

Establishment of land court in Indonesia: an effort to realise justice based on Pancasila



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Abstract

The intricate nature of land issues currently exceeds the capacity of the general court to settle, thus necessitating the completion of numerous pending land cases. Furthermore, the land issues encompass private matters and governmental and administrative concerns. It is not uncommon for many court decisions to be associated with a single piece of land, including ownership rulings from both the District Court and the Religious Courts, as well as administrative decisions related to issuing a land title certificate by the State Administrative Court. This frequently entails a protracted and ambiguous process of land ownership. This circumstance progressively hinders the parties from attaining a straightforward, expeditious, cost-effective judicial system and deviates from a settlement model grounded in the principles of Pancasila. This essay will analyze the necessity of building a land court that aims to construct an efficient, expeditious, and cost-effective legal system for resolving land disputes while adhering to the principles of Pancasila.

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1. Introduction

According to Article 33 of the 1945 Constitution, the state must establish rules to ensure that all the country's land, water, and natural resources are effectively utilized for the maximum benefit of the Indonesian people.¹ To enforce the regulations stated in this constitution, Law Number 5 of 1960, also known as the Basic Agrarian Principles (UUPA), was enacted on 24 September 1960 to fulfill the requirements set by the constitution. Implementing the Basic Agrarian Law (BAL) initiated the transfer of land ownership in Indonesia from the legal control of the Dutch colonial government to the legal control of the Republic of Indonesia.² The UUPA establishes different rights granted by the state and

¹ Ahmad Fadlil Sumadi, 'Law and Social Justice in Constitutional Law Perspective', Jurnal Konstitusi, 12.4 (2016), 853–54.

² Nurhasan Ismail and others, 'Penjabaran Asas-Asas Pembaharuan Agraria Berdasarkan Tap Mpr No IX / Mpr / 2001 Dalam Perundang-Undangan Di Bidang Pertanahan', Mimbar Hukum, 22.2 (2010), 360–72.

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individuals, including Freehold (Hak Milik), Cultivation Rights (Hak Guna Usaha), Building Rights (Hak Guna Bangunan), Right to Use (Hak Pakai), land rental rights, land clearing rights, rights to collect forest products, and other rights to be determined by law and temporary rights.³

The concept of rights articulated in the UUPA represents a novel entitlement distinct from the era of colonization. The Dutch colonialists also established other land rights before establishing land rights as outlined in the UUPA. The colonials utilized three types of land rights: Eigendom Rights, Erfpacht Rights, and Opstal Rights. These circumstances give rise to land ownership disputes between individuals and land ownership disputes between individuals and the government. Consequently, after four years, Indonesia decided to create a land reform court under Law Number 21 of 1964, which deals with Land Reform Justice.⁴ This court was established to resolve disputes and address land-related issues that arise during the land reform process. Following the transfer of state power from the Soekarno regime to the Soeharto regime, it was argued that a land reform judiciary was no longer necessary. This was due to the judiciary's perceived inability to handle land cases effectively and the belief that the composition of judges needed to align with the principles of Pancasila.⁵ These two factors are compelling justifications for eliminating land reform courts and transferring land dispute resolution to regular courts.

Historically, the proposal to eliminate land reform courts in Indonesia is grounded on the premise that general courts can address diverse land reform issues. Consequently, the existence of specialized courts in the field of land is unnecessary, as general courts can settle land disputes in Indonesia. In actuality, this assumption diverges from the actual state of affairs.⁶ The joint judiciary must effectively address the intricacies of land issues, necessitating the expeditious resolution of numerous pending land matters. The land issues encompass private and public matters, including land registration requirements, which gave rise to administrative law.⁷ It is not uncommon for multiple court decisions

³ Anggalih Bayu and Muh Kamim, 'Reforma Agraria Di Perkotaan , Usaha Mencari Bentuk : Kasus Jakarta , Indonesia Agrarian Reform in Urban Area , An Effort to Choose The Right Form : Case Study in Jakarta , Indonesia Pendahuluan', 13.2 (2022), 153–68.

⁴ Felishella Earlene and Benny Djaja, 'Implikasi Kebijakan Reforma Agraria Terhadap Ketidaksetaraan Kepemilikan Tanah Melalui Lensa Hak Asasi Manusia', *Tunas Agraria*, 6.2 (2023), 152–70 <<https://doi.org/10.31292/jta.v6i2.223>>.

⁵ Anggiat Perdamean Parsaulian and . Sudjito, 'Masalah Tumpang Tindih Sertipikat Hak Milik Atas Tanah Di Kota Banjarbaru (Putusan Nomor: 24/G/2014/PTUN.BJM)', *BHUMI: Jurnal Agraria Dan Pertanahan*, 5.1 (2019), 129 <<https://doi.org/10.31292/jb.v5i1.324>>.

⁶ Anna Triningsih and Zaka Firma Aditya, 'Pembaharuan Penguasaan Hak Atas Tanah Dalam Perspektif Konstitusi', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 8.3 (2019), 329 <<https://doi.org/10.33331/rechtsvinding.v8i3.355>>.

⁷ Sulastriyono and Sandra Dini Febri Aristya, 'Penerapan Norma Dan Asas-Asas Hukum Adat Dalam Praktik Peradilan Perdata', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 24.1 (2012), 25–40.

to be associated with a single piece of land. These decisions may involve disputes over ownership, as determined by the District Court, as well as administrative laws related to issuing a land title certificate, as determined by the State Administrative Court.

Moreover, many parties can be engaged in a legal dispute about the same parcel of land, potentially beyond two parties. This often leads to a prolonged and uncertain process of proving ownership rights over land. To ensure legal certainty in property ownership, it is imperative for the parties involved to construct a justice system that is efficient, prompt, and cost-effective. This essay will examine the necessity of developing a land court that implements a streamlined, expeditious, and cost-effective approach to resolving land disputes while adhering to the principles of Pancasila.

2. Research Method

This study employs a normative legal research methodology, utilizing a philosophical, statutory, and conceptual framework.⁸ These three techniques allow for the presentation of arguments supporting the establishment of a specialized land court in Indonesia, grounded in the principles of justice outlined in Pancasila.⁹ Pancasila, a fundamental principle acknowledged in Indonesia's legal framework, must be considered in developing all national legal provisions. However, the principles of Pancasila should serve as the foundation for developing national legal policies, which includes considering the establishment of a dedicated national land court to ensure the creation of just legal outcomes rooted in Pancasila.¹⁰

3. Results and Discussion

Establishment of land courts: simple, fast, and low-cost dispute resolution efforts

Land disputes can be handled through many methods of conflict settlement. It is essential to mention that Indonesian people relied on customary law and traditional means to settle land disputes before establishing a judicial system. These practices were based on ideas aimed at minimizing conflicts over land. The resolution of land disputes in this manner serves not just to address individual conflicts but also to foster reconciliation within indigenous

⁸ Tara Nadya Andiani, FX Hastowo Broto Laksito, and Jose Gama Santos, 'Evidence from Indonesia on the Legal Policy Confronting Discrimination of Minority Groups Based on Race and Ethnicity', *Wacana Hukum*, 29.2 (2023), 146–62 <<https://doi.org/10.33061/wh.v29i2.9808>>.

⁹ Muhamad Khalif Ardi and others, 'The Imperative Is to Restrict Customary Criminal Offenses after Implementing Indonesia ' s New Criminal Code', *Wacana Hukum*, 29.2 (2023), 130–45 <<https://doi.org/10.33061/wh.v29i2.9829>>.

¹⁰ Taufiq Yuli, Ramalina Ranaivo, and Mikea Manitra, 'The Proposal for the Implementation of Elections in Indonesia : A Framework Based on the Presidential System', *Wacana Hukum*, 29.2 (2023), 181–205 <<https://doi.org/10.33061/wh.v29i2.9815>>.

communities on a broader scale.¹¹ Despite contemporary legal systems offering court-based dispute resolution, many regions in Indonesia, mainly rural areas, still need to rely on the aforementioned traditional methods of resolving conflicts. Nevertheless, contemporary legal systems also offer methods of resolving conflicts that do not involve going to court (non-litigation), such as alternative forms of resolving land disputes.¹²

Judicial power refers to the autonomous authority to administer justice and maintain the principles of law and justice, as stated in Article 24, paragraph 1 of the 1945 Constitution. The judiciary is responsible for upholding and ensuring the implementation of laws and the principles of justice or societal values; this is its primary objective. To achieve this objective, the judicial process must ensure fairness by facilitating convenient access for all parties involved, thereby eliminating any presumption that only capable individuals or a select few can initiate legal proceedings. Moreover, there is a necessity for a judiciary that diligently and faithfully enforces justice promptly and cost-effectively.¹³ To uphold the principles of justice outlined in Pancasila and enforce the concept of an independent judiciary, Article 27 paragraph (1) of Law Number 48 of 2009 regarding Judicial Power allows for establishing judicial or specialized courts as prescribed by law. This provision enables the establishment of specialized courts, such as a rustic court, to effectively apply these principles.¹⁴

The forthcoming agricultural court would resemble other specialized courts, including juvenile courts, commercial courts, human rights courts, corruption courts, industrial/labor courts, and fisheries courts, as outlined in Article 27, paragraph 1 of the Judiciary Law. The general judiciary and tax courts within the state administrative court in Indonesia are overseen by specialized courts, including the Children's Court, Commercial Court, Human Rights Court, Corruption Crimes Court, Industrial Relations/Labor Court, and Fisheries Court.¹⁵ Establishing land courts is necessary to recognize property ownership rights definitively. Land conflicts frequently arise among long-standing residents of regions where land usage has been deemed illegal. Resolving long-lasting land disputes does not bring advantages to every aspect of this country. There is a great need to efficiently and inexpensively resolve property disputes promptly and fairly.¹⁶

¹¹ Hesty Wahyuni, Dian Aries Mujiburohman, and Sri Kistiyah, 'Penanganan Sengketa Penguasaan Tanah Hak Adat Melalui Peradilan Adat Sumatera Barat', *Tunas Agraria*, 4.3 (2021), 352–69 <<https://doi.org/10.31292/jta.v4i3.150>>.

¹² Julio Ríos-Figueroa, *Institutions for Constitutional Justice in Latin America, Courts in Latin America* (New York: Cambridge University Press, 2011) <<https://doi.org/10.1017/CBO9780511976520.002>>.

¹³ Rahayu Prasetianingsih, 'Akuntabilitas Kekuasaan Kehakiman', *Jurnal Konstitusi*, 8.5 (2016), 829 <<https://doi.org/10.31078/jk858>>.

¹⁴ Nurjihad Nurjihad and Ariyanto Ariyanto, 'Electronic Trial At The Supreme Court: Needs, Challenges And Arrangement', *Jurnal Jurisprudence*, 11.2 (2022), 170–86 <<https://doi.org/10.23917/jurisprudence.v11i2.16348>>.

¹⁵ Slamet Suhartono, 'Konstitusionalitas Badan Peradilan Khusus Dan MK Dalam Penyelesaian Sengketa Hasil Pilkada Langsung', *Jurnal Konstitusi*, 12.3 (2016), 503 <<https://doi.org/10.31078/jk1234>>.

¹⁶ Suwari Akhmaddhian, 'Discourse on Creating a Special Environmental Court in Indonesia to Resolve Environmental Disputes', *Bestuur*, 8.2 (2020), 129 <<https://doi.org/10.20961/bestuur.v8i2.42774>>.

Resolving land disputes typically involves a protracted and costly process. The process of implementing dispute resolution can span several years. In addition, resolving disputes through general courts aligns differently with the essence of positive law as it often disregards legal principles and the rights of citizens, particularly those economically disadvantaged. Nevertheless, issues such as the persistent habit of delaying court schedules are not easily amendable.¹⁷ The proliferation of cases in general courts and the occasional postponement of trial schedules are among the factors contributing to the disruption of the court process. This criterion contrasts with the provision stated in Article 2, paragraph 4 of Law Number 48 of 2009 regarding Judicial Power, which mandates the delivery of expeditious, cost-effective, and uncomplicated justice.¹⁸ "Simple" refers to efficiently and effectively handling the examination and resolution of matters. The quick principle is a universally applicable notion that pertains to achieving a prompt and efficient resolution time without unnecessary delays. The idea above, sometimes referred to as the adage "justice delayed, justice denied," asserts that a protracted legal process fails to deliver justice to the involved parties. Cost-effectiveness ensures that healthcare services are affordable for the general public. General courts considered incapable of exercising judicial powers should be moved to specialized land courts as a logical conclusion. This is feasible by the regulations stated in Article 27 of Law Number 48 of 2009, which pertains to Judicial Power.

Land Dispute Resolution Based on Pancasila Justice

When engaging in conversations about legal philosophy, individuals often refrain from debating a nation's legal system because such talks tend to become entangled in rigid and inflexible legal arguments. As this section of the article solely focuses on a theoretical analysis, the discussion of Pancasila is limited to a general theoretical context. It does not directly affect positive law or solve specific real-life circumstances.¹⁹ Historically, Pancasila has frequently been regarded as encompassing all necessary elements, allowing for the development of a legal framework by deductive analysis of its core. Pancasila is seen as a well-defined meta-juridical idea, akin to "Aladdin's Lamp," believed to manifest any desired outcome when invoked. This axiom streamlines the problem by acknowledging that Pancasila solely comprises a sequence of inherently theoretical principles, which perpetually require ongoing evaluation to be solidified into a standard. Since its establishment in 1945, this country has not continuously adhered to the Pancasila philosophy as the fundamental principle for developing its national laws, although firmly declaring itself as a state governed by the rule of

¹⁷ Dian Agung Wicaksono and Ola Anisa Ayutama, 'Initiation of Special Court on the Local Election for Regional Leaders to Face the Simultaneously Election of Governor, Regent, and Mayor in Indonesia', *Jurnal Rechts Vinding*, 4.1 (2015), 157–79 <<https://doi.org/10.33331/rechtsvinding.v4i1.53>>.

¹⁸ Mohammad Syaiful Aris, 'Pembentukan Peradilan Khusus Penyelesaian Hasil Pemilihan Kepala Daerah Dalam Pelaksanaan Pemilu Serentak Nasional', *Media Iuris*, 5.3 (2022), 473–506 <<https://doi.org/10.20473/mi.v5i3.34154>>.

¹⁹ E. Fernando M. Manullang, 'Mempertanyakan Pancasila Sebagai Grundnorm: Suatu Refleksi Kritis Dalam Perspektif Fondasionalisme', *Jurnal Hukum & Pembangunan*, 50.2 (2020), 284 <<https://doi.org/10.21143/jhp.vol50.no2.2584>>.

law.²⁰ Efforts to establish a comprehensive national legal system grounded in the Pancasila doctrine are ongoing. It is imperative for all sectors of the country, particularly government officials, to actively engage, make progress, and collaborate in comprehending and implementing the Pancasila concept as the foundation for developing a national legal framework.

Pancasila is commonly recognized as the primary foundation of the legal system in Indonesia, often referred to as the "source of all sources of law." It is also known as the "state philosophy" or "the basis of the state." Pancasila holds the dual role of being both the "state philosophy" and the "foundation of the state."²¹ It manifests the Indonesian nation's ideology and way of life, providing a comprehensive depiction of Indonesian society and guiding principles for its development. The foundation of the state lies in the state ideal, which is the most optimal concept of a state that the nation may conceive. Pancasila, as the ultimate authority on law in Indonesia, serves as a legal paradigm and comprehensive representation of the law, encompassing the Indonesian approach to its implementation.²² Thus, an exemplary representation of legal principles must consistently align with the Pancasila doctrine. Pancasila, as a legal ideal, serves as a guiding principle for the creation and enforcement of legal norms. According to Hans Nawiasky and Hans Kelsen, Pancasila can be seen as the highest level of normativity, akin to a fundamental state norm, as described by the Stufenbautheorie.

The creation of one norm establishes the unity of these normsThe creation of one norm establishes the unity of these norms, precisely the lower one, which is determined by another, precisely the higher one, which in turn is determined by a norm even higher than itself. This hierarchy of norms is ultimately concluded by the highest norm, known as the basic norm, which serves as the ultimate justification for the validity of the entire legal system and thus forms its unity. In his work "Stufenbau der Rechtsordnung," Hans Nawiasky proposes that legal norms in the state can be categorized into different groups, in addition to their hierarchical structure from highest to lowest. These groups include fundamental state norms (staatsfundamentálnorm), basic state rules (staatsgrundgesetz), formal laws (formally gesetz), and implementing regulations and autonomous regulations (Verordnung en outonome satzung).²³

Pancasila, as a fundamental state norm, encompasses the recognition of the humanity of individuals as a whole and the principles of society and justice. The second moral principle of

²⁰ Yance Arizona, 'The Return of Pancasila: Political and Legal Rhetoric Against Transnational Islamist Imposition', *Constitutional Review*, 5.1 (2019), 164–93 <<https://doi.org/10.31078/consrev516>>.

²¹ Arfa'i Arfa'i, Bahder Johan Nasution, and Febrian Febrian, 'Aktualisasi Pancasila Sebagai Sumber Hukum Dalam Pembentukan Undang-Undang', *Undang: Jurnal Hukum*, 3.2 (2020), 377–407 <<https://doi.org/10.22437/ujh.3.2.377-407>>.

²² Bagus Hermanto, 'Penguatan Pengaturan Kelembagaan Badan Pembinaan Ideologi Pancasila, Perlukah?', *Jurnal Legislasi Indonesia*, 18.2 (2021), 204 <<https://doi.org/10.54629/jli.v18i2.742>>.

²³ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <<https://doi.org/10.53955/jhcls.v2i1.21>>.

Pancasila, "just and civilized humanity," is linked to this idea. The second moral principle of Pancasila is the acknowledgment of individuals as distinct beings within the framework of the state and nation.²⁴ This entails recognizing oneself as a human being, acknowledging citizens' rights, and safeguarding their dignity regarding their ownership of property, whether acquired through occupation or transfer. The Pancasila State is a sovereign nation that upholds the principles of social justice, signifying that the state represents the embodiment of human beings as creations of the divine being. Individuals and social animals inherently want to achieve justice in their social interactions. Social justice is derived from and motivated by the fundamental principles of human justice, necessitating equitable treatment of oneself, God, fellow individuals, society, and the natural world.²⁵

Pancasila is the foundation for creating laws and plays a central role in developing regulations. It embodies the essence of the Indonesian nation and promotes the fair treatment, civility, and social equity of all individuals in the country. The current issue revolves around determining what is deemed equitable and morally correct based on the national legal framework derived from Pancasila. There is a crucial discussion regarding equity and societal fairness to further explore the concept of justice from a national legal standpoint.²⁶ Fairness refers to the acknowledgment and equitable handling of entitlements and responsibilities. The concept of justice is embodied in the fifth principle of Pancasila. The attributes of Pancasila justice encompass the ideas that embody the virtues of justice: 1. Founded on the premise of faith in a supreme deity. 1. Ensuring justice based on divine justice; 2. Prioritizing human rights and recognizing humans as social beings whose justice must be safeguarded; 3. Promoting unity to foster a harmonious national environment that ensures justice for Indonesian citizens; 4. Employing the principle of deliberation to achieve consensus (*musyawarah untuk mufakat*) through representatives, thereby ensuring justice for citizens in expressing their opinions; and 5. Ensuring justice for all citizens without any exceptions to their rights.²⁷

The attributes of justice derived from Pancasila encompass the ideals of justice embedded in its principles, which encompass various principles, including the principle of justice rooted in the belief in a higher power, the Almighty God. Adhering to divine justice, the ideas of Pancasila prioritize human rights and emphasize the importance of safeguarding justice for

²⁴ Samuel Hamonangan Simanjuntak, 'Legal Pluralism as Pancasila's Reflection to Realize Substantive Justice in Law Enforcement and Law-Making', *Pancasila: Jurnal Keindonesiaan*, 02.01 (2022), 37–48 <<https://doi.org/10.52738/pjk.v2i1.88>>.

²⁵ Ira Alia Maerani, 'Implementasi Ide Keseimbangan Dalam Pembangunan Hukum Pidana Indonesia Berbasis Nilai-Nilai Pancasila', *Jurnal Pembaharuan Hukum*, 11.2 (2015), 329–38 <<http://jurnal.unissula.ac.id/index.php/PH/article/view/1364>>.

²⁶ Joeni Arianto Kurniawan, 'Pluralisme Hukum Dan Urgensi Kajian Socio-Legal Menuju Studi Dan Pengembangan Hukum Yang Berkeadilan Sosial', *Yuridika*, 27.1 (2012), 17–34.

²⁷ Fais Yonas Bo'a, 'Pancasila Sebagai Sumber Hukum Dalam Sistem Hukum Nasional Pancasila as the Source of Law in the National Legal System', *Jurnal Konstitusi*, 15.1 (2018), 27–49 <<https://doi.org/10.31078/jk1512>>.

people who are social beings.²⁸ The Constitution explicitly outlines the incorporation of Pancasila ideals and several pieces of legislation that uphold residents' fundamental rights. Hence, the state must guarantee the effective and accurate implementation of this legislation and the constitutional rights of its residents. This is intended to establish legal certainty in conduct. Enhancing legal certainty is a means of administering justice by Pancasila. The existence of law is comprised of a structured system, and Indonesia possesses a fundamental legal foundation known as Pancasila. Pancasila serves as the fundamental basis of law in Indonesia, embodying the essence of all legal regulations and playing a vital role in the progress of the country's legal system. Any ideas or conceptions, such as an economic or a political system developed with a Pancasila perspective, can be effectively implemented within the framework of positive law. The presence of Pancasila is crucial for the development of Indonesian legislation, particularly the implementation of law enforcement. The Indonesian law enforcement system is dedicated to pursuing justice, aligning with societal interests to achieve social justice for all Indonesian citizens.²⁹

Law enforcement can be defined as the lawful endeavor to regulate infractions and provide a notion of fairness for the community. The implementation of law enforcement occasionally deviates from the prescribed laws, resulting in an anomaly that arises from the interplay between three key elements: values, legal norms, and behavior. This disruption arises due to varying interpretations of law enforcement. To conduct law enforcement by legal procedure, it must adhere to the principles outlined in Pancasila and the 1945 Constitution.³⁰ According to the 1945 Constitution, the Indonesian state is founded on the principle of the rule of law (*Rechtstaat*) rather than being based solely on the exercise of authority (*Machstaat*).³¹ The power of the state is not total or boundless. To ensure effective law enforcement, it is necessary to establish state guarantees that safeguard the independence of the judiciary from external influences in the administration of courts.

In several other nations, such as Australia, there has been a deliberate emphasis on addressing land conflicts through specialized institutions and judicial systems. In the Indonesian legal system, land disputes can be resolved through different methods, including the general court, state administrative courts, and non-court processes such as mediation, arbitration, and customary settlement institutions in certain regions.³² Furthermore, several

²⁸ Indra Rahmatullah and Dan Ika Atikah, 'Ilmu Hukum Berparadigma Pancasila Di Era Globalisasi: Sebuah Tantangan Liberalisasi Ekonomi Dan Teknologi', *Wajah Hukum*, 6.2 (2022), 386–400 <<https://doi.org/10.33087/wjh.v6i2.989>>.

²⁹ Diya Ul Akmal, 'Penataan Peraturan Perundang-Undangan Sebagai Upaya Penguatan Sistem Hukum Di Indonesia', *Jurnal Legislasi Indonesia*, 18.3 (2021), 296 <<https://doi.org/10.54629/jli.v18i3.761>>.

³⁰ Khoirul Hidayah, Suhariningsih Suhariningsih, and Istislam Istislam, 'Mediation for Indonesian Tax Disputes: Is It Potential Alternative Strategy for Resolving Indonesian Tax Disputes?', *Indonesia Law Review*, 8.2 (2018) <<https://doi.org/10.15742/ilrev.v8n2.486>>.

³¹ Mahrus Ali, 'Mahkamah Konstitusi Dan Penafsiran Hukum Yang Progresif', *Jurnal Konstitusi*, 7.1 (2016), 067 <<https://doi.org/10.31078/jk715>>.

³² C R Twidale, 'The Field, the First, and Latest Court of Appeal: An Australian Cratonic Landscape and Its Wider Relevance', in *Reference Module in Earth Systems and Environmental Sciences* (Elsevier, 2019) <<https://doi.org/https://doi.org/10.1016/B978-0-12-409548-9.11612-4>>.

land dispute remedies can result in overlapping regulations or court rulings. This condition undoubtedly fails to establish legal clarity in resolving land disputes in Indonesia. Conflict resolution occurs within the court system to achieve a system of justice that is efficient, expeditious, and cost-effective. It is reserved for the final stage of the legal process. To establish a strong sense of legal certainty, it is necessary to acquire legitimacy from the court. An equitable land justice system can be established by implementing a prioritization system for resolving conflicts extrajudicially (without litigation).³³ The regulations may stipulate or mandate that the parties initially seek resolution of the disagreement by non-judicial means or alternative dispute resolution methods. If the extrajudicial forum fails to resolve the issue, the matter may proceed to court.

In rural communities, land disputes are typically resolved through the intervention of the village chief, who acts as a mediator. Implementing a settlement pattern such as this might serve as a requirement for parties involved to minimize disputes in court. It is important to note that court decisions aim to resolve disputes and do not actively seek to rebuild or re-establish relationships between parties in society.³⁴ The pattern observed in village societies fosters a harmonic equilibrium rooted in family bonds between individuals. By following this pattern, it is possible to achieve both legal and social justice concurrently, as the essential concepts of social justice and the principle of deliberation (*musyawarah*) in the Indonesian legal system align. Legal justice is intricately linked to the enforcement of laws, whereas social justice is distinct from the ideologies of socialist-communist or liberal groups. Social justice is founded upon a perspective of societal well-being. Meanwhile, deliberation and consensus are founded upon the essence of familial connection.³⁵

The discussion pattern, known as *musyawarah*, is a method to resolve disagreements. It aligns with the ideals of Pancasila, namely the fourth and fifth principles, which emphasize the importance of deliberation for consensus (*musyawarah* for *mufakat*) to establish justice for all parties and society. This context might be regarded as the strategies or measures used by the Indonesian population to attain the objectives of their national existence. This unity is derived from the moral principles of Pancasila, which are grounded in religious values, kinship, and harmonization. These principles are respectively referred to as the first, second, and third principles of Pancasila. Furthermore, the law in this particular case, particularly in its role as a mechanism for resolving disputes, adheres to the principles of discussion (*musyawarah*) and prioritizes the principle of kinship. This approach aligns with the values prevalent in Indonesian culture, which can be seen as the embodiment of collective

³³ David Mercer, 'Aboriginal Self-Determination and Indigenous Land Title in Post-Mabo Australia', *Political Geography*, 16.3 (1997), 189–212 <[https://doi.org/10.1016/0962-6298\(95\)00122-0](https://doi.org/10.1016/0962-6298(95)00122-0)>.

³⁴ Andrew Macintosh and others, 'Delays, Stoppages and Appeals: An Empirical Evaluation of the Adverse Impacts of Environmental Citizen Suits in the New South Wales Land and Environment Court', *Environmental Impact Assessment Review*, 69 (2018), 94–103 <<https://doi.org/10.1016/j.eiar.2018.01.001>>.

³⁵ Ken Miichi, 'The Role of Religion and Ethnicity in Jakarta's 2012 Gubernatorial Election', *Journal of Current Southeast Asian Affairs*, 33.1 (2014), 55–83 <<https://doi.org/10.1177/186810341403300104>>.

consciousness and customary practices.³⁶

Resolving conflicts by giving importance to attaining equilibrium through prioritizing discussion (musyawarah) is a method of putting into practice the principles of Pancasila, thereby ensuring that the Indonesian population does not deviate from their path by utilizing the ideals of Pancasila. The application of Pancasila principles can be accomplished through a process of wise deliberation (permusyawaratan) (interfaith dialogue) to enforce social justice (distributive justice) and promote a fair and civilized society.³⁷ The concept of a land Act is clearly articulated in articles 60, 61, and 82 of the Land Bill. The rules above align precisely with the viewpoint of Arie Hutagalung, a scholar specializing in land law who pioneered a court dedicated to land-related matters. Nevertheless, the concept was introduced within a framework that explores various options or choices for resolving land disputes in Indonesia. Specifically, the proposal suggests the establishment of a specialized land court as part of the broader judicial system to address conflicts involving community members who hold a negative view of the traditional court system. In theory, the establishment of a land court is feasible. For instance, the establishment of an economic court occurred in the past due to the enactment of Act Number 7/Drt/1955, which pertains to the investigation, prosecution, and trial of economic crimes. This Act was then incorporated into law with Act Number 1 of 1961. legislation Number 2 of 1986, which pertains to General Courts, provides the legal framework for establishing land courts inside the general court. This may be observed in Article 8, which allows for specializations within the General Court as specified by legislation. The anticipated primary attributes of the Land Court are: a. Each District Court is assigned one or more judges who are exclusively responsible for adjudicating land disputes. Therefore, the Land Court judge is a District Court Judge assigned a specific duty. b. The applicable procedural law is the civil procedure law utilized in the District Court...etc."

Contrary to the viewpoint above, Maria S.W. Sumardjono has disclosed that land justice remains essential for resolving land conflicts in Indonesia, as civil problems about land have already been addressed in general courts. Conversely, if the parties involved in the land dispute are individuals or organizations associated with the government, the resolution process falls under the jurisdiction of administrative justice. Given the multitude of complaints stemming from court disputes, the challenge is in guaranteeing the efficient functioning of this judicial institution. Given that court settlement is considered a final option, it is advisable to increasingly employ alternate resolution techniques, such as debate and mediation, which do not involve the court system. For instance, this phenomenon is presently observable in diverse alternative dispute resolution methods rooted in traditional settlement practices, such as Village Mediation (Bale Mediasi) in Lombok or similar regions with distinct

³⁶ Faizal Aditya Dermawan and Bagus Sarnawa, 'Peran Dinas Tenaga Kerja Dalam Proes Mediasi Penyelesaian Permasalahan Hubungan Industrial', *Media of Law and Sharia*, 2.3 (2021), 272–87 <<https://doi.org/10.18196/mls.v2i3.12076>>.

³⁷ Sekar Anggun Gading Pinilih, 'Aktualisasi Nilai-Nilai Pancasila Terhadap Hak Atas Kebebasan Beragama Dan Beribadah Di Indonesia', *Masalah-Masalah Hukum*, 47.1 (2018), 40 <<https://doi.org/10.14710/mmh.47.1.2018.40-46>>.

designations.³⁸

The land court that has been established is distinct from past land reform courts. The purpose of the land reform court is not to function as a land court but rather to accelerate the implementation of the land reform program. It is inseparable from the revolutionary spirit under the presidency of Soekarno. The Land Reform Court aims to adjudicate specific land or agricultural matters with a singular resolution. "This is because the Land Reform Court has a unique purpose of accelerating land reform progress without diminishing the District Court's power to make decisions regarding land and inheritance matters. If the Land Reform Court were also responsible for such decisions, it would impede the implementation of Land Reform." Hence, the Government intends to establish a Land Reform Court rather than an Agrarian Court. By the premise above, articles 3 and 4 govern the transfer of authority to other courts. According to the explanation of Law No. 21 of 1964 about Land Reform Courts, it is understood that delaying the course of justice can lead to obtaining legal certainty. This delay allows a more competent court to make a better decision, which satisfies the feeling of justice of those seeking justice.³⁹

The presence of specific land court plans will undermine or diminish the effectiveness of the State Administrative Court in addressing land conflicts. This degeneration is frequently linked to a necessity for brevity and convenience. Conversely, the state administrative court plays a crucial role in addressing misconduct in land management. Furthermore, it is crucial to address the persistently elevated level of mismanagement in the land sector, which remains a pressing concern.⁴⁰ The study findings indicate eight interconnected difficulties leading to maladministration in the land sector. 1. The legal norms are overlapping, complex, fragmented, and lacking integration. They were designed to prioritize sectoral investment activities rather than establish a legal framework for justice in society. 2. The presence of such a legal system facilitates the implementation of a biased political and economic agenda rather than ensuring fair consideration of the people's interests or the public welfare; 3. The administrative tools for serving the community must be improved, leading to various interpretations of task descriptions, authority, and the administrative process itself; 4. Authorities exhibit a dominant "power" attitude rather than prioritizing service to the community (public); 5. Public officials need more initiative, resulting in their reluctance to rectify mistakes and improve the quality of service on their own. 6. Inadequate oversight, regulation, and ineffective systems for rewarding and punishing behavior; 7. Insufficient dissemination of public service information, particularly to the general public; 8. Ineffective service organizations and administrative providers, including poor internal coordination and

³⁸ Fatimah, 'Reforma Agraria Dalam Konteks Peningkatan Akses Kaum Tani Miskin Terhadap Penguasaan Tanah Di Indonesia', *Samudra Keadilan*, 10.2 (2015), 191–203 <<https://ejurnalunsam.id/index.php/jhsk/article/view/119>>.

³⁹ Triana Rejekiingsih, 'Asas Fungsi Sosial Hak Atas Tanah Pada Negara Hukum (Suatu Tinjauan Dari Teori, Yuridis Dan Penerapannya Di Indonesia)', *Yustisia Jurnal Hukum*, 5.2 (2016), 298–325.

⁴⁰ U. Santoso, 'Eksistensi Hak Pengelolaan Dalam Hukum Tanah Nasional', *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 24.2 (2012), 275–88 <<https://doi.org/10.20303/jmh.v24i2.391>>.

coordination between institutions.⁴¹

Land courts are given priority in settling land disputes in Tanzania as part of their land reform efforts. In addition to implementing improvements in land administration, the Land Act and the Village Land Act have introduced modifications, such as establishing a new land court framework. This is predicated on the judiciary requiring assistance in managing the substantial volume of land disputes. Hence, the courts were characterized by a sluggish pace and limited accessibility for most individuals. It is essential to mention that utilizing land courts to settle conflicts is considered the final recourse according to the principles of Pancasila, and it is an available choice.⁴² Resolving disagreements through deliberation and consensus seeks to restore the parties' positions to the greatest extent feasible to maintain harmonious connections, reflecting the divine nature of the Almighty Godhead. Obtaining a settlement through court does not provide a guarantee that this outcome will happen. The incorporation of deliberation and consensus in dispute resolution is an endeavor to effectively apply the initial and fourth ethical principles of Pancasila, specifically.⁴³

Constitutionally, Pancasila is explicitly established in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia. Indonesia's national independence was established by formulating the Constitution of the Republic of Indonesia. This constitution is founded on the principles of popular sovereignty, the belief in a higher power, justice, civilized behavior, unity among Indonesians, and democracy guided by wise deliberation and representation.⁴⁴ Additionally, it aims to achieve social justice for all Indonesian citizens. The state is responsible for implementing Pancasila by prioritizing consensus discourse as a means of resolving disputes and restoring balance and harmony in society. Establishing a national legal system is derived from our country's legal principles and fundamental norms, known as "Pancasila." This enables a more targeted, cohesive, enduring, and harmonious approach to national development, including legal progress. These objectives are embodied in the five ethical principles, as articulated by Erwin:

"The principles of Belief in One God unveil the harmonious relationship between creation and its Creator." Furthermore, Pancasila has provided a platform for the Indonesian nation to acknowledge and uphold the balanced connection between the Supreme Being and all of His

⁴¹ Dian Agung Wicaksono, Ananda Prima Yurista, and Almonika Cindy Fatika Sari, 'Mendudukkan Kasultanan Dan Kadipaten Sebagai Subyek Hak Milik Atas Tanah Kasultanan Dan Tanah Kadipaten Dalam Keistimewaan Yogyakarta', *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 8.3 (2019), 311 <<https://doi.org/10.33331/rechtsvinding.v8i3.342>>.

⁴² Muchammad Chanif Chamdani, 'Penyelesaian Penguasaan Tanah Di Dalam Kawasan Hutan Pasca Pengaturan Undang-Undang Cipta Kerja', *Jurnal Hukum Lingkungan Indonesia*, 7.2 (2021), 221–53 <<https://jhli.icel.or.id/index.php/jhli/article/view/292>>.

⁴³ Sukirno Sukirno, 'Tindak Lanjut Pengakuan Hutan Adat Setelah Putusan Mahkamah Konstitusi No.35/Puu-X/2012', *Masalah-Masalah Hukum*, 45.4 (2016), 259 <<https://doi.org/10.14710/mmh.45.4.2016.259-267>>.

⁴⁴ King Faisal Sulaiman, 'Polemik Fungsi Sosial Tanah Dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 Dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), 091–111 <<https://doi.org/10.31078/jk1815>>.

creations. Hence, the Indonesian populace must possess self-awareness in all their choices, behaviors, and actions that may disrupt the delicate balance between the Divine Being and His entire creation. This entails upholding harmonious relationships with God, fellow human beings, the nation, and the natural environment (including animals, forests, rivers, seas, caves, and all other manifestations of His creation). Similarly, when crafting and enforcing rules, the individuals involved should internalize that "I possess a divine authority." The Indonesian population holds a strong belief in the existence of a higher power. Consequently, in all aspects of creation, emotion, and intention, we consistently acknowledge the presence of God in our pursuit of justice, which serves as the ultimate objective of our legal system.⁴⁵

The Just and Civilised Humanity principle elucidates the correlation between humanity and the concepts of justice and civilization. Humans are considered caliphs on Earth, which highlights their role as rulers. The need to enforce the notion of accountability serves as a constraint on exercising authority. This obligation validates the conduct or sequence of actions carried out by the ruler (a human being) towards all people under their control, regardless of their nature. This obligation will also govern the process of implementing human acts (as subjects) towards other beings as objects. Humans are sometimes called the epitome of perfection, or at least, more flawless than other creatures. He must exhibit just and civilized behavior and make sound decisions to demonstrate his excellence. Humanity is situated at the juncture where the liberty of others remains unimpaired.⁴⁶

Meanwhile, the essence of civilized society resides in the principle that inequality, resulting from the realization of freedom, should primarily assist the most disadvantaged individuals at the lowest rungs of the social hierarchy. These two factors are indicative of humanism, specifically the struggle of humanity. Based on this ideology, Pancasila anticipates that the Indonesian population will establish and enforce legislation that promotes the dignity and welfare of individuals.

Furthermore, the principle of Indonesian Unity has imparted the principles of *Bhinneka Tunggal Ika* and nationalism to the Indonesian country. The philosophy of *Bhinneka Tunggal Ika* has instilled in the Indonesian populace the notion that regardless of their race, ethnicity, tribe, or religion, they are unified in their self-love. Pancasila, using its principle of nationalism, mandates that all Indonesian citizens consistently endeavor to position the Indonesian nation and state equitably on the global stage to prevent Indonesia from becoming a feeble nation that is humiliated or subjected to manipulation by other nations. Pancasila's third principle emphasizes that all laws should be created and applied to uphold the integrity and greatness of the Indonesian nation and state.⁴⁷

⁴⁵ Firman Floranta Adonara, 'Prinsip Kebebasan Hakim Dalam Memutus Perkara Sebagai Amanat Konstitusi', *Jurnal Konstitusi*, 12.1 (2015), 1–20 <<https://doi.org/10.31078/jk1222>>.

⁴⁶ Muhammad Aziz Zaelani, I Gusti Ketut Ayu Rachmi Handayani, and Isharyanto Isharyanto, 'Asas Umum Pemerintahan Yang Baik Berlandaskan Pancasila Sebagai Dasar Penggunaan Diskresi', *Jurnal Hukum Ius Quia Iustum*, 26.3 (2019), 458–80 <<https://doi.org/10.20885/iustum.vol26.iss3.art2>>.

⁴⁷ Teguh Prasetyo, 'Membangun Hukum Nasional Berdasarkan Pancasila', *Jurnal Hukum Dan Peradilan*, 3.3 (2014), 213 <<https://doi.org/10.25216/jhp.3.3.2014.213-222>>.

Democracy in Indonesia is characterized by the collective wisdom that emerges from the deliberations among representatives. This system governs the legal relationship between all Indonesian citizens and their elected representatives in the legislative, executive, and judicial branches. The power ultimately rests with the people who are represented by these branches. The Indonesian people are accustomed to using this democratic framework to foster the development of their nation and state to achieve the desired justice as defined by the law. Furthermore, the principle of social justice in Indonesia encompasses the notion that the justice system should be accessible to all segments of society, such as children, women, individuals with disabilities, isolated tribal communities, human rights advocates, and refugees.⁴⁸

In light of the widespread occurrence of land disputes in Indonesia, encompassing both private conflicts between individuals and public disputes involving the state, particularly those about conflicts over land ownership between the community and the state, the establishment of an impartial and competent court is necessary for the resolution of social and legal matters. Efforts to address legal challenges should not inadvertently generate further societal complications. To do this, it is evident that it necessitates the establishment of a land court that operates with expertise and autonomy. If addressing the corruption problem is deemed imperative, establishing a corruption court becomes indispensable. Subsequently, land matters become crucial in both the private and public sectors. Land is the most valuable asset for the majority of Indonesian individuals. Due to its significance, land matters in Indonesia directly affect the livelihood of its people. Remarkably, the contemporary land issue is not confined to private concerns but has become a matter of public interest. This is evident in land disputes about the government's safeguarding and disputes over its jurisdiction.⁴⁹

Nevertheless, as previously said, a land court serves as the final recourse for resolving land disputes. To achieve efficient and affordable justice, it is imperative to establish specialized land courts in Indonesia that adhere to the principles of Pancasila. These courts should employ creative approaches that prioritize simplicity and speed. This advancement can be achieved by mandating the parties to pursue other methods of resolving disputes outside the judicial system before initiating legal proceedings. Before initiating a lawsuit in a court of law, it is necessary for the parties involved to provide supporting proof that attempts to resolve the disagreement through alternative means, such as out-of-court methods, have been unsuccessful. The potential breakdown of this settlement may arise due to the absence of a consensus between the involved parties, reluctance from one party to engage in negotiations or other unspecified factors. This task is undertaken to mitigate litigation and foster reconciliation between parties involved in a land dispute or conflict characterized by disharmony. Regarding land-related matters, such as those brought before the Religious Courts, it is common for the involved parties to have familial links. It would be more

⁴⁸ Sunaryati Hartono, 'Membangun Budaya Hukum Pancasila Sebagai Bagian Dari Sistem Hukum Nasional Indonesia Di Abad 21', *Veritas et Justitia*, 1.2 (2015), 251–73 <<https://doi.org/10.25123/vej.1688>>.

⁴⁹ Sarip Arip Arip, 'Kemajemukan Visi Negara Hukum Pancasila Dalam Misi Hukum Negara Indonesia', *Refleksi Hukum: Jurnal Ilmu Hukum*, 2.2 (2018), 109–24 <<https://doi.org/10.24246/jrh.2018.v2.i2.p109-124>>.

advantageous to know the underlying cause of the issue to facilitate its resolution.

4. Conclusion

A special court in the land sector is necessary to address the growing number of land cases in the general court, the State Administrative Court (PTUN), and the Religious Courts in Indonesia. This court would resolve these cases and aim to create legal agricultural solutions that are simple, fast, and cost-effective. To ensure that the resolution of land conflicts is in line with the objectives and principles of Pancasila, it is essential to prioritize the principle of kinship and resolve these problems through discourse. To resolve this disagreement, the parties can be mandated to first engage in Village Mediation (Balai Mediasi Desa) or other commonly employed alternative dispute resolution methods within the local community. If the attempt to settle using this technique is unsuccessful or if it is determined that the settlement procedure has failed, the ultimate recourse is to initiate legal proceedings by filing a lawsuit in court.

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