

SECURING AGRICULTURAL LAND INVESTMENT CONTRACT: RESOLVING SALIENT AGRICULTURAL LAND DISPUTE IN INDONESIA

Antarin Prasanthi Sigit, Daryono

Fakultas Hukum Universitas Indonesia, Fakultas Hukum, Ilmu Sosial dan Ilmu Politik
Universitas Terbuka

antarin.prasanthi@ui.ac.id, daryono@ecampus.ut.ac.id

Abstract

In 2014, Indonesia introduced a more progressive law to ease foreign investment on plantation. This policy seems to resuscitate the legacy of plantation during colonial time as a source of state revenue. This law however has not signified the increases in plantation companies. One of the major causes has been inadequate quality of contract such as lack of transparency, participatory and coherence. In practice the plantation contract still utilizes the outdated uniform contract based on 18th century Civil Code adopted from the Dutch Civil Code. These have challenged the certainty and enforceability. In line with the liberation of plantation in developing nations, the International Institute for Unification of Private law (UNIDORIT) is drafting the universal guideline for responsible agricultural land investment contract. The guideline aims at providing the model of responsible agricultural land investment contract. The model contract considers broad range of social, political, economy and cultural aspects to ensure that stakeholder's interests are respected while it also needs to adhere global issues, such as food security, poverty elevation and environmental preservation. The article is part of study attempting to explore the deficiencies of the existing plantation contract and to seek the potential adoption of the UNIDROIT guideline in Indonesia. There are multi-facet challenges to adopt the UNIDROIT guideline as the stakeholders and legal council capacity are still limited. Those result in complexity during agricultural land dispute settlement process in which non-legal factors contribute to its success. This article explores to mapping the potential issues and seeking a strategic intervention to consolidate stakeholders's interest and to propose more effective agricultural land dispute settlement.

Keywords: *land tenure, land reform, land dispute*

1. INTRODUCTION

The transformation of land affairs from colonial to post-colonial system has created major problems related to the security and certainty of land holding. The problems often raise critical issues in promoting a just and fair dispute settlement in which disputes carries not only legal issues but also socio and political aspects. These emerging problems are the causes of the repressive government during the New Order Government (NOG) 1966-1997.¹ The repressive government during the NOG made the tenurial system including agricultural land management

¹ During New Order Government (NOG), land issues was considered as a sensitive case because it is often related to the Communist Party Propaganda therefore the discourse on land tenure was banned. This has caused limited knowledge and capacity on land tenure. The NOG period neglected the opportunities to establish the foundation of land tenure. See in general Ben White (2005) *Land and Resource Tenure: Brief Notes*, in *Tanah Masih di Langit: Penyelesaian Masalah Penguasaan Tanah dan Kekayaan Alam di Indonesia yang Tak Kunjung Tuntas di Era Reformasi*. (Yayasan Kemala, 2005)

was severely locked,² lacking of independency of court from bureaucracy and elite influence,³ and unreliable land administration.⁴ These create multi-dimensional land tenure uncertainty after the NOG collapsed in 1997 which hindered to opening the agricultural land investment.

In line with the Agrarian Law Reform 2001, there are three major pillars to achieve the equitable agricultural land management: firstly, the legal framework to ascertain the land holding, secondly the effective dispute prevention and resolution and third, responsible, responsive and transparent agrarian resource governance.⁵ These three pillars of the agrarian reform will lead to continuous economic development in the rural areas as well as poverty eradication. The equitable tenurial system is expected to address the economic, social as well as political issues to achieve the sustainable development goals.⁶

Recently the government initiates a series of deregulation policies to opening the investment in agricultural land. The major policies related to local autonomy initiatives and the empowerment of civil society that envision land and agrarian resource management become important factors contributing to current economic, social and political both (in)stability. The agrarian reform needs to address multidimensional issues in related to the values and principles as well as effective governing laws to enhance a more conducive investment climate. The agricultural land investment however has not been significantly increased as it was during colonial time. The agricultural contract provision would be a major source of deficiencies, but the dispute settlement mechanism has also been a source of uncertainty.

This paper aims at exploring deficiencies of the existing plantation contract and to seek the potential adoption of UNIDROIT contract guideline in Indonesia. There are multi-facet challenges to adopt the UNIDROIT guideline as the stakeholders and legal council capacity are still limited. In addition the land dispute mechanism is unable to uphold the certainty and security due to the complexity and deteriorating process.

2. RESEARCH METHODS

Study on land in developing countries is generally an interdisciplinary research. Research that uses an interdisciplinary approach allows obtaining an integrated understanding of the problems at hand.⁷ This is due to the diversified functions of land from legal, social,

² A number of laws governing the use of land are conflicting with Basic Agrarian Law 1960, such as Law No. 41 of 1999 on Forestry, Law No. 4 of 2009 on Mining, Law No. 32 of 2009 on Environmental Law and other land related regulations. Sumardjono, M S W, *Kebijakan Pertanahan: Antara Regulasi Dan Implementasi* (2004) <<http://www.kompas-online.com>> at 14 April 2004

³ Many Court Decisions are conflicting each others and the legal argument presented in court verdict is weak. See *Yurisprudensi Kasus Pertanahan di Indonesia*. (Mahkamah Agung Republik Indonesia, 2002)

⁴ The bureaucracy often is bounded with the patriarchal culture and imprecision rules causing to the denial of general community interest. See Harsono, B, 'Reformasi Hukum Tanah yang Berpihak Kepada Rakyat' dalam Adhie, B and Menggala, H B N (eds), *Reformasi Pertanahan: Pemberdayaan Hak Hak Atas Tanah Ditinjau Dari Aspek Hukum, Sosial, Politik, Ekonomi, Hankam, Teknis, Agama dan Budaya*, (Mandar Maju, 2002).

⁵ Flourie, C dan Soewardi, B, *Institutional Framework Reform for Land Administration - Indonesia*, National Development Agency (BAPPENAS) and National Land Agency, 2000.

⁶ Equitable land tenure would address multiple SDGs including Goals no, 1, 10, 15 and 16. See <https://sustainabledevelopment.un.org/?menu=1300>

⁷ The interdisciplinary approach is intended to improve analytical and synthesis skills from the perspective of various disciplines. See Jufrina Rizal, *Multidisciplinary, Pluridisciplinary, Interdisciplinary and Transdisciplinary Approaches in Understanding the Symptoms of Law and the Diversity of Indonesian Society*, a paper presented at the National Conference of the Association of Legal Philosophy, Semarang: Fakultas Hukum Universitas Soegijopranoto, 2012, hlm. 8.

cultural, political and economic aspects. Or it can be stated that land issues can not only be seen and studied from one side, namely the legal aspects, but require the assistance of various other disciplines such as Sociology, Anthropology, Politics and Economics. As stated by B. Arief Sidharta that in the position as a practical science, law is a field for meeting and interacting with various sciences (converging) whose the final product is scientific and rational problem solving and can be accounted for.⁸

Likewise, because of the effects of social transformation, modern bureaucracy and national law on the land system in Indonesia, it is necessary to involve socio-legal studies. For this reason, socio-legal studies are also used in this research to answer the problems concerned. The basis for this consideration is that since the working of law involves a social space which is influenced by other factors outside the law itself. Law is not something that is autonomous, closing itself off to the world outside it. Therefore, in order to be able to explain legal problems with a more meaningful theoretical and practical work of law in society, the use of a socio-legal methodology was chosen to be used.

The study of law in this socio-legal sense cannot be separated from the context in which the law exists.⁹ Here, law is not only defined in a limited way, which is associated with state law (positive norms that are generally accepted at a certain time and in a certain area and are declared as an exclusive product of a legitimate source of political power).¹⁰ However, seen from a broad perspective, it is not only the state law that is intended but also the norm system outside it. Therefore, law can be interpreted in various ways because it is never separated from society or by borrowing Shidarta's statement, law is a multifaceted phenomenon.¹¹

3. ANALYSIS AND DISCUSSION

Understanding socio-legal phenomena of plantation encompasses a wider background of legal framework in which the law exists and how the plantation business responses to the

⁸ See B. Arief Sidharta (2005) argues that although each science has autonomy which is built at the level of a closed system (such as law as a normative science), in the scientific context all these scientific groups basically open themselves in an open system so that they provide input to each other. However, jurisprudence has different characteristics from other sciences (*sui generis*) because of its unique workings and different scientific systems due to different objects of attention. What should not be ruled out is the normative character of legal science, namely that on the one hand, legal science is analytical empirical, but on the other hand, it is normative practical science. Check out the writings of Johny Ibrahim, *Theory and Methodology of Normative Law Research*, Surabaya: Bayumedia Publishing, 2005, p. 153 & 50. As a practical science, law science is required to immediately make decisions on a concrete event that occurs in society. On the one hand, law science must follow normative rules that have been presented (given), while on the other hand there is always the possibility of practical needs arising which are not entirely accommodated according to the prevailing positive norms. Also check the writings of Shidarta, Mapping Schools of Legal Thought and Their Methodological Consequences, *Metode Penelitian Hukum – Konstelasi dan Refleksi*, Jakarta: Yayasan Obor Indonesia, 2009, hlm. 157.

⁹ Banakar (2005) viewed the opinion of Wheeler and Thomas which explains the meaning of the word 'socio' in 'socio legal studies' which represents the relationship between the contexts in which the law exists. Furthermore, it was stated by Sulistyowati Irianto that according to the explanation of Banakar & Travers (2005) socio-legal study is an alternative approach that tests doctrinal studies of law. See Sulistyowati Irianto, *Introducing Socio-Legal Studies and Its Methodological Implications*, *Kajian Sosio-Legal*, Editor: Adriaan W. Bedner dkk, Denpasar: Pustaka Larasan bekerjasama dengan Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012, hlm. 3.

¹⁰ Soetandyo Wignjosebroto (2009) Legal research is basically a scientific research, *Metode Penelitian Hukum Konstelasi dan Refleksi*, Editor: Sulistyowati Irianto & Shidarta, Jakarta: Yayasan Obor Indonesia, 2009, hlm. 90.

¹¹ According to Shidarta (2009) there are five major role of law: (1) law as an order of sovereign; (2) law as a principles of universal truth and justice; (3) law as reflection of expected behavior; (4) law as court decision in-concerto; (5) law as a people behavior in real case. See Shidarta, *op.cit.*, 2009, hlm. 150-5.

legal infrastructures. The coexistences of legal and non-legal aspects such as the culture and politics often create complexity to ensure legal certainty. Those may reveal the underlying causes of deficiencies in both agricultural land contract provision and dispute settlement mechanism that hinder the investment climate on agrarian land. The analysis therefore focuses on the three different aspects including the legal framework, the contract provisions, and the dispute settlement mechanism. Those three aspects are important to be discussed to highlight how the socio-legal phenomena affects to the working of law in Indonesia. The analysis and discussion are presented in the following.

3.1. THE LEGAL FRAMEWORK

The investment provisions both domestic and foreign investment were initially regulated in late 60's where the nationalization of the neglected Western properties and plantation was taken place.¹² The investment policy aimed at primarily to restore the Dutch plantation destroyed during the revolution war. The investment policy also targeted to providing immediate source of income for the new government of Indonesia. The first foreign investment law in 1967 invited foreign investors with attractive fiscal packages including tax holiday and duty free for the imported machinery. The law also provided a safeguard for the investment security and protection from the nationalization or local community claim. Furthermore, state guaranteed certainty and security by imposing special security armed forces to the plantation. This law however made a little impact to foreign investment due to the ongoing internal political conflict and the global uncertainty.

However during 70's to 80's there was an oil and gas booming. As one of the prominent oil and gas producers, Indonesia had relied state income on the oil and gas revenues. The foreign investment policy went very slow and the policy even imposed a protection to foreign investors by the obligations of reinvestment and the limit of shared ownership up to 51%. The period of oil and gas booming prevented the foreign investment particularly in agricultural sector.

The late 80's the oil and gas booming ended and the government explored the foreign investment as a supplement of the state income. A series of the policies were enacted to ease the foreign investment by offering various incentives and increasing the limit of share to 95%.¹³ The export oriented investments were given priority to be established in eastern part of Indonesia. Majority of the foreign investments are on the mining sectors.

The government further extended the policies for opening foreign investment to various sectors such as plantation, fisheries, forestry, transportation and infrastructures, public health and telecommunication.¹⁴ Considering the increasing foreign investment, the government amended the law on foreign investment with the Law no 25 of 2007 on Capital Investment. This new law was prepared to provide more open policy to investment and gave autonomy to local government to invite investors in various fields.

¹² See the consideration of Law No. 1 of 1967 on Foreign Investment.

¹³ See Presidential Decree no 17 of 1986 on The requirement of the domestic share ownership for foreign investor.

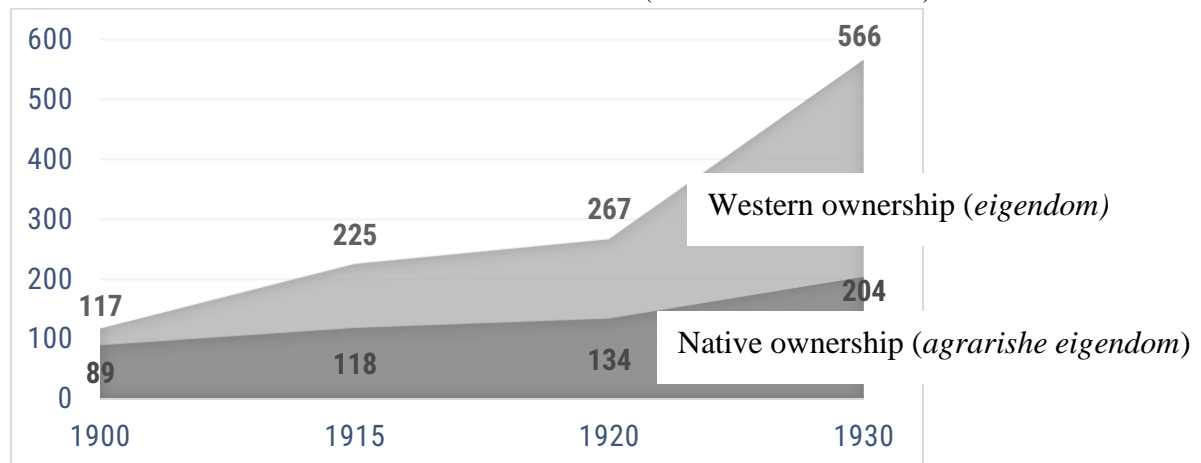
¹⁴ See Government Regulation No. 20 of 1994 on the Share ownership obligation on the foreign investment company.

In line with the new law on capital investment, in agricultural sectors the new law on plantation was enacted in 2014.¹⁵ This law initiated to open foreign investment on agricultural sectors which was previously prohibited. Following this law, the implementing regulation, Presidential Decree No 44 of 2016 on the Foreign Ownership on Plantation stipulated that the foreign investment may reach to 95% of share ownership with the local or domestic partner. However, there is an obligation of the foreign investment company to develop “nucleus” and “plasma” cooperation agreement in which the minimum of 20% plantation areas are devoted to plasma. The nucleus and plasma agreement are the important requirement where agricultural land investment needs also to adhere a global principle of SDGs to eradicate the poverty.

3.1.1. THE LEGACY OF DUTCH COLONIAL PLANTATION

In the late 1800’s Dutch colonial government enacted *Agrarische Wet* 1870 (AW 1870) to open foreign investment for plantation. The numbers of plantation lease significantly increased, almost doubling in the early twentieth century. The number of long leases (*erfpacht*) granted under both Western ownership (*eigendom*) and native ownership (*agrarishe eigendom*) increased about five times over thirty years. During the ten years between 1920 and 1930, the figure of plantation leases for plantation doubled. The figures for the thirty-year period beginning in 1900 are shown in the following table.

GRAPH 1: THE AREA OF PLANTATION IN JAVA 1900 – 1930 (IN THOUSAND HECTARES)



Sources: (Furnivall, J.S., *Netherlands India: A Study of Plural Economy* (1994 (312))).

The numbers of plantation across Java showed that most plantation leases were under *erfpacht*, both long-term and short-term leases. Colonial government-owned plantations only contributed about 3% of total plantation.¹⁶ In East Java particularly the area of plantation leased from customary (*adat*) land was the largest number compared to other parts of Java. This figure also shows that East Java had been a major contributor of plantation revenues during colonial

¹⁵ See Law No. 39 of 2014 on Plantation.

¹⁶ See Kartodirdjo and Suryo, *Sejarah Perkebunan Di Indonesia: Kajian Sosial Ekonomi*, 114.

time¹⁷ and was subject to the most extensive exposure between adat and Western practices. The comparison of plantations is presented in the following table.

TABLE 2. THE AREA OF PLANTATION IN JAVA 1939 (IN HECTARE)

Region	Gov. owned	Private owned	Long Term Lease (erfpacht)	Sultanate Plantation	Short term lease from adat land	Total
East Java	1663	528	161860	-	64116	228167
West Java	6798	45400	196616	-	14818	263632
Centre of Java	10140	1001	34634	-	19756	65532
Yogyakarta	-	-	-	9748	810	10558
Surakarta	-	-	-	38363	1210	39579
Total	18601	46929	393110	48111	100710	607468

Source: (Van der Kroef in Kartodirdjo, S. and Institute of Southeast Asian Studies, *Protest Movements in Rural Java: A Study of Agrarian Unrest in the Nineteenth and Early Twentieth Centuries* (1973)).

East Java and West Java contained major plantation leases that together amounted to about 80% of the total number of plantations in Java. This shows that since colonial times the customary system in Java has been exposed to a modern plantation system.

Another important point is that under the plantation system, the colonial government conducted major forest land clearing and transported migrant workers to clear forest and work on plantations. The colonial government promoted migrant workers to be granted cultivation permits and to work on plantation.¹⁸ This policy escalated the development of plantation which also increased the amount of migration.¹⁹ The grant of land lease and cultivation permit to migrant worker was another mode of customary land dispossession. This shows that the nature of customary systems evolved since the plantation system in colonial times.

Under the domain principle, an adat Indonesian's rights of cultivation and use was classified as native possession (*inland bezitsrecht*) which was as a secondary right granted under state domain (eigendom). To this *adat* right was also attached an "encumber domain" whereby the holder could be evicted at any time as determined by the colonial state as the owner of land.²⁰ This was also applied to inheritable *adat* land (*tanah yasan*). This *adat* land was classified as having an inheritable right of use (*erfelijk individuel bezit*) and therefore the

¹⁷ See Kartodirdjo and Suryo, *Sejarah Perkebunan di Indonesia Kajian Sosial Ekonomi*, 85; See also Howard Dick, 'The Transformation of Comparative Advantage: East Java 1920-1990s' (1995) 31 *Bulletin of Indonesian Economic Studies* 1., 45-51.

¹⁸ The open-door policy during plantation had contributed to the escalation of private investment and number of migrations in plantation area. See Kartodirdjo and Suryo, *Sejarah Perkebunan Di Indonesia: Kajian Sosial Ekonomi*, 96.

¹⁹ Ibid 105. In most plantation villages, currently migrant worker originated from *Maduranese* ethnic is a majority population compared to other ethnics, such as Javanese and *Osing*. See Bumi Rejo, Kepatihan and Sumber Manjing village monographs. (data in Author's file).

²⁰ Nolst Trenite's proposition 3 and 4. as quoted by Burns, *The Leiden Legacy: Concepts of Law in Indonesia*, 83.

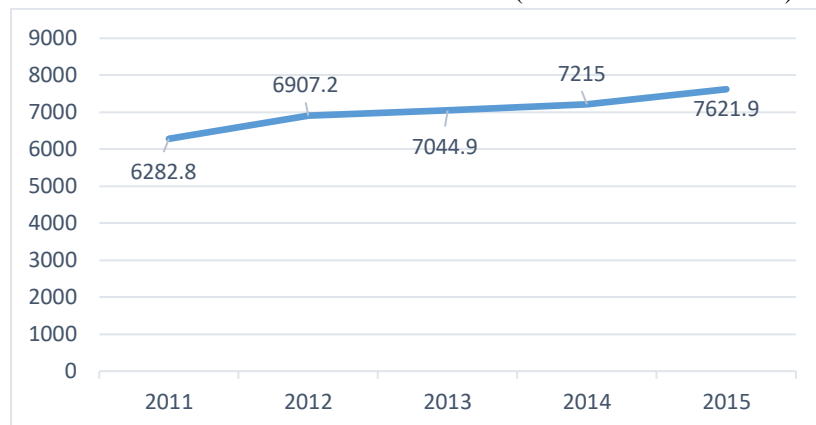
ownership of *adat* land (*tanah yasan*) vested in colonial government. Native Indonesians were only entitled to a possessory right under the colonial land domain.²¹

The plantation system altered customary systems regarding communal *ulayat* rights because the changes in socio-economic and demographic structures of villages greatly affected the nature of *ulayat* rights. Those changes include extensive land leases to non-villagers, the grant of land lease to migrant workers and colonial forms of land acquisition. These factors led to a lessening of *adat* authority on controlling and exercising *ulayat* rights. These phenomena clearly show that customary system has evolved since colonial times due to structural changes held on *adat* community.

3.1.2. THE AGRICULTURAL LAND INVESTMENT POST LOCAL AUTONOMY

Since local autonomy policy in 1997, local government is delegated substantial authorities by central government including to administer the foreign investment. The foreign investment has been liberated to various fields including the plantation. The increases of the plantation since the last ten year is progressing however the total area of the plantation are still far below the expectation of the increases of one million hectare per year.²²

GRAPH 2. THE GROWTH OF PLANTATION AREA (IN THOUSAND HECTARES)



Source: National Statistics Bureau, <https://www.bps.go.id/statictable/2009/09/08/1665/luas-areal-tanaman-perkebunan-besar-menurut-jenis-tanaman-000-ha-1995-2015-.html> (retrieved on 10/04/2019)

Most of the plantation area are community owned plantation which is accounted for 41% of the total plantation area whereas foreign investment company is about 19% of the total plantation area. The domestic company is on the second biggest area which is about 34% of the total plantation. In term of the productivity however the foreign investment company contributes to the largest revenues as they are mainly for export purposes. The figure of the plantation ownership is as follows.

²¹ Holleman, J F, *Van Vollenhoven on Indonesian Adat Law* (1981), XLVII.

²² See Strategic Planning 2015-2019, Department of Plantation, <http://ditjenbun.pertanian.go.id/tinymcpuk/gambar/file/info-publik/Rentra%20Ditjenbun%202015-2019.pdf>

TABLE 3. THE OWNERSHIP OF OIL PALM PLANTATION

	Area (million Hectares)	%
Foreign investment	2,09	18,5
Domestic investment	3,89	34,4
State Owned	0,75	6,6
Community	4,57	40,5
Total	11,30	100

The current legal framework existed in different political situation post-local autonomy however has not been successfully reiterated the legacy of colonial plantation system. For five years period of 2011-2015 the plantation area growth insignificantly. The legal framework itself seems to be insufficient instrument to scale up the plantation industry. The other factor that may contribute to the deficiencies is the contract provision discussed in the following section.

3.2. UNIFORM AGRICULTURAL LAND INVESTMENT CONTRACT

In practice, the agricultural land contract utilizes the uniformed/standard contract which is drafted based on the Book II Indonesia Civil Code. The principle of contract used in Indonesia Civil Code was adopted from the 18th century Dutch Civil Code. The principle is simple and shallow. It is based on freedom of contract. The principle is divided into two main categories as objective and subjective principles. These principles are unable to accommodate the current business practice as well as community needs. The agricultural land contract particularly consists of:

1. Parties. The parties primarily cover only the contracting parties who have direct interest to the contract. Meanwhile in agricultural land contract, several parties may indirectly have an interest to the contract. The stakeholder of the contract can be local community, local government, the security officers and other influential people. These parties need to be included in the contractual agreement to ensure that their duties and liabilities shall also be articulated.
2. Rights and Obligation. The rights and obligation only limit to contracting parties as they are stated in the contractual agreement.
3. Period and Termination of Contract. The provision consists of the validity of the contract and the condition of termination. It is not however stipulated on the duties of the parties to perform the rehabilitation process.
4. The Force Majeure. Force Majuro provision consist of the condition of non-performance due to various aspects.
5. Last provision is dispute settlement. It stipulates general provision of the dispute settlement both through non court and in court settlement.

The simple and too general of the contract provision create an uncertainty and ambiguity which is unable to satisfy the demand of the modern business in agricultural land investment contract.

3.2.1. UNIDROIT MODEL CONTRACT ON AGRICULTURAL LAND

The UNIDROIT format and provision of the agricultural land investment contract are used to compare the existing agricultural land contract. The comparison between both contracts will be evaluated using swot analysis to reveal the threat as well as the opportunities of the adoption. The UNIDROIT model contract on agricultural land investment is created by using the previous standard contract of the Uniformed Standard Contract on *Voluntary Guideline for Responsible Governance of Tenure of Land, Fisheries and Forest* (VGGT) and the *Principles for responsible Investment* (CFS-IRI).²³ In addition provisions on the International treaties such as International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), The Convention on the Elimination of Racial Discrimination (CERD), The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), The Convention on the Rights of the Child (CRC), The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) are also being considered on the draft.

The model contract of the agricultural land investment (ALIC) consists of six major parts, including:²⁴

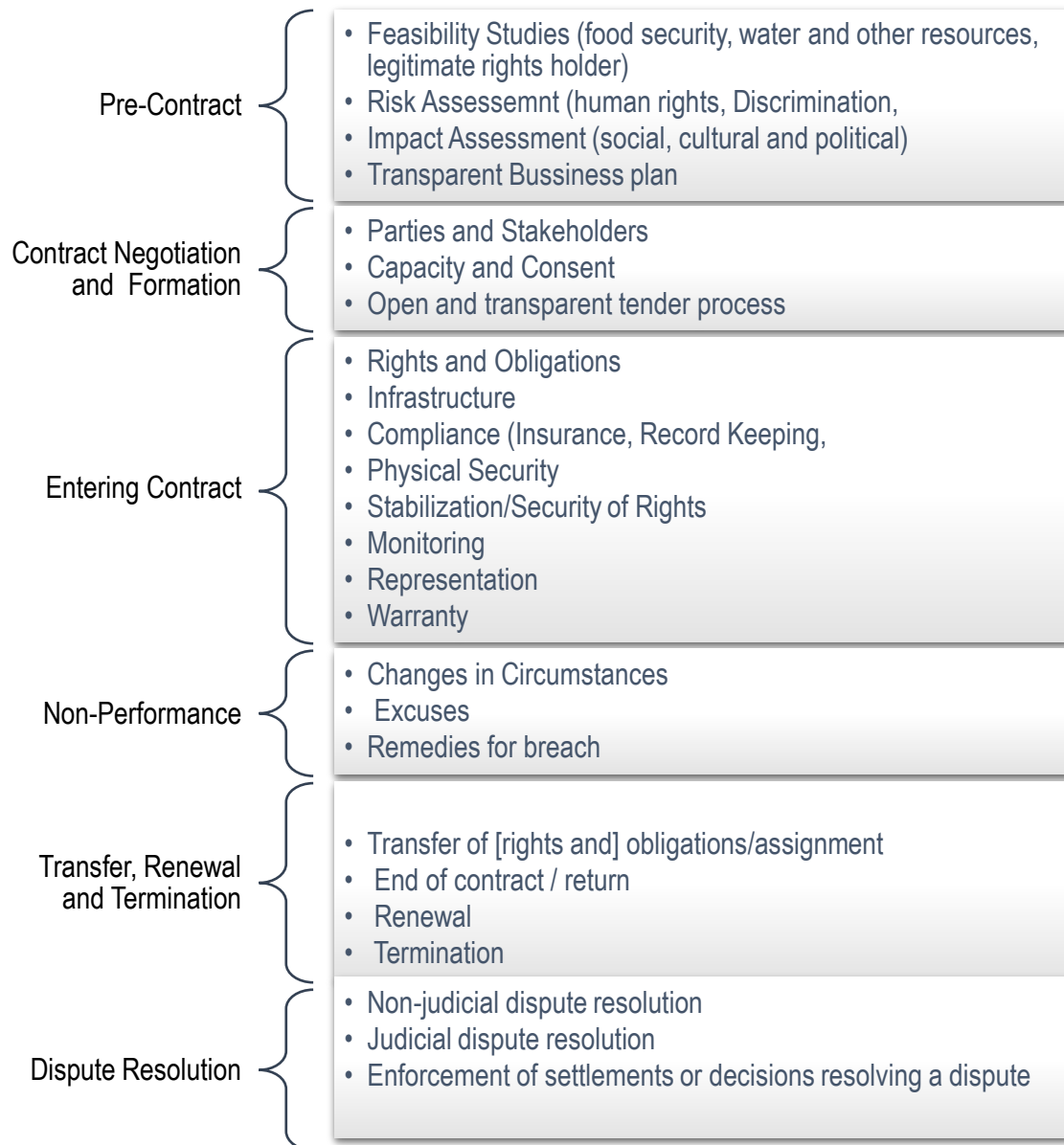
- *Pre-contract provision,*
- *Contract negotiation,*
- *Entering contract/contract provision,*
- *Non-Performance Clause,*
- *Transfer, Renewal and Termination, and*
- *Dispute Resolution.*

Those six components are the minimal requirement of the UNIDROIT model contract on the agricultural land investment that can be extended for the need of the interest parties. In more detail the UNIDROIT model contract is as follows

²³ Food and Agricultural Organization, *Voluntary Guideline for Responsible Governance of Tenure of Land, Fisheries and Forest* (VGGT), Lihat juga *Principles for responsible Investment* (CFS-IRI)

²⁴ Final Draft Agricultural Land Investment Contract (2020).
<https://www.unidroit.org/english/documents/2020/study80b/s-80b-alic-draft-e.pdf>

GRAPH 3. UNIDROIT MODEL CONTRACT ON AGRICULTURAL LAND



Source: Final Draft Agricultural Land Investment Contract (2020).

<https://www.unidroit.org/english/documents/2020/study80b/s-80b-alic-draft-e.pdf>

In addition to the model contract provision, several the principle of international conventions are also considered to be inclusive on the contract. The principles of the convention include:

- a. Risk and Impact assessment: This is articulated in various convention such as Universal Declaration of Human Rights, United Nation Declaration of the Recognition of Indigenous People (UNDRIP), CEDAW etc. Risk and Impact Assessment need to be undertaken during feasibility study including human rights risk, social, cultural, economic and political impact, legitimate tenure holder (indigenous people), food security, environment preservation, discrimination etc.
- b. Transparency and accountability. This principle has been a very strong provision to prevent the corruption and public distrust as part of the promotion of good governance.
- c. Social Obligation. Social obligation may include local food security, fair compensation, respect to local practices, local capacity building, etc.

- d. Environment Obligation. Environment obligation may include impact assessment and management on the following aspects: pesticide utilization, pollution prevention, land fertile preservation, bio-diversity preservation, cultural heritage preservation and waste management.
- e. Adherence to the rule. The adherence to the existing rules such as a fair and good business practice, anti-corruption provision, anti-monopoly and oligopoly.

The more comprehensive contract provisions based on ALIC adherence to various developmental objectives could be more likely to satisfy stakeholders' interests. The Agricultural Land Investment Contract (ALIC) model provides model of equitable agricultural land investment contract. As part of the ALIC model contract, dispute resolution needs to adapt to country-specific situation in which the dispute settlement commonly bears the existing political and cultural boundaries. The Indonesia specific dispute settlement mechanism is presented in the following part.

3.3. FACTORS AFFECTING LAND DISPUTES SETTLEMENT

Agricultural land disputed occurred generally have a root that is relatively the same, namely a gap in land tenure which encourages poor peasants to cultivate land in the plantation area. In some cases of disputes encountered, many farmers in the village did not have land but on the other hand there was land that was abandoned by the plantation holding company. This condition encouraged the poor peasants to occupy abandoned plantation land, as in the case of PT. Tratak Plantation Company. Provision of concession rights for a long time to the owners of capital who in reality have not succeeded in developing their plantation business has led to land neglect.

As for other disputes, landless peasants and farm laborers claim that part of the land in the plantation area belongs to their ancestors so that the poor peasants reclaim, as happened in the case of PT. Ambarawa Maju, PT. Simbangjati Bahagia, PT. Segayung and PT. The show. In reality, plantation land aquitition that is not yet clear in cases of land disputes has triggered a prolonged dispute due to the land rights of poor peasants living around the plantations have been dispossessed. Similarly, cases of disputes relating to profit sharing schemes in cultivating land which, according to poor peasants, are seen as unfair. As found in the case of PT. Tratak Plantation Company and PT. Seashell. The profit sharing conflict subsequently ignited the occurrence of land disputes.

In resolving plantation land disputes in several areas in Batang Regency as stated, the power approach still dominates the dispute resolution process. In addition, the power approach also manifests itself in a repressive way of resolving disputes to enforce security and order in the community. The power approach was carried out by mobilizing all state apparatus in an effort to resolve the dispute issue. In this context, the involvement of many officials in fact opened the space for fraud to occur because of the interests of each actor. As happened in most cases of land disputes studied.

It also found that in land dispute resolution, it turned out that it was not only the approach and involvement of the actors who gave their influence. But also the mechanism and strategy chosen to resolve the dispute. Because the dominant actors involved, also the mechanisms and strategies chosen in dispute resolution are different, it shows that land disputes

are complex. So to solve it, an approach is needed from various aspects, not only from the legal aspects but also from non-legal aspects.

3.3.1. Strategy and Mechanism

Until now, land dispute cases involving community farmers who live around the plantation area (in general are landless cultivators and farm laborers) and plantation HGU holders in the Batang Regency region are in different stages. Although the parties involved in the dispute resolution process in general are the same, namely the Office of the Agrarian and Spatial Planning / National Land Agency (Kanwil ATR / BPN) in Central Java and the Batang Regency Land Office, Batang Regency local government, politicians, police officers (Sector Police (*Polsek*)) and soldiers (*Komando Military District*) Batang, a cross-district organization such as the Batang Farmers Association Forum (FPPB) and the local farmer organization (OTL).

1. Approach Being Used

In general, the approach used in the dispute resolution process is an approach to power that is legal-positivistic or legal-formal. In this thought the law is an explicit order from a sovereign ruler, which is stated clearly and explicitly. Therefore the law conceptualized as such is norms in written form, generally accepted at a certain time and in a certain area, and announced as an explicit product of authority that has legitimacy (borrowing the term John Austin as a command of the sovereign). This law, with reference to Hans Kelsen's opinion, is a coercive order.

Apart from using a legal-positivistic approach, land dispute resolution also utilizes a legal-sociological approach. This is because the complexity of land disputes makes it impossible to use just one approach in resolving the dispute. The legal-positivistic approach is unable and impossible to answer the root causes of land disputes objectively rationally. Likewise the legal-sociological approach cannot produce decisions that directly have legal force because they do not have legitimacy for that.

In the Indonesian context, the use of both approaches in land dispute resolution has strong relevance because law is part of ongoing social transformation in the community. Law is not merely written text in the form of legislation that is made in a vacuum that is sterile from the workings of aspects outside the law itself. The presence of law must be seen in a social perspective because the law is not only a rule but also a behavior.

The approach used by actors in the land dispute resolution process cannot be separated from the purpose of resolving the dispute itself. If the aim is to impose the enactment of the norm, uphold rights without regard to relationships that have existed by explicitly establishing that one party is clearly guilty and the other party is clearly correct, the legal-positivistic approach is more appropriate. But if the goal is to maintain relations, maintain harmony, and reconcile by bringing together the interests of the parties to the dispute, the legal-sociological approach is more suitable for that.

In particular, taking into account the reality obtained at the locus of study, the actions of citizens in relation to the purpose of dispute resolution can more be incorporated into the type of purpose rational conduct as Weber thought. Considering that in the dispute resolution process the community members were aware of their

choices for the purpose of fighting for control and utilization of land. They also jointly determine the choice of these objectives by considering the modalities they have.

The other that need to be considered with regard to the approach in land dispute resolution in addition to the objectives of dispute resolution described earlier are characteristic of the dispute. In general, land disputes are multidimensional and multifaceted in nature, so that the resolution cannot only use one type of approach, as has been done so far, namely the formal legal approach. Also needed an approach which according to David Bloomfield emphasizes empirical conditions (practice generated approach) so as to enable the resolution of conflicts and / or disputes to take place flexibly and dynamically, depending on the relationship of objects and subjects as well as the social and cultural structure behind them. Bloomfield argues that the conflicts that occur are generally multidimensional and multifaceted so that the solutions are not always linear and sequential.

2. Dominant Actors Participating

The actors involved in resolving disputes play an important role in the process. Actors involved in the dispute resolution process can act as a deterrent to continuing disputes (dispute preventor) or even exacerbate disputes (dispalator dispute). The involvement of dominant third parties (actors) will influence the mechanism and dispute resolution strategy so that the outcome (output) of the dispute resolution can also be different.

The existence of dominant actors originating from formal institutions has a tendency to use formal mechanisms that are more quickly and decisively results oriented. Although the dispute resolution process in fact ignores the element of justice (fairness). Even in the process intimidation or pressure can occur. While the dominant informal actors who come from the community itself (figures who have traditional and charismatic authority), as well as academics and NGOs, tend to take efforts to maintain social integration and harmony. They better understand the situation and conditions that exist in the community so they try to bring together the interests of the parties to the dispute by looking for the right and acceptable middle ground for each party. Informal dominant actors will place more emphasis on mentoring and capacity building for parties to seek agreements that can benefit both parties. Such a process can take a long time and there is often manipulation and even escalation of disputes caused by uncertainty and the lack of guarantees of protection from weak parties against "provocateurs" who want an escalating conflict.

In the dispute resolution process in Batang Regency, the dominant actors who act consistently and become part of the land dispute resolution process can be grouped into 2 (two), namely: (1) Formal Dominant Actor (FDA); (2) Informal Dominant Actor Groups (IDAG). This formal dominant actors (FDA) includes BPN cq District / City Land Offices, Regional Governments (Districts/Cities), security forces such as the police (Sector Police (Polsek)), soldiers (Komado Rayon Militer (Koramil)). Some politicians also take part in this process but are not intensive. Politicians tend to take advantage of this situation to gain votes in the election of District People Representatives, as well as in regional head elections. They have no direct interest in being involved in the dispute resolution process, but the presence of politicians has an

influence in carrying out mass mobilization and support. This is often used by certain groups to seek community support.

The Informal Dominant Actor Group (IDAG) is dominated by community leaders, academics, non-governmental organizations (NGOs). Their presence is to provide assistance in the dispute resolution process. IDAG prioritizes protection for citizens (poor peasants) who have low bargaining positions in the process of dispute resolution (process oriented). Through this assistance it is hoped that dialogue and compromise can occur which can benefit both parties. In the early stages IDAG disputes worked more informally to provide assistance in the dispute resolution process. However, the initiative to resolve disputes originated more from the parties themselves by involving IDAG as a mediator in the process. On several occasions IDAG took the initiative to carry out dialogues with the parties, especially during the time when the conflict tended to escalate which could lead to clashes between peasant farmers and farm laborers with masses from plantation companies holding HGU. The effort is to reconcile for the sake of maintaining harmony in the community. But if the conflict erupts, IDAG has the initiative to reconcile through intensive dialogues and mediate the dispute resolution process. IDAG is more focused on dispute resolution so that it can benefit both parties (win-win). The approach taken is not formal but substantial, with an emphasis on strengthening both parties to jointly decide on the dispute through the search for a middle ground that can bring all interests together.

3. Selected Mechanisms and Strategies

In each community there can be found a variety of ways to resolve the disputes it faces. Choice of the ways or mechanisms used to resolve inherent disputes in trust that develop in the community. Trust in the community in the locus of study is based on the value of harmony (togetherness) that is closely embedded in Javanese culture in order to maintain a harmonious situation in society. In a community like this, the purpose of dispute resolution is to maintain relations in order to maintain harmony so that the settlement mechanism is in the form of reconciliation and compromise by involving third parties in this case the mediator, peace-maker. But in reality the purpose of upholding rights by pushing ways to be declared as a party that is clearly true and the other party as clearly guilty, is also found in the lives of the people in dispute with plantation HGU holders in Batang Regency.

In general, the dispute resolution paradigm that exists in the community consists of litigation and non-litigation, in which an understanding is often aligned with dispute resolution mechanisms through courts (in-court settlement) and out of court (out-court settlement). In the context of this study the emphasis is not on the issue of using a court institution or not using it, but rather the approach chosen in the process of resolving disputes and the results of resolving the dispute. Therefore, from the dispute resolution approach can be obtained an overview of the values and norms that develop in the community in relation to the land and the operation of the law in regulating these vital resources. As for the results of dispute resolution, it can be known the purpose of each party to the dispute. This is needed to identify institutions or institutions that need to be developed to meet these objectives.

The mechanism and strategy of the dominant actor in the dispute resolution process, both non-litigation and litigation can be seen in the following table:

TABLE 4. MECHANISM AND STRATEGY OF AGRICULTURAL LAND DISPUTE RESOLUTION

Mechanism/ Strategy	Formal Dominant Actors	Informal Dominant Actors	Result
Non-Litigation (Negotiation dan Mediation)	<ul style="list-style-type: none"> - confirms legal relationship between cultivators and HGU holders - offer profit sharing - offering shared cropping schemes 	<ul style="list-style-type: none"> - farmers can still work on plantation land - abandoned plantation land was redistributed 	<ul style="list-style-type: none"> - did not reach agreement - temporary results to reduce conflict
Mediation– Arbitrate	<ul style="list-style-type: none"> - encourages partnership programs with cultivators 	<ul style="list-style-type: none"> - involving a third party, namely the National Land Agency as a mediator and at the same time functioning the arbitrator - review or test plantation land as abandoned land or converted land not in accordance with its designation - determination of abandoned land status 	<ul style="list-style-type: none"> - determination the status of abandoned land - redistribution of land to cultivators
Litigation	<ul style="list-style-type: none"> - the validity of ownership through a review of title certificates (HGU) - emphasizes formal evidence on the basis of positive rights and laws - Unlawful acts by looting plantation land 	<ul style="list-style-type: none"> - acquisition or land conversion processes that ignore due process of law - social aspects and community needs for land - Western land originating from communal land 	<ul style="list-style-type: none"> - winning one party

Because of the interests of the conflicting parties and the characteristics of a polysentric (multiple / varied) land dispute, the land dispute resolution model cannot be solved using just one approach (single approach). The proposed "Two Phase" land dispute resolution principle in principle separates the dispute resolution process into 2

(two) phases in the form of non-litigation settlement and litigation settlement, by including the conditions and context of the dispute which includes the involvement of the dominant actor, the use of the internal approach dispute resolution, and choice of mechanisms and dispute resolution strategies, which can then be used to predict the success or failure of the land dispute resolution process

3.3.2. TWO-TIER AGRICULTURAL LAND DISPUTE SETTLEMENT

Agricultural land dispute settlement is complex in nature due to local characteristics, the approach being used and the capacity of the involved parties. Those are intertwined overarching legal and non-legal issues. Dispute settlement often proceeds in a nonlinear as well as non-sequential way that becomes uncertain and unpredictable. Considering those barriers, two-tier dispute settlement model is recommended to prevent escalation of dispute and complexities that would create other social unrest.

The two-tier model clearly distinguishes the dispute settlement mechanism based on the dominant actors involved either formal or informal actors. By understanding the involved dominant actors, it can be suggested the dispute settlement process that should be undertaken. Two-tier model would give better prediction of the resolution and outcome. In first stage, non-litigation process through either negotiation or mediation is initiated by parties. In this stage the outcome of resolution is highly determined by the dominant actor involved. When the dominant actors consist of formal authorities such as civil servants, police officers and army, non-litigation process would most likely be failure. The non-litigation focuses more on presenting evidence and legal arguments. Due to the failure of reaching the resolution, it then moves to second stage of litigation. The dispute settlement aims at primarily enforcing the law. In this case, the first stage of dispute settlement should be avoided. The dispute settlement should move to stage two. The stage two of litigation examines the evidence and legal arguments. The decision is made against the law and regulation and favors the party with the strongest legal evidence. The plantation company is more likely to win the case. The decision however will not last long as the community commonly reclaim the disputed land.

In contrast, when the involved dominant actors consist of informal actors such as non-government organization, lecturer or respected key persons, the first stage of non-litigation would be more effective. The negotiation and mediation are merely seeking compromises and mutual understanding. These dominant actors play important role in creating mutual understanding and compromises. The non-legal approaches are highlighted in order to reconcile the disputant and reach the consensual agreement. The agreement is commonly endorsed by the public authority such as National Land Agency (Badan Pertanahan Nasional) in province or district level. According to Presidential Decree Number 20 of 2015 on National Land Agency. It is stated that National Land Agency has an authority to administer land including to settle land disputes in its jurisdiction. In addition, the consensual agreement can be executed by the court based on the Supreme Court Regulation Number 1 of 2016. The signed agreement is binding and can be executed within 30 working days. This formality guarantees the execution of the consensual agreement.

In the second phase, dispute settlement is undertaken through litigation process. The litigation is done either by National Land Agency or court. On the second phase parties expect the decision made by public authorities to justify the claim. Therefore, the process of settlement

is more adversarial to examine the evidence and legal argument. National Land Agency receives the claim from parties and setup the land dispute tribunal in its jurisdiction. The tribunal examines administrative evidence and validity of entitlement. The NLA proposes the mechanism to the involved parties to resolve the disputes. Negotiation and mediation will be offered at the first stage and then move to semi-litigation process where the examination of evidence and legal arguments are taken place.

The informal dominant actors use the NLA forum as a terminal process of dispute settlement to justify the entitlement and the recognition of the rights. As the negotiation and mediation has already reached consensual agreement, the NLA forum basically serves to legitimize the agreement. In contrary the formal dominant actors use the NLA forum to legitimize and justify the claim therefore the NLA forum serve to adjudicate the parties by examining the evidence and legal argument. The NLA forum is used by parties as “a pre-trial medium” in order to suspend the dispute. This suspension of the dispute may escalate conflict.

The last phase of dispute settlement is done by the court. The court proceeding is highly formal and focuses on the examination of the evidence against the existing law. The parties have to prepare necessary formalities including formal evidence and legal argument. Court only examines legal issues and is commonly ignorance to the non-legal issues. Due to multidimensional nature of disputes, non-legal issues play important role on the quality of decision including the validity of entitlement that needs historical prescription, the protection of vulnerable people as the basic human right and promoting sustainable development in the rural areas to elevate community welfare as the nation objectives. In practice, the court is unable to consider those non legal issues that are the essential

Because of the nature of the multi-dimensional conflict, the judiciary in general cannot accept considerations that are highly non-legal considerations in land conflicts. Because of its formal and positive nature, many non-legal aspects that are ideological and philosophical are ignored in the litigation process in court. The following is a chart of the intended "Two-Tier Model" of land dispute resolution:

FIGURE 1. TWO-TIER MODEL OF AGRICULTURAL LAND DISPUTE SETTLEMENT

"Two-Tier Model" land dispute resolution is an alternative land dispute resolution model that can be used to realize optimal results without having to go through a process that empirically does not produce the expected settlement and even the process of social disintegration and disharmony that requires a reconciliation process. This "Two Phase Model" is an improvement from the previous completion model that combines two strategies, namely non-litigation with administrative review and non-litigation with litigation. Through this model prognosis can be known the results of the dispute resolution process carried out. By considering 2 (two) dimensions, namely the dimensions of the dominant actor and approach, and the dimensions of the mechanism and strategy, the "Two Phase Model" can provide a comprehensive explanation of the land dispute resolution process that provides the best solution for poor peasant people regarding their access to control and utilization of land. In the opinion of the author, this "Two Phase Model" can prevent a protracted dispute resolution process that can lead to uncertainty and even conflict resolution.

Considering the complexity of land dispute problems "from the actors involved, sources of conflict, cultural, social and political factors, land dispute resolution" needs to be organized and systematic which is permanent rather than ad-hoc. The issue of land dispute resolution "has various dimensions from legal, political, social and cultural and economic dimensions. The resolution of land issues especially related to land use and control needs to be done by a special agency for land dispute resolution.

4. CONCLUSION

To reiterate the legacy of colonial plantation seems not only requires a legal framework to enable scaling up plantation industry in post decentralization era but it needs a more equitable model of contract provision that satisfies the stakeholders' interest. Considering that the agricultural land dispute is caused by multi-dimensional factors, the conventional model contract of agricultural land based on Book II Indonesia Civil Code would be a primary factor of uncertainty and insecurity. The current UNIDROIT ALIC provides more security and certainty as the contract provisions adhere the general principles of the responsible and equitable contract in agricultural sector in which the non-legal provisions have also been included in a ALIC model contract.

In addition, as the agricultural land dispute that always rooted in political and cultural setting, the understandings of the mechanism and strategy chosen, the role of the dominant actor are important because the success or failure of the dispute resolution process can be predicted in advance from the approach used by the dominant actors. Related to this, the writer proposes a "Two Tier" Model of land dispute resolution through this study. By considering the complexity of land dispute cases that have an impact on solving complex disputes.

The "Two Phase" model in land dispute resolution is intended to provide more optimal results within the framework of agrarian reform, namely the creation of agrarian justice for poor peasant people (landless peasants and farm laborers). The model departs from the characteristics of conflicts and or land disputes, approaches to dispute resolution, capabilities of the actors involved in dispute resolution, and the dispute resolution process which includes the following mechanisms and strategies chosen, as well as political support in the dispute resolution process

REFERENCES

- Burns, Peter. 2004. *The Leiden Legacy: Concepts of Law in Indonesia*. Leiden: Brill. <https://doi.org/10.1163/9789004454644>.
- Chambliss, William J., and Robert B. Seidman. 1971. *Law, Order and Power*. Reading: Addison-Wesley.
- Dick, Howard. 1995. "The Transformation of Comparative Advantage: East Java 1920–1990s." *Bulletin of Indonesian Economic Studies* 31, no. 1: 41–71. <https://doi.org/10.1080/00074919512331336725>.
- Direktorat Jenderal Perkebunan Kementerian Pertanian Republik Indonesia. 2015. *Rencana Strategis (Renstra)*. Jakarta: Kementerian Pertanian Republik Indonesia. <https://ditjenbun-ppid.pertanian.go.id/doc/16/RENSTRA/RENSTRA-DITJEN-PERKEBUNAN-2010-2014.pdf>.
- Flourie, C., and B. Soewardi. 2000. *Institutional Framework Reform for Land Administration - Indonesia*. Jakarta.
- Food and Agricultural Organization. 2014. *Principles for Responsible Investment in Agricultural and Food System*. Rome: Office of Knowledge Exchange, Research and Extension Food and Agricultural Organization. <https://www.fao.org/3/au866e/au866e.pdf>.
- Food and Agricultural Organization. 2012. *Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security*. Rome: Office of Knowledge Exchange, Research and Extension Food and Agricultural Organization. <https://www.fao.org/3/i2801e/i2801e.pdf>.
- Harsono, B. 2002. "Reformasi Hukum Tanah Yang Berpihak Kepada Rakyat." In *Reformasi Pertanahan: Pemberdayaan Hak Hak Atas Tanah Ditinjau Dari Aspek Hukum, Sosial, Politik, Ekonomi, Hankam, Teknis, Agama Dan Budaya*, edited by B. Adhie and H. B. N. Menggala. Bandung: Mandar Maju.
- Holleman, J. F. 1981. *Van Vollenhoven on Indonesian Adat Law*. Edited by J. F. Holleman. Dordrecht: Springer Netherlands. <https://doi.org/10.1007/978-94-017-5878-9>.
- Ibrahim, Johny. 2007. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia.
- Indonesia. 1994. *Government Regulation Number 20 Year 1994 on the Share Ownership Obligation on the Foreign Investment Company*.
- Indonesia. 1967. *Law Number 1 Year 1967 Concerning Foreign Investment*.
- Indonesia. 1960. *Law Number 4 Year 1960 Concerning Agrarian Law*.
- Indonesia. 2014. *Law Number 39 Year 2014 Concerning Plantation*.

- Indonesia. 1986. *Presidential Decree Number 17 of 1986 Concerning The Requirement of the Domestic Share Ownership for Foreign Investor.*
- Irianto, Sulistyowati. 2012. "Introduction Socio-Legal Studies and Its Methodological Implications." In *Kajian Sosio-Legal*, edited by Adrian W. Bedner, Sulistyowati Irianto, Jan Michiel Otto, and Theresia Dyah Wirastri. Denpasar: Pustaka Larasan.
- Kartodirdjo, Sartono, and Djoko Suryo. 1991. *Sejarah Perkebunan Di Indonesia: Kajian Sosial Ekonomi.* Yogyakarta: Aditya Media.
- Mahkamah Agung Republik Indonesia. 2002. *Yurisprudensi Kasus Pertanahan Di Indonesia.* Jakarta: Mahkamah Agung Republik Indonesia.
- Rizal, Jufrina. 2012. "Multidisciplinary, Pluridisciplinary, Interdisciplinary and Transdisciplinary Approaches in Understanding the Symptoms of Law and the Diversity of Indonesian Society." In *National Conference of the Association of Legal Philosophy.* Semarang: Fakultas Hukum Universitas Soegijapranata.
- Sidharta. 2009. "Mapping Schools of Legal Thought and Their Methodical Consequences." In *Metode Penelitian Hukum: Konstelasi Dan Refleksi*, edited by Sidharta and Sulistyowati Irianto. Jakarta: Yayasan Obor Indonesia.
- Sumardjono, Maria S. W. 2001. *Kebijakan Pertanahan Antar Regulasi Dan Implementasi.* Jakarta: Kompas Media Nusantara.
- United Nations. n.d. "Sustainable Development Goals." <https://sustainabledevelopment.un.org/?menu=1300>.
- White, Ben. 2005. "Land Anad Resource Tenure: Brief Notes." In *Tanah Masih Di Langit: Penyelesaian Masalah Penguasaan Tanah Dan Kekayaan Alam Di Indonesia Yang Tak Kunjung Tuntas Di Era Reformasi.* Jakarta: Yayasan Kemala.
- Wignosoebroto, Soetandyo. 2009. "Legal Research Is Basically a Scientific Research." In *Metode Penelitian Hukum: Konstelasi Dan Refleksi*, edited by Sidharta and Sulistyowati Irianto. Jakarta: Yayasan Obor Indonesia.