

# Jurimetric and Nonlinear Analysis of Legal Politics in the Regulation of Plantation Cultivation Rights: A Juridical Approach to Justice in Land Tenure Boundaries

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## Article History:

*Received: 05-11-2024*

*Revised: 25-12-2024*

*Accepted: 07-01-2025*

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## Abstract:

The control of natural resources, including land, by the state must be managed for the prosperity of the people, as mandated by Article 33 paragraph (3) of the 1945 Constitution. Although the Basic Agrarian Law (UUPA) has established fundamental agrarian principles, its implementation in derivative regulations still shows ambiguity, particularly regarding the maximum land ownership limits by private legal entities through the Right to Cultivate (Hak Guna Usaha - HGU). This ambiguity opens opportunities for land monopolies by large corporations, potentially hindering a more equitable distribution of land. This study aims to analyze the regulatory weaknesses related to the maximum ownership of HGU and provide recommendations for stricter regulations to achieve social justice. The research employs a normative legal method with statutory, historical, and case approaches to examine the unclear norms surrounding HGU land ownership by private legal entities, which results in injustice for surrounding communities. The study highlights the importance of setting maximum land ownership limits for HGU by private legal entities to prevent land monopolies and ensure equitable distribution in accordance with Article 33 paragraph (3) of the 1945 Constitution. However, current regulations do not explicitly stipulate these maximum limits, as reflected in Government Regulation No. 18 of 2021 and Ministry of Agrarian Affairs/Head of National Land Agency Regulation No. 17 of 2019, which focus more on location permits. Therefore, clearer and stricter regulations are needed to ensure a balance between economic efficiency and social justice in HGU land ownership.

**Keywords:** land ownership; legal politics; plantation; private entities; right to cultivate.

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## 1. Introduction

In order to realize the welfare of the people, the management of Indonesia's natural resources, including land, water, and natural resources, must be managed in accordance with the spirit of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which emphasizes that all natural resources are controlled by the state for the prosperity of the people. The Basic Agrarian Law (UUPA) as a derivative of Article 33 paragraph (3) emphasizes the importance of people's happiness, welfare and independence. The development of plantations as one of the mainstay sectors is expected to contribute significantly to the improvement of people's welfare and regional income by opening up extensive employment opportunities.[1]

Prior to the issuance of the Basic Agrarian Law (UUPA), state land was defined as land that was fully controlled by the state in accordance with Government Regulation No. 8 of 1953, where the land was free from inherent rights, both western rights and customary rights. However, after the UUPA was born, the concept of state land tenure changed to land directly controlled by the state, with the state acting as a ruling body, not a landowner.[2] In legislation after the UUPA, state land is divided into two categories: land that has never had rights (free state land) and land that previously had rights but turned into state land due to a legal act.[3] Although the UUPA has regulated basic agrarian principles, some provisions, such as the maximum limit on land tenure in Article 7, are often disregarded in other more specific legislation, such as land tenure by private legal entities through Plantation Cultivation Rights.

After the birth of the UUPA, the definition of state land is land that is not attached to land rights. Hak Guna Usaha (HGU) is regulated as a special right to cultivate state land for agriculture, fisheries and livestock companies, with legal subjects who can hold HGU being Indonesian citizens and Indonesian legal entities.[4] Legal entities that can obtain HGU must be established and domiciled in Indonesia, with national capital, unless there is a law that allows foreign capital.[5] However, with the existence of various sectoral regulations related to natural resource management, the position of the community as the main actor of development began to be displaced, so that the ideals of social justice mandated by the 1945 Constitution and Pancasila were increasingly difficult to feel. Decentralization of development opened up large investments in the agricultural sector, especially plantations, which resulted in the control of land by private legal entities through the granting of HGU from the state.[6]

Cultivation Rights Title (HGU) is an important policy in Indonesia's land system that aims to improve the economy through increased production in the agriculture, plantation, fisheries and livestock sectors.[7] Under Article 28 of the UUPA, HGU is granted on state land for a period of 25 to 35 years, with the possibility of extension for another 25 years. In its implementation, HGU is limited by the principle that land has a social function, so monopoly and excessive land control are not permitted. In addition, in accordance with regulatory changes, HGU can now also be granted on management rights land, including customary land.[8] However, the regulation on HGU still requires further explanation regarding the maximum limit of land tenure by a legal subject. Although Article 28 of the UUPA mentions capital requirements and feasible techniques for land of more than 25 hectares, there is no clear provision regarding the maximum limit of land area that can be owned. This potentially contradicts Article 7 of the UUPA which prohibits excessive land tenure.[9] Therefore, more detailed regulations are needed to limit land tenure to the maximum, in order to ensure a more equitable distribution of land and achieve the goal of people's welfare.

Plantation development in Indonesia is based on the principles of sovereignty, benefit, sustainability, and justice, as stipulated in the 2014 Plantation Law with the aim of improving welfare, production, and national resources. However, the management of large plantations, which is expected to be adopted by farmers, has not been achieved. Since the colonial period, land control by foreign companies has resulted in rural communities becoming laborers, not farming entrepreneurs.[10] The 1870 Agrarian Law, which aimed to protect indigenous land rights, did not achieve this, but instead exacerbated inequality in land tenure. Legal provisions regarding maximum land tenure limits favor private legal entities, which can control land with Cultivation Rights Title (HGU) without clear limits, thus further

limiting community access to agricultural land.[11] Facts on the ground show that land cultivated by indigenous farmers is often considered state land and transferred to private companies.

Article 33 paragraph (3) of the 1945 Constitution grants the state the right to control natural resources for the prosperity of the people, which is often implemented through the granting of location permits to private companies, including plantation business licenses. However, regulations related to limiting the area of land controlled by private legal entities, as stipulated in Permen ATR/Head of BPN No. 17 of 2019 and its amendments, tend not to effectively limit land tenure by business entities because restrictions are made based on the type of commodity, not the total area of land controlled. This opens up opportunities for monopoly of land tenure by private legal entities, where one company can have various location permits for plantation businesses with different commodities, thus creating inequality in land tenure. In this research, the author found difficulties in accessing detailed data related to Cultivation Rights Title (HGU) controlled by private legal entities, because the data is classified as exempt information for public access, although several court decisions have determined that HGU information should be open to the public. In addition, the author considers that the maximum land tenure limit for plantation HGU stipulated in Permen ATR/Head of BPN No. 17 of 2019 needs to be reviewed, given the limited land and the need for farmers to have sufficient land to support their lives. This failure to limit land tenure has the potential to exacerbate inequality in land distribution, especially in the agricultural sector.

The social function principle of land rights has an important role in realizing the welfare of the people in Indonesia, which adheres to the concept of welfare state. This principle aims to ensure the utilization of land for the prosperity of the people, as mandated in the 1945 Constitution.[12] However, in practice, land utilization is still not fully able to support collective welfare. One of the main problems faced is the granting of Cultivation Rights Title (HGU) to private plantation companies on a large scale, which limits local farmers' access to agricultural land.[13] In addition, land cultivation by local communities is often hampered by regulations that grant HGU to companies, even though the land is abandoned or the validity period has expired. Furthermore, the issuance of the Job Creation Law raises a number of legal uncertainties related to the HGU regulation. Inconsistencies in definitions, principles, and legal norms regulated lead to potential conflicts of norms, as well as violations of the hierarchy of laws and regulations. This problem is exacerbated by the lack of restrictions on land tenure by private legal entities in the legislation, which causes legal uncertainty in the utilization of agricultural land, especially related to land tenure restrictions by plantation companies.[14] This has the effect of violating the main objective of Article 33 of the 1945 Constitution which emphasizes that natural resources, including land, should be used to the greatest extent for the prosperity of the people.

The regulation of the maximum HGU land limit, which is currently only regulated through Ministerial Regulations, is considered inadequate and ineffective in limiting the concentration of land in large companies, which is contrary to the spirit of social justice mandated by Article 33 paragraph (3) of the 1945 Constitution. This policy has led to inequality in land tenure, where a small portion of the community controls very large tracts of land, while most farmers live on small plots of land. This has become a public issue highlighted in political debates, especially regarding land redistribution for the welfare of the community. This article aims to analyze the legal implications of the unclear norms governing the maximum control of HGU by private legal entities, and its impact on social justice. This

research seeks to recommend a firmer and more equitable regulation for land redistribution, in accordance with the mandate of the UUPA and Article 33 of the 1945 Constitution. Thus, this research is expected to encourage agrarian law reform that is more just and supports the prosperity of the people, through proportional and fair restrictions on land tenure by plantation companies.

## **2. Methods**

### **Research Design**

This study employs a normative legal research approach with a descriptive-analytic method. [15] The descriptive component focuses on explaining the legal framework governing the limitation of land tenure under Cultivation Rights Title (Hak Guna Usaha – HGU) by private legal entities, particularly within the context of Indonesian agrarian law. The analytic aspect involves examining the inconsistencies and legal ambiguities present in the existing regulations, assessing their implications for social justice and equitable land distribution. [16] This research also integrates the concept of legal politics to understand the interplay between regulatory frameworks, state control, and private sector interests in plantation land tenure.

### **Data Collection**

The primary sources of data in this research are:

- **Legal Documents and Regulations:** Examination of relevant laws and regulations, including the 1945 Constitution of the Republic of Indonesia, the Basic Agrarian Law (UUPA), Government Regulation No. 18 of 2021, and Ministerial Regulation No. 17 of 2019, among others.
- **Judicial Decisions:** Analysis of court rulings related to disputes over HGU land tenure, especially those that highlight legal ambiguities and conflicts between agrarian justice and economic policies.
- **Scholarly Literature and Legal Doctrine:** Review of academic works on legal politics, land tenure policies, and the impact of HGU on local communities.
- **Case Studies:** Examination of specific cases involving large-scale land acquisitions by private entities and their effects on land distribution.

### **Legal Analysis Framework**

To ensure a comprehensive evaluation of the issue, this research employs multiple legal research approaches:

- **Statutory Approach:** Examining the legal norms governing HGU, including their formulation, interpretation, and application.
- **Historical Approach:** Tracing the evolution of land tenure regulations from colonial times to the present, analyzing the shifts in policy directions.

- **Case Approach:** Reviewing relevant judicial decisions and case law to identify legal precedents and assess their impact on land tenure regulations.

### **Analytical Methodology**

The research employs a qualitative legal analysis to identify inconsistencies in the legal framework governing HGU. The analysis includes:

- **Doctrinal Analysis:** Evaluating the principles of land ownership as stipulated in statutory provisions and their alignment with the constitutional mandate of social justice.
- **Comparative Analysis:** Comparing Indonesia's regulatory approach with other jurisdictions that impose clear limitations on corporate land tenure.
- **Impact Assessment:** Assessing the socio-economic consequences of weak regulatory control over land tenure by private legal entities, particularly in terms of land concentration and its effects on local communities.

### **Validation and Interpretation**

The research findings will be validated through:

- **Legal Consistency Testing:** Evaluating whether the current regulations align with the fundamental principles of agrarian justice as prescribed in the UUPA and the 1945 Constitution.
- **Case Law Correlation:** Cross-referencing judicial interpretations and precedents to determine the degree of legal certainty provided by existing norms.
- **Policy Recommendations:** Proposing regulatory reforms to establish a more equitable land tenure system while balancing economic growth and social justice concerns.

## **3. Discussion**

### **Policy Direction in Granting Plantation Cultivation Rights to Private Legal Entities with Economic Orientation**

The political direction of law related to the granting of Cultivation Rights Title (HGU) to private legal entities in Indonesian history, starting from the colonial era to the post Job Creation Law, shows that this policy is driven by economic orientation. The state grants land rights to individuals or legal entities with the aim that the land can be cultivated, utilized, and maintained for the benefit of the right holder and the wider community.[17] The land law regulated by the Basic Agrarian Law (UUPA) requires rights holders to fulfill stipulated obligations, and if these obligations are ignored, the state has the right to revoke the land rights. Historically, colonial-era land law emphasized efficiency and individualism, with an orientation towards the expansion of the plantation sector to support the capitalist economy. This policy benefited groups with large capital, especially in the large-scale

plantation sector. In contrast, customary law emphasizes the values of togetherness, kinship, and more equitable distribution, so that land tenure is more limited and tailored to the needs of the community subsystem. This difference in values creates dualism in land management, where aggressive and dominant groups in land expansion benefit more, while groups supported by customary law tend to be more passive and difficult to compete with.[18]

The enactment of the Basic Agrarian Law (UUPA) aims to end differences in values and interests in land law by emphasizing the prosperity of the people as the main goal, in accordance with Article 33 paragraph (3) of the 1945 Constitution. This goal refers to the fulfillment of basic needs such as food, clothing, shelter, employment, health, and education for all Indonesians without discrimination. UUPA also emphasizes that the desired prosperity is not only for certain individuals or groups, but for all Indonesians in every region of the country.[19] Within the UUPA framework, there are two levels of interest: intermediate and ultimate. Intermediate interests include socio-economic conditions that serve as a bridge to the prosperity and welfare of the people, while ultimate interests focus on the fair distribution of land and economic resources to realize common welfare. Welfare includes material aspects, such as the fulfillment of basic needs, as well as immaterial aspects in the form of happiness supported by safe and secure conditions.[20] A just agrarian law is expected to create social justice for all people by distributing land and economic resources to as many Indonesians as possible.

The choice of people's welfare and justice promoted in the UUPA is the main foundation for achieving the ultimate goal of forming a just and prosperous society, in accordance with Indonesian socialist values.[21] This is stated in several sections, including the "Menimbang" Section and Article 2, which emphasize the important role of the earth, land, water, and space in building people's welfare and social justice. In addition, the General Elucidation of the UUPA also emphasizes that state control rights are used to maximize the prosperity of the people, in line with the values of nationality, independence, and justice in Indonesia's agrarian society. This concept of a just and prosperous society is the antithesis of colonial policies that only benefited a handful of citizens. In contrast, under the UUPA, every family is sought to own land as a source of livelihood, reflecting social justice without oppression.[22] Although the LoGA has gone through various governmental changes since 1960 until the reform era, its main orientation remains unchanged. However, there are several concepts within the LoGA that require reformulation to ensure clear interpretation and prevent deviations.

The regime change from the Old Order to the New Order in Indonesia brought about changes in economic development policies that underpinned the social orientation and values prioritized. During the Old Order (1960-1966), economic development policies focused more on equity by distributing land resources to the wider community, reflecting traditional values. In contrast, the New Order adopted a more economic growth-oriented approach. Land was granted to individuals who were able to fulfill certain requirements, such as the ability to compete and contribute to increased production, with the aim of prospering the people through increased production and the creation of large-scale employment opportunities. The implementing regulations of the UUPA in the New Order era leaned more towards modern values that emphasized efficiency and productivity.[23]

In economic development policy discourse, there is a view that equity and economic growth orientations are part of an interconnected process. However, from a political economy perspective,

they are often perceived as conflicting policy choices. Authors such as Mubyarto and Mohtar Mas'od emphasize the conflict between a growth-oriented economy and an equity-focused economy. Mubyarto sees conglomerate-driven economic growth as often at odds with the spirit of equity, while Dawam Rahardjo associates economic growth with capitalistic development, as opposed to populism which is more concerned with equity.

In the context of economic development, there is a view that growth and equity should go hand in hand, as reflected in the concept of “growth with equity”. However, policy practice often prioritizes economic growth at the expense of equity, especially in situations where there is tension between the two. Some experts, such as Maryatmo, argue that if market mechanisms function properly, economic growth should result in equitable distribution of employment opportunities and income. However, in reality, the two aspects often do not go hand in hand during the development process, especially in Indonesia where development policies face a difficult choice between prioritizing economic growth or equity. During both the Old and New Order periods, Indonesia's economic development policy was faced with the dilemma between growth and equity, which impacted on various policies, including agrarian policy and the granting of Cultivation Rights Title (HGU). The HGU, which was intended to encourage efficient land utilization, also served as an instrument to increase economic production in strategic sectors such as agriculture and plantations. Although the essence of HGU is to improve people's welfare and promote social justice, its realization is still far from expectations.[24] With the plantation sector having a significant contribution to the country's foreign exchange, the government needs to pay special attention to its management in order to provide optimal benefits for the community and the country in accordance with the provisions of the applicable laws.

The ownership of Plantation Business Licenses in Indonesia is an important issue for plantation companies, especially in relation to transparency and land management. One of the main challenges is the lack of access to Cultivation Rights Title (HGU) data, which the Supreme Court decided in Decision No. 121 K/TUN/2017 to open up to the government. Misalignment between regulations and implementation on the ground also often arises, especially in relation to the overlap of HGU with forest areas and the obligation to develop community gardens by HGU holders. Regulations such as MOA 98/2013 and PP 24/2018 emphasize the importance of administrative compliance through license registration in the OSS (Online Single Submission) system, to support transparency and compliance in the plantation sector. In addition, the policy of granting HGU to private legal entities has a significant impact on community land ownership. Unequal land distribution often disadvantages local communities, who lose access to the land that has been their source of livelihood. This inequality is further exacerbated by large economic interests that encourage large-scale land licensing to private companies through the OSS system.[25] Meanwhile, political and structural problems in the implementation of the law, as stipulated in the UUPA and related regulations, have exacerbated the situation, resulting in the protection of local community rights being neglected.

Large landholdings by private legal entities have a significant impact on local communities' rights and access to land. Communities are often forced to leave land they have managed for many years without adequate compensation, reducing the area available for smallholder farming and the natural resources on which their livelihoods are based. These impacts not only result in a decline in economic well-being, but also affect social and cultural aspects, as land has cultural and spiritual value to local

communities.[26] In addition, the concentration of large-scale land ownership in the hands of a few companies creates monopolies that harm communities, including affecting prices and access to other important resources. The lack of clarity in regulations regarding the size of land that can be controlled by private legal entities adds to the vulnerability of local communities. Several related regulations, such as PP No. 40/1996 on Cultivation Rights and Ministerial Regulations on Location Permits, often overlap and lead to different interpretations. As a result, companies can take advantage of legal loopholes to acquire land on a larger scale than should be allowed. These discrepancies undermine equitable land distribution, increase the risk of conflict with local communities who lose access to their land, and widen social and economic disparities.

The conversion of land from community use to large plantations leads to a decline in local economic diversity and impacts the livelihoods of people who depend on smallholder agriculture or local resources. Communities often struggle to adapt to new jobs offered by large companies, which rely more on external labor or technology, reducing local employment opportunities. Land monopolization by a handful of large companies creates imbalances in land distribution, limits local communities' access to land, and consolidates economic and political power in the hands of a few large entities.[27] This is contrary to the principle of social justice in Pancasila and Article 33 of the 1945 Constitution, which emphasizes that natural resources must be utilized for the prosperity of the people equally.

This inequality in land ownership is exacerbated by Hak Guna Usaha (HGU) policies that favor entrepreneurs by extending the period of land management, increasing opportunities to commercialize land as a high-value commodity. The absence of maximum restrictions on HGU ownership by private legal entities reflects the influence of neoliberalism, which prioritizes foreign capital and economic growth over the welfare of local farmers.[28] As a result, small farmers are increasingly marginalized and turned into workers, no longer as landowners. To prevent HGU abuse and create balance, the government is expected to take normative steps, including distributing cultivated land to farmers, so that farmers' welfare can be guaranteed without sacrificing foreign investment.

The problem of land ownership inequality in Indonesia reflects the accumulation of land ownership in one party, while others own a limited amount of land or none at all. The imbalance in land distribution, both agricultural and non-agricultural, has had significant economic, political and sociological impacts, with the heaviest burden falling on farmers.[29] In addition, the growing value of land commodities triggers competition between parties for economic gain, which causes the populist orientation as mandated by the Basic Agrarian Law (UUPA) to erode. Several policies that should have supported the people, such as Law No. 2/1960 and Law No. 56/Prp/1960, began to be pushed aside by the capitalistic interests of the financiers. A number of land policies issued by the government, such as the Investment Law and the Job Creation Law, have extended Cultivation Rights Title (HGU) for up to 95 years, which has led to protests and conflicts among farmers. This policy is considered contrary to the UUPA and Constitutional Court Decision No. 21-22/PPU-V/2007, which states that granting HGU for 95 years at once violates the Constitution. Recent regulations, such as Presidential Regulation No. 75 Year 2024 that extends HGU to 190 years, add to the complexity of agrarian issues, exacerbate inequality, and lead to further conflicts over land ownership and management in Indonesia.

Since the enactment of the UUPA, the implementation of Cultivation Rights Title (HGU) has faced many obstacles in the field, mainly due to the ineffective legal structure. Political and economic interests have influenced the implementation of this law, which in turn has damaged the legal culture related to land management. The policy of granting HGU to private legal entities often leads to injustice in land distribution, especially for local communities who lose access to land that has become their source of livelihood. Companies that obtain HGU often control land on a large scale, resulting in an imbalance between the rights of local communities and corporate interests.[30] The consequences of land tenure by private legal entities have a profound impact on the lives of local communities, economically, socially and culturally. Loss of access to land not only affects economic welfare, but also the cultural values of the community. In addition, the overlapping regulations regarding the maximum area of HGU between Government Regulation No. 40/1996 and other regulations are often used by companies to acquire more land than they should. This creates injustice in land management, creates a land monopoly, and exacerbates social inequality in the community.

Large-scale land acquisition by private legal entities, especially for plantations, has a significant impact on local communities' land rights, often reducing their access to resources that are the basis of life, such as subsistence agriculture. This land conversion not only causes changes in the social structure of communities, increases poverty and triggers social conflicts due to relocation, but also reduces local economic diversity and employment opportunities.[31] In addition, the monopolization of land by a handful of large companies exacerbates inequality in resource distribution, consolidates economic and political power, and prevents land use for the benefit of the wider community.

Land monopoly in Indonesia contradicts the principle of social justice enshrined in the fifth precept of Pancasila and Article 33 paragraph (3) of the 1945 Constitution, which emphasizes that natural resources should be used for the prosperity of the people. When land is controlled by a handful of private legal entities, local communities, especially farmers, are often deprived of equitable access to these resources, creating economic inequality. Renewal and extension of Cultivation Rights Titles (HGU) further reinforce the dominance of entrepreneurs in land management, exacerbating this injustice. The government needs to implement normative measures to prevent HGU abuse and prioritize land distribution to farmers to achieve more equitable welfare.

Agrarian problems in Indonesia reflect the inequality of land ownership, where there is a concentration of ownership in certain parties, while other groups, such as farmers, only own a limited amount of land or even do not own it. This imbalance has significant economic, social and political impacts. The value of land as an economic commodity is increasing, leading to competition from capital owners to control it, contrary to the populist spirit of the Basic Agrarian Law (UUPA).[32] In addition, government policies such as the Investment Law and Job Creation Law further exacerbate this inequality, especially for the affected farming communities. Agrarian conflicts are further exacerbated by policies such as Presidential Regulation Number 75 of 2024 that allows land concessions of up to 190 years, which is considered to violate the provisions of the UUPA and the Constitutional Court Decision. These policies indicate a shift from the spirit of agrarian justice towards a capitalistic orientation. MPR Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management has actually underlined the importance of agrarian reform to achieve social and economic justice, especially for small farmers and indigenous peoples. However, new policies have actually added to the burden of agrarian conflicts and

exacerbated inequality. With fairer land redistribution and environmental sustainability, it is hoped that natural resource management can support inclusive and equitable development.

Social justice in society does not only depend on fair individual attitudes, but is also determined by fair social structures. In the context of the rule of law, social justice can only be realized if unjust social structures are rectified through systematic efforts. The rule of law, in this case, not only functions as the guardian of order and security, but is also responsible for creating welfare and justice for society. Laws in the rule of law must protect society from threats, ensure justice, and encourage development for the welfare of the people. In Indonesia, the principle of the rule of law is the “Pancasila rule of law” which combines legal certainty and justice.[33] One important foundation in achieving justice is Article 33 of the 1945 Constitution, which emphasizes that natural resources are managed by the state for the greatest prosperity of the people. Through MPR Decree No. IX/MPR/2001, land policy is directed to support welfare and create justice in agrarian management. It also emphasizes the importance of sustainability and community participation in managing agrarian resources in a fair and environmentally friendly manner, in order to avoid future conflicts.

MPR Decree No. IX/MPR/2001 is a strategic foundation for agrarian reform and natural resource management in Indonesia. It emphasizes the importance of agrarian reform by taking into account the integrity of the state, human rights, the rule of law, and the protection of indigenous peoples and the environment. In its implementation, this agrarian policy focuses on land reform, which is the rearrangement of control, ownership, use, and utilization of land in a fair manner.[34] In addition, this policy accommodates cultural and legal diversity, and encourages the resolution of agrarian conflicts to create legal certainty. Implementation of these provisions resulted in various regulations, including land redistribution to reduce ownership inequality and strengthen small communities' access to land. The creation of a more integrated and transparent land administration system is also a priority, including through programs such as OSS to facilitate the processing of land rights. These agrarian reforms not only aim to improve the efficiency and transparency of land administration, but also to reduce socio-economic inequality through fairer access to natural resources.

### **Regulation of the Limitation of Plantation Cultivation Rights by Private Legal Entities that is Equitable**

Regulations regarding restrictions on the control of Plantation Cultivation Rights Title (HGU) land by private legal entities have not been clearly regulated in Indonesian legislation. Currently, existing regulations emphasize access rights rather than direct land tenure. The difference between rights and permits in the legal system also needs to be observed, where permits are temporary and non-transferable, while rights are permanent. This lack of strict rules has led to unequal distribution of land and created inequality in plantation land tenure, where land is only controlled by a handful of parties.[35] The main objective of land tenure restrictions is to achieve equity in the management of natural resources, in accordance with Article 33 paragraph (3) of the 1945 Constitution and several provisions in the UUPA. Restrictions are necessary because state intervention can reduce the inequality

that occurs, especially for those who have greater access to technology and resources. Without clear restrictions, land management will be increasingly unfair, so state intervention to set a maximum limit on HGU control by private legal entities is very important in creating social justice and welfare for the community.

A draft law on limiting ownership and control of land under Hak Guna Usaha, Hak Guna Bangunan, and Hak Pakai has been discussed from 2013 to 2018. The main objective was to ensure equitable distribution of land ownership by setting maximum limits based on factors such as population, area, and land availability in each district or city. In the 2018 version, which was updated in 2019, the law retained the maximum limit but with exceptions related to economies of scale, community participation, and national interest. These exceptions are accompanied by a progressive tax payment requirement if the limit is exceeded. However, critics of the law say that the latest version does not reflect the principle of fairness, especially regarding the redistribution of agricultural land. The maximum limit provision is considered to lose meaning if it is not accompanied by strict sanctions against violations. The exemptions granted are also considered to contradict the principles stipulated in the Basic Agrarian Law (UUPA).[36] Therefore, limiting Cultivation Rights Title to legal entities is considered important in order to create legal certainty and reduce inequality in land ownership.

Restrictions on Cultivation Rights are governed by a number of legal bases that reflect the state's efforts to manage and distribute land resources fairly. The 1945 Constitution provides the main constitutional basis, particularly Article 33 paragraph (3), which emphasizes that state control over natural resources must be used for the greatest prosperity of the people. This article provides the legal basis for restrictions on land ownership, including Cultivation Rights Title, to ensure that land rights are not only owned by a few but also provide broad benefits to society. The LoGA provides further details on the regulation of land in Indonesia. The LoGA emphasizes that land rights, including Cultivation Rights, must be managed in accordance with the principles of order, justice, and public interest. In this context, the UUPA mandates certain limits to land ownership to ensure a more equitable distribution and avoid the accumulation of land power by certain parties. Derivative regulations from the LoGA, such as government regulations and ministerial decrees, do not regulate in technical detail the limitation and management of Plantation Cultivation Rights by private legal entities, instead only control by individuals is regulated in detail.

The principle of justice in land tenure restrictions aims to ensure equitable access to land resources in the public interest, avoiding domination by certain individuals or groups. Based on Aristotle's theory

of justice, which emphasizes that injustice occurs when treatment of equal or unequal things is unequal, land tenure arrangements must be fair to all parties.[37] This is reflected in Article 33 paragraph (3) of the 1945 Constitution and the UUPA, which mandates a maximum limit on land tenure, both by individuals and legal entities, so as not to harm the public interest. These restrictions include normative arrangements that ensure land is used fairly and for the welfare of the wider community.

The policy of limiting Cultivation Rights Title (HGU) from the colonial period to the present has not changed significantly. During the colonial period, land tenure by large companies was prioritized without clear boundaries, often ignoring local rights. After independence, the UUPA was introduced to create fairness in land management, including regulating HGU with the aim of preventing monopoly ownership.[38] However, Article 28 of UUPA does not explicitly limit the maximum HGU ownership by private legal entities. In addition, Regulation of the Minister of Agriculture No. 98/2013 also does not provide a maximum limit on the size of the HGU, opening up opportunities for very large land holdings, so its implementation is often influenced by political and economic interests.

During the New Order era, land policy focused on economic development and large investments, which favored large companies and foreign investors with loose regulation of Cultivation Rights Title (HGU), leading to land accumulation and agrarian conflicts. The Reformation era brought improvements with regulations that emphasized equity and sustainability, including limiting the maximum HGU area.[39] However, recent regulations still open loopholes for greater land control by legal entities through strategic exemptions and progressive tax payments, as seen in PP No. 18 of 2021. Lack of supervision and weak enforcement of HGU restrictions exacerbate the problem of private land monopoly, thus perpetuating inequality and neglecting the welfare of farmers, who are increasingly marginalized by big capital in an increasingly neo-liberal agrarian economy.

Problems in the control of Plantation Cultivation Rights (HGU) by private legal entities that are often carried out without any maximum restrictions have triggered conflicts with surrounding communities. This occurs due to the accumulation of land tenure that is often neglected or not managed in accordance with the purpose of granting the right, so that local communities begin to work on the land, which then leads to disputes. Limiting the HGU of plantations is considered an important solution to this problem, as it has a positive impact on surrounding communities by enabling a more equitable and fair distribution of land, and reducing potential inequalities in land ownership.[40] In addition, for companies, these restrictions spur efficiency in land use, technological innovation and more sustainable management practices, while reducing the risk of conflict with communities. On the other

hand, these restrictions also present challenges for companies related to potential increases in operational costs and more productive land management.

The implementation of restrictions on Cultivation Rights Title (HGU) in various regions in Indonesia tends to vary depending on local government policies. For example, in East Kalimantan, based on Governor Regulation No. 1/2018, the HGU limitation for oil palm plantations is set at 100,000 hectares. However, this regulation only applies to oil palm plantations, while there are no clear restrictions for other types of crops. This indicates that the HGU limitation is not effective in reducing overall land tenure, as it is only limited by crop type, not total land area. In line with this, the Regulation of the Minister of ATR/Head of BPN Number 17 of 2019, which was amended through Permen Number 13 of 2020, also does not clearly limit land tenure by private legal entities. Restrictions made based on the type of plant, not the amount of land controlled as a whole, have the potential to create inequality in land tenure in various regions. On the other hand, HGU restrictions also have varied impacts in the field. For example, in South Sulawesi, HGU restrictions for oil palm and rubber plantations aim to reduce negative impacts on the environment and surrounding communities. Some companies were forced to adjust by investing in more sustainable land management practices and involving local communities in economic activities. As a result, there has been an increase in local incomes and a reduction in agrarian conflicts. However, in some areas, the implementation of this policy faces challenges, such as weak law enforcement and economic uncertainty, especially for companies that have not been able to adapt to the new restrictions. This suggests that while the HGU restriction policy aims to create a more equitable distribution of land, its effectiveness is still affected by variations in implementation at the local level.

An evaluation of the effectiveness of the Hak Guna Usaha restriction policy in achieving the objectives of social justice and equity shows mixed results. In general, the policy has been successful in creating a better balance between large companies and local communities, by opening up access for smaller entities and improving equity in land ownership. In some areas, restrictions on Cultivation Rights of Way helped reduce agrarian conflicts and improved the welfare of neighboring communities by allowing them to access land for their economic activities. However, implementation challenges, such as inconsistent law enforcement and resistance from large companies, often hinder the achievement of overall social justice goals. Technical and administrative obstacles in implementing restrictions on Cultivation Rights are often related to bureaucracy and complex administration.[41] One of the key issues is coordination between government agencies involved in land control and management. For example, the National Land Agency (BPN) and the Ministry of Agrarian Affairs and Spatial Planning

(ATR) must cooperate with different levels of local government to ensure that restrictions on tenure of Plantation Cultivation Rights are consistently applied. However, there are often gaps in communication and differences in interpretation between agencies, which can result in legal uncertainty and inconsistent enforcement.[42] In addition, the administrative process for verifying and approving and approve Plantation Cultivation Rights Title applications can also be complicated and time-consuming. Applications involving large land areas or complex uses often face cumbersome procedures, which can be often face convoluted procedures, which can hinder investment and efficient management. Excessive bureaucracy and a lack of capacity and resources at the local level to manage and monitoring compliance with Hak Guna Usaha restrictions are also frequent barriers. Social and economic challenges are also significant in adapting to restrictions on Hak Guna Usaha. For private legal entities, restrictions on the extent of Hak Guna Usaha can lead to economies of scale, which affect operational efficiency. Large companies may need to restructure, sell some land, or find alternative ways to maintain their profitability. This can lead to economic instability and investment uncertainty, which in turn affects business decisions and long-term planning.

Community adaptation to restrictions on Cultivation Rights often faces social challenges, including land conflicts with private legal entities and difficulties in adjusting to new land management systems. Local communities are often under-involved in decision-making processes and uninformed, so changes in land allocation can create uncertainty in access and use rights, which in turn has the potential to trigger agrarian conflicts.[44] In this context, the doctrine of control by the state must be understood more broadly through the four main functions of the state, namely: protecting the blood and homeland (protectional function), improving the welfare of the people (welfare function), educating the nation's life (educational function), and creating peace both domestically and internationally (peacefulness function).

The Constitutional Court (MK) has reformulated the notion of “state control rights” in line with different views and perceptions regarding the role of the state in natural resource management. In its various decisions, including decisions related to the Oil and Gas Law, as well as the Electricity and Natural Resources Law, the Constitutional Court emphasized that the right to control the state does not mean that the state directly owns natural resources, but rather that the state has the authority to formulate policies, regulate, administer, manage and supervise natural resources. Thus, the state has an important role in ensuring that the utilization of natural resources is carried out for the greatest

prosperity of the people. In Constitutional Court Decision No. 36/PUU-X/2012, related to the review of Law No. 22/2001 on Oil and Gas, the Court emphasized that state control over natural resources must be carried out through direct management by the state, either through state-owned enterprises or other mechanisms that prioritize the interests of the state. If the state hands over the management of natural resources to private parties, the state's profits will be divided, potentially reducing the benefits that should be enjoyed by the people. In addition, the Court emphasized that direct management by the state will ensure that the results and profits obtained will go to the state treasury, which indirectly also has a positive impact on the welfare of the people.

The regulatory function of the state (*regelendaad*) is carried out through the authority of legislation by the DPR together with the Government, as well as regulation by the Government (*executive*). In the implementation of economic resource management, the state uses a mechanism of share ownership and direct involvement in the management of State-Owned Enterprises or Regionally-Owned Legal Entities. In this way, the state utilizes its power over natural resources for the greatest prosperity of the people.[45] In addition, the state's supervisory function (*toezichthoudens-daad*) is carried out to ensure that the management of resources that are important to the people, in accordance with Article 33 paragraph (3) of the 1945 Constitution, is truly directed to the common prosperity. In this context, the Constitutional Court set four benchmarks to assess the utilization of natural resources for the prosperity of the people. These benchmarks include the benefits of natural resources for the people, equitable distribution of benefits, people's participation in decision-making, and respect for people's hereditary rights. Based on the Constitutional Court's decision, the state has an obligation to ensure that the utilization of natural resources improves people's welfare, protects people's rights, and prevents actions that harm people's access to natural resources.

Based on this understanding, it is appropriate that the maximum limitation on the granting of Cultivation Rights to private legal entities be regulated in a similar way to the restrictions applicable to individuals. This is important given the goal of natural resource management for the greatest prosperity of the people, which requires the state to regulate and prevent any actions that may prevent the people from obtaining their rights or enjoying natural resources. This restriction is intended to create a sense of justice for the community, so that the state is not considered to be acting authoritarian. Therefore, it is necessary to conduct an in-depth study of the weaknesses in the current legislation that only limits the control of land rights by individuals, without including private legal entities.

#### 4. Conclusions

Limiting the maximum area of land tenure of Cultivation Rights Title (HGU) by private legal entities is an important effort to prevent land monopoly by large entities and ensure a more equitable distribution for the prosperity of the people, in accordance with the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Although this policy has been regulated in various regulations, including the LoGA and government regulations, there is no provision that clearly sets the maximum limit of land tenure by private legal entities. Regulations such as PP No. 18/2021 and Permen ATR/Head of BPN No. 17/2019 regulate location licensing rather than land tenure. As a result, existing regulations allow monopoly and do not support efficiency and fairness in land management. Therefore, reorganization is needed through clearer and firmer regulations related to restrictions on HGU tenure, which not only consider economic efficiency but also social justice, so that they can support the welfare of the wider community.

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