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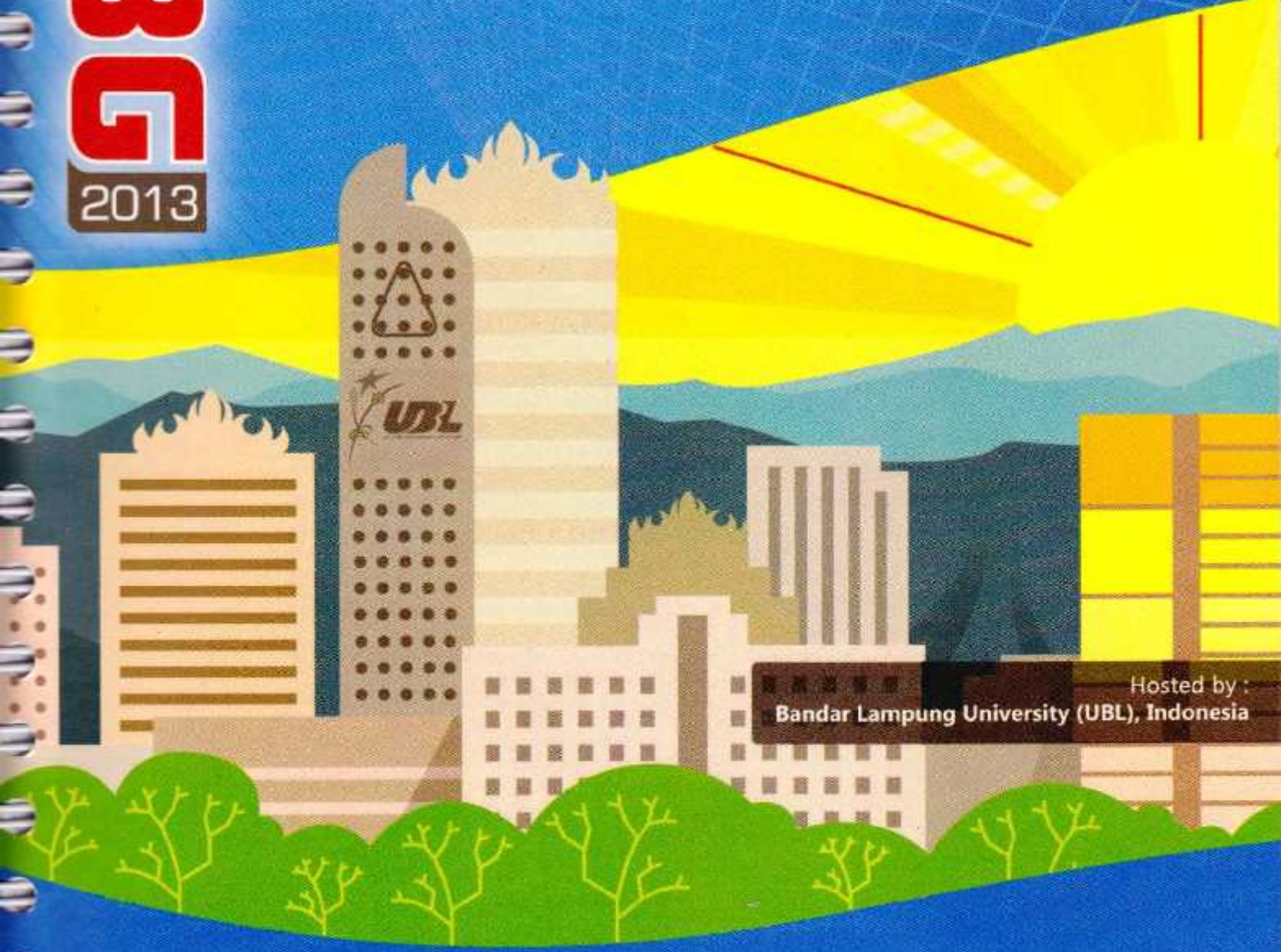
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THE FIRST
INTERNATIONAL CONFERENCE ON
**LAW, BUSINESS
& GOVERNANCE**

23-24

OCTOBER 2013
BANDAR LAMPUNG
UNIVERSITY (UBL),
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PREFACE

The Activities of the International Conference are in line and very appropriate with the vision and mission of Bandar Lampung University (UBL) to promote training and education as well as research in these areas.

On behalf of the First International Conference on Law, Business and Governance (Icon-LBG 2013) organizing committee, we are very pleased with the very good response especially from the keynote speaker and from the participants. It is noteworthy to point out that about 67 technical papers were received for this conference.

The participants of the conference come from many well known universities, among others : International Islamic University Malaysia, Utrech University, Maastricht University, Unika ATMA JAYA, Universitas Sebelas Maret, Universitas Negeri Surabaya, Universitas Jambi (UNJA), Diponegoro University, Semarang, Universitas 17 Agustus 1945 Jakarta, Universitas Bandar Lampung, Universitas Andalas Padang, University of Dian Nuswantoro, Semarang, Universitas Terbuka, Universitas Airlangga, Bangka Belitung University, President University, Tujuh Belas Agustus University Jakarta, International Business Management Ciputra University, Surabaya, University of Indonesia, Business School Pelita Harapan University, STIE EKUITAS, Bandung, STAN Indonesia Mandiri School of Economics Bandung, Lampung University.

I would like to express my deepest gratitude to the International Advisory Board members, sponsor and also to all keynote speakers and all participants. I am also gratefull to all organizing committee and all of the reviewers who contribute to the high standard of the conference. Also I would like to express my deepest gratitude to the Rector of Bandar Lampung University (UBL) who give us endless support to these activities, so that the conference can be administrated on time

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Table Of Content

Preface.....	ii
International Advisory Board	iii
Steering Committee	iv
Organizing Committee.....	vi
Table of Content	ix

Keynote Speakers :

1. Leadership Style, Climate, Commitment and Corporate Performance – Andreas Budihardjo	I-1
2. The Great Paradox of Good Governance in Indonesia - Andrik Purwasito	I-8
3. Local Autonomy and Inter-Sector Performance-Based-Governance in Lampung Province – Ari Darmastuti	I-15
4. Urgency of Regulatory Priorities Watershed in Order To Conduct an Integrated Watershed Administrative Law In Indonesia – I Gusti Ayu Ketut Rachmi Handayani.....	I-22
5. The Strategic Development Model of Organizational Dynamic Capabilities at Private Higher Education Institutions Using Soft System Methodology – M Yusuf S Barusman.....	I-29
6. Governance, Business and The Environment - Maliah Sulaiman	I-39
7. Good Governance and The Rule Of Law - Nik Ahmad Kamal Nik Mahmod	I-45
8. The Legal Protection of Geographical Indications in Indonesia Towards The Asean Economic Community - Wahyu Sasongko.....	I-56
9. Bank Indonesia Law Relations With The Financial Services Authority (FSA) in Indonesian Banking Supervision - Zulfi Diane Zaini	I-63
10. Application of Factor Analysis to Public Sector Integrity in Indonesia - Warsono, Armen Yasir, Dian Kurniasari, Widiarti, Ridwan Saifuddin	I-69
11. Strengthening Creative Economic Resources Through Designing Appropriate Regulatory Model in Managing and Optimising Cultural Property- Hayyan ul Haq.....	I-76

Invited Speaker

12. The Direction Of Future Management Accounting Research In The Asia Pacific Region - Grahita Chandrarin	I-77
---	------

Paper Presenter :

Law :

1. Indonesian Marriage Legal System Construction In Order to Protect Children From Marriage Law That is Not Recorded - Amnawaty	II-1
2. Urgently of Harmonization of National Legislation on Juvenile Criminal Justice Towards International Standards: A Review of Rules of Deprivation of Liberty of Child Offender - Antonius Ps Wibowo.....	II-14

3. The Urgency of Total Economic Value Aspect in Food Security Regulation In Order to Engage Asia's Trade Area (Indonesia Case Study) - Anugrah Adiastruti	II-25
4. Strike as The Last Resort In Dispute Settlement Between Workers and Employers - Arinto Nugroho	II-30
5. Politics of Land Law For Indonesian Farmers (Towards the Bill of Land in Indonesia) - Elita Rahmi	II-35
6. State Role In Building People's Economy Amid Economic Globalization - Elly Nurlaili	II-40
7. Legal Protection of Traditional Crafts Tapis Lampung Based Local Wisdom in The Era of Globalization- Erlina B	II-45
8. Perda Progressive : an Alternative To Fulfillment of Poor People Rights of Health in Local Autonomy - H.S. Tisnanta, Agus Triono	II-52
9. The Comparison Between Indonesian Constitutional Court and Russian Constitutional Court - Lintje Anna Marpaung.....	II-58
10. The Politics of Islamic Criminal Law in Indonesia (A Critical Analysis) - Mohamad Rapik.....	II-67
11. Learning Environmental Rights, Finding Green Future: The Road to Ecojustice - Muhammad Akib, Fathoni	II-73
12. The CSR of Tobacco Industries: The Concept And Its Implementation – Nanik Trihastuti	II-80
13. The Comparison Of The Indonesian Ppatk Role With Other Countries Financial Intelligence Unit (FIU) - Nikmah Rosidah	II-86
14. Benefits Of Ratification Of The Madrid Protocol (Protocol Relating To The Madrid Agreement Concerning The International Registration Of Marks) For The Protection Of Intellectual Property Rights In Indonesia - Risti Dwi Ramasari.....	II-92
15. Equitable Law of Democracy Political Policy Against The Election of Incumbent - S. Endang Prasetyawati	II-99
16. Narcotics Crime as A Phenomenon of Transnational Organized Crime - Zainab Ompu Jainah	II-110
17. Safety Net of The Financial System in The Perspective of Indonesian Banking Law - Zulfi Diane Zaini	II-115
18. National Land Law Reform in Facing Globalization - Darwin Ginting	II-122
19. Land Dispute Settlements Insocial Philosophy Perspectives (A Case Study in PTPN VII of Bergen Unit Business in South Lampung Regency) - Herlina Ratna S.N.	II-130
20. Analysis of Regional Expansion as Implications of Regional Autonomy Implementation - Indah Satria	II-137
21. Normative Judicial Analysis of Dissolution of Political Parties Towards Democratic System in Indonesia - Rifandy Ritonga	II-141
22. Limitations Of Legal Ability In Dispute Resolution Of Consumer Protection - Tami Rusli.....	II-147

Business

1. Accountability And Financial Performance of Local Government in Indonesia – Aminah, Lindrianasari	III-1
--	-------

2. Competitive Advantage; The Affecting Factors and Its Impact on Selling-In Performance (Studies on Patronage Outlets PT. Indosat Semarang) - Ana Kadarningsih	III-7
3. Bankruptcy Analysis of Banking Companies in Indonesia Period 2001-2012 (Using the Altman Z-Score Model)- Andi Sanjaya, Lindrianasari, Aminah.....	III-20
4. The Influence of Audit Committee Quality and Internal Auditor Objectivity Toward The Prevention of Fraudulent Financial Reporting(A Survey in BUMN of Indonesia) - Angrita Denziana	III-26
5. Performance Measurement of Management Study-Program Based on Balanced Scorecard from Students' Perception – Ardansyah, Ayu Ichda Mardatila.....	III-32
6. E-Business : At A Glance Indonesia Online Shop Agent - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	III-37
7. Brand Awareness Strategy: Role of Blackberry Messenger (Case in Sumber Tiket Murah Travel: PIN 2144C41F) - Dian Pane, Baroroh Lestari.....	III-40
8. Analysis of Corporate Social Responsibility Implementation And Social Audit at PT Semen Padang - Elvira Luthan, Sri Dewi Edmawati	III-50
9. Tourism Investment, Supply and Demand in Indonesia: Impact and Factor Analysis -Faurani Santi, Rina Oktaviani, Dedi Budiman Hakim, Reni Kustiari.....	III-61
10. The Effect of Job Satisfaction and Organizational Justice on Organizational Citizenship Behavior with Organization Commitment as The Moderator - Fauzi Mihdar.....	III-75
11. The Economic of Umar Bin Khatt b Policy in Modern Economic Policy - Hendri Hermawan Adinugraha	III-83
12. The Influence of Corporate Governance Implementation toward Bank Performance (Empirical Study on Banks Listed in Indonesia Stock Exchange) - Heriyanni Mashitoh, Irma.....	III-90
13. The Factors That Influence The Firm Performance In The Furniture Industry Jepara - Mahmud,Guruh Taufan H, Ida Farida.....	III-102
14. The Implication of Opportunistic Behavior Towards a Financial Report Conservatism : A Study of Banking Company Go-Public at BEI - Novi Darmayanti, Nur Suci Mei.....	III-110
15. Innovation Strategy With Environment Variable Antesenden Internal, External And Environmental Partnership Strategy For Their Impact On The Sustainable Competitive Advantage (Survey on Small Business in Pangkalpinang city) - Reniati and Dian Prihardini Wibawa	III-118
16. The Infuence of Cash Flow Information Toward Stock Return - Reza Kurniawan	III-126
17. The Influence of Internal Control toward Production Cost Control Efectivity - Sarjito Surya.....	III-132
18. The Influence of Management Information System to Management Control System - Sihar Tambun, Vienda A. Kuntjoro.....	III-138
19. Identifying Indonesia-Uruguay Bilateral Trade Opportunities:A Revealed Comparative Advantage Approach - Sulthon Sjahril Sabaruddin, Riris Rotua Sitorus	III-145
20. Redesign the Competence Business Strategy of SME's in Dealing with ASEAN Economic Community (AEC) Trade Liberalization 2015 Case Studies: SME's Creative Industry Sector in Bandung - Teddy Fauzi	III-153

21. Service Innovation: In Highly Competitive of Hotel Industry - Widjaja Hartono	III-157
22. The Impact of Liquidity, Profitability And Activity Ratio To The Probability Of Default For Banking Companies Listed in Indonesia Stock Exchanges For The Period 2006 To 2012 - William Tjong, Herlina Lusmeida	III-164
23. Using Altman Z-Score Model and Current Status Of Financial Ratio to Asses Of Consumer Goods Company Listed in Indonesia Stock Exchange (IDX) - Yoppy Palupi Purbaningsih,	III-169
24. Analysis of Factors Affecting Foreign Direct Investment Mineral Mining Sector in Indonesia Period 2009-2012 - Zeflin Anggal, Purwanto	III-176
25. Implement of M-Government to Improve Public Services - Ahmad Cucus, Yuthsi Aprilinda	III-181
26. The Development of Productivity Performance Models: Based on Self-efficacy, Trust, Systems Quality, and Information Quality. Study on Information Systems of PT Pindo Deli Paper Products - Indah Kartika Sandhi.....	III-187

Governance

1. Controlling for Agricultural Land Conversion District in West Java Province Tasikmalaya - Ade Iskandar	IV-1
2. Local Handicraft Development Policy Implementation - Ani Heryani	IV-5
3. Designing IT Governance Approach Standard ISO 38500 for Indonesia Higher Education - Arnes Yuli Vandika, Samsul Arifin, Eka Imama Novita Sari, Debi Herlina Meilani	IV-9
4. Potential Thematic Campaign for Lampung Tourism - Hasan Basri	IV-12
5. Globalization and Its Effect on Democracy - Ida Farida	IV-17
6. Bureaucracy Communication and Government Organizational Culture - Khomsahrial Romli	IV-23
7. Creative Economic Development Mode Through Business Learning Group For The Purpose of Ending The Poverty - Soewito, Suwandi	IV-29
8. Child Protection Strategies at Agrarian Conflict Area (A Case Study at Moro-Moro Village, Register 45, Mesuji Regency) - Wijatnika	IV-36

POLITICS OF LAND LAW FOR INDONESIAN FARMERS (Towards the Bill of Land in Indonesia)

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Abstract

The purpose of this paper are: **first**, to examine critically how the politics of agrarian law in Indonesia can provide legal protection for land ownership for farmers in Indonesia, so that the transition of function of the land from agricultural land into non-agricultural sector still pays great attention to the farmers as the vulnerable groups (poor, abandoned); **second**, to examine critically how the draft of the land law which is now being discussed in parliament can give protection to the farmers, so that they have bargaining position of land ownership equally with those of the capital owners.

This paper uses three analysis namely: 1) juridical analysis to understand the legal norms of the land law for the farmers in Indonesia; 2) historical analysis to understand the history of land ownership for farmers since independence of Indonesia which had not been proporsionil compared with the ownership to those of investors in Indonesia; 3) analysis of prospective of agrarian law concerning with the pros and cons of the Bill of Land being discussed before the Parliament.

This paper wishes to provide alternative for the rule of land for the farmers, so that the politics of law related to land in Indonesia correlated with farmers' strategic position as one of the main agents of the development.

Key words: *Politics of law, bill of land, farmers*

1. INTRODUCTION

The strong influence of Indonesian economic globalization has an impact on the position of Indonesia as an agricultural country whose majority population livelihood is farming. However, the politics of Indonesian land law has put Indonesia away from being an agricultural country and led it to technology and industrial one. As a result, the right of land by the farmers has been neglected by the Indonesian state policy.

The changing of the function of farmland to non-agricultural is increasingly out of control. As a result, conflict and land disputes can not be avoided as the function of the farmers is under pressure by the demands of investors who control a lot of land. The interests of economic, social and culture have also led to arena of struggle making land as individual interests. In this situation, the government interests tend to ignore the interests of indigenous peoples. Therefore, a national land law reform is needed in order to realize the interests of farmers as citizens whose lives depend on land¹.

Now, corrective policy become necessary in order to control the distribution of land for the government has been campaigning "one day no rice." At the time of 100-year of Indonesian independence (next 32 years), the population of Indonesai is predicted to reach untill 500 million. We got the situation of "one day no rice."²

The existence of the Bill of Land as a complementary of Law No. 5 of 1965 on Agrarian, will result in two possibilities; 1) the land will be more exploited for non agricultural; 2) the Bill of Land now being discussed before the House will be able to control the rate of land ownership by investors , through the land reform program which gives special attention to the farmers' interests of land. Then, how should the government give serious attention to the limitations of ownership of agricultural land?

¹ .Compare, Noer Fauzi, Tanah dan Pembangunan, Pustaka Sinar Harapan, Jakarta.P. 2-3

² .Sjamsoe'oed sadjad. Mengubah Pola Makan (Guru Besar Emeritus Fakultas Pertanian IPB. Opini Kompas (News paper) August 31,2013. P 6.

Thailand, one of the countries in Southeast Asia, though being hit by the crisis, successfully managed to pass it by strengthening its agriculture-based economic.³ Indonesia, despite its provision regarding land reform in the UUPA (the Basic Agrarian Law Act), this provision is not well applied. Even the Act No. 56 Prp Year 1960 has promised the farmers to have 2 acres of land, this also has not been done well. As a result, farmers in Indonesia live in poverty and destitution, and are treated very unfairly in land sector.

So, how can the politics of land law back to basic to ensure the farmers being prosper as provisioned in the Article 33 paragraph (3) of the 1945 Constitution that "The land, waters and natural wealth contained within them are controlled by the State and shall be utilised to increase the prosperity of the People?"

The provision of the Constitution above stated that agricultural land are farmers' sources of life, and therefore the state has to ensure the agricultural land be in the hands of the farmers⁴.

Without correcting the farmland ownership, food crisis that is being experienced in Indonesia today, where prices of soybean and onion rose very unstable, will be difficult to stop without recovering the function of agricultural land.

2. POLITICS OF LAW OF AGRICULTURAL LAND IN INDONESIA.

Politics of law is identical to legal policy that is being or have been implemented nationally by the Indonesian government, which, in its implementation, includes⁵:

(a) Law making and law reform on legal materials that are considered strange or unsuitable with the goals of law making.

(b) Application of existing laws, including enforcement of the functions of related institutions and training members of law enforcement officers.

It is inferred from the above definition that politics of law meant in this paper is identical to legal policy of national land laws favoring farmers that will be or have been implemented by the government, in relation with the Bill of Land which is being discussed in the House, especially land reform as the history of a national land law towards agrarian reform for the welfare and the prosperity of the people.

According to Notonagoro, there are five factors needed in developing agrarian land in Indonesia, namely formal, material and Ideal factors, as well as social factors of modern agraria and Political-ideological factors⁶.

The above opinion becomes a ground of theory that the politics of land law in Indonesia is influenced by other legal issues, associated with the philosophical, juridical and sociological factors. For this reason, there are so many experts who believe that the Agrarian Law is "sensitive law", as it is related to family law, inheritance law and economic law as well as administrative law, constitutional law and even human rights.

The history of Indonesian land law has noted the state preference to farmers was expressed through land reform policy, though it was failed. Today, agrarian reform policy seems to have attention by the government.

Referring to the above problems, so in line with the philosophy of Indonesian goals, the Indonesian policy and law enforcement should lead to the welfare of the people, especially farmers, as a vulnerable group that should be protected by law in order to increase their roles as affirmative action, through specific policies. Without special attention on the issues related to Indonesian farmers' scarcity of agricultural land, it is difficult for Indonesian people to survive from the long-term crisis due to the control of farm product by free market.

On the other hand, globalization has been the expansion of economic activities defined politically across national and regional boundaries through the increased movement of good and services, including labor, capital, technology, and information via trade and service⁷.

³ Herawan, *Politik Hukum Agraria (Kajian Atas Landreform Dalam Rangka Pembangunan Hukum Ekonomi Indonesia*. Pustaka Bangsa Press. Medan. P 14

⁴ See Muhammad Bakri. *Hak Menguasai Tanah Oleh Negara (Paradigma Baru untuk Reformasi Agraria*. Citra Media. Yogyakarta 2007. P. 2

⁵ Abdul Hakim Garuda Nusantara, *Politik Hukum Nasional, Pada Kerja Latihan Bantuan Hukum*. LBH Surabaya. September 1985

⁶ Notonagoro, *Politik Hukum dan Pembangunan Agraria di Indonesia*, Pantjuran Tujuh Jakarta. P 3-7

⁷ Morrison & Hadi Soesastro (eds). *Domestic Adjustment Go Globalization*, ICIE, 1998. P. 228

From the condition of Indonesian land development, the influence of minimizing farmers' access to land will be more frequent. Access of very dominantly globalization resulted in the lack of farmers' rights to the land.

Land reform is a reconstruction of land. That is to reconstruct the structure of land ownership and of man's relationships with the land, and human relationship with respect to the land, in order to increase farmers' income⁸. It is with this land reform program the politics of land law hope to accelerate the farmers' rights on land so that their status of lives will be equal with other economic actors.

As long as the farmers in Indonesia have limited rights on land, their position is indeed always worst. Normatively, the legal basis of agricultural land ownership is stipulated in the Law No. 56 Prp Year 1960 on the **Determination Land Scope (UUPLTP)** governing the determination of the maximum and minimum limits of land ownership that every farmer should have, ie two (2) hectares for each farmers (explanation UUPLTP no 8).

Nevertheless, the above law, so far, was not easy to fulfilled as the politics of land law failed to favour the farmers. As a result, there are many farmers in Indonesia but have no sufficient agricultural land. The emergence of landless peasants and farm laborers resulted in Indonesian vulnerability to global crises. As the government didn't pay attention to the farmers' right and need, Indonesia is now facing the crisis of onions and soybeans.

3. ABANDONED RIGHTS OF INDIGENOUS/CUSTOMARY PEOPLES (COMMUNAL LAND)

Indonesia is well known in the world to have strong indigenous/customary people. In its land ownership there also known the rights of community land. In Indonesia, it is called *tanah ulayat*. Normatively, the land rights of indigenous/customary people is strongly recognized as stipulated in the Article 3 of Law No. 5 Year 1960 on Basic Agrarian Regulation providing that considering the provisions of Article 1 and 2 of the implementation of customary rights and similar rights of indigenous/customary peoples, as long as it is there in reality, should be such, so that in accordance with the national and the state interests based on the unity of the nation and must not conflict with the laws and other higher regulations.

Based on the the provision mentioned above, the existence of customary rights should be subject to wider interest. Unfortunately, whenever this indigenous/customary rights deal with such concessions as logging concession (HPH), in many cases, the customary rights tend to be neglected. Therefore, conflicts and disputes on land became the answer and this situation indicates that the existence of customary rights normatively very weak. Though regulated in the Basic Agrarian Law (UUPA), there are only few legislations could follow-up on how this customary rights was performed in the government policy, both central and local government. Function of agricultural land which highly switched into housing and industrial direction (transfer of rights for certain legal acts) and the the lack of spatial planning in Indonesia are also the main problems causing the narrowing of agricultural land.

4. TRANSMIGRATION: AN INDONESIAN FARMER EMPOWERMENT MODEL

In Indonesia, transmigration is needed for at least two reasons. First, unevenly spreading population; and secondly, economic inequality between the farmers and non- farmers. However, in its development, the empowerment of transmigration was not well observed for such reasons as widely clearance of forests for palm oil plantation. As a result, many farmers became laborers or became plantation workers. Therefore, state alignments is required in order to revitalize and realize the transmigration program to ensure equal distribution of population and to reproduce agricultural land for farming use.

Transmigration is regulated in the Act No. 15 Year 1997 on Transmigration , as amended by the Act No. 9 Year 2009. Juridically, transmigration is voluntary migration to improve welfare through three kinds of transmigrations, ie General Transmigration (TU), Assisted Self-Developing Transmigration (TSB) and Independent Self-Developing Transmigration (TSM). The goals of transmigration are to enhance welfare, support local development, strengthen the unity of the nation, improve skills, science and technology, and empower as well as input land titles⁹.

⁸ Hustiati *Agrarian Reform di Philipina dan perbandingannya dengan Landreform di Indonesia*. Mandar Maju Bandung 1980,P 32

⁹ Pedoman Penyelesaian Masalah Pertanahan. Direktorat Penyediaan Transmigrasi Direktorat Jenderal Pembinaan Penyiapan Permukiman Dan Penempatan Transmigrasi Departemen Tenaga Kerja Dan Transmigrasi. Jakarta 2006.P 1

By all of these principles, the transmigration program is a good model suitable with the demands and the needs of land for farmers.

5. THE FUTURE OF FARMERS IN LAND BILL

The philosophy of Bill of Land in its consideration stated that the development of policies that tend to promote economic development has allowed misinterpretation concerning the objectives and principles of the Act No. 5 of 1960 on the Basic Rules of Agrarian Basis with various effects.

The Bill of Land consists of XIV Chapters and 102 Articles. The Bill itself is not meant as the completion or the substitution of the Act No. 5 Year 1960. Therefore, in Article 101 it is stated that all laws and regulations in the field of land and its implementing regulations that already exist, remain valid as long as not contrary to the provisions of this law.

Nevertheless, the provisions of Article 101 can lead to overlapping regulation on land. It is feared that this could lead to legal uncertainty and far from the public's sense of justice. For example, the Article 19 of the Land Bill rights over such land as Freehold Title (Hak Milik), Building Use Title (HGB or Hak Guna Bangunan), Right to Use Title (HP or Hak Pakai) and Right to Rent for Buildings (Hak Sewa untuk Bangunan). That means there is a narrowing of land rights as stipulated in article 16 of the Basic Agrarian Law Act (UUPA) governing land rights, both permanent and temporary.

Based on the articles of the Bill of Land, it is learned that the state should take farmers into good consideration. In addition, the Bill of Land should be clear in regulating land in Indonesia, whether to replace the Law No. 5 of 1960 on the Basic Agrarian Law Act (UUPA) or merely to alter some of its articles to the better ones and add new chapters that have not been regulated in the Basic Agrarian Law Act (UUPA).

6. CONCLUSION

1. It is time for the politics of land law in Indonesia to take side with the farmers as the majority of the community so that they can have access to comprehensive development.
2. Limitations of agricultural land, lack of legal protection of agricultural land transfer to non-agricultural land, lack of supervision of the spatial planning, have resulted in highly speculation of agricultural land. Consequently the farmers became vulnerable groups and experienced structural poverty.
3. The Bill of Land is feared to lead merely to overlapping regulations of land and will not provide fresh air in the protection of law, justice and the law benefit for farmers in Indonesia.

7. RECOMMENDATION

1. For the Government, it is highly hoped to issue regulations and policies that will protect farmers, such as: determining of the minimum ownership of agricultural land, providing venture capital assistance and educating farmers on professional farming techniques, so that farmers have access equally with the other people.
2. Rural development and farmers empowerment regulated in the Land Bill need a comprehensive evaluation.

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