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THE FIRST INTERNATIONAL CONFERENCE ON LAW, BUSINESS & GOVERNANCE

23-24 OCTOBER 2013
BANDAR LAMPUNG UNIVERSITY (UBL), INDONESIA

Hosted by :
Bandar Lampung University (UBL), Indonesia

UBL in corporation with Universitas Gadjah Mada Maastricht University

PROCEEDINGS

Icon-LBG 2013

THE FIRST INTERNATIONAL CONFERENCE ON LAW, BUSINESS AND GOVERNANCE 2013

22, 23, 24 October 2013
Bandar Lampung University (UBL)
Lampung, Indonesia

PROCEEDINGS

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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 participans. 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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NATIONAL LAND LAW REFORM IN FACING GLOBALIZATION

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Abstract

Problem of land is a national problem, it is our problems. It is not just agroup interest. It means that problem of land is very fundamental for our country because land has a political dimension and is very strategic as a means of unifying a nation.

Most problems of land which have been faced nowadays can make disorder, legal uncertainty, injustice among people, so there should be a pro-active effort to accelerate the achievement of national goals in the field of land and agrarian. This research is descriptive-analytic and uses juridical-normative approach, history of law, and juridical-qualitative analysis. From the result of this research, it can be concluded that the efforts of NationalLand Law Reform are required through the Land Act, because this Act is hoped to be able to solve the land and agrarian problems all over Indonesia. At least, The Land Act is supposed to pay attention to right to control the State, communal land right, nationalism, rights of land, management right, restriction on ownership and control of land, social function on land, settlement of land dispute, ministry level institution, unification and land law pluralism, and pay attention to globalization demand.

Keywords: *Reform, National Land Law, Globalization*

1. INTRODUCTION

Basic Agrarian Act (UUPA) was first promulgated in 1960 and applied the provision of land reform pertaining to the restriction on ownership and control of agricultural land, prohibition of ownership on *absenti land*, land redistribution which has been affected by provision of land reform, and regulation of profit sharing, and agricultural land pawning. Then, there was an abolishment of colonial rights and provision of right on land conversion which had been regulated in the former law device became new rights in Basic Agrarian Act.

During New Order regime, the government had performed its policyto increase economic growth and development. In the sector of land, the policy put a priority in facilitating land for industrial companies, huge plantation, and urban housing development which need people's vast land. The impacts of New Order regime's policy, there was an alteration from pro-people policy to pro-capitalism liberalism policy. There was no equitable development so the effort in achieving welfare and social justice was not successful.

The most fatal policy taken by the government was that; the land sector had become business commodity in accelerating development.This was very contradictory to the principles of Basic Agrarian Act. Some New Order regime's polices raised negative impacts to our nation, for instance:

1. Scarce land availability, and quality was running down
2. There was a gap in ownership and control of land right
3. There was uncontrolled land conversion, and eventually the farmers became poor and stipulated unemployment
4. Closing the people access, because there was a difference access; capital access and political access
5. Land rights of indigenous people were losing on the pretext of development interest
6. Boosting conflict and dispute of land increasingly nationally, and
7. It was too far to achieve the goals of Basic Agrarian Act; the initial goal was to abolish the landlords, whereas the new landlords increased

The situation above finally boosted the downfall of New Order regime, and the Reformation Era was arise demanding the alternation of development orientation which accentuated peoples' interest, which was

known as "populist economy" in every aspect.[1] Especially in the field of land and agrarian, there was a demand to change Basic Agrarian Act through determination of legal basis based on MPR (People Consultative Assembly) decree regulating agrarian reform and management of natural resources.Through the basis of MPR decree, it assigned People Representative Council (DPR) to regulate further implementation of agrarian reform and management of natural resources, and repealed, changed, and replaced all Acts and implementation regulations which were not appropriate and in line with this provision. In the framework of following nationalism spirit, the government has published Presidential Decree No. 34 year 2003 on National Policy in the field of land. The Presidential Decree essentially emphasized on the following steps:

a. The arrangement of Act drafting of Basic Agrarian Act improvement, and drafting of Land Right Act, and other regulations in the field of land,
b. Information system development and land management.

To perform the order of the MPR decree and Presidential Decree, the ideas and concepts of national land law reform have been done and echoed by land law academics, politicians and bureaucrats, especially National Land Board (BPN). The draft of Basic Agrarian Act revision has been made based on the ideas or concepts, and public test has been carried out in some big cities in Indonesia, but finally it disappeared without any reasons. According to the result of writer's survey in the People Representative Council in 2007, there was a high level political agreement to continue the revision of Basic Agrarian Act.[2]It was very ironical because the discussion of revision drafting of Basic Agrarian Act has spent a lot of state budgets and involved many national components. This fact has shown us that the reform or national land law development is very sensitive with political interest. This is supported by multi-parties political system, so there is no majority party in the parliament or People Representative Council.

Amid the highly liquid political bustle, it gives opportunity the citizens to give comments and opinions on reform and national land law development that should be followed up immediately. In such bad situation, conflict problems, and land disputes in Indonesia, and also land mafias, it has obstructed infrastructure and poverties. Talking about the role of land mafias, the president has given a statement "the breakdown of infrastructure development will hamper the growth of national economy". The national economy will not grow if the infrastructure development is hampered because of land mafias".[3]. Amid this bad situation, initiative right from People Representative Council came up to discuss the draft of National Land Act and it has been discussing about the kinds of substances which should be included in the improvement of the draft.

According to the writer, the efforts of arranging the draft of Land Act should be appreciated and accepted wide-openly, because the draft of this Act will be able to solve the land problem in Indonesia as well as support and boost national land law development. Now, what are we supposed to do and play important roles in giving and providing input or solution and protect the substances of the draft in order to solve the problems in thefuture. The land problem is nation problem. It is our problem. It is not a problem of a group or class. It means that it is a very serious and fundamental problem for our nation. We, as a pluralistic nation should be able to create that land as a means of unifying a nation.[4]Therefore, it should be remembered; do not ever make the land as a businesscommodity. AndrinofChaniago said that" it is very difficult to solve the land problem. Land ownership should be included in Constitution amendment. It is very easy for China to develop the infrastructure because the land is owned by the State, while in Indonesia the land is dominantly owned by private, and finally the land becomes a commodity".[5] From the background above, the writer wants to discuss about why national land law development is required?

2. THEORETICAL FRAMEWORK

National agrarian law development theoretically cannot be separated from development law theory as it was expressed by MochtarKusumaatmadja (grand theory). This approach is a legal science approach a science (scientific legal approach) as well as a philosophical legal approach which becomes a "guidance star" and it can verify the importance of new paradigm of national land law development. According to

[1]DarwingGinting, *Hukum Pemilikan Hak Atas Tanah Bidang Agribisnis*, Gahlia Indonesia, 2010, page 219.
[2] Ibid, page 221
[3]*Sulitnya Membrangus Mafia Tanah*, published in *Konstan* Magazine, March, 2012, page 10.
[4] Darwin Ginting, *study of Law on settlement of Land Dispute through Customary Justice*, National Legal Development Board, Jakarta, 2012, page ….
[5] Ibid, page 11.

Mochtar,[6]"law should function as a means of society reform". Lili Rasjidi[7] comments the development law expressed by Mochtar as follow;"Mochtar's development law theory is a transformation from hisown theory, added by a transformation of Roesco Pound's law theory. But, the most important thing is transformation of Pound's theory. Mochtar firmly stated that he declined mechanism conception from conception "law as a tool of social engeneering", and because of that he changed the term of "tool" with "medium".

The essence of development law theory is that the usage of the word "tool" sounds mechanistic, whereas the law should observe the regulated object, namely human beings (naturally) not the dead things. For the reason of that, the term of "medium" is used in the framework of sociey reform.

The function and role of law as a "medium" of society reform is very correlated with legal political concept (*rechspolitiek*) in anglosaxis reference is wellknown as a legal policy theory.[8] According to Teuku Mohammad Radhie[9], "legal politic is a willingness expression of a ruler of a country pertaining to the law existance in its theritory, and the goal of constructed law development". Based on this opinion, legal politic can be defined as a part of law study as it talks about legal planning, and taks about legal drafting which has substances on how the law is codified, law concordance, law harmonization, law pluralism, law unification, and others.

In comprehending the goal of a legislation, there should be a comprehension about the thought which form the background of an Act; according to legal drafting science, it can be seen in the preamble of an Act. Thus, it can be seen in Basic Agrarian Act No. 5 year 1960 where the background of publication of this Act was aimed at developing principle of customary law which was original law of indigenous people containing values which grows up and develops in the middle of our lives; sense of togetherness which is based on the balance and religious atmosphere. Whereas the goal of Basic Agrarian Act is to finish up law pluralism in the field of land, and puts the principles of national agrarian law development which is based on philosophy of customary law and philosophy of *Pancasila*.

Thus, national land law development should be appropriate by using conception and principles applied in customary law system. According to Budi Harsono, the keyword is "religious-communalistic" which is formulated as "conception which enables mutual land ownership as a gift from God The All Mighty by every citizen individually with rights of land privately and contains togetherness element".[10] Therefore, in national land law development, especially in making a draft of Act of Land, there should be an interdiscipliner and multidiscipliner comprehensive study through paying attention to the existance of customary law and its principles. This should be emphasized because it is related to globalization influence, and it can interfere substances of an Act.

The scoup of new paradigm of national land law development policy is very wide, so the writer restricts some aspects or variables which need more attention in containing materials of draft of Land Act which are being discussed in People Representative Council (DPR), such as; policy on right to dominate by the state, the existance of communal right, right of management, restriction of land ownership, and land dispute settlement, unification, and land law pluralism.

3. DISCUSSION

1. Right to dominate by the State

The direction of legal policyof national agrarian law on the right to dominate by the State is derived from constitutional argument that; state's important production branches which control people's need are "dominated" by the state (article 33 paragraph (2), of the 1945 Constitution). This legal norm is an implementation of the right to dominate by the state. It is very different from constitutional argument that states "earth, water, and natural resources are "dominated" by the state (article 33 paragraph (3) of the 1945 Constitution) is a normative realization of the theory of domination by the state on its nation territory.[11]

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[6]MoctarKusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan*, Bandung, Study Centre of Archipelagic and Development, in associate with Alumni, 2012, page 14.
[7]Lili Rasjidi & I.B. Wyasa Putra, *Hukum Sebagai Suatu Sistem*, Bandung, Mandar Maju, 2003, page. 183
[8]Imam Syaukani & A. Ahsan Thohari, *Dasar-Dasar Politik Hukum*, Jakarta, Raja Grafindo Persada, 2004, page.19.
[9]Ibid, page. 27.
[10]Arie Sukansi S. Hutagalung, *Pembaharuan Hukum Agraria Di Indonesia*, published in the book of *Dinamika Pemikiran Tentang Pembangunan Hukum Tanah Nasional*, Trisakti University, Jakarta, 2012, page. 92.
[11]Compare: Miriam Budiardjo, *Op.Cit*, page. 41

In Basic Agrarian Act, it has firmly mentioned about the right to dominate by the state. Article 2 paragraph (1) of Basic Agrarian Act confirms that "on the basis of the provision in article 33 paragraph (3) of the 1945 Constitution, and other items mentioned in article 1, earth, water, outer space, including natural resources in highest level are "dominated" by the state, as an organization of the whole Indonesian people. According to A.P. Parlindungan:[12]"article 2 paragraph (1) has given attitude that; to achieve the goal of article 33 paragraph (3) of the 1945 Constitution, it is not in the right place that Indonesian nation or state is the owner of the land. This is appropriate with the explanation of Basic Agrarian Act so that the country as a dominating organization of the whole of Indonesian people, acting as a ruling/dominating body so it is very precise that earth, water, outer space and natural resources in highest level is "dominated" by the state." Article 2 paragraph (2) Basic Agrarian Act gives more explanation that right to dominate by the state in highest level are:

a. to regulate and perform allocation, use, reservation, and maintenance
b. to determine and regulate rights on earth, water, and outer space
c. to determine and regulate legal connection among people and legal deed pertaining to earth, water, and outer space

Comprehensible basic principle on right to dominate by the state is that a state as a dominating organization (*staat is gezagorganizatie*)[13] dominates and has the power to make regulation (*regelings*) then executes the use and allocation, reservation, and maintenance of earth, water, outer space, and natural resources. Besides, it determines and regulates (defining and making regulation) rights which can be developed from right to dominate by the state.[14]

Article 2 paragraphs (3) and (4) can be itemized as follow:

(3) Authority deriving from right to dominate by the state in paragraph (2) is used to gain welfare for the people as much as possible in the sense of happiness, prosperity, independent society, and independent, sovereign, prosperous Indonesian law state.

(4) The implementation of right to dominate by the state can be delegated to regional autonomous government, and customary law societies, and it does not conflict with national interest according to the provisions of government regulation.

From the provisions above, it can be obviously seen that agrarian authority in Basic Agrarian Act system stands in the central government. Regional government may not perform agrarian authority action if there is no delegation appointed by the government, or government institution, or customary law societies, as it can be explained and clarified in article 2 paragraph (4) Basic Agrarian Act.[15] This requirement has juridically been applied since the publication of Act No. 32 year 2004 on Regional Government. As it has been confirmed in article 14 Act No. 32 year 2004 that "the obligation matter which becomes regional government authority covers: service in the field of land". This field of land should be submitted to the autonomous regional government. Yet, in fact, this authority is not submitted to the autonomous regional government. It is just lips service.

Support towards decentralization in the field of land was introduced by Maria S.W Sumardjono as:[16]" correlation between state and land including other wealthy. Affirmation required is not only related to authority contents and goals, but also covers controlling instrument which should be developed to streamline the performance, including adaptation from *a change of centralistic authority pattern towards decentralization* in governing, and developing *good governance* principle in management of land resources. Through decentralization, good legal policy can be created which can afford to adapt itself with *living law*. In behalf of consideration for strategic and political dimension in the field of land as *a nation binder*, autonomy in the field of land has not been realized.

2. The existence of Communal Land

Talking about communal land (*beschhikkings-recht*) of customary law society scientifically is a very interesting matter to be discussed in the reformation era. Why? Because it goes without saying that the problems of land in Indonesia during the New Order regime was dominated by *land policy* which tended to be centralistic and had ignored rights of customary law societies. It was very different from the

[12] A.P. Parlindungan, *comment on Basic Agrarian Act*, Bandung, MandarMaju, 1991, page. 38

[13] See: J.H.A. Logemann, on*Teori Suatu Hukum Tata Negara Positif*, Jakarta, IchtiarBaru – Van Hoeve,1975, page.7

[14] A.P. Parlindungan, *Op. Cit.* page. 39.

[15] *Ibid*

[16] Maria S.W. Sumardjono, *Kebijakan Pertanahan; Antara Regulasi dan Implementasi*, Jakarta, Kompas Publisher, 2005.page. 222-223

condition after the breakdown ofNew Order regime in political stage (21 March 1997) which was led to decentralization efforts in the field of land, *mutatis mutandis of conservation of rights of customary law societies*.[17] Wider implication of that is more and more discussions on national agrarian problems are carried out as a criticism to land policy which does not support customary law societies.[18] The constitutional basis of communal right is contained in article 18B 1945 Constitution which confirms: "the state acknowledges and respects units of customary law societies along with traditional rights when they are still alive and it is appropriate with society development and the principle of unitary state of Indonesia regulated in the Act". This provision was commented by JimlyAsshidiqie[19]: "It shouldbenoted that this acknowledgment is given by the state (i) to the existence of customary law society along with their traditional rights; (ii) the acknowledged existence is the existence of units of customary law societies. It means that this acknowledgement is given to one by one of their units, and the customary law societies have certain characters, (iii) the customary law societies are still alive; (iv) in certain environment (*lebensraum*); (v) acknowledgement and respect are given without ignoring size eligibility to humanity in accordance with development level of civilization.For instance; certain traditions which is not proper to be preserved, such as *koteka*; (vi) acknowledgement and respect may not reduce the meaning of Indonesia as a unitary state of Indonesia".

Communal right in fact has been one of classification of human rights acknowledged in Indonesia, that is to say; right to preserve and maintain traditional identity and traditional society right, as it is mentioned in article 28I paragraph (2) 1945 Constitution: "cultural identity and traditional society right are respected along with times and civilization development. Rights of traditional societies on their cultural identities (including communal right) should be preserved as a treatment effort as innate human nature. It is very important to avoid the human exploitation (*exploitation de l'hommeparl'homme*). Article 3 of Basic Agrarian Act states that: "considering the provisions in article 1 and 2, the performance of communal right and other similar rights from customary law societies should be in line with national interest based on nation unity and in line with other higher legislation.

The norm contained this article shows legal security on political will from the government to protect and facilitate communal right of customary law societies. Maria S.W. Sumardjono[20] said that the arrangement of communal right in article 3 of Basic Agrarian Act is to protect those rights, because they were ignored during the period of colonial government". This is intended to avoid the refusal from customary law societies to development activities, such as Freeport and Papua customary law societies.[21]

According to the writer, the acknowledgement of the existence of communal right is a very logical matter, because communal right together with customary law societies have been existing before the proclamation of the independence of Indonesia, even long time ago before the Dutch Colonialism. Based on the writer's experience in land acquisition, especially communal right in *Buru island* (now: *regency of Buru island*) in 1996 for the sake of transmigration as wide as 30.000 ha (12.000 ha identified to be acquitted). In the process of communal right acquisition, the role of societies are involved such as local transmigration program, so the process can be accepted by members of customary law societies in *Buru island*.

3. Nationality and Land Rights

Nationality concept in Basic Agrarian Act states that only Indonesian citizens who possess fully eternal relationship with land. It should be implemented and applied in the draft of next Land Act. This provision is hoped to give a protection to nationalist rights, prevent and restrict the foreigners to own a lot of pieces of land who own a lot of capital.

[17] Compare: Eddy Ruchiyat, *Politik Pertanahan Nasional Sampai Orde Reformasi*, Alumni, Bandung, 1999. page. 109-111

[18]EllydarChaidir, Decentralization of Natural Resources Management in the Perspective of Act No. 22 year 1999, Legal Journal *IusQuiaIustum* No. 14. Vol. 7 Indonesian Islamic University, Jogjakarta, 2000, page. 149

[19]JimlyAsshidiqie, Manuscript Consolidation of 1945 Constitution after the fourth amendment, Depok, Study Center of Administrative Law, Law Faculty, University of Indonesia, 2002, page. 24.

[20] Maria. S.W. Sumardjono, *Op Cit*. page.54

[21] Darwin Ginting, Management Right in the perspective of Basic Agrarian Act Reform, Unpad Press, Bandung, 2011,page. 47

4. The existance of Management Right

Universally, the world land law regulates the domination of land, and its substance regulates the relationship between the country and its land dependant upon its ideology. Essentially, management right is right to dominate a piece of land and its implementation is submitted to the third party. The holder of management right is given authority to manage the land and given ownership right of land, right to build and use,right to use, based on the agreement made by the holder of management rightand the third party. Subject of management right is public legal body,for instance ministry, regional governments (provincial government, regency/city government), state owned enterprice (BUMN),regional government owned enterprice (BUMD).

Generally, management right is found in big cities, so it has high economic value. Legal basis regulating the management right is still succinct. It means that it is only regulated in minister regulation level, so we can find a lot of problems causing legal uncertainty as it difficult for the society to accept the publication of ownership right, right to build and use, right to use over management right. Meanwhile, Basic Agrarian Act regulates ownership right, right to build and use, right to use.LegalMaterials ofmanagement right should be clearly regulated in the draft of Land Act which is being discussed, so there is legal protection for societies who obtain Land Right over Management Right.

5. Land Ownership Restriction

One of big problems which is being regulated is restriction and domination of land in big cities and farmland because many certain groups of people who own big capital dominate the land and they are not forbidden because there is no norm regulating this activity, especially in big cities. The domination of land by certain groups of people causes mismatch and social jealousy and finally causes social problems among the societies. Act No.56 year 1960 on land ownership restriction for farmland is not suitable with population growth and uncontrolled population spreading in Indonesia, so it should be reviewed, changed, synchronized and harmonized with the next draft of Land Act.

6. Land Dispute Settlement

Nowadays, quantitive land conflicts and disputes often happen and become more complex. This case is getting worst because of land mafias/realtors, and impedes the infrastructure development. This condition obstructs national economic growth. There should be an evaluation, review to the existance of land dispute settlement institution because there are so many piles of land disputes which cannot be handled in a short period of time in general judicature, and a lot of verdicts in court of first instance and appeal in Supreme Court levels cannot be executed. According to the writer, in short term period, there should be a special judicature to handle land dispute, and there should be a permanent dispute judicature in long term period because land dispute cannot be stopped become more complex along with the population growth.[22]

7. Social Funtion of Land

Definition of "social fuction" according to Leon Duguit[23] isthat; there is no subjective right (*subyektief recht*), there is only social function". Duguit started from denial to subjective right, there is only social function. Duguit's thought is similar to utilitarian's thought expressed by Rudolf Von Jhering[24] on collective happiness as the aim of law, not individual happiness. Individual happiness can obtained after social happiness is gained.

In the field of land, the existance of social function on right of land has been regulated in Basic Agrarian Act article 6 which affirms that "all rights of land have social funtion". This social function on right of land is in accordance with Indonesian *groundnorm* hoping "social welfare and social justice" then it is stated in article 33 paragraph (3) of 1945 Constitution pertaining to " the use of people welfare". Therefore, A.P. Parlindungan[25] comments that "although the phrase "social function" is not mentioned in article 33 paragraph (3) of the 1945 Constitution, it should be intepreted that social function of primary ownership right is defined as ownership right which does not inflict the social interest. According to Notonagoro[26] " ownership right is social function. It does not mean to omit self-nature, but self-nature is

[22]Darwin Ginting, Capita Selecta Agrarian Law, Fukosindo Mandiri, Jakarta, 2012, page. 107.
[23]A.P. Parlindungan, *Op. Cit*, page.59
[24]See: Dardjidarmodiharjo & Shidarta; Principles of Legal Philosphy, What and How is Indonesian Legal Philosophy, Jakarta, Gramedia Pustaka Utama, 2006, page. 121.
[25]A.P. Parlindungan, Op. Cit. Page. 59
[26]Notonagoro, *Politik Hukum dan Pembangunan Agraria di Indonesia*, Jakarta, Pantjuran Tudjuh, no year

contained in ownership right as well as collective-nature. Obviously, individualistic and colective concepts should be in equilibrium (balanced)

In the framework of completing Nasional Land Law, the writer agrees with A.P. Parlindungan[27], stating that article 6 of Basic Agrarian Act should be developed and improved, so all agrarian rights have social function. Thus, not only land right that has social function, but also other agrarian rights including earth, water, outer space, and natural resources has social function.

8. Unification and Legal Pluralism

Conception of legal politic (*rechtspolitiek*) discusses about the law which will be made using legal unification and legal pluralism are very beneficial to the process of making of new National Land Law in the future? The urgency of legal unification and pluralism sizes of National Land Law are very close related to society acceptance to the draft of Land Law which is being discussed. From effeciency aspect, the effort of legal unification of national Land Lawis precise because it will be much easier to the efforts of *legislation planning*, *law making process*, and *law enforcement*. From the aspect of society resistance to the law which is contradictory to the culture, custome and tradition,legal pluralism model is very precise tobe applied.[28]

In general, it can be identified that Indonesia as nation state is a unification or blend of differnt languages, ethnics, cultures,natural resources which are arranged in the localistic social system.Diversities or differences show that legal pluralism model is very precise to be applied in Indonesia.[29]Moreover, there is a constitutional hope which gives oppotunities to legal pluralism, namely acknowledgement to units of customary law societies and their traditional rights, as well as the acknowledgement to cultural identities and traditional societies.[30]

According to Effendi Parangin[31], legal reform and developmentthrough pluralism of NationalAgrarian Law is that “there is pluralism of land law. We need legal unification. Unification is a feature of modern land law. Besides, we want to make law in codification. The original defintion of codification is the implementation of legal aspect completely in the Civil Code. But, the definition of codification at present is the implementation of regulation in written legislation.

Concepts of legal pluralism cannot be argued against codification concept because they have different scoups. Codification refers to written legal norms, legal pluralism refers to substances of its law. Through agrarian legal politic and legal pluralism concept, it will give opportunities to customary law societies all over Indonesia to use and manage their land optimally based on their own customary laws without any interferences from the state through legal unification, because the field of land law is not neutral.

4. CLOSING

National Land Law Reform is one of strategic effortsto accelerate constitutional mandate,where the assignment of the state is to make societies prosperous because most of Indonesian people live in villages.

In general, National Land Law Reform is a certain and real thing to create order, certainty, justice, and welfare for the whole Indonesian people, especially for farmers, fishermen, and customary societies. National Land Law Reform is required to support, boost legal certainty in societies, and support, attract the investors in every sector, especially in direct investment sector.Considering the failure of the revision to Basic Agrarian Act, the making of National Land Act is very urgent and crusial. Through the making of National Land Act, it is hoped that the land problems can be handled, and it will not cause the resistance of Act in other sectors. Vertical synchronization effort and horizontal harmonization with Act in other sectors are required to avoid mismatch and overlap.

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[28]Ibid. Page. 18.
[29]HUMA Team, *Op. Cit*, page. iii
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[31]Effendi Parangin, Effendi Parangin, *Hukum Agraria Indonesia*,; Suatu Telaah dari Sudut Pandang Praktisi Hukum, Jakarta, Raja Grafindo Persada, 1994, page. 198-199

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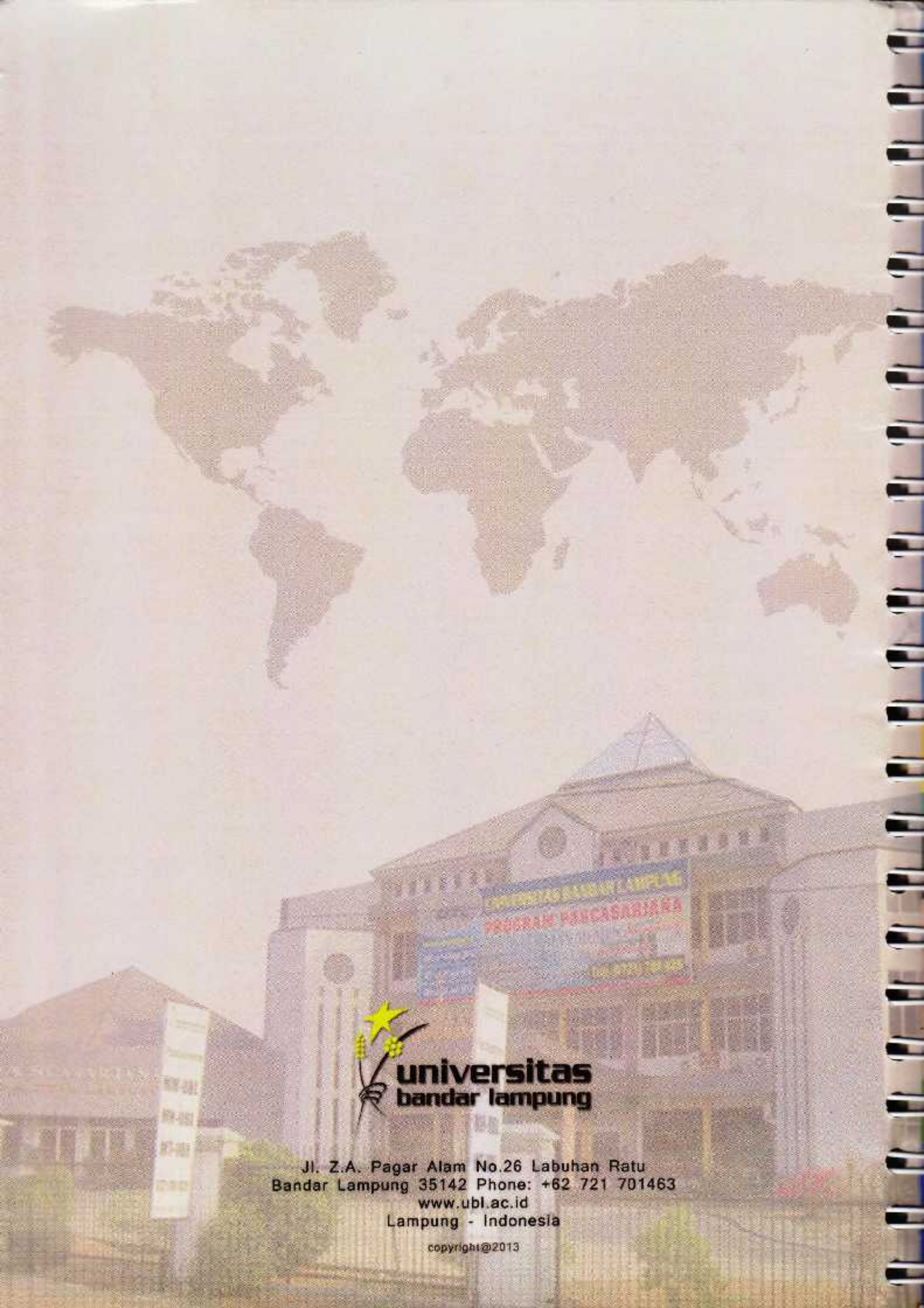

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