

## LEGAL DUALISM CONCERNING AGRARIAN CONFLICT OF LAND IN BONGKORAN, WONGSOREJO, REGENCY OF BANYUWANGI

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Umar Sholahudin<sup>1</sup>

### Abstract

*This study aims to analyze the practice of legal dualism in agrarian conflicts of the Bongkoran land, Wongsorejo, Banyuwangi Regency. Agrarian conflicts are structural conflicts, one of which originates from legal conflicts; state law and people's law. There are different legal bases used by state/government, corporation, and society. Government and companies rely more on the legal-formal (de jure) aspect, that land ownership and control rights are based on formal laws and procedures, that is proof of concession permit (HGU or HGB). Meanwhile, the community relies more on the socio-historical aspect, that the community has lived in, controlled, and used the land communally and for generations (de facto). This research focuses on how the practice of legal dualism in agrarian conflicts in the land of Bongkoran Wongsorejo. This study uses a legal sociology approach with a participatory method. The results showed; Legal dualism in agrarian conflicts has contrasting characteristics and characters that are difficult to be compromised and resolved fairly. The strong domination and hegemony of state law over the people's law, making the conflict more sharpened, people's rights over land increasingly seized, and often lead to acts of violence. There needs to be equal dialogue and communication between the (law) of the state and the (law) of the people in an intense and deliberative manner to produce a more just consensus (legal product). Settlement of agrarian conflicts is not enough to use legalistic-positivistic state legal instruments, but it is need to pay attention to community law that has local wisdom and is more oriented towards justice aspect*

**Key Words :** *Legal Dualism, Agrarian Conflict, Bongkoran Land, Banyuwangi Regency*

### Abstrak

Penelitian ini bertujuan untuk menganalisis praktik dualisme hukum dalam konflik agraria di tanah Bongkoran, Wongsorejo, Kabupaten Banyuwangi. Konflik agraria merupakan konflik struktural yang salah satunya bersumber dari konflik hukum; hukum negara dan hukum rakyat. Dasar hukum yang digunakan oleh negara/pemerintah, korporasi, dan masyarakat berbeda-beda. Pemerintah dan perusahaan lebih mengandalkan aspek legal-formal (de jure), bahwa hak penguasaan dan penguasaan tanah didasarkan pada hukum dan prosedur formal, yaitu bukti izin penguasaan (HGU atau HGB). Sedangkan masyarakat lebih mengandalkan aspek sosio-historis,

<sup>1</sup>Departement of Sociologi, Faculty of Political and Social Sciences of Universitas Wijaya Kusuma Surabaya

<sup>1</sup>Email korespondensi: umar.sholahudin@uwks.ac.id

bahwa masyarakat telah mendiami, menguasai, dan menggunakan tanah secara komunal dan turun-temurun (*de facto*). Penelitian ini berfokus pada bagaimana praktik dualisme hukum dalam konflik agraria di tanah Bongkoran Wongsorejo. Penelitian ini menggunakan pendekatan sosiologi hukum dengan metode partisipatif. Hasilnya menunjukkan; Dualisme hukum dalam konflik agraria memiliki sifat dan karakter yang bertolak belakang sehingga sulit untuk dikompromikan dan diselesaikan secara adil. Kuatnya dominasi dan hegemoni hukum negara atas hukum rakyat, membuat konflik semakin menajam, hak rakyat atas tanah semakin direbut, dan tak jarang berujung pada tindakan kekerasan. Perlu adanya dialog dan komunikasi yang setara antara (hukum) negara dan (hukum) rakyat secara intens dan musyawarah untuk menghasilkan konsensus (produk hukum) yang lebih berkeadilan. Penyelesaian konflik agraria tidak cukup menggunakan instrumen hukum negara legalistik-positivistik, tetapi perlu memperhatikan hukum masyarakat yang memiliki kearifan lokal dan lebih berorientasi pada aspek keadilan.

**Kata Kunci : Dualisme Hukum, Konflik Agraria, Tanah Bongkoran, Kabupaten Banyuwangi.**

## INTRODUCTION

Agrarian conflict has been through long history. The change in regime that has taken place several times does not manage to ease agrarian conflict, but it rather extends further, either qualitatively or quantitatively (Koeswahyono, 2019). Every year, Agrarian Revitalisation Consortium (commonly known as KPA) regularly submits the record of agrarian conflict ever occurring in Indonesia. Back in 2018, the KPA recorded there were at least 410 agrarian disputes, involving 807,177.613 ha area of conflict and 87,568 families in some provinces in Indonesia. Cumulatively within four-year period (2015-2018) of the presidential term of Jokowi-JK, there had been at least 1,769 cases of agrarian conflict, in which conflict in plantation ranked the highest, accounting for 144 cases (35%). Of the 144 cases of agrarian conflict in plantation sector over the year, eighty-three cases or 60% were found in palm oil commodity. The significant number of cases in agrarian conflict in plantation sector indicates that the government has not seriously and earnest in resolving agrarian conflicts in Indonesia. President Jokowi asserts that concession permits in plantation sector or forest do not come during his office but they rather result from earlier governments (KPA, 2018).

Agrarian conflict often comes with violence from law enforcers. Year-end report of KPA of 2019 mentions the startling fact where the violence is mostly driven by police with the number of cases accounting for 37 cases, followed by company security officers for 15 cases, Indonesian Armed Force six cases, and Civil Service Police Unit six cases.. The data of KPA also mentions that hundreds of conflict over land throughout the year of 2019 had taken 258 farmers and agrarian activists as victims of the criminalisation, in which 211 experienced torture, and 24 people were shot (KPA, 2019). Escalation of the agrarian conflict was getting more intense after law Number 25 of 2007 concerning Capital Investment was passed. When the liberalisation of agrarian sector was getting increasingly massive and when it was legitimated through legislation, injustice emerged. The state through its legal instrument often accommodates corporate interest that demands numerous lands to gain profit. Simultaneously it betrays socio-cultural relationship between local people and agrarian resources. The state even sees it as a hindrance to economic development (Mulyani, 2014)

This study looks into one of agrarian disputes taking place in Bongkoran, Wongsorejo in the Regency of Banyuwangi. This conflict has been going on for a long time and until now there has been no fair resolution (Luthfi, 2018). The existence of legal dualism is apparent, meaning that there seem to be different legal bases regarding the use of and control over lands. The company, PT. Wongsorejo, facilitated by the state, leans more on legal-formal aspect such as on state law. While farmers are more towards socio-historical aspect such as law accepted by locals. This condition indicates that people believe that they have rights to own, to control, and to use rights to land on which they have been living since they were born. The locals have long been living on and interacting with their lands and historically this culture has been communally held and is the legacy for following generations.

This research is focused on how the practice of legal dualism in agrarian conflict is, specifically how state law and customary law work concerning land dispute in Bongkoran, Wongsorejo, Regency of Banyuwangi. This study is aimed to more profoundly understand and analyse the practice of legal dualism in agrarian conflict between state law

and customary law. Central and local governments have often concentrated on positive law (legalistic-positivistic), with no attempt to further understand sociological aspect of local people concerned (Sholahudin, 2017; Mustain, 2005).

Several discussions on agrarian conflict have been around among researchers. It shows that the utilisation and monopoly of state law regarding agrarian conflict will just ignite a new problem and extend the conflict instead of completely resolving the problem (Rosyadi, S., & Sobandi, K. R, 2014). The use and penetration of positive law of the state to agrarian conflict on communal lands owned by the locals will not settle the conflict in a pro-local people way, but it rather triggers a clash in legal validity between the state and its people over rights to own a land, leading to unabating conflict with no resolution available (Ikhsan, 2011; Karman, 2010; Tanya, 2011)

An approach and intervention of state law based on legalistic-positivistic principle intended to resolve the complexity of agrarian conflict fail to resolve the real existing problem, but it rather leaves another burden that further leads to a new problem (Sholahudin, 2018). A new approach capable of contributing more empirical and comprehensive explanation such as legal sociology approach is required. This study employs legal sociology approach. Legal sociology is to provide studies law as an empirical social fact, and this matter is embodied as part of day-to-day life experience in the societies through the method of social science (Wignyosoebroto, 2002). The legal sociology intends to provide description about legal practices, how law works, and its implementation in society.

## **METHOD**

This research used a qualitative method with the legal sociology perspective and participative research methods. Qualitative method has given a chance to the researcher to conduct description and interpretation in a more elaborate scope regarding the object observed to help gain more comprehensive understanding (Marsavati, 2004). Therefore, it is not the width of the matter that is needed, but how in-depth the matter or the information is acquired from the field (Sudikin, 2002). This research also

involved participative method where the researcher was directly involved and positioned closer to the object of observation, and this allowed the researcher to gain valid, factual, and empirical data. The research subjects consisted of some elements including farmers/local people of Bongkoran, Community Legal Advisors, Government (Local Government, National Land Agency, and Police), and corporate elements (PT Wongsorejo). The nine informants had been selected by using purposive sampling technique with certain considerations that have been known beforehand, namely recognizing and understanding the problems under the research. The data were collected in March – July 2019

Data collection involved observation, in-depth interview with government officials, companies, and farmers as informants, documentation of secondary data obtained from available documents from governments and PT. Wongsorejo, or Organisation of farmers called Organisation of Farmers Wongsorejo Banyuwangi (commonly known as OPWB). The data was then analysed by means of qualitative method that involved selection and analysis of data in qualitative method in reference to the legal sociology perspective. In terms of the qualitative analysis, concentration was really spent on determining descriptive meaning, clarifying and replacing data in its own context.

## **RESULTS AND DISCUSSIONS**

### **Result**

#### **Agrarian Conflict of Land in Bongkoran, Wongsorejo**

This agrarian conflict arose between farmers and a company called PT. Wongsorejo, and it remains persistent. The conflict started to rise in 1950s and is left without just resolution to date. It began with reclamation of ownership and control over land between PT. Wongsorejo and the locals in Bongkoran. Historically, the Chief of OPWB Yateno Subandio clarified that farmers have resided in Bongkoran since 1942s. They hold control of and used a land of former rights (*erfpacht*) with an area of 220 ha for residence and agriculture. The land further serves as a space upon which the local farmers' livelihoods rely (Organsiasi Petani Wongsorejo Banyuwangi/OPWB, 2018).

Following the independence, the birth of Basic Agrarian Law Number 5 of 1960 began to set a milestone in land reform or rearrangement of land ownership that was more pro-farmers. This law was put in place by the government during New order back in 1967 and was replaced by the regulation allowing investment in plantation within up to thirty-year period. Under this regulation, the government issued HGU to a large number of large-scale companies, one of which is PT Wongsorejo located in the district of Wongsorejo, Banyuwangi. This company was granted a concession permit for kapok tree plantation on 603 hectare of land in 1988. Out of this area, two hundred and twenty hectares were cultivated land occupied by farmers in Bongkoran. Since they held control over and used the land, several times the farmers had called on the government to legalise land through National Land Agency (BPN) but to no avail.

### **Formal Legality vs Socio-Historical Legality**

Legal dualism is seen on the basis of legitimacy in the control and use of land. In this agrarian conflict, the legitimacy of land rights for farmers is based on socio-historical legality. Meanwhile, the state and companies base the legality of land on the aspect of formal legality. The farmers in Bongkoran initially asserted and claimed that control over land was communal and held through generations even before PT. Wongsoredjo gained its concession permit of HGU for kapok tree plantation. Peasants never intended to leave their land even before the independence to date. Senior members of the village opine over this issue as informed through the chief of OPWB, Yatno Sudandio as follows:

“We have had stayed on the land in Bongkoran for a very long time, even far before the independence. My parents opened the land in this area before 1945 Independence. Previously, this land was not more than wild forest, overgrown with shrubs. My parents cleared the land and opened it for agriculture. Agricultural products came from this land to be consumed by the locals or distributed to markets.” Yanto said. (Subandio, 2019)

Meanwhile, PT Wongsoredjo claimed that it had taken over control over the rights of *erfpacht* that has been legally converted to HGU according

to the current positive law. Communication Manager of PT Wongsorejo, Tria Utama, confirmed that all the permits were obtained to develop industrial area according to procedures and Law. HGB permit issued was regulated under the law and it was supported by documents. People residing at the area of plantation are company's employees (Utama, 2019). HGU certificate released in 1988 and HGB certificate in 2014 serve as the basis and proof of control over land in Wongsorejo. Such legality is often referred to by the company to repress and evict farmers from the land they work on. This is as explained by General Manager of PT. Wongsorejo, Tria Utama, as follows;

“We have the HGB protected under law with all the backing up documents. The farmers in Bongkoran resided on the land under the property of the company after 2000. They entered and resided on our land without any proof of property ownership. They even failed to show us the clarity confirming that the property was theirs even in their village” (Utama, 2019)

the National Land Agency of Banyuwangi Regency official (BPN), also looks more at the legality aspect of the status of the disputed land. BPN is guided by the legal-formal aspects of the company. The company can show its formal legal status, namely HGU and HGB permits, while the Bongkoran people are considered unable to demonstrate legality over the land they control. This is as explained by Head of Land Dispute Sie, BPN Banyuwangi Regency, as follows;

“Regarding the legality claimed by the farmers, show me the legality of the land?...if the OPWB really controls the Bongkoran land, try to show me the official certificate. And the farmers cannot show and only show the land in Bongkoran that has become a village, the others cannot show. (Mujiono, 2019)

Meanwhile, the police as a representative of the state and law enforcement officers, also have a more legalistic-formalistic view, namely guided by applicable rules and laws (UU). As a rule of law, everything has its rules related to the status of Bongkoran land. If farmers do not have legal and written evidence, they should not own the land. This is as explained by Regional Policy of Banyuwangi, Ipda Surdarso, as follows ;



We, as law enforcers, refer to laws and regulations. Similarly, local government also complies with positive law (legal formal) in dealing with agrarian conflict in Bongkoran, Wongsorejo. People should understand laws and regulations regarding the status of the land in Bongkoran. Without any valid proof, it does not make any sense when they insist on taking over control over the land simply because they fail to understand the law. (Sudarso, 2019)

Argument and fight over interest between parties (state, PT. Wongsorejo, and local people/farmers in Bongkoran Wongsorejo) is complicated and imbalance. At empirical level, two legal systems contest for legality of rights to land and this situation is uncompromised. Disproportionate relationship between state law and customary law has led to endless agrarian conflict. Both the government and corporate are backed up by law enforcers and robust bureaucracy ranging from central to local government. However, farmers only rely on the law or tradition living and growing amid the community and through generations. Myrna A. Safitri argues that agrarian conflict is inextricable from relationship of power asymmetrical and disproportionate to the exponent of several legal systems. Actors and such relationship lead to the practice of dominance of state legal system over another legal system such as customary law. Dominance can be in the form of discourse, policy, or action (Safitri M. , 2012). To reinforce its existence, dominance of state law over the customary law often involves violence.

This strong hegemony in agrarian conflict increasingly represses customary law. Adopted from the concept referred to by Gramscy, hegemony of the state could be seen in the form of violence or consensus, in which the latter involves an agreement through political and ideological leadership (Simon, 2004). Development through industrialisation that involves instruments of state law is believed to bring well-being in the society, while the locals challenged the discourse they established on their own. The policy regulating development and industrialisation designed by the state and given to private sectors is often claimed as an effort to bring welfare to the people. On the contrary, people see industrialisation violate the rights to lands, ruining socio-economic and cultural structure of the



locals. Instead, it was not welfare the people gained but structural poverty; the locals no longer have their access to lands as their sources of their livelihood.

Along the history of agrarian conflict existing in Indonesia, conflict mainly stems from the state. The state (along with its law enforcers) has failed to serve as facilitator and mediator when land release takes place in society (Afrizal, 2018). Through its law enforcers, the state is positioned behind capital owners in the process of land release, and it usually involves armed forces. This scene seems to be inevitable fact (Afrizal, 2006). Noer Fauzi Rachman believes it has something to do with politics of forming the state of lands and involves natural resources owned by community, a practice commonly called as “federal lands”. Through legal politics used to takeover control from the state, the central government has released concession permits such as HGU/HGB to both government and private business entities. The government even seems to eliminate the people’s rights to lands or even to disregard what is stipulated in the legislation that should serve as the basis according to which the bureaucracy works in sectorial basis (Rachman, 2016). In other words, legal product related to agrarian matter stemming from the state and supposed to be referred to as a resolution to agrarian conflict has become the source of the conflict. The approach of state law that is too legalistic-positivistic even exacerbates the agrarian conflict.

Therefore, state law *ansich* is not capable of resolving the conflict alone since the legal dualism itself is prone to conflict. Understanding law not only involves understanding it in legalistic-formalistic scope or in law, but it should also involve how law works in social context. Principally, law has varied dimensions. Legal studies must be placed in social, cultural, economic, and political context holistically. Several legal and social issues are complex and cannot be solved in a normative and textual scope. As a consequence, other approaches of social science, legal anthropology, or legal sociology are to give wider access to elaborate explanation on how law works and operates in everyday life (Irianto S. , 2009). In this context, state law legitimated nationally cannot act unilaterally, such as derecognising the existence of customary law. State law is present not only to recognise the

customary law, but it should also accommodate the law living and growing in local communities (Safitri T. M., 2010).

## **Discussion**

### **Legal Dualism in Agrarian Conflict of Land in Bongkoran, Wongsorejo**

In the history of law in Indonesia, although socially and culturally the Indonesian people have customary law as their own law, colonialism and penetration of colonial law are inevitable. Customary law existing communally and through generations in social system and structure of the people has to be subordinated to colonial law. Some observers, legal researchers, and people believe that penetration of modern colonial law is incompatible with the condition of social structure in Indonesian societies. Colonialism and penetration of modern law have triggered social disturbance and legal defect in the implementation (Suteki, 2013). This condition is reasonable since social structure and the condition of socio-culture of European society (where modern law was born) is not like the characteristic of Indonesian people, who are more homogenous and live in togetherness. On the contrary, modern law sees heterogeneous people more liberalistic and individualistic.

Agrarian conflict, wherever it may be found, including the one in Bongkoran dispute, is endless due to political institution, where the state uses its power and places law enforcers to snatch people's rights to lands and to convey the right to control land for other parties such as business people through concession permits, either HGB or HGU or those of other forms. State's authority, with which the central government issues rights (HGU, rights to mining, rights to control forest, contract of work for mining, and so forth), is derived through the concept of legal politics of right to control from the state, as stipulated in several laws such as Basic Agrarian Law Number 5 of 1960, Basic Forestry Law Number 5 of 1967, Law concerning Mining Number 11 of 1967. The conveyance of access and control over land from people to another party, especially to business people, was performed with several methods that involved utilisation of instruments of bureaucracy and government regulation, intimidation,

manipulation, and direct and indirect coercion employed by authoritarian political institution (Wiratraman, 2014)

The work of state law and customary law in the context of agrarian conflict is different and imbalance. In a simple way, it can be said that the state law is more state interest-oriented. The law is made and operated by authoritative and formal legal institutions based on written rules and regulations. The concept of the state law, as John Austin argues, implies that something can be called as a law when it comes from an empirical authority that factually has an authority to make the state law as a single political institution that steers how the law works (Samekto, 2015). In the case of the Bongkoran land, the local government, National Land Agency, and the company often cling on the aspect of formal law, and PT. Wongsorejo even has legally held the rights to control land in reference to the permits of HGU and HGB from the government. Legalistic-positivistic perspective was also expressed by police when agrarian conflict of Bongkoran land was under investigation. The police asserted that the locals had their option to bring the case to court if they could not take what had been decided regarding the right to control land under concession permits (HGU and HGB) held by PT. Wongsorejo. The police's opinion is cited as follows.

Another claim was raised by farmers insisting that they had the rights to land according to socio-historical aspect. In other words, they believe that tens of years of residing the area and using the land for agriculture should have given them legitimate rights to the land. Historical ties between the farmers to their land have existed for very long and they still remain till today. The farmers admitted they had no written or formal documents issued by official government bodies, but the control over the land had taken place communally and through generations since 1950s. The takeover of the land represents the loss of life of the farmers. Land, to farmers, is the heart of their livelihood.

Lawful ownership of the land by PT. Wongsorejo is seen as unfair process by the locals. The locals even believed that the legality of the HGU permit was gained by deceiving them, where their thumbprints were required to complete the agreement. Farmers believed that the company

unfairly snatched the land the locals had resided on and cultivated for tens of years

Claim over the right to the land by the locals or farmers in Bongkoran tends to abide by socio-historical law or customary law. Customary law, also known as *adat* law, according to Soetandyo Wignyosoebroto, is not written and exists as general principles that have long stayed in the memory of the locals in the community, maintained communally and through generations as custom which is believed to be passed from their ancestors. This turns to the customary or *adat* law as in socio-legal studies. Sociologically, people autonomously hold a set of rules as reference to their life guidelines in the society, where this set is born and grows into a local identity that works throughout generations, and this characterises customary law. (Wignjosoebroto, 2013)

Herlambang *et al* argue that in the study and conception of law, customary law is more towards its content and form, unwritten and maintained throughout generations. This law grows amid the society and forms a local identity (socio-cultural). These characteristics mark the difference from the state law (Wiratraman, 2014). Customary law is bottom-up and is capable of maintaining the embodiment of justice principles, while state law, which is more elitist, is created by state apparatuses through formal state institutions, a law that cannot automatically adjust to what people need, or it is even seen as the law that is foreign amid the community. State law is a legitimating instrument for elites with power, and this law is more prepared to maintain and preserve the power (Suyanto, 1997).

### **Law as an Instrument of Violence**

Regarding this agrarian conflict, both the government and PT Wongsorejo often use legal instrument to take away the farmers' rights, and it is often performed by bureaucratic apparatuses, security enforcers, and the company through violence. Banners once issued contained threatening messages implying that criminal sentences might be imposed on illegal cultivation done by the farmers in the area of PT. Wongsorejo. The banners were aimed to alarm and sue farmers from the property of the company. The

involvement of Indonesian Armed Forces, Indonesian National Police, Civil Service Police Unit, and the foreman of the company was often brought to the area of conflict, but this measure was defied by the farmers and they resumed their work on the land simply because they believed they legitimately had a right to the land.

This fact indicates how state law is used by government apparatuses and security enforcers to back up the company to repress and sue the farmers for the interest of the company. In terms of industrial society, law is made by the state to give service to business interest of capital owners. State, in the perspective of Marx, always stands in favour of social class with power and represses the poor or the weak. State is considered as an institution that legally holds morality and law to take whatever action to guarantee and protect the interest of its power, not to mention business interest of capital owners (Suseno, 2001). There is certainly mutual symbiosis between the state/the government and corporate over this agrarian conflict (Afrizal, 2018).

Violence on behalf of the country and law is obvious in the history of agrarian conflict in Indonesia (Luthfi, 2018), including the case of Bongkoran land in the Regency of Banyuwangi. Farmers often become the victims of violence brought by the state, either physically or non-physically. The former usually ranges from assault, capture, detention, to criminalisation. Meanwhile, non-physical or psychological violence includes 'labelling farmers fighting against apparatuses and law enforcers as communist'. For example, a shooting happened on 10 May 2011 by Public Control of Sub-regional Police Department of Banyuwangi and Mobile Brigade Corps of Regional Police of East Java and a farmer, Ponijan (35), was knocked down in the shooting. This tragedy left the victim severely injured in his chest and left leg. This brutal shooting was triggered by one of the farmers pruning kapok trees in the company's property since the trees were responsible for reducing the productivity of agricultural plants. The people of Bongkoran were alarmed by the shooting and it kept them vigil all night. A couple of days following the shooting, the OPWB accompanied by Legal Aid reported it as violation of Human Rights to National Commission of Human Rights (KOMNAS HAM) in Jakarta. Surprisingly, at Ketapang

train station, Yateno was arrested by police but the cause was unclear (Organsiasi Petani Wongsorejo Banyuwangi/OPWB, 2018).

Lubis (1986), as cited by Bagong Suyanto (Suyanto, 1997), argues that several reasons have made the state law this repressive. *Firstly*, state law was codified. It was initially a law regulating imports during colonial time; it was intended to disallow people's rights. This legacy from the colonials is still in place and often serves as an instrument giving access to violence in several cases including this agrarian conflict.

*Secondly*, this colonial legacy, in most cases, is foreign to people, since this law was made by scholars with only limited understanding about the values living in the society. Values and norms of law in colonial or modern legal system often reduce the role of customary rules or law that is principally essential and has been around for centuries and inextricable from the behavioural system of the locals.

*Thirdly*, colonial law, during its progress, is more social order-oriented, not justice-oriented. As a consequence, this law often paralyses people's freedom. Colonial or modern law even tries to derecognise established rules in the society. Despite the existence of varied positive laws in the state, their implementation is hampered or even raises conflict since they are not closely connected to social reality of the people, not even close to justice for the people, and not for the capacity of the people to understand the law due to its incomprehensible legal terms.

This issue is inextricable from the nature and process of law making that is elitist. Legal product made in top-down structure is often elitist. According to Bernadinus Steni, historically, since Dutch colonialism, the state emerging amid old communities or locals was not contractual based, but it rather repressed those communities or the locals by imposing orders or certain political requirement, including the legal systems in place in the society. Therefore, the existence of the state law in agrarian conflict does not seem to resolve the problem, but it rather escalates the problem. Legalistic-positivistic approach is more legal certainty-oriented but still overlooks justice and social context in the society (Steni, 2009).

Understanding and implementation of positivism of law in agrarian conflict have been heavily lambasted. Legal positivism is regarded as not to

give much space to implement the law, recalling that Indonesia is home to diversity, including diversity of its legal systems. In the context of agrarian conflict, the issue is complicated. State positive law does not have enough capacity to regulate diversity with the state legal spirit oriented to uniformity (Koesno, 2016). As a result, it is without doubt that the vigour of uniformity and autonomy to implement the state law seems to ignore humanity. In terms of thoughts and monolithic legal reasoning, according to Esmi Wirassih, law is no longer virtuous, where it should be to protect and to guide people towards dignity and humanity, but the law is rather aimed to legitimate particular interests with juridical validity. Weber even mentions that the law seems to be intended to get things done, and it tends to overlook suffering and tribulation of intimidated or marginalised members of community (Wirassih, 2006).

Discourse coming from central and local government to settle the conflict often comes to the surface but in top-down pattern, where an instrument of state law is used and, at the same time, it usually receives resistance from the locals. Legalistic-positivistic approach to this agrarian conflict, principally, is not satisfactory for both local governments and local people. Bernard L. Tanya states that the implementation of the systems of modern or state positive law, particularly in local community, often imposes addition burden on people since the law and local culture are not always compatible and the relationship between the two is usually conflict-laden. Law as formal-modern system designed centrally exists amid the life of socio-cultural and informal locals. Not only do both result from social construction from two different spheres, but they also have different logic and “basic concerns” (Tanya, 2011). State law is even utilised as instrument of violence against the locals who fight for their rights to land.

Another issue putting the agrarian conflict in a more difficult situation is overlapping law concerning agrarian resources. From the data released by Agrarian and Spatial Planning Ministry of Indonesian National Land Agency, there are about 623 regulations concerning land, of which 208 are no longer into effect, leaving 424 active regulations. Some of these 424 regulations have issues in their implementation and clash with agencies. Meanwhile, varied regulations, legislations, and policies/decisions made by



state officials are unjust for the rights of the people. As a result, farmers involved in the conflict were labelled ‘illegal residents’, ‘thieves of federal land’, and ‘illegal loggers’ since no legal documents are owned. In the rigid implementation of political agrarian system that is legalistic-formalistic, varied significant concession permits are issued for customary lands, residential areas, cultivated lands, all of which support their livelihoods (LBH, 2018).

Handling this matter requires more than legalistic-positivistic approach. The rigid implementation designed and applied earlier in positive law to settle this agrarian conflict has failed to justly resolve the conflict, including in the case of Bongkoran land. Socio-historically, Indonesia houses diversity in every respect, including the legal system. The people have their characteristics and traditions passed throughout generations, social norm, and their local rules and local ways of life serving as to manage the relationship between people and their agrarian sources, their social relationship among people regarding control and use of land, including land division and conflict resolution. They even have institutions responsible for settling disputes arising in the society. All these rules shape what is called as customary law or *adat* law. Forcibly adjusting the national law to the society, seen from empirical-historical fact, has raised conflict and confrontation from the members of society. As stated by Myrna Safitry, the state’s attempt to forcibly implement national law is often irrelevant to the norms and reasonableness in the local community. When this is the case, this irrelevance between the national law and customary law will not be regarded as an option, and if it has to be implemented, it is not without confrontation from the locals (Safitri M. , 2011). The dominance and monopoly over unilateral use of state law, where socio-historical context and people’s rights are not taken into account, is considered as legal violence and injustice.

This state is like a giant bowl in which all land issues are regulated through constitution or law, a state law. However, outside the state and its law is a social space called “social space outside the state”, a customary law (Rahardjo, 2010). Customary law emerges from within society and it is an integral part of the behavioural pattern of the society towards the land and

their residence. Several communities started to exist long before Indonesia formed, the communities living on their land with social values and norms deeply rooted and binding.

Customary law is more than just a set of norms, but it brings together a dynamically systemised sequence and a process and sustainability. This sustainability allows the law to survive and to run its social role. Customary law works in the social system itself, not relying on the system of norm or law from an authority or state law. Customary law does not emerge from the system of formal authority, but it rather grows and works within society per se, and it directly interacts with the condition of the society. Customary law does not work “on formal bureaucratic table”, but it directly works on an “open field” of society (Wiratraman, 2014).

Meanwhile, matters and mechanism of formal-procedural are perceived as “burden”, not only due to the requirement, mechanism, or demanding procedure, but also due to local structural reality with its simplicity that is too limited in fulfilling the demand of the system in formal matters. On the other hand, for the locals, all the matters and issues arising in the society that are deemed in order, certain, and “normal”, now turn to “complex” due to the existence of state regulations. This complexity is also formed when customary law meets state law (Karman, 2010).

Legalistic-positivistic approach of state law is not satisfactory. It was proven in the study conducted by Ade Saptomo, on Dyadic conflict and Diagonal Negotiation, a study on resolution to conflict concerning water resource between local people and the government of Bukit Tinggi with legal anthropological approach, indicating that cultural mediation is not only caused by internal factor (cultural), but also external factor (juridical-political). Therefore, legal provision in articles in a set of laws and regulations is not capable of accommodating normative-collective expectation and thus the development of law should be based on local socio-cultural potential in the future (Saptono, 2006)

Fauzi Rachman, argues that this endless agrarian conflict indicates the failure in providing legal protection for local people or farmers. The system of liberal state law has a huge contribution to this agrarian conflict, where it is more likely to accommodate the interest of corporate or capital owners

over the interest of local people or farmers. The farmers' rights to the land and their life are getting more marginalised (Rachman, 2016). Furthermore, Rachman explains that the conflict stems from unabating claim over the rights to land and/or other resources coming from different legal bases, as believed by the state and local people. All the parties concerned (state along with corporate and people) have their claim of validity of law to take control and maintain the regional function along with agrarian sources therein. This difference surely contains dimension of varied interests (Rachman, 2016).

### **Legal Deliberation for Agrarian Justice**

The locals in Bongkoran are left with aspiration that this agrarian conflict will be justly resolved soon. Discussion and communication equally conducted between the parties involved are also expected through ways and mechanism of resolution in a deliberative political chamber (democracy) (Hardiman, 2009). The state has one of primary tasks that is to realise social justice aimed for all the people of Indonesia, as mandated in the constitution. In terms of agrarian conflict, as stipulated in Article 33 of the 1945 Indonesian Constitution, the state, the government, ranging from central to regional governments, are mandated through General Election to regulate and manage natural riches, including agrarian resources therein, as to be exploited for the greatest benefit of the people. The key is 'to be exploited for the greatest benefit of the people', which is definitely not meant for only particular groups of people.

According to Sulistyowati Irianto, agrarian conflict is an issue attached to day-to-day life of Indonesian societies. Regimes come and go, but none has managed to settle the agrarian conflict justly and completely (Irianto S. , 2011). Currently farmers/people hope that their rights to land are given back. In Soetandyo Wignyosebroto's perspective, just law is a national law whose case-by-case implementation is capable of touching moral principles existing and applying in local societies, the principles that are still believed by the locals (Wignjosebroto, 2010). Justice is the soul of law. Therefore, good and functional law must have social significance and must provide more than the existing procedural justice. Law must act fairly, give equal opportunities, be pro-people, and be committed to achieving

more substantial justice. Thus, justice for people requires more than the parameter of positive or formal law of the state; it is supposed to look through the social context (Susanto, 2008)

In socio-historical context, Indonesian people refer to collectivism and mutual cooperation (*gemeinschaft*). Monopoly in excessive use of state law in all agrarian conflict without taking living law into account is unhistorical and unwise. This state character will shape the face of law. Indonesian people with communalistic character have different faces and traits from those of western countries that are highly individualistic-liberalistic.

Therefore, Daniel S. Lev from the US in his book entitled *Judicial Institutions and Legal Culture in Indonesia* (1972) argue that when conflict or disputes take place in the society, Indonesian people put harmony to the fore and tend to maintain good relationship with others, instead of immediately dealing with the issue and using law (Susanto, 2008) . Therefore, social conflict resolution, including the agrarian conflict will not be well accommodated by only using or forcibly adjusting the instrument of state law that is unjust, but it also requires the living law that has local wisdom and is more justice-oriented.

## CONCLUSION

The agrarian conflict of Bongkoran Land in Wongsorejo, the Regency of Banyuwangi, is a scene of structural conflict coming from legal conflict between state law and customary or living law. With the existing authority, state law works through an institution or bureaucracy of the state, involving central and local governments. Intervention of state law in agrarian conflict not only imposes burden on the locals, especially farmers, but this conflict also heightens.

How the law works dealing with the agrarian conflict in Bongkoran through dominance and hegemony has directly and indirectly taken away people's rights. This practice even escalates the conflict that leads to violence against farmers. Moreover, legalistic-positivistic approach cannot solely resolve the agrarian conflict in a fair way for farmers. Therefore, sociological approach that justly accommodates the need and interest of the people is required.

Nothing is expected by the locals but to see this conflict put to an end justly. Legal dualism that is conflict-laden should be over through the availability of procedure and mechanism of resolution in deliberative political chamber. There should be a more intensive and equal dialogue or communication mediating the state (governments), company, and people to come to a fair consensus. di

Practically, intervention and monopoly of state law in agrarian conflict is proven a failure in tackling the conflict. Therefore, settling this agrarian dispute should take more than unfair instrument of state law, and attention should be given to customary law with its local wisdom without overlooking the aspect of justice.

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