

# Indonesian Agrarian Reform on Swapraja Land Meaning Assignment Based on Justice in Cirebon City

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**Abstract:** Legal reformation must be related to the history of the State, including *swapraja* as well as *ex-swapraja*. There is a disagreement of interpretations of *swapraja* or *ex-swapraja* between the Cirebon City Government and the Cirebon Kingdom. The government of Cirebon city considers the Kingdom of Cirebon as a part of *swapraja* land or *ex-swapraja* land. Each party defended its argument, which finally led to land conflict. Agrarian Law Dictum fourth (a) does not give a clear definition of what makes up a *swapraja* land, so make the other regulations. Assigning meaning to *swapraja* land must be done based on the historical perspective in terms of politics and legal about the existence of the *swapraja* land. The reformation of land law related to *swapraja* meaning must be made to achieve social justice, i.e., Pancasila social justice. The meaning assignment of *swapraja* must not be freed from the Cirebon city government in settling the dispute to create legal certainty in society. This research used socio legal method, started by building awareness on legal purpose to achieve justice, stability, and life prosperity. It is concluded that there must be proper law enforcement and just and certain law in society.

**Keywords:** Agrarian Reform, *Swapraja* Land, Legal Reformation, Cirebon City

## 1. Introduction

*Swapraja* or *ex-swapraja* land's existence is part of legal policy in the land (an agrarian concept in strict meaning). Indonesia is in progress to be a nation state which experiences two leadership styles, namely Kingdom and Colonial Government. In progress of legal policy development, ex-colonial lands have been directly regulated by Agrarian Law. Kingdom land is known as *swapraja* land, yet dictum fourth (a) of Agrarian Law and Indonesian Government Regulation No. 224 the Year 1961 does not explain the indicators of *swapraja* and *ex-swapraja* land. The impact is that this regulation can be effectively implemented, including in Cirebon city. The meaning of *swapraja* or *ex-swapraja* land in the Indonesian Constitution has not yet to be adequately described. There is no clear definition in other regulations as well, for example in (1) Indonesian Constitution 1949, (2) Indonesian temporary constitution 1950, (3) Indonesian Constitution Before Amendment, and (4) Indonesian Constitution 1945 After Amendment. The government assigned the meaning of *swapraja* and *ex-swapraja* based on Boedi Harsono's doctrine only. The minimum description of *swapraja* or *ex-swapraja* meaning makes various meaning and subjective perspectives from both parties, namely Government and Kingdom of Cirebon. *Swapraja* meaning has not found resultant between the Cirebon Kingdom and Cirebon City Government.

*Swapraja* or *ex-swapraja* meaning cannot be leased from historical and culture of the kingdom in Indonesia. The Cirebon Kingdom has different histories with other kingdoms. Cirebon cannot be categorized as *swapraja* or *ex-swapraja*, because a *swapraja* or *ex-swapraja* must make an appointment with HindiaBelanda government (KorteVerklaring). The historical background of the Cirebon Kingdom from the past up until today shows that Cirebon is a *wewengkon* land (descendant land), not a *swapraja* or *ex-swapraja* land. The hegemony of state authority of the Cirebon City Government creates many implications, including conflicts. Such a condition needs land law restoration to clear up the meaning of *swapraja* based on justice.

## 2. Methodology

The study used a common–legal approach, in which is a legal study using the approach of law science and social sciences that leads to study to show and review the social and legal aspects of the application to a gap. The approach used is not dogmatic (normative), which means that the research used a non-doctrinal research methodology.

## 3. Findings

### 3.1 Legal Restoration based on Pancasila

Legal restoration is a part of legal policy that will or has been nationally executed by Indonesian Government which include: (1) legal restoration which mean making and restoration of legal material in order according to the need; and (2) implementation of legal rule, including affirmation of institution function of law officer[1]. Proper restoration is not new, and it is not for the past problem, as there is a protracted conflict because of the land problem. The land ruler has control over food and other utilities. Without understanding this meaning, people will be trapped in solving the agrarian problem partially, administration technically and legalistically; not sociologically, politically, and historically[2]

The legal policy explains about law and choices on a law that will be elapsed, which is entirely assigned to achieve state purpose as stated in Preamble of Constitution 1945. Hence, the national legal policy must be based on a basic frame, namely national legal policy; that must achieve a prosperous society based on Pancasila. The legal policy must protect the entire state for integrity or state unity, embodying social justice in economy and society to embody democracy (people sovereignty) and nomocracy (legal sovereignty) and to create tolerance based on civilization and humanity.

Pancasila, as a source of values for legal transformation as *rechtsidee*, according to Notonegoro, has a function as *staatsfundamental norm*. As a legal desire, it can fulfill a constitutive function and regulative function[3]. Through constitutive function, Pancasila determines based on legal regulation to assign meaning for the law itself. It is also related to the regulative function. Pancasila determines whether a positive law has been just or not. Justice cannot be elapsed from the root in which that law arises. Based on that explanation, BardaNawawiArief stated that justice could not be separated from religious law and living law, and it should be accommodated in national law. As *philosofischiegrondslag*, Pancasila philosophically can be a source of Indonesian legal order. In such position, Pancasila is a comprehensive source of every regulation in Indonesia.

Indonesia's law reformation in the meaning assignment of *Swapraja* based on Pancasila is aligned with Scholten's statement that law science is science on justice[4]. It means that

Indonesian legal science is science on Pancasila justice. Pancasila justice is Pancasila based on divine and humanistic justice, and it is a substantive justice, not a formalistic justice[5]. *Swapraja* and *ex-swapraja* meaning assignment in legal transformation need an indicator stipulation on the meaning of *swapraja* land. In other words, there must be an analysis of Cirebon's historical background, since the legal transformation is a never-ending process, and it must be based on Pancasila.

### 3.2 Meaning assignment of Swapraja Based on Social Justice

Gustav Radbruch taught that law must contain three fundamental values, namely: (1) the value of justice, (2) the value of certainty, and (3) the value of utility. The regulation is the implementation of those values and must not violate those values. Value in this context is mentioned as a justice value.

Different interpretation in *swapraja* or *ex-swapraja* meaning assignment in the Cirebon Kingdom's perspective is considered unjust. This is caused by different interpretations of *swapraja* and *ex-swapraja* meaning. It brings implications to the kingdom's land position. To minimize the conflict, there must be a reconstruction of *swapraja* and *ex-swapraja* meaning through resultant of related parties. It may result in a meaning reconstruction of *swapraja* based on Pancasila, which is social justice for all Indonesian that aims to bring prosperity for all. It means that everyone is treated justly without exemption.

*Swapraja* meaning is based on BoediHarsono's opinion that "swapraja is an area with its bureaucracy as part of Netherland Indische, the head is named Sultan, Sunan, King or etc based on agreement with Netherland Indische government to make its own bureaucracy (*IndischeStaatsregeling* 1855 Article 21 named; *Zelfbestuur*) in that area and its various culture[6]. Its agreement named as *KorteVerklaring*. It contains the oath to be loyal with Netherland government or its representative so that without *korteverklaring*, its area is not *swapraja* area but direct bureaucracy under Netherland government. There is no regulation with a clear definition of *swapraja* and *in-swapraja*, which requires efforts to create meaning of *swapraja*. Cirebon kingdom never agreed with the Netherland government, which is why the land is considered as *nonswapraja* area, and it had ceded its authority to England on July 20<sup>th</sup>, 1813.

Recently, Cirebon government has not admitted whether Cirebon kingdom land is a *swapraja* or *ex-swapraja* land. Justice must be brought into regulation. Social justice is not only the responsibility of Cirebon City Government but also the entire society. Social justice is stated in the fifth article of Pancasila: "Social justice for all Indonesian people." The problem arises, what is just in Pancasila conception.

The various interpretations need an understanding or resultant on land law transformation by reconstructing the insight on the meaning of *swapraja* through interaction between the people, City Government, and the Cirebon Kingdom. Through historical, political, and juridical background, there is a link between *swapraja* interpretations that depict social justice based on divinity, humanity, and unity, which are the results of discussions between the government and society.

## 4. Conclusion

Indonesia's law reformation in the meaning assignment of *Swapraja* based on Pancasila is aligned with Scholten's statement that law science is science on justice. It means that Indonesian legal science is science on Pancasila justice. Pancasila justice is Pancasila based on

divine and humanistic justice, and it is a substantive justice, not a formalistic justice. Meaning assignment on *swapraja* based on social justice is a result of compromises among the parties. To find a reciprocal relation between the Cirebon Kingdom and Cirebon City Government, compare the reality in society without putting aside historical background and local wisdom. A just *Swapraja* meaning must contain philosophical perspective, namely fulfillment of all rights in humanistic relation as an obligation. Humanistic relation has three dimensions, namely toward himself, God as the leading cause, and among human beings.

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