

## Legal Sociology Review of The Development of Land Services in Indonesia

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### **Abstract**

*This study investigates the complex relationship between Indonesian social dynamics and the legal framework governing land development, examining the implications for societal welfare and legal certainty. Indonesia's land governance environment is changing dramatically as a result of fast population expansion and the shift to the digital era. Despite the desire for an equitable and flourishing society, gaps exist between the idealistic goals of community development and the practical implementation of agrarian legislation. This study seeks to answer the following questions: the impact of Indonesian social behavior on law creation and implementation, the impact of social structures on legal interpretation, the role of community organizations and governmental bodies in legal regulation, and the evolution of land service through the lens of legal sociology. By examining these issues, this study hopes to provide insights into the complexity of land development in Indonesia, with an emphasis on increasing legal clarity and promoting societal well-being.*

**Keywords;** *Legal Sociological Review, Indonesia, Social Dynamics, Land Development*

### **1. INTRODUCTION**

The population is going to continue to rise in this rapidly globalizing period. Population growth impacts not only the quantitative features of society but also its social aspects, particularly the satisfaction of both basic and advanced wants. People are interested in learning about their needs and the global advancement of humankind. This phenomenon is accompanied in the modern environment by extremely rapid population expansion, which facilitates better transit between regions and even between countries. This is a big and fast-changing country in Indonesia. Natural resources like land, water, and space are viewed as a gift from God Almighty and play a crucial role in efforts to create a just and prosperous society that meets our aspirations in the Republic of Indonesia, where most people still live and work in agriculture. Paradoxically, while the existing Agrarian Law ought to be viewed as a crucial tool for accomplishing these objectives, in practice it frequently gets in the way of achieving these aims. The mismatch between the idealized objective of community development and the actual application of agrarian laws is a crucial problem that requires further investigation (Undang-Undang No 5, 1960).

In the digital age, technology facilitates all aspects of daily life to make it more efficient and contemporary. It is no longer possible to stop Indonesia's transition to the digital age; this is partly due to the community's requests and desires for more efficiency and practicality in all aspects of life. The land sector started implementing electronic-based land services, up to the point where papers were produced in the form of electronic documents, to accomplish the modernization of land services. There are advantages and disadvantages to the introduction of electronic land certificates as stated in the Regulation of the Head of the National Land Agency on Electronic Certificates, which was signed on January 12, 2021, by Agrarian Minister Sofyan Djalil (Silviana, 2021).

In the meantime, land rights are derived from the state's right of control and can be bestowed upon a variety of parties, including private and public legal entities, individual Indonesian citizens, foreign nationals, and groups of individuals. Put differently, land rights are indivisible and can be possessed by various legal entities and persons, irrespective of their legal form or nationality. The Basic Agrarian Law's (UUPA) Article 4 paragraph (1) regulates the regulations about land rights (Santoso, 2005).

*"Based on the State's right to control land as referred to in Article 2, various kinds of rights over the surface of the earth, called land, are determined, which can be granted to and owned by persons, either alone or jointly with other persons and legal entities."*

According to the essay, the state's authority must be utilized as much as possible to ensure the prosperity of the Indonesian people. Prosperity in this sense is described as a positive impact on the well-being and contentment of society. Control over land (earth), water, space, and the natural resources that are found there are all included in this right of control. Therefore, by considering the natural resources that the state owns, the primary goal of exercising this state control power is to increase the welfare and pleasure of all Indonesians.

## **2. RESULT AND DISCUSSION**

### **LAND SERVICES DEVELOPMENT AND SOCIAL BEHAVIOR**

Innovating in the delivery of public services is one way to boost community involvement in political matters. In addition to meeting the requirements of the community, these innovations seek to provide services that encourage, promote, and motivate active community engagement (Kusumawati et al., 2020). Indonesian social norms, conventions, and values are reflections of their social conduct. These mold their opinions about the law and affect how they interact with others in society. One specific illustration is the use of customary law in the Minangkabau regions, which continues to be crucial in resolving disputes (Soetoto et al., 2021).

#### **1. The Legal System of Colonialism and Customary Law**

Indonesian civilization had a system of customary law that differed from region to region before the colonial era. Social, economic, and political norms that were accepted by the community were governed by these systems. The Indonesian customary law system was then affected and changed by Dutch law as the colonial era progressed. According to Soetandyo Wignjosebroto, customary law with a spirit of pluralization has gone unrecognized since Article II of the Transitional Rules of the 1945 Constitution nationalized and so continued the enactment of all colonial statutory laws with a spirit of unification. As is well known, ter Haar oversaw the politicization of Customary Law through judicial processes rather than legislation, as van Vollenhoven had intended, during the last phase of colonial administration. In actuality, Customary Law was "only" recorded in jurisprudential books. As is well known, jurisprudential materials are never considered the primary source of formal law in nations that adhere to the French civil law system tradition, like Indonesia. Although jurisprudence is acknowledged

as a source of formal law in Indonesia, the continental European tradition that the Dutch colonial authority developed is more well-known. In actuality, a thorough examination reveals that the Anglo-Saxon heritage is more akin to the development of customary law (Wignjosoebroto, 2014). Furthermore, Koesnoe specialists believe that customary law ought to serve as the foundation for national law due to the multitude of laws that are applicable in Indonesia. The customary law in question is explained as a component of customary law, which is where all of the specific provisions of customary law obtain their fundamental justification, rather than customary law that is born out of the decisions of legal officers or that has been embodied in real behavior, which is commonly referred to as custom. Therefore, the fundamental ideas, goals, and precepts that form the basis of customary law and give rise to its more specific rules are applied to societal reality (Koesnoe, 1992).

## **2. Gaining Independence and Forming Indonesian State Law**

The foundation of Indonesia's legal system was laid by the country's Declaration of Independence on August 17, 1945. The 1945 Jakarta Charter and the 1945 Constitution serve as the cornerstones of the Indonesian constitution, which was drafted and established throughout this period.

## **3. The National Law and the New Order Era**

Under President Soeharto, the government and the military consolidated their hold on power during the New Order era. As a result, numerous laws governing different facets of social, economic, and political life were issued, significantly altering the country's legal structure.

## **4. Legal Restoration and the Reformation Era**

The 1998 government shift cleared the path for Indonesia's reform phase. The administration moved to fortify law enforcement agencies, end corrupt activities, and enhance the legal system. To achieve legal justice, a number of organizations were founded, including the Constitutional Court and the Corruption Eradication Commission (KPK).

## **5. International Law's Integration with Globalization**

International legal developments have also had an impact on Indonesia. Several international treaties that the nation is a party to have an impact on national legal policy, such as those pertaining to trade, human rights, and environmental protection.

## **6. Current Difficulties and Advancements**

Indonesia will continue to encounter a number of issues with its legal system until 2021. Human rights protection, law enforcement, and general legal reform are a few of these issues.

It is crucial to keep in mind that Indonesian legal evolution is an ongoing process that is susceptible to the influence of numerous internal and external variables. Future legislative direction and policies may be impacted by social, political, and economic developments. For Indonesia to maintain justice and legal security, it is crucial to continuously monitor and assess the legal system.

One could argue that laws are a powerful instrument for bringing about the kind of social change that is intended or planned. When change is planned and meant, it means that citizens who lead the way in bringing about change have anticipated and planned it. Law is a crucial source of legitimacy in complex cultures because bureaucracy is a major factor in social action. Therefore, the law is required to give these bodies legitimacy as well as to define and limit power if the government wants to create organizations that work to alter society deliberately. In this instance, the establishment of entities that have a direct impact on social, political, and economic processes is how the rule of law fosters social transformation (Soekanto, 1989).

## **LAND SERVICE LAW DEVELOPMENT IN INDONESIA**

As a gift from the Almighty God, land is essential to human existence and provides essential resources for day-to-day living. In addition to being a place to walk on and a basic necessity, the land holds great significance for certain groups of people, particularly indigenous peoples who view it as the means of survival. Land serves a variety of purposes in addition to being a site for living and growing, like keeping a portion of it as a natural forest, hosting social gatherings, and serving as a repository of regional knowledge. Moreover, land contributes to social, cultural, and customary factors in addition to meeting economic necessities. Soeroyo Wignyodipura emphasizes the strategic importance of land as an enduring asset, stressing the intimate bond that exists between people or communities and the soil as the basis for both the existence and the continuation of regional customs (Nurdin, 2015).

The relevance of legal sociology, in particular, and the science of law is paramount. Legal sociology is consistent with the legal paradigm shift away from a legalistic and dogmatic approach and toward the application of functional and critical concepts. In order to address differences between legal norms and social reality, legal sociology helps analyze the social dynamics that impact land services. Legal sociology makes it possible to develop policies and put in place land services that are more equitable and responsive to community needs by comprehending social, economic, and cultural factors. This includes diligent law enforcement and legal reform. To make sure that the legal system in Indonesia not only represents justice in land ownership and management by the expanding social reality but also conforms to formal legal norms, legal sociology must be integrated into the examination of land services (Dirdjosisworo, 2010).

Land service laws in Indonesia have evolved significantly over time to meet societal demands and changing circumstances. An outline of the evolution of land service law in Indonesia is provided below:

1. Early Independence to Early Independence Era: Following Indonesia's declaration of independence, the state started to create a framework for land law. The earliest set of laws governing land rights and their use was the Basic Agrarian Law (UUPA) of 1960 (Sumarja, 2015).
2. Agrarian Reform and Policy Change: The government implemented agrarian reform in 1998 in an effort to restructure the unjust land system. As a result, Law

No. 5/1960 on Agrarian Principles was released, and it was later amended to become Law No. 5/1967.

3. Era of Digitalization and Modernization of Land Services: Indonesia is about to enter the era of digitalization of land services, driven by both the need for more effective services and technology advancements. The utilization of information technology in land administration and the computerized certification process are intended to streamline procedures, minimize red tape, and boost legal assurance.
4. Land Services Regulations: A number of regulations, including the Head of the National Land Agency (BPN) Regulation on Electronic Certificates and other guidelines controlling land registration, land use planning, and legal matters, were released to assist with the modernization of land services.
5. Transition to Electronic-Based Services: The government wants to promote the shift to electronic-based land services in order to use technology to improve public access, boost efficiency, and give more legal certainty.

The government's attempts to meet contemporary needs and give the community more modern, effective, equitable, and sufficient land services are reflected in this development. In that instance, it relates to Durkheim's questioning of the relationship between the law and social functions, whereby a nation's legal system develops in tandem with society to satisfy its demands (Peter, n.d.).

## LEGAL INTERPRETATION AND SOCIAL STRUCTURE

A system is made up of multiple functioning components that are interconnected and form a unity or roundness. Legal dogmatics, legal history, comparative legal science, legal politics, legal sociology, and general legal science—which includes legal anthropology—are the several subdisciplines that comprise the general legal science system. Every component is related to every other, resulting in a cohesive comprehension. If we talk about rudimentary, mostly unwritten local legal systems, we won't find the concept of a system (Hadikusuma, 2004).

One system is that the interpretation and application of the law are influenced by social structures, such as political and economic stratification. Legal decisions can be influenced by various factors, including money and social class, when it comes to economic concerns. Furthermore, political power can have a significant impact on the creation and application of laws. It is critical to recognize the intricate and frequently entwined relationship that exists between social structure and legal interpretation. In a heterogeneous culture like Indonesia, it is essential to comprehend how social structures impact the law in order to maintain justice and legal security.

In Indonesia, social structure has a significant impact on how laws are interpreted and applied. The following are some ways that the nation's socioeconomic structure affects how laws are developed:

### 1. Access to Justice and Social Stratification

There are several societal strata in Indonesia, including the middle class, the impoverished, and the political elite. Social caste, race, religion and economic variables also play a part in establishing one's position in the social structure. This social standing

frequently affects access to justice. For instance, those belonging to higher social strata might have greater access to a good legal system due to their greater financial means.

Access to justice and socioeconomic stratification are likewise intimately linked to these developments. Social structures have changed as a result of societal transition, which has an impact on how justice is distributed at different levels. This raises significant obstacles to access to the legal and justice system, both at the municipal and national levels. The process of social stratification that happens amid this transformation might alter the extent to which individuals or groups have fair access to legal institutions and legal protection (Wignjosoebroto, 2008).

## 2. Influence of Political Power

Social structure is very directly linked to political power. Groups or individuals who hold strong political power tend to have a great effect on the formulation and interpretation of law. Therefore, legal decisions might sometimes be reflective of dominating political objectives.

The influence of political power on land development in Indonesia has a considerable impact on land policy regulation and execution. The granting of land rights, redistribution, and land utilization are typically influenced by government policies motivated by continuous political power. Changes in political regimes, such as during the New Order and Reform eras, also generated diverse land policies. Resources for understanding the impact of political power on land in Indonesia include legal literature, academic publications, and official government reports, such as Government Regulations, Land Laws, and studies from renowned research organizations.

## 3. Local Culture and Traditions

Local culture and customs influence how individuals understand and obey the law. In some locations, customary law still plays an important role in resolving problems and maintaining social order. The understanding of customary law and its interpretation is often impacted by local social institutions and values.

## 4. Human Rights Issues

Social structure can also be a factor affecting human rights protection in Indonesia. Marginalized or vulnerable groups within the social structure, such as women, children, and ethnic minorities, may face additional challenges in gaining access to justice and legal protection.

## 5. Economic Dynamics and Social Inequality

Unequal economic structures and social disparities also play an important role in legal interpretation. Economic inequality can affect how the law is applied especially in cases involving economic issues.

## 6. Influence of Globalization

The influence of globalization also affects the social structure in Indonesia. The process of globalization can accelerate social change and societal values, which in turn can affect the way people perceive and comply with the law.

## 7. Social Institutions and the Rule of Law

Government institutions, civil society organizations, and non-governmental organizations play a significant role in regulating and influencing the law in Indonesia. Examples of this are the Constitutional Court, which plays an important role in ensuring compliance with the Constitution, and human rights advocacy organizations, which monitor and fight for justice.

All of the above social institutions work together to shape and regulate the legal system in Indonesia (Wignjosebroto, 2008). Collaboration between these institutions is essential to ensure a fair and equitable legal environment for all citizens. Social institutions play a key role in the regulation of law in Indonesia. Various institutions and organizations play an important role in the creation, implementation, and enforcement of laws in the country. Here are some of the social institutions that are influential in the rule of law in Indonesia:

### *Government and Legislature*

The Indonesian government, including the executive and legislature, has the power to make and amend laws. Legislative bodies, such as the House of Representatives (DPR) and the Regional Representatives Council (DPD), are responsible for discussing, passing and revising laws. They also have a role in setting the budget for legal institutions.

### *Justice System*

The judicial system in Indonesia consists of various levels, including the District Court, High Court, and Supreme Court. These institutions are responsible for interpreting and enforcing the law, as well as deciding cases brought before them.

### *Constitutional Court*

The Constitutional Court is an independent institution tasked with ensuring compliance with the Indonesian constitution. It has the authority to test laws against the constitution and provide official interpretations of the constitution.

### *Law Enforcement Agencies*

Law enforcement agencies include the police, prosecutors, and the Corruption Eradication Commission (KPK). They are responsible for investigating, prosecuting, and enforcing the law against individuals or organizations that violate the law.

### *Human Rights Organization*

Institutions such as Komnas HAM (National Commission on Human Rights) play an important role in monitoring and protecting human rights in Indonesia. They investigate

human rights violations and provide recommendations to the government for further action.

### *Civil Society Organizations*

Civil society organizations, including NGOs (Lembaga Swadaya Masyarakat), also have a significant role to play in the rule of law in Indonesia. They can monitor government policies, advocate for public interests, and voice legal and justice issues.

### *Legal Education Institute*

Law faculties at various universities in Indonesia play an important role in the education and development of legal knowledge in the country. They shape the next generation of lawyers, judges and jurists who will contribute to the rule of law in the future.

In addition, the development of law in Indonesia is inseparable from the dynamics of social behavior, social structure, and social institutions that surround it . Indonesian society has a diversity of cultures and traditions that influence the way they perceive and implement the law. In addition, the social structure formed from economic, political and cultural factors also has a significant influence on the development of law in this country. Therefore, the study of the interaction between social behavior, social structure, and social institutions with legal development becomes very relevant to study.

## THE CONCEPT OF LEGAL SOCIOLOGY IN THE DEVELOPMENT OF LAND SERVICES IN INDONESIA

The basic concept of legal sociology provides an important foundation for analyzing the complexity of the development of land services in Indonesia. In the perspective of legal sociology, law is not a static entity, but rather the result of the dynamics of social interactions, values, and norms that develop in society. Therefore, in analyzing the development of land services, a legal sociology approach can open wider horizons for understanding the complex dynamics involving society, social institutions, and formal and informal legal norms.

The goal of Indonesian legal development is to realize a just and balanced law in all aspects of life (Sugiantari, 2015). To achieve this level of justice and balance, many theories of legal development have been proposed by jurists and social scientists. Here are some important theories about legal development:

### **Legal Evolution Theory**

This theory states that law develops naturally along with the development of society. It is based on the mistaken belief that an evolutionary approach to law requires a deterministic underlying ideology of what law is and what it will be; namely the idea that law must exist to achieve certain goals and that, despite efforts to the contrary (Kirste et al., 2023).

### **Legal Positivism Theory.**

This theory claims that law is a set of rules made by a competent authority and must be followed by society. Law is seen as a separate phenomenon from morality or justice, and only laws legitimately enacted by the government are considered valid. This is not a trivial issue: Descriptively flawed court decisions are influenced by its anti-naturalistic viewpoint. Upon closer examination of the writings of prominent legal positivists, it appears that much of the legal positivism of the 20th century, which in its various forms contradicts naturalism, must be rejected by those who wish to promote a naturalistic approach to law (Priel, 2024).

### **Legal Realism Theory**

This theory emphasizes the importance of practical, social, and economic factors in shaping and interpreting the law. Legal realists argue that judges often decide cases based on considerations of policy or fairness, rather than on the legal text alone. One common perception of legal realism is its hostility towards legal philosophy. Legal doctrine does not and cannot prevent judges from using existing legal information to get almost any desired result, as the realists demonstrate in the famous story. Thus, theology only hides and obscures what the public should be talking about. This article aims to make this famous story more complex. I highlight a modern interpretation of legal realism that argues that the free exchange of ideas about morality will enhance the authority of law (Priel, 2024).

### **Social Functionalism Theory**

This theory emphasizes that law should function to meet the needs and goals of society. Law is regarded as a tool to maintain social stability and balance, as well as ensure justice and security for all members of society (Nardis, 2013).

### **Structuralist Theory of Law.**

This theory emphasizes the importance of social and economic structures in shaping law. Law is seen as a reflection of the economic and political interests that exist in society (Niebergall, 2002).

### **Critical Legal Theory**

This theory highlights the power, ideological, and social aspects of law. They argue that law is often used to maintain unjust social structures and that changes in the law are necessary to achieve social justice (Akhmadi, 2019).

### **Postmodern Legal Theory**

This theory critiques the idea that law is a fixed and standardized entity. They argue that law is flexible and shaped by various interpretations and social constructions (Rosenbury, 2019).

Each of the above theories provides a different view of how law develops and interacts with society. A combination of these theories and an interdisciplinary approach can help understand the complexities of legal development in changing social, political, and economic contexts. This paper focuses on the development of Land Services in Indonesia. The researcher also explains behavior, social structure, and social institutions.

First of all, the sociology of law emphasizes the importance of understanding how legal norms do not only originate from formal institutions, but are also formed through norms that develop in society. In the context of land services, this means that customary, traditional, (Anwar, 2008) and local norms can interact and influence each other with formal legal norms regulated by the state. By understanding these dynamics, we can identify points of tension and harmony between formal and customary legal systems .

Second, the role of social institutions is a key aspect in the sociology of law analysis. In land services, customary institutions, community organizations and other institutions have an important role in shaping and influencing the implementation of the legal system. An understanding of the interactions between these institutions and the government and other formal legal institutions can provide deep insights into the dynamics of land services from a social perspective.

In addition, the sociology of law recognizes the social conflicts that can arise in the implementation of legal norms. This conflict analysis becomes relevant in the context of land services where conflicting land rights, ownership, and utilization are often complex issues. Through a sociology of law approach, we can analyze the root causes of such conflicts, and identify solutions that can facilitate harmonization between legal norms and community expectations.

Furthermore, inequalities in access to and utilization of land services can be analyzed more deeply through the lens of legal sociology. By understanding the social factors that contribute to these inequalities, more inclusive policies can be designed to improve equity in land services. This analysis could involve consideration of how social aspects such as gender, economics, and ethnicity affect the distribution of land rights and access to land services.

Overall, the sociology of law approach not only provides a theoretical basis for analyzing the development of land services, but also opens up space for formulating more contextual and sustainable solutions. By involving the concepts of legal sociology, the analysis of land services can become more holistic, considering the diverse social aspects that shape and influence the legal system.

### **3. CONCLUSION**

The development of land services in Indonesia reflects community engagement through social norms and customs. Colonial history, the New Order era and reformasi influenced the evolution of the legal system. Globalization, international legal integration, and current challenges such as law enforcement and human rights reform also shape the dynamics of national law. In this context, legal rules play a key role in designing desirable change, offering legitimacy to social change bodies, and forming the basis for the development of Indonesia's legal system. Continuous monitoring is essential to ensure that justice and legal security prevail in Indonesia.

The development of land service law in Indonesia reflects evolution throughout history. From the establishment of the Basic Agrarian Law at the beginning of independence to agrarian reform in 1998, and then to the era of digitalization and modernization of land services. The government responded to the demands of the times by issuing various

regulations that support the transformation of land services, including the application of electronic certificates and electronic-based processes. All of these developments reflect the adaptation of law to the social needs of society, in accordance with Durkheim's concept of the role of law in social functions.

Social structures in Indonesia, such as social stratification, political power, local culture, and the influence of globalization, play a key role in the interpretation and implementation of the law. Issues of access to justice, human rights, and economic inequality are influenced by the dynamics of the social structure. Institutions such as the government, the judicial system, the Constitutional Court, law enforcement agencies, and civil society organizations collaborate to shape and oversee a just legal system. This collaboration is essential in ensuring justice and legal protection in Indonesia.

In the context of the development of land services in Indonesia, the basic concepts of legal sociology provide an important foundation for analyzing the complex dynamics of social interactions and legal norms. By utilizing legal theories such as legal evolution, legal positivism, and legal realism, as well as an interdisciplinary approach, legal sociology understands the role of social institutions, social conflict, and inequality of access in land services. With this analysis, contextual and inclusive solutions can be found to improve justice in land services in Indonesia.

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