drawn, namely: How should the Land Law Policy be built to fulfill the constitution, justice and prosperity?

## 2. Research Method

This research is categorized as normative legal research, namely the process of legal research conducted to produce new arguments, theories, and concepts to answer legal issues by reviewing and analyzing the provisions of the law and other legal materials.

The method used to discuss the problems in this study was: The Statute Approach which was carried out by examining all laws and regulations related to the legal issues being dealt with. The conceptual approach went from views and doctrines that develop in law.<sup>1</sup> The historical approach was carried out to examine the development of land law political arrangements in the field of Right to Cultivate (HGU) for plantations. The historical approach was conducted to examine the development of land law political arrangements in the field of Right to Cultivate (HGU) for plantations that are prosperous and equitable. This study used primary law and secondary legal materials, those were the 1945 Constitution of the Republic of Indonesia, Act R.I. Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, Law Number 41 of 1999 concerning Forestry, Law Number 39 of 1999 concerning Human Rights, Law Number 39 of 2014 concerning Plantations, Government Regulation Number 40 of 1996 on Cultivation Rights (HGU), Building Rights (HGB), and Right of Use (Article 9-18). Secondary legal material refers to legal materials that explain primary legal materials, such as research results, scientific journals, the results of seminars or other scientific meetings. Secondary legal materials in this study were: legal text books, dissertations, journals, legal journals, magazines, newspapers. The analysis was carried out according to the analysis or interpretation of the law as stated by Philipus M. Hadjon as follows.

## 3. Result and Discussion

The protection of constitutional rights is first by judging from the historical context. The history of the constitution is the history of the claim of rights, so that constitutional rights are not merely related to the constitution but are part of (incorporated) in the constitution.<sup>2</sup> Constitutional rights, which originated from the conception of individual rights derived from the idea of natural rights,<sup>3</sup> When it is poured into and became part of the constitution, it will bind all branches of power country.<sup>4</sup> Therefore, the compliance with these rights must be enforced (enforceable).<sup>5</sup> One of the forcing tools is the court's decision. Constitutional complaints are one of the legal efforts to maintain constitutional rights owned by citizens. Meanwhile the function of the Constitutional Court of Indonesia should have the authority to adjudicate cases of constitutional complaints.

The criminalization article again threatens farmers and people living around the plantation location. The article was revived in Article 55 letter a, letter c, and letter d juncto Article 107 letter a, letter c, and letter d of Law Number 39 Year 2014 concerning Plantations. Indeed, the Article which regulates illegal land use and the provisions concerning the criminal sanctions constitute a replica of Article 21 and Article 47 of the old Plantation Law (Law No. 18 of 2004), which has been canceled by the Constitutional Court in Decision Number 55 / PUU- VIII / 2010.

The re-inclusion of the article on criminalization adds to the list of problems that arise as a result of the enactment of Law No. 39 of 2014 concerning Plantations (Plantation Law). The Indonesian House of Representatives stated that the Plantation Law is established to avoid potential land conflicts between farmers and plantation companies. However, substantially what was stated by the DPR was different from the facts that appeared on the field. As for the example is the establishment of a farmer from Aceh Tamiang, M. Nur, as a suspect by the Aceh Regional Police when disputing with the oil palm plantation company PT. Rapala with Article 55 letter a jo. Article 107 letter a of the Plantation Law.

At the criminal trial of Case Number 122 / PUU-XIII / 2015 which was held on Thursday (15/10), the applicants represented by attorneys who were members of the Planters Advocacy Team presented the points of

<sup>1</sup>Peter Mahmud Marzuki, *Penelitian Hukum*, (Kencana Penada Media Group, 2005) hlm.95.

<sup>2</sup> Ernest baker, 1959, *Reflection on Government*, Oxford University Press, hlm. 30-31

<sup>3</sup> Lihat Durga Das Basu, 2003, *Human Right in Constitutional Law*, Wadhwa and Company, New delhi-Nighpur-Agra, hlm. 48-78 dan 107-35.

<sup>4</sup> Pasal 1 (3) Konstitusi Jerman (Grundgesetz), misalnya dengan tegas menyatakan, *"The following basic right are binding on legislatur, exekutive, and judiciary as direcity valid law"*.

<sup>5</sup> Imtiaz Omar, *Constitutional law*, Butterworths. Sydney-Adelaide-Brisbane-canberra-Melbourn-Pert, 1989, hlm. 145.

the petition. The applicant's attorney explained the articles to be tested were from the Plantation Law. The articles to be tested were Article 12 paragraph (1), Article 55 letter a, letter c, and letter d and Article 107 letter a, letter c, and letter d.

Another provision considered problematic is Article 12 Paragraph (1) of the Plantation Law which stated; "In the case that the Land needed for the Plantation Business is the Land of Ulayat Rights of the Customary Law Community, the Plantation Business Actors must conduct deliberations with the Customary Law Community of the Ulayat Rights holders to obtain approval regarding the land handing over and the compensation". This article is considered to give an inequality position between the Customary Law Community and the Plantation Business Actors (the Company). Provisions for "deliberation to obtain land approval and compensation" do not provide an option for the community other than giving up the land.

The use of the term "reward" increasingly shows the weak position of the community in facing the company. Reward in the Indonesian Great Dictionary means wages or gifts to pay services whose amount is determined by the giver. This is certainly contrary to the guarantee of legal certainty and respect for the Customary Law Community as stipulated in Article 28D Paragraph (1) and Article 18B Paragraph (2) of the 1945 Constitution.

If Article 55 is a replica of Article 21 of Law No. 18/2004, then Article 55 can be said to be formally flawed because it denied the previous Constitutional Court ruling.

That the principles of law formation are fair according to Lon Fuller in his book (Legal moralities), including:

- a. The law must be made in such a way that it can be understood by ordinary people.
- b. Rules must not conflict with each other
- c. In law there must be assertiveness. The law must not change anytime, so that everyone no longer orients activities to it
- d. There must be consistency between the rules as announced with actual implementation.

One of Certain legal certainty implies that the law must be predictable, or fulfill predictive elements, so that a subject can estimate what underlies their behavior, and how the rule is interpreted and implemented;

According to Gustav Radbruch, legal ideals (*idee des Rechts*) which are institutionalized in a form of a state of law must fulfill three general principles, namely purposiveness-benefit (*zweckmassigkeit*), justice (*Gerechtigkeit*), and legal certainty (*Rechtssicherheit*). The three elements must be in the law, both the law and the judge's decision, proportionally or equally, never let one of the elements not accommodated well, or dominates the others.

Meanwhile Radbruch explained that it is actually very difficult to make the law truly proportional, because the legal aspirations of one another basically have values that are contradictory (antonym), for example between certainty and justice. Therefore, the law that applies in a legal society must be a balance between various antagonisms, as well as the formulation between legal certainty, usefulness and justice.

The conflicting and contradictory provisions (antonyms) that are still in force, often result in legal uncertainty for everyone. Such uncertainty will result in legal chaos which is very vulnerable to abuse and arbitrary enforcement. Criminal punishment differing from one case to another, as a result of unclear elements of Article 12 Paragraph (1) and Article 55 (a, c, d) jo Article 107 (a, c, d) and Article 11 paragraph (2) clearly causes legal uncertainty and disruption of justice;

Legal certainty is closely related to the clarity of the formulation of a regulation so that its intentions and goals can be predicted. This is in accordance with the understanding of legal certainty in various European Court doctrines and decisions where legal certainty contains the meaning:

"The principle which requires that the rules must be predictable as well as the extent of the right which is conferred to individuals and obligations imposed upon them must be clear and precise"

"The principle which ensures that individuals are concretely must know what the law is, so that they would be able to plan their actions accordingly"

Law Number 5 of 1960 concerning the basic rules of agrarian principles, hereinafter abbreviated as UUPA has a populist character since the beginning as seen in its basic principles. In its course of time, it has experienced various challenges along with the shift in land policies embodied in the various implementing regulations of the UUPA, or on the contrary because there is no issuance of related implementing regulations due to various considerations or obstacles. In relation to policy orientation, after almost four decades, it needs to be sharpened and developed to adjust to the demands of the development of needs and political, social, economic and technological advances in the constellation of relations between countries that seem to be without limits.

In the Land Law Politics, the making of a legal product must be a responsive legal product and the process of making must be participatory in the community, through social groups (both NGOs, customary law communities and individuals in the community).

Judging from its function, laws that are responsive in character are "aspirational", it means that they contain materials that are generally in accordance with the aspirations or wishes of the people they serve, so that legal products can be seen as crystallization of the will of the people.

Besides, from the interpretation point of view, we can see that responsive legal products usually provide little opportunity for the government to make its own interpretation through a variety of implementing regulations and narrow opportunities that only apply to things that are truly technical.<sup>1</sup>

Talking about welfare means that it cannot be separated from the level of satisfaction issue. The level of satisfaction and welfare are two interrelated meanings. The level of satisfaction refers to individuals or groups, while the level of welfare refers to the community or society at large. The level of welfare includes food, education, health, sometimes also associated with employment opportunities, old age protection, limitation of poverty and so on.<sup>2</sup>

People are longing for welfare, either people who live in the city or in the village. Everybody is struggling to crave a prosperous life, both inner and outer prosperity. However, in reality, the life that is lived by human is not always in a state of prosperity. The ups and downs of life make people always try to find ways to stay prosperous. It starts from rough work such as labor to office work that can increase the salary into hundreds of millions. Let alone the lawful, which is willing to be done for the welfare of life.

In general, the term welfare is defined as a state of fulfilling all forms of life needs, especially primary needs, such as food, clothing, housing, education and health. The definition of social welfare also refers to all organizing activities and the distribution of social services from community groups, especially the disadvantaged group. The implementation of various social protection schemes, both formal and informal, is the examples of social welfare.<sup>3</sup>

Social welfare in a very broad sense encompasses various actions carried out by human to achieve a better standard of living, this better standard of living is not only measured economically and physically, but also social, mental and aspects of spiritual life. Social welfare can be interpreted as a prosperous condition of a society, social welfare in general includes health, economic conditions, happiness and the quality of life of the people. In Indonesia, social welfare is guaranteed by the 1945 Constitution of the Republic of Indonesia, especially in Article 33 and Article 34.

In the context of the Indonesian state, the purpose of the country is to promote public welfare, educate the lives of the nation and participate in carrying out world order based on independence, eternal peace and social justice as stated in the opening of the 1945 Constitution of the Republic of Indonesia. Thus, it can be said that Indonesia is a country that aims to realize general welfare and form a just and prosperous society.

The basic function of the state is to “regulate”, to create law and order, and “manage” to achieve prosperity.<sup>4</sup> The role of a country to improve welfare was stated by Joseph Agassi that: Welfare is a complex representation because it has multidimensional and inter dimensional relationships, as well as dimensions represented. The formulation of the boundary between the substance of welfare and the representation of welfare is determined by the development of policy practices that are influenced by the ideology and performance of the state which cannot be separated from the influence of dynamics at the global level.<sup>5</sup>

Basically, the welfare of society is very dependent on the natural resources of a country in which the country with abundant natural resources has a possibility to be a prosperous country. Yet, what we feel is the contrast to the theory, where a country with abundant natural resources is not always be prosperous country. It all depends on how the government of a country manages and organizes the results of natural resources itself. So, it is not surprising that there are countries with abundant natural resources but the conditions of the community are poor or mediocre. Whereas a country with limited natural resources has prosperous and affluent people.

Prosperity can also be realized through government policies based on the situation of the country, for example, imposing taxes that are too high in the market, and others. If people sell goods to the market with high taxes, it is likely that the results obtained by the community tend to be small. Social welfare covers a variety of actions carried out by people to achieve a good level of community life. According to Article 1 point 1 of Act Number 11 of 2009 concerning Social Welfare (State Gazette of 2009 Number 12, Supplement to State Gazette Number 4967) stated that "Social welfare is a condition of meeting the material, spiritual and social needs of citizens so that they can live properly and be able to carry out the social functions".

Social welfare as an organized function is a set of activities that intends to enable individuals, families, groups and communities to overcome social problems caused by changing conditions. In addition, broader social welfare functions into a broader field in a country's social development. In a broader sense, social welfare can play an important role in contributing to effectively digging and mobilizing human resources, as well as mineral resources in a country so that it can successfully overcome the social needs caused by change thereby contributing as well as in nation building.

<sup>1</sup> Abdul Latif, dan Hasbi Ali, *Politik Hukum*, Sinar grafika Jakarta 2012 hlm 30-31

<sup>2</sup> Mohammad Ilham Arisaputra, *Reforma Agraria di Indonesia*, Jakarta, Sinar Grafika hlm. 94.

<sup>3</sup> *Ibid*

<sup>4</sup> Darmawan T dan Sugeng B, *Memahami Negara Kesejahteraan: Bererapa catatan Bagi Indonesia*, Jurnal Politika, Jakarta, 20006, hlm. 21.

<sup>5</sup> *Opcit.*, hlm 102.



The general explanation of Law Number 11 of 2009 concerning social welfare explained that: Development of social welfare embodies the efforts to achieve the goals of the nation mandated in the 1945 Constitution of the Republic of Indonesia. The fifth principle of Pancasila states that social justice for all Indonesians. Apart from this, the Preamble of the 1945 Constitution of the Republic of Indonesia mandates the state to protect the entire nation and all of Indonesian bloodshed, promote public welfare, educate the lives of the nation, and participate in carrying out world order based on independence, eternal peace and social justice.

Transplantation of the Plantation Law, both the principle concept and its contents, indeed causes a wide and deep gap, especially between what is stated in the legal text and the reality. This article raised questions of contextual law and also contributes to the problem of plantation issue in the field. Different perception of claims based on the law are thirsty for capital accumulation that later leads to plantation conflicts impacting a number of victims.

According to the researcher, Law No. 39 of 2014 is full of political interests and unresponsiveness so that fulfillment, respect, and protection of the community do not go as it should be.

These weaknesses, as it is said by Mahfud<sup>1</sup> are constituted by the articles of the 1945 Constitution of the Republic of Indonesia. This has been recorded by many experts as the reason for the president's power to deviate from the principles of a democratic state.<sup>2</sup> noted that before the constitutional amendment, there were 5 fundamental weaknesses in the constitution, namely:

1. The constitutional system under the 1945 Constitution is "Heavy Executive"
2. There is no check and balance
3. This Constitution delegates too many constitutional rules to the level of the law.
4. This Constitution (before the Amendment) delegated too many constitutional rules to the level of the law
5. This constitution depends too much on Political goodwill and the integrity of politicians

The above weaknesses according to the authors greatly impact the fulfillment, respect and protection of the residents around the plantation. The government should be responsible for the fulfillment and protection of control over land which in its implementation is not in accordance with the provisions of the law. It means that besides being discriminatory, there are many overlap, ambivalent and clash with each other.

Provisions concerning guarantee of protection in the constitution are only possible in a democratic political system, because democracy provides the basis and mechanism of power based on the principle of similarity and equality of people. Democracy places humans as owners of sovereignty which is then known as the principle sovereignty.

The principle of democracy or popular sovereignty can guarantee the citizen's participation in the decision-making process, so that every legislation that is implemented and enforced truly reflects the justice of the community. Legislation must not be applied unilaterally by and for the interests of the authorities, but for the benefit of everyone's justice.

The politics of land law in a democratic country must be promotive, protective and implementative toward the community rights in order to prevent power abuse in the form of violations.<sup>3</sup> Implementative means that the law made must be able to be implemented or applied in the event of a violation. It is not a law that cannot be implemented since the formulation of the article is vague, unclear, duplicative, multiple interpretations, and dependent.

The choice of a country's political system, both authoritarian and democracy cannot be separated from the predetermined political system. The legal politics established by the laws of a country is the main guideline and the choice must be implemented by state officials thus it can be said that the law politics is a choice of decisions. Moreover, policies that have been established before based on political decisions, through or using legal instruments carried out through institutions legitimate politics and adhered to by political officials. Politics is related to the purpose of the whole community not for personal or group purposes.

In democratic political system, powerful political force must have the nationalistic insight, not narrow minded thinking that only concerns groups. Indonesia determines the legal politics as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia, including creating a just and prosperous society and united sovereign that must be applied by officials, politicians as well as bureaucrats. The democratic legal system requires public participation or high public awareness so that community members will be able and have a great responsibility in developing their obligations in the country and nation, this is what is desired by a democratic legal system.

The fact that occurs in the decision-making process in Indonesian Legislative Assembly (DPR) shows that the decision making at the "law making" level follows a Whay Person approach<sup>4</sup>. called the power approach

<sup>1</sup> Moh. Mahfud, *Amandemen Konstitusi menuju reformasi*, Yogyakarta, UII Press, 1999, hlm 61-67.

<sup>2</sup> *Ibid, Op Cit*, hlm 67

<sup>3</sup> *Ibid, Op.cit*

<sup>4</sup> Suteki, *Op.Cit* hlm. 84

model. The power approach model views decision-making is shaped and determined by the class power structure, the rich, the bureaucratic order and the political order. The establishment of a democratic law as a form of public policy is not merely a juridical process, however, it should have gone through a sociological process and a political process.

The study of the relationship between political configuration and the character of legal products produces a thesis discussing that every legal product is a reflection and political configuration. This means that each legal product charge will be largely determined by the political vision of the dominant group (rulers). Therefore, every effort to create laws that are responsive / populist must begin with the efforts of democratization in political life. Judging from the logic of politics or the effort of democratization in political life is not easy. It happens because the political configuration that was born from the new formed political format leads to an imbalance of political power. The government and PDI as the holders of hegemony in political life, certainly will not easily approve the aspirations to create a more balanced format because it means reducing the power existing.

If we want to develop a law that is responsive, the first and foremost condition that must be fulfilled is democratization in political life. It is impossible for us to develop responsive laws without first building a democratic political system, because responsive law will not be created in an authoritarian political system. Through constitutional amendments (1999-2002) Indonesia has made structures and patterns of state power relations from a constitutional perspective, furthermore, it guarantees a democratic political system. Even so, there are two things that must be considered to always actualize the democratic system.

First, the democratic system that has been confirmed through constitutional amendments must be followed by morality or spirit to make it happen by the state administrators, because as it is stated above, the system and the spirit of state administration are equally important

Secondly, as a product of the agreement (resultane) which was born from certain conditions and times, the 1945 Constitution of Republic of Indonesia must not be limited from the possibility of being changed with the new resultane. The 1945 Constitution of the Republic of Indonesia is the result of an amendment and must be open to the possibility of being amended again in the new resultane if the circumstances and time demand it

Even so, it does not mean that the 1945 Constitution of the Republic of Indonesia can easily be changed with the new resultant without strict reasons and procedures. Although it can be changed through the new resultant in accordance with the provisions of time, place and politics, economy, social and culture, the 1945 Constitution of Republic of Indonesia is made with content and procedures that are not easily amended. The amendment can only be done for crucial reasons and complicated procedures.

Therefore, since the amendment of the 1945 Constitution of Republic of Indonesia is not easy to do and in order to prevent any frequently amendment for political purpose arising from changes in political configuration, the constitution experts mentioned two important things that must be considered in the constitution making and content:

First, the constitutional content must be fundamental. Moreover, the general abstracts do not make concrete, technical and quantitative matters so that it doesn't face too many demands for change. Concrete, technical and quantitative matters are usually more easily questioned when dealing with new problems that arise in the midst of society.

Second, the constitution must contain a change procedure that is not easy to do except for very important reasons, for example there must be provisions regarding the minimum number of proposers to change the contents of the constitution and the minimum quorum in making decisions to change the contents of the constitution. There is also a Constitution whose changes must be made through a referendum.

Political influence in the legislative and law enforcement processes will lead to conflicts or contradictions in economic relations that will lead to disparities in the ownership of natural resources. Strengthening the democratic political order is also strengthening the belief in the emergence of legal products that are responsive, both in substance and in the process of making laws and regulations. A democratic political system is expected to produce legal products that are responsive, not repressive. As in a state of law and democracy there will be a system of power sharing and protection of human rights as stipulated in the constitution. Even in this constitution, according to Miriam Budiardjo, it is explicitly determined the limitation of the government power and human rights warranty because the constitution is the highest law that must be obeyed by the state and government officials in accordance with the argument "Government by laws, not by men".

It should be noted that in the formation of the laws and regulations set forth in Law Number 10 of 2004 concerning the formation of laws and regulations, in terms of legal customs as stipulated in Article 6 paragraph (1) letter i which explains that in the framework of establishing laws and regulations it contains the principle that every material of legislation must be able to create order in society through the guarantee of the certainty of law. Besides, in order to realize regulation and legal certainty as stated in the letter g, the material of the laws and regulations also contains the principle of justice that must reflect proportional justice for every citizen without exception.

In conducting legal interpretation of a law, a legal expert cannot act arbitrarily. According to Prof. J.H.A.

Logeman: "In interpreting a law, a legal expert is obliged to seek the intent and intention of making the law in such a way that it does not deviate from what is desired by the legislator".

In an effort to find and determine the will of the legislator, there are methods or ways of interpreting the laws and regulations, namely:

1. Grammatical Interpretation (*taatkundige interpretatie*) namely the interpretation carried out on terminology or words, sentence in a context of language used by lawmakers in formulating certain laws and regulations.
2. Historical Interpretation (*historische interpretatie*) is the interpretation carried out on the contents of a law by reviewing the historical background of the formation or the occurrence of the relevant legislation. Historical interpretation is divided into historical interpretations of the Act (*wet historische interpretatie*) and interpretation according to legal history (*rechts historische interpretatie*).
3. Systematic interpretation, (*systematische interpretatie*) namely the interpretation of one or more laws and regulations, by investigating a particular system contained in a legal system in order to discover the principles of general law that can be applied in a particular legal problem. Systematic interpretation is an interpretation that links an article with other articles in a relevant law or other legislation, or even reading the explanation of the law until understanding the meaning.
4. Sociological (teleological) interpretation, in line with the view of Prof. L. Jan Van Apeldoorn, it is one of the main tasks of a legal expert to adjust the laws and regulations with concrete things in the community
5. Authentic interpretation, namely the interpretation of the word, term or understanding in the laws and regulations that have been previously determined by the legislators themselves
6. Interpretation of a *contrario*, namely interpretation by combating the understanding between the questions faced with the problems regulated in an article of law.
7. Extensive interpretation is an interpretation by expanding the meaning of words in the rules so that an event can be included
8. Restrictive interpretation is an interpretation by limiting the meaning of words in regulations
9. Comparative interpretation, namely an interpretation by comparing the explanations in order to find the clarity of a statutory provision.

The articles of *a quo* law cannot be said to be potentially misused by the authorities and plantation companies depending on the interpretation of the authorities. The government cannot interpret the law, there are signs that must be obeyed. In addition, JH Logeman said that the judge must comply the will of the legislator, as it is stated in the relevant laws and regulations. The will cannot be read simply as the word of the law, so the judge must look for the history of the words, the system of laws, or the meaning of the word used in everyday relations at the present time. Every interpretation is an interpretation that is limited by the will of the legislator.

According to the interpretation of history (historic interpretation) as described above, then Article 55 letter a, c, d juncto Article 107 letters a, c, d *a quo* Law must be reviewed the historical background of the formation or occurrence where there is a disturbance in the plantation business in the form of garden destruction and plantation land use without permission. In this case, it can also use systematic interpretation (*systematische interpretatie*). Article 55 letters a, c, d juncto Article 107 letters a, c, d the *a quo* law can be interpreted by linking article one with other articles in the *a quo* law or other legislation or reading the explanation so that the meaning is understandable. Article 55 letter a, c, d juncto Article 107 letter a, c, d of the *a quo* Law according to the systematic interpretation must be interpreted as a whole interrelated with the provisions of other articles Act *a quo*.

#### 4. Conclusion

Land Law Politics in order to fulfill the constitution, prosperity and justice by means of: Legal Politics Land in the field of plantation must be responsive. In the Land Law Politics, the making of a legal product must be a responsive legal product and the process of making it is participatory in the community, through social groups (both NGOs, customary law communities and individuals in the community). Judging from its function, the responsive laws are "aspirational", it means meaning that it contains material that are generally in accordance with the aspirations or will of the people they serve, so that legal products can be viewed as crystallization of the will of the people.

#### References

##### Books

- A. Hamid S. Attamimi, *Asas-Asas Pembentukan Peraturan Perundang-Undangan Yang Baik Gagasan Pembentukan Undang-Undang Berkelanjutan*, Jakarta, PT Raja Grafindo Persada, 2009.
- Alan de Janvry, *The Role of Land reform in Economic development: Policies and Politics, dalam Agricultural Development in third World*, ed Carl K Eicher and John M Staatz, Baltimore and London: The John Hopkins University Press, 1984

- AP. Parlindungan, *Komentar atas Undang-Undang Pokok Agraria*, Bandung, Mandar Maju, 1991
- Bela Mukhoti, *Agricultur and Development in Developing Countries- Strategis for effektive Rural Development*, Boulder and London Westview Press, 1985
- Boerma Boerhan dan Sofyan T. Hlm. Ib, "Pengaruh Undang-Undang Pokok Agraria dan Kedudukan Tanah Adat di Sumatera Barat", dalam Simposium Undang-Undang Pokok Agraria dan Kedudukan Tanah-Tanah Adat Dewasa ini Jakarta, Badan pembina Hukum Nasional, 1978
- Chen-Cheng, *Land Reform in Taiwan*, (Taipe: China Publishing Company, 1961
- Endang Suhendar, *Menuju Keadialan Agraria, (70 Tahun Gunawan Wiradi)*, Bandung Akatiga, 2002
- George Mc Turnan Kabin, *Nationalism and Revolution in Indonesia*, Ithaca, New York: Cornrl University, 1952
- Herbert feith, *The Decline of Constitusional democrcy in Indonesia*, New York, Cornell University Press, 1962
- Hung-Cho Tai, *Land Reforms and Politics: Comparative analysis*, Barkley, University of California Press, 1974
- Jeffery M. Paige, *Agrarian Revolution: social movements And Export Agriculture in The Underdeveloped World*, tanpa tempat: Pedati, 2004.
- M Burisch, *Legislative and Administrative Aspects of Land Reform in Taiwan, land reform and Settlement and Cooperatives*, I, 1969,
- Muchtar Lutfi, *Politik Hukum Pertanahan Dalam Perspektif Otonomi Daerah Pasca Orde Baru*, Yokyakarta, FH UII Press.
- Notonagoro, *Politik Hukum dan Pembangunan Agraria di Indonesia*, Jakarta pantjuran Tudjuh, 1972
- Roy L Prosterman and jeffrey M Riedinger, *land reform Can Be The Marxist's Worest Enemy*, The Wall Street Journal, October 27, 1983
- Noer fauzi ranchman, *The resurgence of Land reform Policy ang agrarian movement in Indonesia*, Berkley, University of california, 2011
- Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Penada Media Group, 2005
- Rusell King. *Land Reform: A World Survey*, London, G. Bell dan Sons Ltd. 1977
- Sediono MP Tjondronegoro dan Gunawan Wiradi, *Dua Abad Penguasaan Tanah Pola Penguasaan Tanah Pertanian di Jawa dari Masa ke Masa*, Jakarta, yayasan Obor Indonesia dan PT Gramedia, jakarta 1984
- Subrata Chatak and ken Ingersent, *Agricultur and Economic Development*, Baltimore, Maryland, The John Hopkons University Press, 1984,
- Sudargo Gautama, *Masalah Agraria, Berikut Peraturan-peraturan dan contoh-contoh*, Bandung, Alumni, 1973
- Zahir Ahmed, *Land Reform in South-East Asia, New Delhi*, Orient Longman Ltd. 1975

### **Regulations**

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945
- Putusan Mahkamah Konstitusi Nomor 55/PUU-VIII/2010
- Putusan Mahkamah Konstitusi Nomor 122/PUU-VIII/2015
- Undang-Undang republik Indonesia Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria Lembaran Negara Republik Indonesia 1960-104, Tambahan lembaran Negara Republik Indonesia Nomor 2043.
- Undang-Undang Republik Indonesia Nomor 17 Tahun 2007 tentang Rencana Pembangunan Jangka Menengah Nasional Tahun 2015-2019 lembaran Negara Republik Indonesia Tahun 2007 Nomor 33.
- Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal.
- Undang-Undang Republik Indonesia Nomor 26 Tahun 2007 tentang Penataan Ruang Lembaran Negara republik Indonesia Tahun 2007 Nomor 68.
- Undang-Undang Nomor 22 tahun1999 Tentang Pemerintah Daerah
- Undang-Undang Republik Indonesia Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan Lembaran Negara Republik Indonesia Tahun 2011 Nomor 82.
- Undang-Undang Republik Indonesia Nomor 39 Tahun 2014 tentang Perkebunan