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# **COMMON SOCIETAL THEORIES: STATE CONTROL OVER NATURAL RESOURCES IN INDONESIA: PROBLEMS AND SOLUTIONS**

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# Introduction/ Background



studies exhibit results regarding the abundance and fertility of the land across the country, but this faces the serious problem of present structural inequity and the non-manifestation of agrarian justice that favors parties that experience injustice in or loss of access toward agrarian resources, poverty of a part of the people, lack of access to education and health, discrepancies among regions, environmental damage, corruption, and weak law enforcement.



Based on the results of analysis by the author regarding the doctrine, the theory of natural resource management in Indonesia has unique and distinct characteristics as well as a long historical period, stretching at least before the Western Europe colonial period by the Netherlands, England, and Portugal; Netherlands Indies (*Nederlandsch Indie*) from the arrival of the Dutch



Before the control of the Indonesian nation by colonists, the people of Indonesia who are composed of various tribes, traditions, customs, and religions, created an order of a legal subsystem that is known as "indigenous law or the Adat Law" (*hukum Adat*), with distinct, unique, and dynamic characteristics, in connection with the relation between people and natural resources



# PROBLEM STATEMENT:



1


How has been the dynamics of state policy and regulation of Indonesia for the management of agrarian resources in Indonesia along with the implications of problems as a result of the typology of policies and regulation by the state?




2

What are the alternative solutions that may be put forward to answer the implications of problems from cases of agrarian resource management as a result of the typology of policies and regulation by the state?






The primary element of agrarian law, or land law in a narrow sense, is based on the philosophy of relations between people and agrarian law, or land law in a narrow sense: first, there is the legal relationship (*rechtsbetrekking*) between the legal society (*'rechtsgemeenschappen'*) and the people of the legal community (*'corpus corporatum'*) according to the diction of Roman law



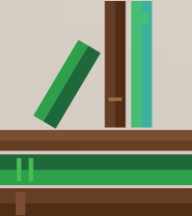
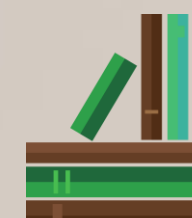
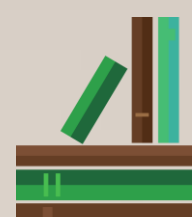
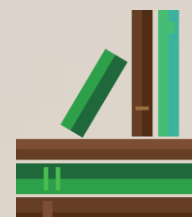
The basic principle of indigenous agrarian law is horizontal separation (*het Horizontale Scheiding Beginself*), which means that control and ownership of plots of land are separated from the control and ownership of objects on top of them such as buildings and plants, which have their own control and ownership.



This is different from the conception and doctrine that is carried by colonial Netherlands and England, which adopts the principle of adherence based on the legal conception of the Roman Empire with the term *'cujus est solum ejus est usque ad caelum et ad inferos'*. States that peruse what is called "Accessie Principle" or "adherence principle"

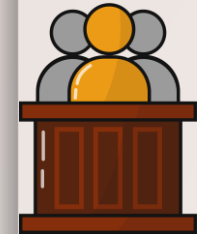


## Principles of Agrarian Law in Indonesia

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- a. Outsiders are required to pay a tribute (*recognitie*/recognition) to possess or collect products from the lands of indigenous communities.
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- b. Indigenous communities are responsible for every violation of the law that occurs in their areas of jurisprudence. Actors cannot be held responsible if their whereabouts are unknown.
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- c. Indigenous communities still have the right of controlling and supervising agricultural lands within their environments.
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- d. The land of indigenous communities may not be sold freely to another party forever. These are the distinct characteristics of indigenous law regarding agrarian resources: concrete, cash, clear, *religio magis*, *prima ad facie*, free and prior informed consent (FPIC).



# Analysis Method



the method for this analysis is the method of normative analysis with legal materials that comprise legal regulations, academic paper, and conceptions (notions or ideas that form legal regulations conceptually) of legal regulations in the field of agrarian resources as well as legal politics of the regulation of agrarian resources in Indonesia through the approach of '*hermeneutic*' interpretation.



the authority to interpret Article 33 of the 1945 Constitution of the Republic of Indonesia, in relation to providing interpretations and their criteria regarding:

- a. control rights of the state
  - b. the greatest prosperity of the people
  - c. economic democracy
- branches of production that are controlled by the state





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the explanation of Article 33 Paragraph (3) is still abstract in nature and thus causes multiple interpretations between the people who support the system of populist economy and those who maintain the substance of Article 33 in its entirety. The people who support liberal economy are those who intend to change the contents of Article 33 of the 1945 Constitution of the Republic of Indonesia;



The absence of detailed formulations regarding the controlling right of the state and the greatest prosperity of the people, according to Sumardjono, is present in laws related to natural resources involving the land (Article 2 Paragraphs (2) and (3) of the UUPA), forests (Article 5 Paragraphs (5) and (9) of Law No. 5 of Year 1967 on the Basic Provisions of Forestry as amended by Law No. 41 of Year 1999 on Forestry, Articles 3, 4), and water resources (Articles 2, 3 of Law No. 11 of Year 1974 on Water Resources as amended by Law No. 4 of Year 2007 on Water Resources, Articles 3, 6). In relation to mining resources, in particular minerals and coal, there is Article 4 Paragraph (1) Law No. 4 of Year 2009 on Minerals and Coal.



Accordingly, based on the study of the norms of legal regulations, Constitutional Court verdicts, and the views of natural resource law analysts, the following matters may be distilled:

- a. Realization of the spirit of the constitution regarding state authority over the management of natural resources with the five kinds of authority as explained previously;
- b. Manifestation or realization of the three ideals of the law, because the objective of the law is protection through both active and passive legal protection, which will allow fairness to be achieved. Fairness according to the viewpoint of John Rawls is the same as the fairness as outlined by Amartya Khumar Sen, which is a demand for impartiality that can be achieved if political rights are given, and allows for the distribution of revenue and wealth, or in brief, economic and social rights.



- c. How the state advances justice, A fair law is law that is able to serve the greater good, distribute burden fairly, respect God, and does not violate the authority of lawmakers. If this matter is not able to be fulfilled, then according to Aquinas in Lyons (1993), the law is an unfair law. Morally, people must obey a fair law.





# CONCLUSION



1. The dynamics of state policies and administration in Indonesia over the management of agrarian resources in Indonesia is apparent after the start of the reformation era along with the implications of problems as the consequence of the typology of policies and regulations by the state, in that the explanation of Article 33 Paragraph (3) is still rather abstract, causing multiple interpretations between supporters of a populist economic system and those who maintain the substance of Article 33 in whole. People who support liberal economy. the basis of rationality in interpreting Article 33 of the 1945 Constitution of the Republic of Indonesia, explaining that the limits, content, and scope of the state right to control lacks clearness. Until the state provides authority to the rights owner to exercise the right, the opposite may happen, as state authority does not become limited by the contents of the right and the contents of the right becomes limited by state authority.

2. The solution that may be put forward to respond to the implications of problems as the consequence of the typology of policies and regulations involves realizing the spirit of the constitution regarding state authority for the management of natural resources with the five kinds of authority as explained above, and manifesting or realizing the three ideals of the





## RECOMMENDATIONS:

**a. For lawmakers, as the government along with the People's Representative Council and the Regional Representative Council, they need to realize the spirit of the constitution for the state authority over natural resource management with the five kinds of authority as explained above.**

**b. For lawmakers, as the government along with the People's Representative Council and the Regional Representative Council, they need to realize or bring into manifestation the three ideals of the law, as the objective of the law is to create legal protection, both actively and passively, to realize justice.**

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**Thank You**

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for your attendance and participation

Prof. Dr. Imam Kuswahyono, S.H., MHum