

ISSN: 2052- 6164

INTERNATIONAL JOURNAL OF SCIENCE, COMMERCE AND HUMANITIES



VOLUME NO 3 NO 4

Contributor's of Vol. No. 3 No. 4 July 2015

Title	Page
Effect of Entry Postures and QWERTY-Virtual-Keyboard Modes on Text-Entry Times and the Accuracy Rate of a Tablet Computer with a Multi touch Screen. <i>Chin-Lung Chen¹, Chiwu Huang², Bai-Kang Shen³</i>	1-15
Samuel Smiles' Moral Philosophy and the Enlightenment to the Contemporary Moral Education in China. <i>Pei Ziwei, Liu Licai.</i>	16-22
Usefulness of Financial and Non-financial Information Disclosure of Information Technology Industry <i>Ying-Li Lin.</i>	23-38
General Technology training platform based on mobile Internet. <i>Zhao Yuqiu and Cao Lei.</i>	39-42
Sustainable Livelihoods and Capacity Development Projects Conducted by a Very Unique Community <i>Dimithri Devinda Jayagoda PhD.</i>	43-67
Contemporary Significance of Marxist Cultural Perspectives ——In the construction of cultural identity and cultural tourism Perspective <i>Wen Tingting.</i>	68-74
The Valuable Thinking for the Construction of Cultural Identity in Cyber Space. <i>Tang Ling, Wen Tingting.</i>	75-79
Determinant Factors of Customer Satisfaction for Mobile Service Providers <i>Yi-Mu Chen, Thi Nhai, Jasmine, Dao.</i>	80-93
Creating a Whole-New Paradise: Community Construction in Toni Morrison's Paradise. <i>Zeng Na</i>	94-99
Plantation Land Disputes In The Area Of State-Owned Companies: Determining Priority Action For Quality Improvement In North Sumatera. <i>Kusbianto, P.L. Rika Fatimah, Mohammad Yamin Lubis.</i>	100-116
A Case Study of the Relationships between EFL Learners' Self-efficacy and Their Autonomy. <i>Yang Quan.</i>	117-125
What attracts international students to Taiwan's higher education. <i>Shih-I Cheng.</i>	126-134

Plantation Land Disputes In The Area Of State-Owned Companies: Determining Priority Action For Quality Improvement In North Sumatera.

Kusbianto

Faculty of Law, Universitas Sumatera Utara, Indonesia.

P.L. Rika Fatimah*

*Faculty of Economics and Business, Universitas Gadjah Mada, Indonesia
rika_paper@yahoo.com*

Mohammad Yamin Lubis

Faculty of Law, Universitas Sumatera Utara, Indonesia.

Abstract

Land disputes between PT. Perkebunan Nusantara and tenant farmers in North Sumatra, in fact, have not yet come to a complete and clear resolution. The failures in the settlement of land disputes, either through litigation or non-litigation were triggered by many factors. First, settlement of disputes through legal process is considered bias; tenant farmers believe the Court is inclined to favor the plantation. Second: the non-litigation settlement is performed with security approach, which resulted in losses of lives and properties hence worsens enmities between both parties. Therefore, a new model to completely settle such disputes between company and tenants needs to be found.

Keywords – Land disputes, State-owned plantation, Quality deployment, Priority improvement action

I. Introduction

Land disputes within State-owned plantation companies cannot be separated from the course of history of Indonesia. Indonesian regions, formerly kingdoms turning into the Unitary State of the Republic of Indonesia, have brought various land laws and social relationship in communities which continue to interact as a part of human lives. Similarly, customary laws have brought a form of collective law – the communal land rights. Continuous land conflicts becoming disputes involving the people (tenant farmers, watchmen, indigenous peoples) and *onderneming* ("enterprise"), currently become PT. Perkebunan Nusantara (PTPN), are difficult to settle; on top of it, new disputes occur before the old ones were resolved (Kalo, 2005)^[1].

Land Disputes Mapping by 1860s-1960s

Land disputes were initiated when plantations in North Sumatra, formerly East Sumatra, were occupied by an *onderneming* under long-term lease agreement between the Sultan and a Dutch merchant wanting to produce tobacco as the best commodity in his place of origin. Then, tobacco trade was highly profitable in Europe. Deli Maatschappij, the first Dutch-owned tobacco plantation *onderneming* in East Sumatra

established in 1869, received huge success. *Ondernemings* expansion in the East Sumatra flourished, not only for tobacco but also for other commodities, i.e. rubber, tea, palm oil, and fiber plantations in Pulau Raja, Asahan, and Labuhan Batu. Plantation lands related to lease agreements between the Sultan and these plantation *ondernemings* started their disputes in early 1900s. The issues were triggered as lands occupied by plantation companies under the lease agreements have had impact on Sultan's servants who have lost their land rights. The plantations, Sultan, and the Dutch East Indies colonials had once tried to settle the disputes between Dutch Plantation Companies and the farmers. The solution failed as each party did not come to an agreement on the conditions necessary for the protection of both parties without offending the interest of Sultan's authority (Pelzer, 1997)^[2].

PTPN plantations were initially Dutch companies taken over by the Government of the Republic of Indonesia through Nationalization in 1958 under the Law No. 86 of 1958 (State Gazette 1958-162). In the early days of Indonesian independence, these plantations held important roles. The plantations were occupied by the Army of the Republic of Indonesia and other military factions. Trades of rubber and other plantation commodities to Malaya were strongly objected by Dutch Officials, considering them as smuggling. The Dutch then established a sea blockade to prevent the export of plantation commodities from the Republic of Indonesia regions (Pelzer, 1997)^[2]. The blockade resulted in Indonesian Government's emergency where many regions faced food supply crises, forcing the people to utilize the lands rightfully belonged to the state or other parties (Gazette of Republic of Indonesia No. 56 of 1954).

The signing of Dutch-Indonesian Round Table Conference treaty in 1949 has established that the Government of the Republic of the United States of Indonesia acknowledges foreigners' land rights, which include concession and *erfpacht* (right of cultivation) and the right for further commercialization (Gazette of Republic of Indonesia No. 56 of 1954). Land occupation by farmers, therefore, had quasi-legal foundation whereas plantation owners were supported by valid ruling. Responding to the issue, in one side, the Government has had the expectation that plantation owners' interest was protected, considering the sector became an important source of state revenue. On the other hand, farmers whose lives depended on these lands also needed legal protection, among others through the regulations to acknowledge labors working at the companies and tenants occupying and working on the plantation lands. They should not be arbitrarily evicted. Although the law put interests to all parties, in practice, farmers were disappointed by the coalition between plantation owner's economic power and local authority's political power. At the same time, farmers' struggles were empowered by the freedom of association with the establishments of Indonesian Peasants Front (BTI), Indonesian Peasants Association (RTI), Indonesian Estate Workers Union (*Sarbupri*), and Indonesian National Peasants Union (*Petani*). These organizations were also affiliated to political parties, hence strengthening their struggles as evidenced by the outbreak of Tanjung Morawa Incident on March 16, 1953, resulting in the fall of Wilopo Cabinet and the establishment of the Ministry for Agrarian Affairs (Pelzer, 1991)^[3]. Further, the government issued the Emergency Law No. 8 of 1954 concerning the *erfpacht* of plantation lands by the people, that land occupation was not considered as legal violation and its settlement were sought after by the government through rights granting and negotiations between disputing parties.

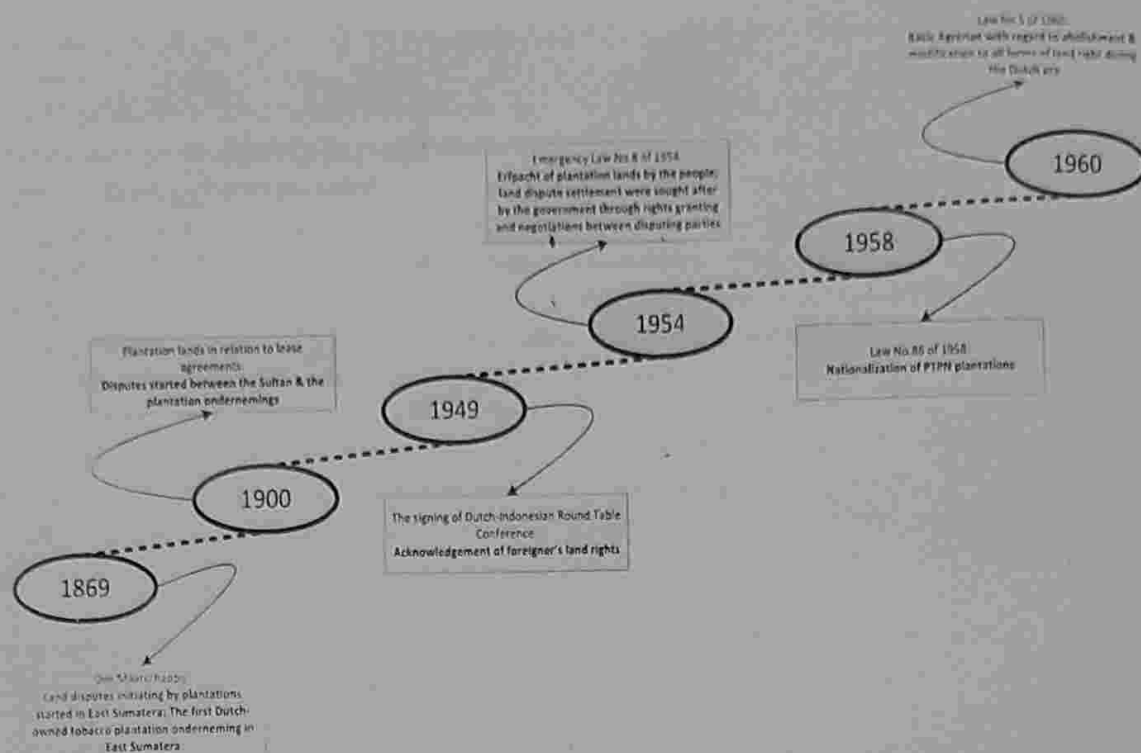


Figure 1. Land Disputes Mapping by 1860s-1960s in Indonesia

The establishment of the Law No. 5 of 1960 about Basic Agrarian (Ruchiyat, 1984)^[4] was based on improved customary law, therefore all forms of land rights during the Dutch era were abolished and modified into rights established in the Basic Agrarian Law. The Basic Agrarian Law regulates the restriction of law ownership to avoid disrupts to public interests and to protect individual land rights within functional dimension, meaning that land right is inclined to public interests.

The implementation of land reform program to restrict the area of owned land, in reality, faced obstacles. Land owners, in any way, sought to avoid the provisions in the Basic Agrarian Law. Other interesting issue is the fact that land reform implementation was also used by the Indonesian Communist Party (PKI) as a strategy to exert their influence in rural communities. PKI has used the land reform issue to polarize the rural community into two opposing classes: land owners as "Village Devil" and the peasants (Kuntowijoyo, 1993)^[5]. Eventually, social conflicts between landless peasants and land owners broke when PKI, under the reasoning that the government failed to implement the land reform, enforced the land reform implementation with unilateral actions.

Land Disputes Mapping by New Order

The government of the New Order tended to implement development policy with economy as its commander. This resulted in the change of perception towards land function as a natural resource with unique characteristic; land was seen as a means of investment and capital accumulation. This change in perspective coincidentally took place with the changes in land policy from inclining to community interest to prioritizing capitalist interest. However, the Basic Agrarian Law was maintained even though it was no longer used as the canon for all agrarian regulations (Fauzi, 1997)^[6]. A number of regulations contradicting the Basic Agrarian Law were introduced, such as Law No. 1 of 1967 concerning Foreign Investment and Law No. 5 of 1967

concerning Basic Provisions on Forestry which give the opportunity to various parties to obtain Forest Concession Right (HPH) and Forest Product Harvesting Right (HPHH). The enactment of these regulations has neglected community rights, such as indigenous rights or communal land rights. People's rights were set aside by the interests of capital owners. The Basic Agrarian Law which essentially tried to abolish land and natural resources capitalization has almost never been implemented: in reality, government acknowledgment of customary rights was very rare, if not nonexistent. Land grabbing often happened under the pretext for the sake of developments run by both domestic and foreign investors (Safitri, 2006)^[7].

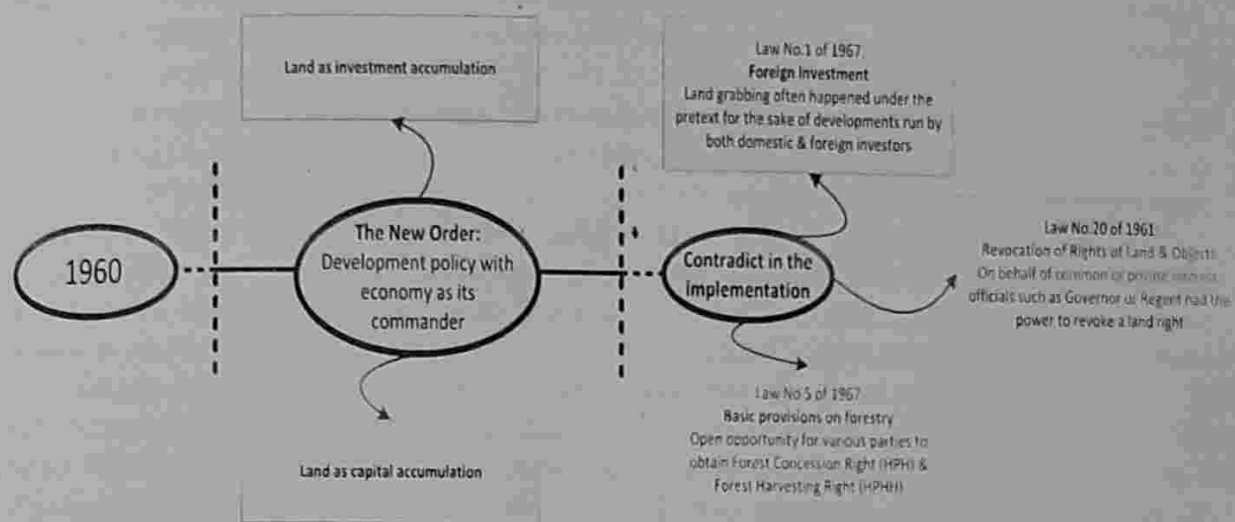


Figure 2. Land Disputes Mapping by New Order in Indonesia

Stark changes during the New Order could be seen from the disputing parties. Conflicts were no longer between peasants/tenant farmers and land owner; it went to land owner (farmers/people) versus large capital owner/the state. The state might act as facilitator providing support to large capital owner or even the state itself, on behalf of the development, as the party directly disputing with the community (Wiradi, 2000)^[8].

Land disputes during the era of New Order occurred more frequently and triggered by various factors (Mubyarto, 1993)^[9]. Plantation land disputes, commonly in plantation regions such as Java and Sumatra, were resulted from the enactment of new regulations, extensions, or handovers of the Right of Cultivation of the plantation land and/or ex plantation land cultivated by the community. Disputed areas also expanded, not only in rural society, but also in urban communities. Housing expropriations in large cities, for example, were aimed for the benefits of capital owners, luxury housing developers, or state-owned projects. The Law No. 20 of 1961 concerning the Revocation of Rights of Land and Objects over the land was interpreted in such a way that in practice, on behalf of common or private interest, officials such as Governor or Regent had the power to revoke a land right. The expropriations of people's land by the Government took place on behalf of development, for the benefits of the state, capital owners, even individuals who have access to authority. These kinds of expropriation were commonly given inadequate compensations which clearly unfair for land owners. In Law No. 5 of 1960 concerning Basic Agrarian Provisions, land ownership is distinguished by right

subjects, i.e. Indonesian Citizens and Foreign Nationals. Indonesian Citizens are given the opportunity for land rights, while Foreign Nationals have restricted opportunity for land rights with limited term, such as Right of Use and Right of Lease. Such restriction for Foreign Nationals was grounded by land ownership principles in the communal land right. Within the communal land right, outsiders (in this case, non-members of the customary law circle) are restricted from owning the land within customary law boundary. During Dutch East Indies colonization, the regulation was different that with the enactment of BW (Civil Code), every person was entitled to land rights such as *eigendom* (right of property), *opstal* (right of use of structures), and *erfpacht* (right of cultivation) as long as the concerned person obey the BW. Land ownership regulations established in the BW were absolute and sacred; land owners might enjoy and use their rights as extensively as possible. The absolute nature of the BW even violated State *domein* (ownership), in which the *domeinverklaring* (Declaration of the State as Owner of Land) stated, unless proven with *eigendom*, an existing area of land becomes State *domein* (Lubis and Rahim, 2013)^[10].

Following the enactment of The Basic Agrarian Law No. 5 of 1960, applicable national agrarian law establishes land rights in civil and administrative aspects containing national agrarian politics; its final aim is to reach unification for agrarian law prevailing in Indonesia. The Basic Agrarian Law as national agrarian law was *disaneer* (cleaned up from its negative aspects) from customary law (Lubis and Rahim, 2013)^[10]. As national agrarian law, the Basic Agrarian law becomes the foundation for all provisions concerning land, both for laws and government regulations.

Approach in Mapping and Deploying Quality for Improvement for Land Dispute and Settlement

Settlement process of the land dispute have been done since 1800s far behind before the Indonesian Independency in 1945. However, seems the land dispute's issues not yet near to any proper solutions. The dynamic factor involved in the process settlement is one of the biggest challenges to overcome in land dispute settlement.

Therefore, this study aim for determining priority action so any process settlement that has been done can be improved effectively. Quality approach shall be taken to deploy both land disputes and settlement in a clearer and simpler perspective. The deployment process execute by using the philosophy of Quality Function Deployment (QFD). QFD is a practice for designing real process in customer needs (Day in Rika Fatimah, 2014)^[11]. QFD was developed to satisfy the customer needs by translating the need into a company production process. In this study, the customer needs is equal to plantation land dispute. In addition, the dispute settlement theory and the dispute theory are equal to the company process. Today, the applications of QFD have been widespread both in the production, services, human resources even social issues (Rika Fatimah, 2014)^[11].

To accommodate dynamic changes happened in the process of land dispute and settlement, some adaptations being done to the House of Quality (HOQ). HOQ is one of deployment technique in QFD. Several matrixes were eliminated for the purposes of the study. Expert teams from both law and quality study were involved intensively in deploying issues of land disputes and settlement. As result, priority action to improve the quality of land disputes settlement can be determined. The priority action then shall solve land disputes more effectively.

Discussion

- II. Two discussion sessions shall briefly present. The first is about plantation land disputes in PTPN. Some cases with regard to the land disputes in PTPN need to discuss by exploring any possibilities reason and cause of the disputes. The next one is regarding settlement of plantation land disputes. After identifying the cause of disputes, then also need to explore how the settlement done so far.

Plantation Land Disputes in PT. Perkebunan Nusantara (PTPN)

A Plantation Company is a plantation entrepreneur, either Indonesian citizen or a body corporate, established under Indonesian law and domiciled in Indonesia which manages plantation business with certain scale (Law No. 18 of 2004 concerning Plantation, Article 1 number 6).

A State-Owned Entity hereinafter referred to as SOE, means an entity, the capital of which is in part or in whole owned by the State through direct investment derived from the state's separated assets (Law No. 19 of 2003 concerning State-Owned Entity).

State-Owned Limited Liability Company, hereinafter referred to as Persero, means a State-Owned Entity in the form of a limited liability company, the capital of which is divided into shares in which all or at least 51% (fifty-one percent) of its shares are owned by the State of the Republic of Indonesia aiming mainly to make a profit (Law No. 19 of 2003 concerning State-Owned Entity, Article 1 number 2). The SOE Plantation uses the Tri Dharma Perkebunan ("Three Pillars of Plantation") doctrine containing the creation of employment, increase in State revenue, and preservation of environment. Currently in the Province of North Sumatra stand three SOE Plantation Companies, i.e. PT. Perkebunan Nusantara (PTPN) Persero II, III, and IV.

The Right of Cultivation is a land right juridical and formally acknowledged by Article 16 and Articles 28 to 34 of Basic Agrarian Law No. 5 of 1960 and Government Regulation No. 40 of 1996 concerning Right of Cultivation, Right of Use of Structures, and Right of Use of Land. From the Right of Cultivation definition contained in the articles above it can be concluded that the right to cultivate the land directly controlled by the State can be granted for a term of at most 35 years and can be extended for at most 25 years for use by an agricultural, fisheries, or animal husbandry company.

Those who may obtain a Right of Cultivation are Indonesian Citizens and bodies corporate incorporated under Indonesian law and domiciled in Indonesia. The Right of Cultivation can be issued under several circumstances such as government decree or conversion, but never based on an agreement. For legal certainty, the granting, transfer, and nullification of Right of Cultivation shall be registered.

As seen from substantive aspect of civil law, such registration functions as an important opportunity to deliver material right. In adjective aspect of civil law, a registered Right of Cultivation shall serve a strong instrument of proof, except in the case where such a right is nullified because its term has expired.

In absolute definition, a Right of Cultivation holder is a right holder and the State serves as right granter. When the term has expired and not extended, the Right of Cultivation shall be relinquished to the State. Such a right in positive law perspective is defined as authority granted by laws and regulations to legal subject to perform or not to perform an action.

The Basic Agrarian Law does not prohibit holder of Right of Cultivation to transfer the right to other party. However, in Government Regulation No. 40 of 1996,

the prohibition to transfer such Right of Cultivation to other party is affirmed unless stated otherwise by laws and regulations. Such prohibition is applicable as long as the Right of Cultivation term has not ended. When such right has expired and no longer extended, Right of Cultivation holder is allowed to transfer the right to other party.

In addition, the Basic Agrarian Law and Government Regulation No. 40 of 1996 do not provide firm solution. Explicitly, it is clear the nullification of Right of Cultivation has brought juridical consequence that the land becomes the property of the State. For Right of Cultivation holders, if such right has not been extended, they will bear two liabilities. The first one is dismantling buildings and objects existing on the land. Next is regarding relinquishing land and crops existing on the ex Right of Cultivation land to the State within a period stipulated by the Minister.

The first liability indicates Right of Cultivation holder remains holding the right on buildings and objects on the ex Right of Cultivation land. This is in accordance with the principle of horizontal separation adopted by the Basic Agrarian Law. For the second liability, the Minister in question is the Minister in charge of land affairs, in this case the Head of National Land Agency. In the Basic Agrarian Law and Government Regulation No. 40 of 1996 concerning Right of Cultivation, Right of Use of Structures, and Right of Use is stated that one of those who may obtain a Right of Cultivation is a body corporate incorporated under Indonesian law and domiciled in Indonesia (Kamello, 2006)^[12].

The 1998 reform gave the opportunity to the people to break into plantation area to occupy and grab lands controlled and managed by plantation companies. They also filed charges on the basis that arable land settlements during the New Order were unjust, therefore demanded the rights of tenant farmers and indigenous peoples to be returned. Vast changes in the situation and condition in post-reform period has added to many problems, economic crises alluding to political, socio-economic, legal realms and finally crystallizing into a crisis of confidence. All of these have impacts on plantation sector. According to data from South Sumatra Provincial Government (2012)^[13], in North Sumatra alone land conflicts have reached 2,833 cases. As State-Owned Entity engaging in plantation sector, PT. Perkebunan Nusantara has suffered from not only material (please refer to Table 1), but also immaterial losses such as the loss of work spirit of the employees. This certainly had negative impacts on company performance. The plantation Management and Employees' times are consumed for the settlement of plantation land cultivation disputes.

Arable land disputes in plantations in the forms of:

Plunders and vandalism of sugarcane crops belonged to PTPN II still continue. If not stopped, not only 820 employments are threatened with layoffs, but also the company will face difficulties; total land area of PTPN II South Sumatra under the Right of Cultivation planted with sugarcanes is 500,000 hectare, including the areas of infrastructure and housings. The Right of Cultivation was obtained in 2003 and extended until 2028, therefore no reasons for other parties to perform any plunders, vandalism, and clearing of sugarcanes that has been maintained by the workers for more than six months. All of a sudden, hundreds of people came – vandalizing, torturing, and driving away employees of PTPN II. The vandalism continued to take place and victimized 19 employees with wounds from stabbings, arrows, and wooden beam beatings. They claimed the land was not the property of PTPN II; instead, it belonged to their grandparents. We hope the apparatus will protect our employees who have been anticipating for second attack or any more

vandalism to their sugarcane plants" (General Chairman of Plantation Workers Federation, 2012)^[14].

When referring to title as evidence, plantation right is formally legal. In other words, formally, the plantation has clear legality of the land it manages under the Right of Cultivation. The farmers, on the other hand, although *de facto* controlling the land cultivation, have no formal legal title. This means that formally, the people have weak legal basis in the forms of working permit, letter from Head of Village, compensation letter, Land Registration Reorganizing Card (KRPT).

Essentially, land disputes occur not only because of legal issues, but also due to difference between land ownership right concepts adopted by society (Tenants) and positive law insight (Europe) of plantation companies. According to tenant farmers, the relationship between human and their land is determined by *de facto* intensity of utilization or cultivation of the land. The more intense the utilization, the stronger their right to control. This is strengthened by religious belief stating land is the gift of God which can be owned by whoever willing to work and utilize it.

Table 1. Land Disputes of PT. Perkebunan Nusantara (PTPN) III

No	Disputing Right of Cultivation Area		Land Dispute	Sought-after Settlement Actions
	Plantation Unit	Area/Ha		
1	Gunung Pamela	611.54	▪ Non-staple food crops planted by community	Ex-Gratia, Relinquishment, Legal Action
2	Gunung Monako	137.20	▪ Perennial crops planted by community	Approach for Ex-Gratia
3	Silau Dunia	647.83	▪ Perennial crops planted by community	Approach for Ex-Gratia and Legal Action
4	Gunung Para	9.14	▪ In the area currently stand permanent/semi-permanent houses	Approach for Ex-Gratia
5	Sei Putih	2.00	▪ Cassava crops planted by community	Approach for Ex-Gratia
6	Pulau Mandi	2.00	▪ Low-lying area as water catchment is cultivated by community	Legal Action in Judicial Proceedings
7	Sarang Giting	76.21	▪ Non-staple food crops planted by community	Legal Action in Judicial Proceedings
8	Rambutan	75.80	▪ Perennial crops planted and buildings constructed by community	Approach for Ex-Gratia
9	Bangun	697.88	▪ Perennial crops planted and buildings constructed by community	Follow-up Process of Asset Relief Permit
10	Bandar Betsy	280.40	▪ KTBR & KOREKER: cassava/non-staple food crops planted	Legal Action in Judicial Proceedings
		12.00	▪ Panadu/Perenngan: perennial crops planted	
11	Ambalutu	40.86	▪ Cacao and palm oil planted by community	Approach for Ex-Gratia

12	Huta Padang	2.93	▪ Perennial crops planted by community	Approach for Ex-Gratia
13	Sei Silau	673.47	▪ Perennial and non-staple food crops planted by community	Approach for Ex-Gratia
14	Merbau Selatan	158.22	▪ Occupied/controlled by community	Approach for Ex-Gratia
15	Rantau Prapat	49.57	▪ Perennial crops planted by community	Approach for Ex-Gratia
16	Aek Nabara Utara	3.60	▪ Official House and grabbing of land under Right of Cultivation	Approach for Ex-Gratia
17	Batang Toru	278.93	▪ Disputed area with residents and community	Settlement handed over to Civil and Administrative Section of the North Sumatra High Prosecutor Office
Total		3,759.58		

Source: Data from PTPN-III as of February 2013

On the other hand, PTPN plantation uses opposing logics. The cultivation of a land, however extensive the area or however hard the work, would not result in the land ownership right. European land ownership concept personified land ownership which originally belonged to the state. Each right to own and control the land by the community, *ipso jure*, shall be originated from the government as land owner, in this case, Dutch East Indies government *domein* as successor to kings of Java's rights. *Ipso facto*, the control, placement, settlement, occupation, and utilization of land cannot automatically become people's rights however hard the workload or however long the work period (Wignjosebroto in Rohmad, 2008) ^[15].

By further considering the reasons why these tenants claimed and maintained the land they factually occupied, it has been revealed that the roots of the disputes in North Sumatran plantation area, as seen from legal aspects, were based on these issues:

1. The lands, formerly controlled and occupied by the community, or belonged to the community for generations, were taken over and turned into plantations without complete resolution.
2. Incomplete compensation process and compensation value which is considered too low for the community. However, as intimidation was involved in the compensation process, the community involuntarily handed over their land.
3. Difference between area measurement and Right of Cultivation measurement on field. A difference in land area measurement on field resulted in the inclusion of peoples' land into plantation area.
4. Plantation lands are communal lands or inheritance from certain sultanate or family in the community. Plantation land is acknowledged as communal land which was taken over by entrepreneurs without approval from their community leaders/elders or the land was inherited from Sultan/King descendants, therefore the heir assumes to have the right on the plantation land.

5. Plantation land is not well-maintained. The land seems abandoned or considered as idle land, therefore planted with non-staple food or perennial crops by community.¹

Various reasons behind land disputes in plantation land area under the Right of Cultivation along with diverse ways of settlement from authorized institutions have brought us to formulate the following problem. Furthermore, the form of resolution can settle disputes in the area of arable land under the Right of Cultivation for plantation.

Settlement of Plantation Land Disputes

Settlement is a process, action, and method of solution. Settling is defined as to finish, to end, to finalize or decide, to organize, to reconcile (disagreement or fight), or to arrange something to be better (Kamus Besar Bahasa Indonesia, 1990)^[16]. Dean G. Fruitt and Jeffrey Z. Rubin define dispute as:

“Perceived divergence of interest, or a belief that aspirations of disputing parties cannot be reached simultaneously (Salim and Nurbani, 2013)^[17].”

In addition, settlement through legal action with court ruling does not guarantee the plantation may regain control over the arable land. By way of security approach, physical clashes have resulted in victims and material losses. Failures in the settlement of disputes in plantation area were triggered by various factors, e.g. tenants are not willing to receive ex-gratia or crop compensation, tenants demand to own the land they cultivate, difference in land area measurement between tenants and plantation, unclear population data for tenant groups whose disputes to be settled. Meanwhile, tenants have rejected court rulings as they are considered unfair and biased toward the plantation.

The efforts to resolve land disputes based on applicable regulations were made by a number of authorized institutions, such as:

1. Litigation, through General Court and State Administrative Court as regulated by Law No. 48 of 2009 concerning Judicial Authority
2. Non-Litigation, through:
 - a) *Mediation, Arbitration* as regulated in Law No. 30 of 2009 concerning Arbitration and Law No. 17 concerning National Long-Term Development Plan Chapter III point IV 1.5 Number 14 concerning the improvement of land dispute resolution efforts through administrative court authorization and alternative dispute resolution.
 - b) *Land institution authority* as regulated in Presidential Decree 26/1988 in conjunction with Presidential Regulation 10/2006.
 - c) *Regional Government authority* as regulated in Presidential Decree No. 34 of 2003 concerning Agrarian National Policy.
3. Special Channel, through National Land Agency (BPN)-Indonesian National Police (POLRI) Ad Hoc Team in accordance with MoU between BPN and Indonesian National Police, Joint Decree No. 10/SKB/XII/2010-B/31/XII/2010 of December 3, 2010 concerning Dispute Investigation of crime indications (South Sumatera Land Agency, 2012)^[17].

Regional Government is an institution having the authority for land dispute settlement based on Presidential Decree No. 34 of 2003 concerning Agrarian National Policy, which states that the settlement of arable land disputes is performed by

Regency/City Government. Meanwhile, cross Regency/City settlement within a Province is performed by relevant Provincial Government.

The Minister for Agrarian Affairs/Head of National Land Agency Regulation No. 5 of 1999 concerning the Guidelines on the Settlement of Indigenous Peoples' Communal Land Right Issues acknowledges traditional wisdom in the control of land right. Government makes agrarian policy to strengthen traditional wisdom both individually or communally with the affirmation and strengthening of land right through acknowledgment and registration. Such regulation becomes the guideline for regional government in land issue management, particularly in relation to communal land right which obviously still exist in certain regions. In its development, individual rights in a number of indigenous regions are strengthening. In addition, the community has higher mobility even starts leaving their communal region. To gain protection over their rights, these individuals have chosen to obtain their rights through agrarian and land ownership policy and leave behind customary laws (Kusbiyanto, 2010)^[19].

The Head of Republic of Indonesia National Land Agency Decree No 34 of 207 concerning Technical Guidelines on the Handling and Settlement of Land Issues states that land issues include technical issues, disputes, conflicts, and land issues in need of resolutions or settlements. Meanwhile, land disputes are the difference in value, interest, opinion, and or perception between individuals and or bodies corporate (private or public) concerning the controlling and or ownership and utilization or beneficiary status of certain plot of land.

Tenant farmers are given their right under Law No. 8 of 1954 concerning Land Registration Reorganizing Card and in accordance with Law No. 51 of 1960 concerning the Settlement of Plantation Land Utilization, the Minister for Agrarian Affairs shall pay attention to people as land users, the interests of other community where the plantation runs its business, with the condition that settlements are sought through consensus. The failures in the settlement of land disputes, either through litigation or non-litigation were triggered by many factors. First, settlement of disputes through legal process is considered bias; tenant farmers believe the Court is inclined to favor the plantation. Under such consideration from tenants, court rulings which have gained permanent legal power cannot be executed. Second: the non-litigation settlement is performed with security approach, which resulted in losses of lives and properties hence worsens enmities between both parties.

For this matter, an alternative dispute resolution needs to be introduced. Such resolution is based on the understanding that conflicts do not always have to be settled through win-lose solution. Conflicts can also be ended by winning all disputants (win-win solution).

When referring to title as evidence, plantation right is formally legal. In other words, formally, the plantation has clear legality of the land it manages under the Right of Cultivation. The farmers, on the other hand, although *de facto* controlling the land cultivation, have no formally legal title. This means that formally, the people have weak legal basis in the form of working permit.

Radbrucch (1980)^[20] offers the notion of three legal bases which by most of legal theorists and philosophers are also identified as legal purposes, i.e. justice, expediency, and certainty. Jointly, these legal bases form legal purposes. Radbrucch (1980)^[17] argues that we need to use priority principle, in this case, justice as first priority, expediency as second priority, and certainty as the third priority. Legal expediency and certainty should not oppose justice, just like legal certainty shall not oppose its expediency (Ali, 2009)^[21]. Eugen Ehrlich argues positive law will have

positive effect if containing or aligned with living law. His most influential theory is that there is a difference between positive law and living law (Rasyidi, 2007).^[22] That, current legal issues are no longer formal legality issues, but rather move towards law utilization as a means to help shaping a new life order or to suit with current condition (Paton, 1951)^[23].

Lawrence M. Friedman's idea states that, among others, law basically functions as provider of tools and media that can be referred by people to settle their conflicts and disputes. This function is not solely owned by legal system, but also held by parents, teachers, religious leaders, employers, etc. It relates on how law is utilized to settle for land disputes (Friedman, 2009)^[21].

III. Deploying Quality for Plantation Land Disputes by using Dispute & Dispute Settlement Theory

The process of deploying quality will discuss in this section. Two main discussion sessions shall represent the process as mentioned earlier. The first discussion is to define the quality aspect of dispute theory. Next discussion is about deploying quality of dispute settlement theory.

Deploying Quality of Dispute Theory

Deploying quality can be meaning as explaining characteristics or gathering simpler theories to define what is the dispute theory. Dispute theory analyzes the disputes of interest and utilization of violence binding the community jointly in the face of oppression. Meanwhile, consensus theory reviews integration value within the community.

Simon Fisher, et al. introduces six theories in reviewing and analyzing the causes of the dispute (Salim and Nurbani, 2013):

1. Public relations theory argues that dispute happens because of continuous polarization (opposing groups), disbelief, and enmity between different groups within a community. This theory targets on the improvement of communication and understanding between disputing groups and strives for tolerance thus community can better adopt the diversity therein.
2. Principle negotiation theory considers that dispute happens because of disharmonious position and difference of view about disputes by disputing parties.
3. Identity theory assumes that dispute happens because of threatened identity, which often happens because something has lost or due to unresolved past suffering.
4. Intercultural misunderstanding theory assumes that dispute happens because of miscommunications between disputing cultures.
5. Dispute transformation theory assumes that dispute happens because of inequality and injustice in social, cultural, and economic issues.
6. Human needs theory assumes that dispute happens because of the unfulfilled or hindrance to human's physical, mental, and social basic needs. The issues of security, identity, acknowledgment, participation, and autonomy become the topics to discuss.

As refer to the six Dispute Theories, we develop the House of Quality (HOQ) for deploying the six dispute theories. Under the adoption of HOQ development, there are three metrics. First metric or known as Left Room is to deploy the dispute theories.

Six theories represented in detail into 13 variables. The variables represent further detail characteristic of each theories (please refer to Figure 3). Having the characteristics shall bring a simpler understanding to the dispute theory then able map the land dispute issues more effectively.

Dispute Theory	Public Relations	Continues polarization
		Disbelief
		Enmity
	Negotiation Principle	Disharmonious position
		Difference of views
	Identity	Something has lost
		Unresolved past suffering
	Intercultural Misunderstanding	Miscommunication
		Disputing cultures
	Dispute Transformation	Inequality in cultural socioeconomic
		Injustice in cultural socioeconomic
	Human Needs	Unfulfilled
		Hindrance

Figure 3. First Metric (Left Room of House of Quality-HOQ):
Deploying Quality of Dispute Theory

Deploying Quality of Dispute Settlement Theory

Philosophically, Dispute Settlement Theory is an effort to recover the relationship between disputing parties to its original state. With the recovery of the relationship it is hoped that these parties may create a connection, both socially and legally between one and another (Salim and Nurbani, 2013)^[17].

Dispute settlement theory developed by Ralph Dahrendorf Salim and Nurbani 2013)^[17] is oriented to social structure and institution. Dahrendorf argues the community has two faces, i.e. dispute and consensus. For the purpose of this study, we use Dispute Settlement Measures as follow;

1. To avoid horizontal conflict on field, Regional Government establishes Mediation Team for Land Dispute Settlement.
2. Regional Government invites tenant farmers and PTPN to a meeting; the company is suggested to provide ex-gratia for tenants.
3. To maintain the security of tenants and plantation employees, PTPN Plantation Management temporarily discontinues all activities on disputed land.
4. PTPN Board of Directors establishes a Team for Plantation Land Dispute Settlement whose duties are:
 - a) Preparing the chronology of arable land dispute from its beginning.
 - b) Performing site visit to witness the condition on field.
 - c) Inventorying all plots, existing crops on the area, the number of buildings and total area of the cultivated plots.

- d) Performing direct coordination with Regency Government, City Government, District Police, Prosecutor, and District Court for the settlement of disputes.
- e) Submitting final recommendation in written form to the Board of Directors in relation to the settlement of disputes.
- f) Preparing follow-up plans and takeover attempts of the land from the community.

Next metrics is known as Top Room of HOQ. As refer to the Dispute Settlement Measures, we deploy four variables represent further detail characteristic of each measures (please refer to Figure 4). The four variables are recommended settlement to solve the land dispute in the first metric or the Left Room. Each variables shall map accordingly within response to variables at the Left Room.

Dispute Settlement	Establishing team for settlement
	Temporarily discontinues all activities
	Meeting invitation for Tenant & PTPN
	Establishing mediation team

Figure 4. Second Metric (Top Room of House of Quality-HOQ):
Deploying Quality of Dispute Settlement

		Dispute Settlement						
		Establishing mediation team	Meeting invitation for Tenant & PTPN	Temporarily discontinues all activities	Establishing team for settlement	Priority Problem Score	Priority Improvement for Problem	
Relationship Matrix ● 9 = Strong ○ 3 = Moderate △ 1 = Weak								
Dispute Theory	Public Relations	Continues polarization	●	○	△	13		
		Disbelief	●	○		○	15	★
		Enmity	●		○	△	13	
	Negotiation Principle	Disharmonious position		○		●	12	
		Difference of views		○		●	12	
	Identity	Something has lost			●	○	12	
		Unresolved past suffering	○	△	●		13	
	Intercultural Misunderstanding	Miscommunication	●	○			12	
		Disputing cultures	●	○			12	
	Dispute Transformation	Inequality in cultural socioeconomic		●		○	12	
		Injustice in cultural socioeconomic	○	●			12	
	Human Needs	Unfulfilled	○	●			12	
		Hindrance	○	●		○	15	★
Priority Action Score		57	55	22	31			
Priority Improvement for Action		★						

Figure 4. Third Metric (Center Room of House of Quality-HOQ): Deploying Quality Relationship between Left and Top Room

IV. Determining Priority Action for Quality Improvement on Plantation Land Disputes

After developing Left and Top Room then we determine each relationship of variables between both rooms (please refer to Figure 4). Three relationships are given. First relationship indicates for a 'strong relationship'. Strong relationship means that the settlement has bigger changes to solve the cause of land dispute effectively. For example, 'establishing mediation team' has strong relationship to solve kind of land dispute that caused by 'continuous polarization'. Furthermore, the chances are decrease accordingly when the relationship indicates 'moderate' and 'weak'.

In addition, each relationship has score of 9 for 'strong relationship', 3 and 1 for 'moderate' and 'weak' respectively. Having the score, then we able to determine the highest score of caused for land disputes and kind of settlement appropriately.

As result, we identified two priorities improvement of problem caused to the land disputes that need to consider. The first one is 'disbelief' under the Public Relation. One of the crucial caused that dispute happens because of disbelief between different groups within a community. Therefore as we can see at the Centre Room. There are

three approach of dispute settlement that can be done. One strong relationship is in 'establishing mediation team' and two moderate relationships in 'meeting invitation for tenant and PTPN' and 'establishing team for settlement'. The settlement approach targets on the improvement of communication and understanding between disbelief groups.

The second one is 'hindrance' under the Human Needs. Out of three dispute characteristics under Human Needs, hindrance scored the highest with 15 out of 12 from others. By means is hindrance or unfulfilled to human's physical, mental, and social basic needs. At the Centre Room, there are three approach of dispute settlement that can be done. One strong relationship is in 'meeting invitation for tenant and PTPN' and two moderate relationships in 'establishing mediation team' and 'establishing team for settlement'. The settlement approach targets on handling the issues of security, identity, acknowledgment, participation, and autonomy.

Apart of deploying priority dispute, then we can indentify priority action to improve execution of dispute settlement. Scoring 57, 'establishing mediation team' is the priority action that more suitable to handling mostly land dispute. By knowing which settlement approach may give wider impact to better handling the land dispute, might increasing better case closing appropriately. In addition, is also more effective and efficient with regard to time-cost consumption and satisfaction level of parties.

V. Conclusion

Both deploying caused and handling the land dispute shall bring better result to settle down the dispute. Two priority caused were identified are 'disbelief' under the Public Relation and 'hindrance' under the Human Needs. Furthermore, 'establishing mediation team' is identified as the priority action that better handling for mostly land dispute caused.

In detailing the result above, PTPN Plantation Company strives for the dispute settlement of land cultivated by the community by two way. The first one is the establishment of a mediation team by the Board of Directors; the settlement is prioritized through consensus with the provision of ex-gratia in the form of crop compensation for tenants. The crop compensation value is based on price guidelines attained from local Department of Plantations. Settlement through consensus with ex-gratia is superior compared to legal actions through Court, as it is more secure, convenient, and may create good social relations between tenant farmers and the plantation. Next, legal action through court is the last resort when consensus cannot be reached, which is obtained from final recommendation of the Team established by the Board of Directors.

VI. Acknowledgements

This paper is presented in **Workshop and Coaching on Writing Publication in International Journal (WCWPIJ) 2014, Malaysia**. Therefore, the authors express their gratitude to ThinkSmart Scholar (TS Scholar) for the event and the valuable inputs during the preparation and improvement processes of this article.

References

- [1] Kalo, S. (2005). *Kapita Selekta Hukum Pertanahan Studi Tanah Perkebunan di Sumatera Timur*. Sumatera Utara: USU Press.

- [2] Pelzer, Karl J. (1997). *Toeian Keboen Dan Petani Politik Kolonial dan Perjuangan Agraria di Sumatera Timur 1863-1947*. Jakarta: Penerbit Sinar Harapan.
- [3] Pelzer, Karl J. (1991). *Sengketa Agraria: Pengusaha Perkebunan Melawan Petani*. Jakarta: Pustaka Sinar Harapan.
- [4] Ruchiyat, E. (1984). *Sistem Pendaftaran Tanah Sebelum dan Sesudah Berlakunya UUPA*. Bandung.
- [5] Kuntowijoyo. (1993). *Radikalisasi Petani*. Yogyakarta: Bentang Budaya
- [6] Fauzi, N. (1997). *Tanah dan Pembangunan*. Jakarta: Sinar Harapan.
- [7] Safitri, M. (2006). In *Simposium Agraria I*. Medan.
- [8] Wiradi, Gunawan. (2000). *Reforma Agraria: Perjalanan yang Belum Berakhir*. Yogyakarta: Insist.
- [9] Mubyarto. (1993). *Tanah dan tenaga Kerja Perkebunan: Kajian Sosial dan Ekonomi*. Yogyakarta: Aditya Media.
- [10] Lubis, M.Y. and Rahim, L.A. (2013). *Kepemilikan Properti Di Indonesia Termasuk Kepemilikan Rumah Oleh Orang Asing*. Bandung: Mandar Maju.
- [11] Rika Fatimah, P.L. (2014). The development of FFMD Pyramid: Fuzzy Family_Marriage Deployment as decision support method to improve human resources performance. *Quality & Quantity International Journal*, Volume 48, Issue 2, pp. 659-672 with DOI: 10.1007/s11205-007-9196-1. Springer-Netherland. **[ISI; Q3; Impact Factor: 0.8]**
- [12] Kamello, T. (2006). *Peralihan Hak Atas Tanah Eks Hak Guna Usaha PTPN (Persero) Sebagai Badan Usaha Milik Negara Kepada Pihak Lain, Seminar Pengalihan Hak Atas Tanah Eks Hak Guna Usaha Di Sumatera Utara: Permasalahan Dan Solusinya*. Departemen Hukum Keperdataan Fakultas Hukum USU.
- [13] South Sumatera Provincial Government. (2012). Public Lecture of Acting Governor of South Sumatera. [Disertation]. Universitas Dharmawangsa on 17 September 2012.
- [14] Kompas. (2012). General Chairman of Plantation Workers Federation, May 26. Jakarta [Newspaper].
- [15] Rohmad, A. (2008) *Paradigma Resolusi Konflik Agraria*. Semarang: Walisongo Press.
- [16] Kamus Besar Bahasa Indonesia. (1990). Jakarta: Balai Pustaka.
- [17] Salim, H.S. and E.S. Nurbani. (2013). *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*. Jakarta: PT. Raja Grafindo
- [18] Kusbianto. (2010). *Konflik Di Perkebunan*. Sumatera utara: USU Press.
- [19] South Sumatera Land Agency. (2012). Settlement of Land Disputes and Conflicts. *Research Report*.
- [20] Radbruech, G. (1980). *Five Minutes of Legal Philosophy; Philosophy Of Law, Second Edition, edited by Joel Feinberg and Hyman Gross*. Belmont, California: Wadsworth Publishing Company
- [21] Ali, A. (2009) *Menguak Teori Hukum (Legal Theory) & Teori Peradilan (Judicialprudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*. Jakarta: Kencana.
- [22] Rasyidi, L. (2007). *Pengantar Filsafat Hukum*. Bandung: Mandar Maju.
- [23] Paton, G.W. (1951). *A Text-Book of Jurisprudence*. 2nd Ed. Oxford University Press.
- [24] Friedman, L.M. (2009). *Sistem Hukum: Perspektif Ilmu Sosial*. Bandung: Penerbit Nusa Media..