

# DIALECTICS OF LEGAL CERTAINTY AND AGRARIAN JUSTICE IN THE INDONESIAN AGRARIAN LEGAL SYSTEM: A MULTIPARADIGM STUDY

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## Abstract

The tension between legal certainty and agrarian justice is a classic issue in the Indonesian agrarian legal system, especially when legal-formal land norms are faced with the reality of unequal land tenure, tenure conflicts, and threats from certain community groups. This article aims to analyze the dialectic of legal certainty and agrarian justice in a multiparadigm framework, by placing law not only as a set of norms (positivistic paradigm), but also as a social phenomenon (*socio-legal/interpretive paradigm*) and an arena of power relations (*critical paradigm*). The method used is normative legal research with a conceptual approach and statutory regulations, which is enriched with an empirical perspective through a review of socio-legal literature related to land practices and agrarian conflict resolution. The results of the study show that the dominance of the positivistic paradigm tends to prioritize procedural certainty and formal proof, but has the potential to ignore the dimensions of substantive justice and the social history of land tenure. On the other hand, the socio-legal and critical paradigm emphasizes the importance of social context, legal pluralism, and the need for structural corrections to agrarian inequality. This study concludes that a multiparadigm approach can function as an analytical strategy to formulate a more integrative model of policy and agrarian dispute resolution, namely by strengthening legal certainty without abandoning the orientation towards the distribution of agrarian justice.

**Keywords:** Legal certainty, Agrarian justice, Critical paradigm.

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## 1. INTRODUCTION

The Indonesian agrarian legal system has long been characterized by a persistent tension between legal certainty and agrarian justice. On the one hand, legal certainty demands clear norms, formal procedures, and predictable enforcement mechanisms to ensure stability in land administration. On the other hand, agrarian justice calls for equitable land distribution, protection of vulnerable communities, and recognition of the social and historical realities of land tenure. This tension becomes increasingly visible when legal-formal land regulations confront the reality of unequal land ownership, persistent tenure conflicts, and the marginalization of community groups whose claims often fall outside formal documentation standards (Republic of Indonesia, 1960; MPR RI, 2001).

In practice, agrarian disputes frequently reveal the limitations of a strictly normative and procedural approach. Land governance mechanisms that prioritize formal proof and administrative legality may inadvertently perpetuate structural inequality, particularly where communities rely on customary tenure, historical possession, or socially recognized claims that are not fully accommodated within

state-issued land documentation (Benda-Beckmann, 2018; Tegnan, 2015). Consequently, the pursuit of certainty through formalism may not always translate into justice, but instead can intensify contestation and deepen distrust toward land governance institutions (Burns, 2007).

These conditions underline the need for a broader analytical framework that can explain land disputes beyond doctrinal legality. Existing agrarian legal studies have commonly been dominated by a positivistic paradigm, treating law primarily as an authoritative system of norms and statutes. While essential for assessing the coherence and validity of regulations, this paradigm often lacks adequate tools to analyze how land law operates socially and politically (Creswell, 2009). For this reason, socio-legal and interpretive perspectives emphasize law as a social phenomenon embedded within context, meaning-making, and legal pluralism, while critical legal approaches highlight land regulation as an arena structured by power relations and unequal access to legal resources (Creswell et al., 2007; Tegnan, 2015).

This article argues that resolving the dialectic between legal certainty and agrarian justice requires a multiparadigm approach that moves beyond single-paradigm explanation. Accordingly, this study analyzes agrarian law through three complementary perspectives: (1) law as a normative system (positivistic paradigm), (2) law as social practice and interpretation (socio-legal/interpretive paradigm), and (3) law as contestation shaped by structural inequality (critical paradigm). By placing these paradigms in dialogue, the study seeks to develop a more integrative model of agrarian policy and dispute resolution—one that strengthens legal certainty without abandoning a substantive orientation toward distributive agrarian justice.

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## 2. METHODOLOGY

This study applies normative legal research using a conceptual approach and statutory regulations analysis to examine the dialectic between legal certainty and agrarian justice in Indonesia's agrarian legal system. The primary legal materials include Law No. 5/1960 (Basic Agrarian Law/UUPA) and the MPR Decree No. IX/MPR/2001 on Agrarian Reform and Natural Resource Management, supported by secondary legal materials such as scholarly books and peer-reviewed journal articles relevant to agrarian law and dispute resolution (Marzuki, 2017).

To strengthen the analysis beyond a purely doctrinal reading, the research is enriched with a literature-based socio-legal perspective, drawing from empirical socio-legal studies on land practices, legal pluralism, and agrarian conflicts. The collected materials are analyzed within a multiparadigm framework: (1) positivistic paradigm (law as formal norms and procedural certainty), (2) socio-legal/interpretive paradigm (law as a social phenomenon shaped by context), and (3) critical paradigm (law as an arena of power relations). Through this analytical strategy, the study identifies paradigm-specific limitations and proposes an integrative approach to agrarian policy

and dispute resolution that strengthens legal certainty while maintaining distributive agrarian justice.

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### 3. FINDINGS AND DISCUSSION

#### 3.1 Positivist Paradigm: Agrarian Law as a Normative System

Within the positivistic paradigm, agrarian law is primarily conceptualized as a formal system of binding norms enacted and enforced by authorized state institutions. Legal validity is assessed based on the source and hierarchy of norms rather than their social acceptance or distributive outcomes. This view aligns with central premises of legal positivism, particularly the idea that law is “*law as it is*” (*das Sein*) and must be distinguished from morality or justice (*das Sollen*) (Kelsen, 1967). In the Indonesian context, positivistic reasoning in agrarian matters is reflected in a strong institutional reliance on written rules, administrative procedures, and formal evidence, especially land registration documents as determinants of legal rights.

Normatively, the state’s commitment to a unified and certain agrarian legal system is grounded in UUPA, which serves as the principal foundation for land regulation in Indonesia. UUPA establishes the legal architecture of land rights, the legal status of land control, and the authority of the state to regulate land relations. This legislative structure is designed to provide certainty and uniformity in the classification and recognition of land rights. Moreover, in the framework of UUPA, land rights are understood in legally defined categories that can be administered, transferred, and enforced through state mechanisms, thus reinforcing the central positivistic idea that law functions effectively when rights and duties are clearly determined and formally codified.

The positivistic orientation becomes even more operational and concrete in the regime of land registration, particularly through Government Regulation No. 24 of 1997 on Land Registration, which systematically regulates the procedures and administrative requirements for the creation of legal certainty in land ownership. Article 3 of this regulation explicitly states that land registration is conducted to ensure legal certainty and legal protection for rights holders, especially through the issuance of land certificates (*sertipikat*) as recognized proof. In practice, this regulation institutionalizes a documentary-centered understanding of legal certainty: certified land rights become the most authoritative form of proof, while non-documented tenure histories (e.g., long-term occupation, social recognition, collective memory) often remain legally weak. Thus, in the positivistic paradigm, certainty is operationalized via procedural legality and registration outcomes, rather than contextual legitimacy.

From the standpoint of positivistic legal theory, such procedural emphasis is rational and consistent. In Kelsen’s Pure Theory of Law, legal certainty derives from a coherent hierarchy of norms where each norm is valid because it is authorized by a higher norm in the legal system (Kelsen, 1967). Agrarian governance, accordingly, is expected to function through compliance with normative hierarchy—statutes, government regulations, administrative rules, and authorized institutional decisions. Similarly, Hart’s concept of law as a union of primary and secondary rules supports the view that formal systems require institutional rules defining validity, adjudication, and change—functions clearly represented in land administration and land registration institutions (Hart, 1994). These theoretical foundations help explain why Indonesian

agrarian law places significant weight on formal procedures and administrative mechanisms: without them, the state risks legal uncertainty, overlapping claims, and arbitrariness in dispute resolution.

In addition, positivistic practice in agrarian governance is reinforced by a broader state commitment to maintaining orderly administration and investment stability. The formal land system provides certainty not only to individuals but also to economic actors and the state itself by enabling predictable transactions, licensing, and land-based development. In this sense, positivistic certainty is treated as a governance instrument: the clearer the documentary proof and legal category, the easier the land is to govern. This explains the institutional preference for documentary evidence and formal categorization in resolving land disputes.

However, the findings of this study indicate that while the positivistic paradigm successfully strengthens procedural certainty, it also produces significant normative consequences. First, it creates a tendency to equate legality with documentation, meaning that those without certificates are often treated as holding weak or uncertain rights regardless of social history. Second, it encourages dispute resolution models that prioritize formal proof over distributive fairness, potentially sidelining the justice-oriented mandate embedded in broader agrarian reform discourse. This becomes contradictory when compared with the policy direction of MPR Decree No. IX/MPR/2001, which explicitly frames agrarian reform as a project of restructuring land tenure and addressing inequality, not merely administrative order (MPR RI, 2001). Therefore, the dominance of positivistic approaches can inadvertently shift agrarian reform away from its redistributive spirit toward a procedural-administrative orientation.

### **3.2 Socio-Legal/Interpretive Paradigm: Agrarian Law as Social Practice and Interpretation**

When viewed through a socio-legal/interpretive lens, agrarian law operates not only as written norms but also as social practice that gains meaning through daily interactions between communities, state institutions, and local authorities. This paradigm emphasizes that disputes are rarely caused by legal texts alone; rather, they emerge from clashes between formal administrative systems and plural social realities, including customary tenure systems, local land governance practices, and community-based legitimacy. In other words, land law is “*lived*” and interpreted differently across contexts, depending on how actors understand ownership, entitlement, and fairness.

The findings suggest that a socio-legal approach reveals why the positivistic framework often fails to resolve agrarian conflicts decisively. In many cases, legal certainty is contested not because norms are absent, but because formal law does not fully capture social tenure realities. This is especially relevant in areas where customary norms, historical settlement patterns, and collective land claims remain influential. Socio-legal interpretation also reinforces the relevance of legal pluralism in Indonesia: state law and non-state normative orders coexist and interact, shaping dispute outcomes and perceptions of justice. Therefore, improving dispute resolution requires institutional mechanisms that incorporate context-sensitive evidence and social history, rather than relying solely on formal documentation. Such integration aligns with the policy orientation of agrarian reform that not only seeks order, but also protection and equitable restructuring.

**Table 1. Typology of Agrarian Conflicts in Indonesia**

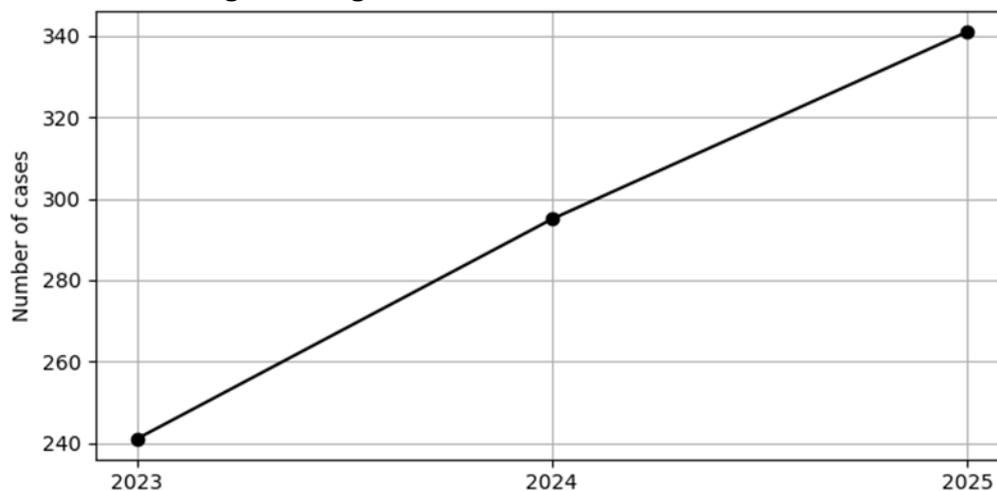
Conflict Sector	Typical Legal Basis	Interpretive Socio-Legal
Plantation	Right to Cultivate (HGU), business permits, land concession maps	Land seen by communities as inherited livelihood space; “ <i>legal ownership</i> ” negotiated through customary claims, local recognition, and informal tenure
Forestry	State forest zone designation	Communities contest “ <i>state forest</i> ” status land and interpreted as customary territory
Mining	Mining Business Permit (IUP) boundaries	Communities interpret damage and loss as injustice regardless of formal permit legality
Infrastructure	Strategic National Projects (PSN)	Local communities interpret “ <i>public interest</i> ” as state dominance
Property	Location permits, land titles and zoning regulations	Communities may view land as socially legitimate despite weak formal documents
Agricultural Land	Redistribution programs, land registration (PTSL)	Communities negotiate rights through local institutions; boundaries often socially constructed
Coastal	Coastal permits, reclamation permits	Coastal space interpreted as common livelihood space (fishers); conflict framed around access and survival

Source: Consortium for Agrarian Reform (KPA) Data (2025)

The Typology of Agrarian Conflicts in Indonesia table demonstrates that agrarian conflict is sectorally patterned rather than random, with each conflict type shaped by distinctive legal frameworks and recurring triggers. In the plantation sector, conflicts are typically triggered by land clearing, concession expansion, boundary disputes, and compensation controversies, often justified through HGU and plantation permits. In forestry-related conflicts, the designation of state forest zones frequently becomes the central trigger, as communities face restricted access, evictions, and criminalization while contesting the legitimacy of “state forest” claims against customary (*adat*) tenure. Mining conflicts are commonly triggered by environmental degradation, pollution, relocation, and disputes over unfulfilled social commitments, even when companies hold formal IUP permits. Conflicts tied to infrastructure and strategic projects are triggered mainly by land acquisition processes, limited participation, and compensation valuation disputes, where “public interest” narratives are frequently contested at the community level. In property and industrial development, eviction, gentrification, overlapping land titles, and disputes over land

certificates become dominant triggers, reflecting tensions between administrative legality and social legitimacy. Meanwhile, conflicts in rural agricultural settings are often triggered by boundary disagreements and elite capture during land governance and registration processes, whereas coastal/marine tourism conflicts are frequently triggered by reclamation projects and restricted access to livelihood spaces for fishers. Taken together, the typology and its triggers provide strong socio-legal evidence that agrarian law operates as social practice—where legal meanings and land rights are continuously interpreted, negotiated, and resisted in everyday contexts—highlighting a persistent clash between formal legal instruments and lived, socially recognized claims to land and resources.

**Figure 1. Agrarian Conflict Case in Indonesia**



The 2023–2025 agrarian conflict trend table/graph shows a consistent escalation in the number of cases reported by the Consortium for Agrarian Reform (KPA), rising from 241 cases in 2023 to 295 cases in 2024, and further to 341 cases in 2025. This represents a year-on-year growth of 22.4% from 2023 to 2024 and 15.6% from 2024 to 2025, indicating that agrarian conflicts are not isolated incidents but reflect persistent structural tensions in land governance. From a socio-legal/interpretive perspective, this trend highlights agrarian law as a form of social practice (“law in action”) rather than merely written norms, because conflicts emerge from competing claims of legitimacy over land and natural resources among the state, corporations, and local communities—where “rights” and “ownership” are continuously negotiated through lived experience, power relations, and divergent interpretations of legal instruments (*such as concessions, state forest zoning, and land acquisition frameworks*). Therefore, the upward trend suggests that the core issue is not simply the absence of regulation, but deeper problems of implementation, unequal access, and the recurring clash between formal administrative legality and socially recognized legitimacy at the local level.

### **3.3 Critical Paradigm: Agrarian Law as Contestation Shaped by Structural Inequality**

The critical paradigm further deepens the analysis by positioning agrarian law as an arena where power relations and structural inequality shape what counts as

“*legal*” and whose claims are recognized. From this viewpoint, legal certainty is not neutral: it can function as an instrument that privileges actors with greater access to administrative systems, legal expertise, political networks, and economic resources. Thus, disputes are not simply disagreements about rights, but manifestations of unequal capacity to secure legal recognition. In this framework, land administration and certification processes may strengthen certainty for some groups while simultaneously increasing vulnerability for others.

The findings indicate that the emphasis on documentary proof and formal legality often operates as a structural filter that disadvantages communities already situated in unequal conditions. This reinforces a critical insight: legal certainty, when detached from distributive justice, risks becoming a mechanism that legitimizes existing inequality under the appearance of procedural objectivity. Consequently, agrarian conflict resolution cannot be reduced to technical legal reform; it requires structural correction, including stronger recognition of socially legitimate tenure histories and policies that address unequal land control. This supports the argument that agrarian justice is not an “*extra*” moral aspiration but a necessary component of sustainable legal certainty. A multiparadigm approach therefore becomes essential not only for analysis but also for policy: it enables dispute resolution models that preserve procedural order while actively resisting the reproduction of structural inequality.

Taken together, these findings demonstrate that the dialectic between legal certainty and agrarian justice is not a binary opposition but a multidimensional relationship shaped by legal doctrine, social context, and power structures. The positivistic paradigm contributes clarity and procedural stability; the socio-legal paradigm contributes contextual understanding and recognition of plural land realities; and the critical paradigm reveals how formal law can reproduce inequality if left unchecked. Accordingly, this study concludes that an integrative multiparadigm approach provides a more adequate foundation for agrarian policy and dispute resolution: strengthening legal certainty while maintaining an explicit commitment to substantive and distributive agrarian justice.

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#### 4. CONCLUSION

This article has examined the enduring tension between legal certainty and agrarian justice within the Indonesian agrarian legal system through a multiparadigm framework. The findings indicate that the prevailing dominance of the positivistic paradigm tends to reinforce procedural certainty and formal evidentiary requirements, yet it frequently overlooks substantive justice and the socio-historical realities of land tenure. In contrast, socio-legal/interpretive and critical perspectives highlight that agrarian disputes cannot be understood solely through legal-formal norms, but must also account for social context, legal pluralism, and asymmetrical power relations shaping land governance. Therefore, this study argues that a multiparadigm approach

is essential not merely as an academic tool, but as an integrative analytical strategy to support policy formulation and dispute resolution mechanisms. By balancing normative certainty with contextual sensitivity and structural correction, the multiparadigm model offers a pathway to strengthen legal certainty without abandoning the distributive orientation of agrarian justice.

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