

REFORMING INDONESIA'S AGRICULTURAL LEGAL SYSTEM: EMPOWERING FAMILY-BASED FARMERS FOR SUSTAINABLE DEVELOPMENT AND SOCIAL SECURITY INTEGRATION

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Abstract

Agriculture plays a vital role in sustaining the economy and livelihoods, particularly in developing countries. In Indonesia, the agricultural sector faces several challenges, including widespread farmer poverty, low incomes, climate change impacts, and inadequate agricultural insurance. These issues underscore the need for a reformed agricultural legal system focused on empowering family-based farmers and ensuring sustainable agricultural practices. This research examines the existing agricultural legal framework in Indonesia, identifying the limitations in farmer welfare and social protection mechanisms. The study emphasizes the importance of transforming informal agricultural employment into formalized agricultural work, aligning with the Sustainable Development Goals (SDGs) of eradicating poverty and hunger. It also highlights the need for a comprehensive Agricultural Legal System that guarantees social security, implements agricultural insurance, and provides a legal foundation for family-based agricultural operations. The findings suggest that a paradigm shift toward recognizing farmers as individual legal subjects, alongside policy reforms in agricultural insurance and social security systems, is crucial for improving the livelihoods of farmers and achieving sustainable agricultural development. This research proposes the establishment of a dedicated Farmer Social Security system, ensuring health, pension, and accident coverage, to promote farmer welfare and facilitate the transition to a formal agricultural economy.

Keywords: Agricultural Policies; Informal Economy; Workers' Rights; Farmers' Social Security; Economic Transformation.

A. Introduction

Agriculture is one of the strategic economic sectors that affects the livelihood of many people and must be controlled by the state (Lavers, 2012; Zougmoré et al., 2016). Farmers are the main focus in the national agrarian law system, as explained in General Explanation I, last paragraph letter a, that the core of purpose of the law is to lay the foundations for the preparation of national agrarian law which is a tool to bring prosperity, happiness and justice to the state and the people, especially farmers, in a fair and prosperous society. Farmers must be guaranteed their lives through their agricultural efforts in accordance with their dignity as human beings, both for themselves and their families who provide certainty and social security, including in the labor sector (Suárez, 2013).

Family-based farmers are the backbone and agents of change to realize the main targets or objectives of the Sustainable Development Goals (SDGs), namely the target of SDG-1 to eradicate poverty and SDG-2 to end hunger or zero hunger through food security, which can be achieved through sustainable agricultural systems. Family-based agriculture is defined as “a way of organizing agricultural, forestry, fisheries, pastoral and aquaculture production that is managed

and operated by a family and relies on family finances and labor, including women and men workers”.

The main and fundamental problems which are faced by the Indonesian nation in the agricultural sector are poor farmers, many farmers switch to non-agricultural work because the risk of the business in the agricultural sector is quite large, such as the uncertain and low income in the agricultural sector and the decreasing availability of agricultural land (Pesik et al, 2016), climate change resulting in crop failure or shrinking agricultural production, and no guarantee of compensation from the government through agricultural insurance; their income is very low, the selling value of the agricultural products is unfair when compared to the income of those who work in the non-agricultural sector (Saroh, 2016).

Amartya Sen (1983) stated that the cause of poverty is due to capability deprivation. Human capability refers to human freedom to be able to fulfill their will, rather than human capital which only focuses on efforts to increase production or ways for humans to be more productive so that they can make a major contribution to economic growth (Indro, 2013). Farmer poverty in Indonesia in legal reasoning is caused by many factors, namely the requirement as a farmer is only Indonesian citizens, which results in farmers still being classified as informal workers (unofficial, unregulated workers, whose members easily come and go); the government does not have accurate data and information on farmers, due to the reasons referred to in letter a); government policy in the field of agriculture is based on the collective system through Farmer Groups (*poktan*) and farmer Group Association (*gapoktan*) as a result of the letters a) and b), which prioritize farmers as human capital, not human capability, which has the potential to ignore the existence of farmers. This means that farmers are forced to obtain their rights based on existing regulations or policies or are forced (farmers do it because of the need to obtain their rights) to join the collective system. Collective-based government policies, such as the distribution of agricultural subsidies such as fertilizers, seeds, to obtain land for agrarian reform objects, the right to receive compensation for crop failure due to natural disasters through agricultural insurance, as well as partnership system programs in the agricultural sector such as the implementation of transmigration and food estate programs.

The problems which are faced by the legal subjects of farmers in Indonesia indicate that the regulation of the agricultural legal system as “a unified norm consisting of elements related to the management of fertile land in a sustainable economic manner for the production of plants and/or animals whose work is interrelated and influenced by the environment to achieve goals”, has not yet begun, because farmers as the smallest sub-system have the greatest influence on the legal system.

Recognition of the existence of farmers related to constructive development, based on existing problems, can be done by conducting activities to identify and define farmer poverty and constructing ways to measure it (Haralambos & Heald, 1985), within the framework of the Agricultural Legal System. Along with that, it is urgent to have a transformation from the informal economy to the formal economy in the agricultural business sector, which has an impact on informal employment to formal employment, because maintaining informal employment is the same as preserving poverty, the transformation of regulations and/or policies from a collective system to a “Farmer-Individual” system, a family-based agricultural system. Thus, it is necessary to reconstruct the Agricultural Legal System, to be able to reinterpret existing laws and regulations like the *hemeneuans*, and to create new laws like the positivists. Strengthening of family-based farming should pay attention to the principles of agricultural law, and the law can be used as an economic tool to achieve maximization of happiness which refers to the principle of justice (*gerechtigheit*) and the principle of utility (*zweckmaessigkeit*), so that it becomes an economic standard based on three basic elements, there are value, utility, and efficiency which are based on human rationality (Posner, 2007).

One of the strategic technical sub-factors in the structure of the Agricultural legal system is the Agricultural social security legal system, through farmer and family insurance (Farmer Family Insurance), including health insurance, work accidents, farmer old-age security, and property insurance, for example for the risk of crop failure. People must distinguish between farmer social security as part of the economic legal system with social assistance as a part of social law (filling the minimum existence deficit of each individual and/or their family based on non-employment) which is often associated with poverty.

B. Discussions

1. A *Das Sollen* Agricultural Legal System

a. A Construction of Sustainable Agricultural Business Based on Family Farming

From a legal perspective, agriculture is the sustainable management of fertile land for the production of plants and/or animals (Kroeschell). Sustainable economic agricultural businesses require constructive, systematic, and logical arrangements, meaning arrangements based on existing problems and strategies to overcome them within the framework of the Agricultural Legal System concept (*das sollen*) which is logically structured to achieve goals. Based on Article 33 paragraph (2) and (3) of the 1945 Constitution in conjunction with Article 2 paragraph (3) of the Basic Agrarian Law in conjunction with Law No. 22 of 2009 concerning the Agricultural Cultivation System in conjunction with General Explanation I, the last paragraph of the Sustainable Basic Agrarian Law, the Government has to present a sustainable agricultural system through the regulation of the Agricultural Legal System.

The Agricultural Legal System is a unity of norms consisting of elements related to economically sustainable fertile land for the production of plants and/or animals which work together with each other, are interrelated, organized, and influenced by the environment to achieve goals (Andjarwati, 2011). The purpose of the agricultural legal system is to guarantee the welfare of farmers. The elements (structure) of the Agricultural Legal System can be classified into three factors, namely technical factors, economic factors, and social factors. First, Technical Factors, including labor (farmers and farmer assistants, including members of farmer families), irrigation systems, fertilizers, seeds, agricultural equipment, legislation, government apparatus and their organizations, farmer organizations such as farmer groups (*poktan*), farmer group associations (*gapoktan*), farmers union or agricultural traders, digitalization systems related to the agricultural businesses.

Second, Economic Factors, related to the production costs that are greatly influenced by the market, agricultural taxes and levies, financing of agricultural risks, agricultural credit, production costs, such as seeds, fertilizers, agricultural equipment rental, watering and/or irrigation costs, transportation costs, packaging, and agricultural insurance premiums (both farmer personal insurance and property insurance). The cost of agricultural production is all components of costs incurred by farmers in cash to carry out their farming business, the structure of which can be divided into two categories, namely first, fixed costs, for example farmer social insurance premiums or personal insurance, depreciation of machinery - agricultural machinery value, irrigation, agricultural land rent, and second, variable costs or non-fixed costs, where the costs incurred are different for each agricultural business, for example seeds, plant fertilizers, agricultural medicines, and labor (Ali, 2020), agricultural property insurance. Third, social factors, namely those related to employment relationships and work conditions, which are related to farmer welfare guarantees (routine income guarantees, health insurance, old age security, accident insurance, care guarantees) and education. The influence of the “environment” in question is the environment that influences the working of elements to achieve goals, including climate change and other natural disasters, mafia problems

in the agricultural sector, such as food mafia, fertilizer mafia, seed mafia, agricultural product mafia, and other mafias.

Like the characteristics of other legal systems, the characteristics of the Agricultural Legal System are: *having a specific purpose; having at least two sub-systems; the smallest sub-system influences the largest system*. Farmers are the smallest sub-system in the Agricultural Legal System. The problem of the requirement to become a farmer is only as an Indonesian citizen indicates logically that there is no Agricultural Legal System in Indonesia; *sustainable*. Sustainable agricultural efforts must be supported by legal subjects of farmers who are able to reproduce, act as traders or determine the price of their agricultural products. Only the rich can contribute to a nation. The sustainable nature is related to formal employment, the legal system of inheritance of agricultural businesses, the prohibition of fragmentation of agricultural land; *self-regulation*. Regulation of the working of elements of technical, economic, and social factors to achieve goals in one system, for example, payment of farmer insurance premiums (person insurance) is taken from the farmer's exchange value for his production (as part of the production cost); *autonomous*. Farmers have private autonomy which can decide for themselves for their agricultural efforts; *open*. Even though farmers have private autonomy, farmers must pay attention to other laws and regulations, for example Law No. 5 of 1999 concerning the Prohibition of Monopolistic Practices and Unfair Business Competition.

b. Farmer Legal Subject: The Existence of Farmers as Human-Individuals

Farmers as individuals should get a central position in the regulation of sustainable agricultural law, whose existence as individuals lies in the authenticity of their existential attitude which has a kind of feeling of disorientation, confusion or fear in the face of a world that seems meaningless (Flynn, 2006). Soren Kierkegaard stated that every individual is responsible for giving meaning to life and living, honestly and passionately (Patios, 2013). The central concept of existentialism from Philosopher Jean Paul Satre is interpreted as a human existence in a concrete form with all its problems that emphasize more attention to the subject than the object, or protest against movements that tend to drown individuals in the collective or mass (Titus, 1984). Existence means an actual state, which occurs in space and time; and to exist is to actively create oneself, act, become, and plan (Bagus, 1996).

The existence of Farmers is an individual who thinks, does, feels, and lives, which based on the objectives of the basic agrarian law will be guaranteed prosperity, and happiness and treated fairly through the establishment of the principles of national agrarian law. Farmers are essentially producers with all their rights and obligations as free and independent economic actors, as humans must be respected and protected by law. Koerniatmanto Soetoprawiro (2013) in his book Introduction to Agricultural Law stated that "farmers and fishermen as humans must be viewed as the basis, cause, and main goal of the agricultural system itself". Farmers are agricultural producers who process plants into crops, and animals into livestock, to meet human needs. Farmers are one of the main production factors in farming as workers, and leaders who regulate the overall production organization such as purchasing and using fertilizers, land cultivation, and deciding whether or not to use labor other than family members (Mubyarta, 1989).

c. Farmer Legal Subjects in the Legislation

The legal subject of a farmer can be a "person" who is not/does not have a family or "people" who are in one family, where the members of the farmer's family can be seen from the reality of their livelihood who are still fully dependent on the family (Explanation of Article 1 of Law No. 56 of 1960). The farmer's family is a husband, wife and children who are not yet married and are their dependents and the number is around 7 people (Explanation of Article 17

of the Basic Agrarian Law). The head of the farmer's family can be a man or a woman (Explanation of Article 3 of Law No. 56 of 1960 in conjunction. Article 9 paragraph (2) of the Basic Agrarian Law).

In the legislation, the requirements as a legal subject for a farmer are only as an Indonesian citizen, while in comparison in other countries, whose agricultural legal systems are already established, such as Germany - the European Union, the requirements for a legal subject for a farmer include a minimum of 50% of their energy invested in the agricultural sector and a minimum of 50% of their income from agricultural businesses. Thus, farmers enter the formal employment sector, as taxpayers and as beneficiaries of social security.

The legal subjects of Farmers based on Article 12 of Law No. 19 of 2013 are categorized into three groups, namely: farmers who own land and carry out food crop cultivation on a maximum of two hectares of land; food crop cultivators, namely farmers who do not have agricultural land and cultivate agricultural land of a maximum of 2 hectares; and horticultural farmers, plantation owners, or small-scale livestock breeders in accordance with the provisions of laws and regulations. Meanwhile, the presidential decree No. 62 of 2023 concerning the Acceleration of the Implementation of Agrarian Reform stipulates that the legal subjects of Farmers who are entitled to obtain land as an object of land reform (TORA) include Farmers who cultivate their agriculture as a source of livelihood such as: Smallholder Farmers are farmers who own land less than 0.25 hectares; Land Tenant Farmers are a farmer who control agricultural land of no more than 2 hectares; Sharecropper Farmers are farmer who work on/cultivates land that is not their own); Farm workers are farmers who work/cultivate other people's land for wages.

Concerning agricultural business financing, Article 1 number 5 of Government Regulation No. 18 of 2020 concerning agricultural business financing stipulates that Farmers are people who carry out activities: means of production; production/cultivation; post-harvest handling, processing of products; and/or supporting services in the agricultural business sector. The scope of the definition of farmers in this agricultural business financing regulation obscures the definition of the legal subject of Farmers as agricultural production producers, who cultivate fertile land to process plants into crops, and animals into livestock. The definition of farmers which is expanded to harvesters, legal subjects who handle post-harvest (processing of products) as regulated in this Government Regulation shows chaos in the regulation and policies in the agricultural sector, especially related to the Agricultural Market which should be a place where farmers as producers meet with harvesters as consumers (*das sollen*). Likewise, supporting services in the agricultural business sector are referred to as farmers. Agricultural production harvesters are not in the agricultural sector, but in the industrial sector, as well as in the supporting services sector. The big question is how the state budget is used to subsidize agricultural business financing in the name of "farmers" especially for farmer-producers.

d. The Rights of Family Farmers in the Indonesian Welfare State

The rights of legal subjects of farmers like other citizens are protected by the Constitution, such as the right to work and a decent living for humanity; the right to develop oneself through the fulfillment of basic needs; the right to social security, which allows for the development of oneself as a dignified human being (Article 27 paragraph (2) in conjunction with Article 28C paragraph (1); Article 28H paragraph (3) of the 1945 Constitution of the Republic of Indonesia). On the other hand, the rights of farmers based on the Basic Agrarian Law, namely (a) the right to live prosperously, happily and be treated fairly (Article 2 paragraph (3); (b) the right to social security (Article 13 paragraph (4); (c) the right to have ownership rights to agricultural land (Article 10 paragraph (1)). To fulfill the rights of farmers, the government is obliged to develop an agricultural social security system in particular.

2. Collective System-Based Agriculture

The practical politics of Indonesian agricultural law due to its inability to reach the legal subjects of farmers (producers) whose requirements are only as Indonesian citizens and are in informal employment (members are free to come and go) has an impact on farmer institutions through a collective system, which tends to drown Farmers (producers) as individual human beings or ignore the existence of Farmers. This can be seen in the regulation of Farmer Organizations, which are divided into Farmer Institutions and Farmer Economic Institutions (Regulation of the Minister of Agriculture No. 67 of 2016 concerning the Development of Farmer Institutions), which are organized hierarchically-vertically from Farmer Groups (*Poktan*), farmer group associations (*Gapoktan*), Agricultural Commodity Associations (*Askom*) and the National Agricultural Commodity Council (*Dekom*). *Poktan* and *Gapoktan* focus on the technical aspects of consolidating farming businesses while *Askom* and *Dekom* focus on advocating for farmers' interests in political and economic terms. Normatively, farmer economic institutions are institutions that carry out farming business activities formed by, from, and for farmers in order to increase the productivity and efficiency of farming businesses, both those that have and have not been legally incorporated. However, the results of economic and business studies on farmer organizations such as farmer groups, farmer associations, agribusiness microfinance institutions, and agricultural cooperatives show that farmer organizations have the potential to thwart the path to increasing farmer income (Hanggana, 2017).

Collective-based agricultural development is also known as farmer corporations as legal farmer economic institutions, formed by, from, and for farmers, from integration carried out by farmer groups and/or farmer group associations in the form of cooperatives or other legal entities, with the majority of capital ownership which is owned by farmers, which is regulated in Regulation of the Minister of Agriculture 18 of 2018 concerning guidelines for the development of corporate-based agricultural areas. The purpose of farmer corporations is to increase the productivity and efficiency of farming businesses, both those with legal entities and those without legal entities. Its activities include increasing access for legal farmer economic institutions to sources of financing, and insurance. In a collective system as described above, it shows that the value of farmers is placed more as human capital, rather than as human capability.

3. The Transformation of Farmer Employment (Producer) from Informal Employment to Formal Employment

Workers are people who can do work to produce goods and/or services either to meet their own needs or for the community. The objectives of workforce development include protecting workers and their families in realizing welfare (Indriani, 2016). Generally, people who work in the informal economy sector do not have adequate labor legal protection, and often face major challenges related to their rights (Nugraha et al., 2023). Most of them do not have adequate access to decent income and/or social security (Jatmiko, 2023). They are vulnerable to exploitation, discrimination, and unsafe working conditions (Panjaitan & Raja, 2024). Informal workers often face legal uncertainty and a lack of adequate legal protection like formal workers (Rahmawati & Kamilah, 2020).

The research conducted by Sukesni mentions 11 characteristics of the informal sector (Sihombing & Asfinawati, 2005), namely: unorganized businesses; no business permits; irregular activities; no government policies and assistance; workers can easily enter and exit; simple technology; small capital and business; no formal education required; done by yourself, workers come from families; consumed by the lower middle class; and own capital or borrowed from informal credit. Workers in the informal sector are in a very diverse group with different employment statuses and different work contexts, and the extent of the informal employment

sector is measured as the sum of all these workers, both those working in the informal sector or informal conditions outside the informal sector (ILO, 2021).

The informal employment has relevance to the Informal Economy, which is “activities that have a market value and would add to tax revenues and GDP if recorded”, “a diversified set of economic activities, enterprises, jobs and workers that are not regulated or protected by the state” (The Women’s Advocacy Organization (WIEGO), usually it was characterized by high poverty rates and severe decent work deficits (World Economic Forum, 2024). Social protection is essential for building global development, as it will not be possible to address rural poverty and food insecurity and environmental degradation, hence the need for a transition from the informal economy to the formal economy, which is a powerful tool for achieving the SDGs, otherwise decent work for all and equality in society will be an illusion (World Economic Forum, 2024).

Along with the need for radical government policies, namely reconstructing and reinterpreting legislation, new laws within the framework of the agricultural legal system, which lay down the principles of agricultural law to achieve the goals of ensuring farmer welfare, ensuring food at fair prices, ensuring the environment and maintaining landscapes that transform the informal economy into a formal economy, regulating and making policies from a collective agricultural system to a family-based agricultural system to transform from informal employment to formal employment. The main challenges are the difficulty of identifying informal workers and the lack of awareness of workers about their rights (Panjaitan & Raja, 2024).

4. Agricultural Social Security and Agricultural Insurance

a. Social Protection Law and National Social Security System as the Basis for Farmers' Social Security

Initially, social protection for traditional communities was carried out informally, through the help of family, neighbors, and the community, for example, the responsibility of each generation to take care of their parents in their old age, and the community was expected to help their weak neighbors. However, in its development due to pressures in industrial society, such as urbanization, formalization of the economy, declining birth rates, and increasing life expectancy, resulting in a weakening of the informal social protection system, therefore formal social protection is needed, through social insurance, as regulated in Law Number 40 of 2004 concerning the National Social Security System. The National Social Security System is a system that protects social welfare for all people, ensuring that all people can meet their basic needs properly. The principles of implementing National Social Security System are the principles of humanity, which are related to respect for human dignity. The principle of operational benefits describes efficient and effective management, and the principle of social justice for all Indonesian people (Lestari, 2020).

All residents without exception including foreigner who have worked for at least six months in Indonesia, are required to participate in the health program from the Social Security Administering Agency and also every worker is required to participate in the Social Security program in the employment sector. The health insurance program is a program that is prioritized in Presidential Regulation No. 36 of 2023 concerning the 2023-2024 Social Security Roadmap. As of June 2024, the number of Social Security Administrator for Employment participants was recorded at 58.80 million people consisting of around 65.99 percent active participants and around 34.01 percent non-active participants (BPJS Ketenagakerjaan, 2024).

b. Welfare and Social Security of Farming Families

Certainty and Guarantee of efforts in the agrarian field, especially in the agricultural sector including the labor sector, is the Government's obligation to regulate it so that farmers can have a standard of living that is in accordance with human dignity, both for themselves and their

families. Farming businesses face many risks, and conditions that are detrimental or dangerous for both farmers themselves and their agricultural businesses. According to Kahan (2008) and Sari (2019) the sources of agricultural business risks are (1) the human resource risk is a risk caused by individual personal conditions such as illness, death, labor shortages due to migration, and the ability of farmers to allocate the resources they will use for farming, aging farmers (2) the production risk is a risk related to production that is influenced by weather, pests, and diseases, and factors in choosing appropriate technology; (3) the price and market risks which is caused by changes in agricultural product prices that are influenced by product supply and demand, as well as production costs that have different prices in each period; (4) business and financial risks are risks that can be caused by cash flow management, the uncertainty interest rate, the availability of capital loans, the ability to provide funds, the ability to repay loans (5) the institutional risks, caused by unexpected changes in the provision of services by related agricultural institutions, both formal and informal, such as cooperatives, banks, marketing organizations, researchers, government extension services, and production stability policies, distribution, and prices of inputs and output products.

There are still many poor farmers in Indonesia, which causes farmer protection to be not based on work, but based on the poor. The contribution fund assistance is a fund paid by the government for the poor and underprivileged as participants in the Social Security program. Based on the National Social Security System Law and the social welfare law, farmers and their families have the right to receive welfare and social security. Law No. 22 of 2019 concerning the Sustainable Agricultural Cultivation System and Law No. 19 of 2013 concerning the protection and empowerment of farmers only regulate farmer insurance, but it is not individual farmer insurance but property insurance because it only regulates guarantees for crop failure losses caused by natural disasters.

The social welfare of farmer families is a condition where the material, spiritual, and social needs of farmer families are met properly and can develop themselves, so that they can carry out their social functions, including if there are things that can result in the loss or reduction of income due to illness, accidents, loss of employment, entering old age or retirement. To achieve the condition of social welfare for farmers and their families in a sustainable manner, it is appropriate that a legal system of social security for farmer families is needed, through the regulation of a farmer insurance system. The social security system for farmer families requires an institutionalized scheme to ensure that farmers and their families can meet their basic living needs properly. The social security administering body based on Article 5 paragraph 3 of the National Social Security System Law is only a Limited Liability Company, Social Security for Workers, State Employee Savings and Insurance Fund, Armed Forces Social Insurance Company of the Republic of Indonesia; and the Indonesian Health Insurance Company. Therefore, based on Article 5 paragraph (4) of the National Social Security System Law, a social security administering body for Farmers' Social Security can be established.

C. Conclusion

The farmer's social protection and security requires a Social Security Administration Agency for Farmer Families as stated in Article 5 paragraph (4) of the National Social Security System Law for health insurance, work accidents, pension insurance, old age insurance, and farmer death insurance. Therefore, to make this effort, several things need to be done, **first**, a transformation from the informal agricultural economy or informal farmer employment to the formal agricultural economy or formal farmer employment. This transformation policy requires the concept of a legal subject for farmers in a sustainable agricultural legal system, which in principle requires at least farmers, namely: Indonesian citizens; farmers who can reproduce a strong economic base whose regulations are no longer based on the poor. Farmers are workers who work to cultivate agricultural land economically sustainably for the production of crops and/or animals; farmers are people who

cultivate land with ownership rights to their agricultural land; farmers are in the formal workforce. This requires a statement of the farmer's ability to continue working as a sustainable farmer. During the transition period, there needs to be support from the state to meet the minimum needs of farmers which can be taken from agricultural subsidy funds that are not from social assistance savings funds, including costs to become participants in the farmer and family health insurance program and the farmer employment social security program. **Second**, it is necessary to establish a Farmer Social Security Company for work accident insurance, pension insurance, old age insurance, and farmer death insurance. The establishment of Farmer Social Security Company company requires regulation in the form of a law.

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