

Legal Implications of the Use of State Land for Individual Rights

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Received: May 03, 2026
Revised: May 15, 2026
Accepted: June 11, 2026
Published: June 24, 2026

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Abstract: *State land is an agrarian resource whose management is in the hands of the government as a representative of the state based on the right to control as mandated by the Basic Agrarian Law (UUPA) Number 5 of 1960. However, in the practice of governance, the use of state land often causes conflicts and clashes with existing individual rights inherent in individuals and legal entities. This study examines the legal implications arising from the use of state land on individual rights, both in terms of ownership rights, cultivation rights, building rights, and usage rights. The research method used is normative legal research with a statutory and conceptual approach, supported by primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of land law literature. The results of the study indicate that the use of state land that does not pay attention to the principles of legal certainty, justice, and benefit has the potential to result in the loss or reduction of individual rights unilaterally without adequate compensation, which is contrary to the constitution. Regulatory harmonization is needed between the provisions of the UUPA, the Job Creation Law, and technical land regulations to provide stronger legal protection for individual rights holders on state land.*

Keywords: *State Land; Individual Rights; Legal Implications; State Control Rights; Agrarian Law.*

INTRODUCTION

Land is one of the most fundamental natural resources, possessing not only high economic value but also rich social, cultural, and political significance for Indonesian society. As an agricultural nation, Indonesia considers land the primary foundation of its people's livelihoods and national development.¹ The complexity of land law in Indonesia stems from a long history of colonialism, which left behind a legal dualism between customary law and Western law, which still leaves behind various fundamental problems in securing land rights. To end this dualism and to foster independence in the field of agrarian law, the Indonesian government enacted Law Number 5 of 1960 concerning Basic Agrarian Regulations, better known as the UUPA. This law marked a milestone in the reform of Indonesian agrarian law, grounded in the principles of nationality, socialism, and social justice, and served as the legal umbrella for all land regulations in Indonesia.

¹Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Edisi Revisi (Jakarta: Djambatan, 2021), hlm. 23.



In the legal construction established by UUPA, the state is not positioned as a land owner in the civil sense, but rather as a ruler who has public authority to regulate, manage, and supervise the use and allocation of land throughout Indonesia.² The concept of the state's right to control (HMN) as regulated in Article 2 of the UUPA is the constitutional basis for the state to manage land for the greatest prosperity of the people.³ However, the state's right to control does not mean that the state can act arbitrarily against the rights that individuals have acquired to land, because the state is bound by constitutional principles regarding the protection of human rights, legal certainty, and justice. The tension between the state's right to control on the one hand and individual rights to land on the other is a persistent issue in the dynamics of Indonesian land law, often resulting in conflicts that are difficult to resolve through existing legal mechanisms.

State land can be simply defined as land that is directly controlled by the state, namely land that is not owned by individuals or legal entities with any rights to the land.⁴ This concept distinguishes state land from land that has been burdened with private rights such as ownership rights, business use rights, building use rights, or use rights.⁵ In practice, the boundary between state land and certified land is often unclear due to weak land registration systems, overlapping claims from various parties, and inconsistent implementation of regulations in the field. This problem is exacerbated by the fact that most of Indonesia, particularly outside Java, is not yet registered in the formal land administration system. Consequently, many plots of land that have been de facto controlled and utilized by the community for decades remain de jure categorized as state land. This situation creates a significant potential conflict between the state's interest in utilizing land for development and the interests of the community that has long depended on the land for their survival.

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.⁶ This constitutional provision serves as both a philosophical and normative foundation for state land management in Indonesia. However, in practice, this noble goal of "people's prosperity" is often interpreted differently by the government and the public. The government often prioritizes infrastructure development and investment, perceived as providing macroeconomic benefits, while the affected communities experience real losses due to evictions, displacement, or restrictions on their land rights. This

²Maria S.W. Sumardjono, Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya (Jakarta: Kompas, 2022), hlm. 45.

³ Utama, Mohammad Wira, Riana Wulandari Ananto, and Wafda Vivid Izziyana. "Reorientasi Politik Hukum Hak Menguasai Negara atas Tanah dalam Perspektif Negara Kesejahteraan di Indonesia." *Jurnal Hukum Lex Generalis* 6.9 (2025). <https://doi.org/10.56370/jhlg.v6i9.2505>

⁴Urip Santoso, Hukum Agraria: Kajian Komprehensif (Jakarta: Kencana Prenada Media Group, 2021), hlm. 112.

⁵ Afifah, Fatma, Fikri Hadi, and Farina Gandryani. "Konsep Hak Milik, Hak Guna Usaha, Hak Guna Bangunan Dan Hak Pakai Dalam Undang-Undang Nomor 5 Tahun 1960." *Jurnal Ilmu Hukum Wijaya Putra* 3.2 (2025): 115-127. <https://doi.org/10.38156/jihwp.v3i2.326>

⁶Pasal 33 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

mismatch of perspectives reflects the structural tensions between the state and its citizens in the context of agrarian resource management that remain unresolved to this day.

The dynamics of land regulations have become increasingly complex following the issuance of Law Number 11 of 2020 concerning Job Creation, which brought significant changes to various provisions in the UUPA and other land regulations.⁷ Through the Job Creation Law, the government seeks to simplify licensing and encourage investment by providing businesses with easier access to state land.⁸ However, on the other hand, this regulatory reform has raised concerns among legal academics and agrarian activists that the interests of small communities and pre-existing rights will be further marginalized to accommodate investment interests. Government Regulation No. 18 of 2021, the implementing regulation of the Job Creation Law in the land sector, introduces changes to the mechanism for granting, extending, and renewing land rights originating from state land, by providing longer timeframes and simplifying procedures for corporate rights holders. The implications of this policy for individual rights, particularly those who do not yet have land certificates, require in-depth and comprehensive study.

The problem of the use of state land that intersects with individual rights is not merely an administrative issue, but also touches on the foundations of justice and respect for human rights.⁹ In numerous cases, the use of state land for infrastructure development, industrial estates, or national strategic projects often comes at the expense of the rights of the communities who have long inhabited and cultivated the land. Non-transparent land acquisition processes, inadequate compensation, and approaches that prioritize project interests over community protection are common complaints. This phenomenon indicates a gap between legal norms that ideally ensure a balance between public interests and private rights, and the practice of state land management on the ground, which is still far from ideal. Therefore, a systematic and comprehensive scientific study of the legal implications of state land use on individual rights is highly relevant and urgent, in order to contribute to the improvement of Indonesia's land law system.

Various previous studies have examined certain aspects of this problem, but generally focused on one specific aspect such as land acquisition for public interest, abandoned land, or customary rights of indigenous peoples.¹⁰ Few studies have comprehensively examined the legal implications of state land use in relation to various types of individual rights simultaneously, while also considering recent regulatory changes within the framework of the Job Creation Law and its implementing regulations. This research aims to fill this gap by offering a holistic and systematic analysis of how the use of state land by the government and the private sector impacts existing individual rights, and how the law should balance these interests. Therefore, this research is expected to provide both theoretical contributions to the development

⁷Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA), Pasal 2 ayat (1).

⁸ Fuad, Fuad, Ontran Sumantri Riyanto, and Said Munawar. "Penerapan Regulasi Investasi Asing di Indonesia Sebelum Dan Setelah Undang-Undang Cipta Kerja." *Innovative: Journal Of Social Science Research* 4.4 (2024): 12779-12794. <https://doi.org/10.31004/innovative.v4i4.14310>

⁹Adrian Sutedi, *Peralihan Hak atas Tanah dan Pendaftarannya*, Cetakan Ke-6 (Jakarta: Sinar Grafika, 2022), hlm. 78.

¹⁰Arie Sukanti Hutagalung dan Markus Gunawan, *Kewenangan Pemerintah di Bidang Pertanahan* (Jakarta: RajaGrafindo Persada, 2021), hlm. 34.

of Indonesian agrarian law and practical contributions to policymakers, legal practitioners, and the public seeking legal certainty over the land they control.

Based on the background outlined above, this study formulates two main research questions. First, how is the legal construction of state land use within the Indonesian land law system? Second, what are the legal implications of state land use for individual land rights, and what legal protection should be provided to holders of these individual rights?¹¹ These two questions will be answered systematically and in-depth through a comprehensive normative legal analysis, by examining applicable laws and regulations, relevant legal doctrines, and related jurisprudence.

METHODOLOGY

This research uses a normative legal research method, namely research conducted by examining library materials or secondary data consisting of primary, secondary and tertiary legal materials.¹² The selection of this method is based on the characteristics of the problem being studied, namely the legal implications of the use of state land on individual rights, which is essentially a normative issue related to the construction and application of positive law. Normative legal research is considered the most appropriate for examining this problem because it allows researchers to trace and analyze applicable legal norms, identify gaps between *das sollen* (what should be) and *das sein* (what happens), and formulate recommendations for improving the existing legal system. With this approach, researchers can conduct an in-depth study of the substance of positive law that regulates the use of state land and individual rights, without being tied to a specific concrete case but able to provide a comprehensive picture of the legal condition in general.

The approaches used in this research include the statute approach and the conceptual approach.¹³ The legislative approach is carried out by examining all laws and regulations relevant to the legal issue at hand, including the 1945 Constitution, the Basic Agrarian Law (UUPA), the Job Creation Law, the Land Acquisition Law, and various implementing regulations in the land sector. The review of these laws and regulations is conducted systematically to understand the *ratio legis* of each provision, identify the relationship between one regulation and another, and identify potential inconsistencies or gaps in norms that need to be addressed. The conceptual approach is carried out by studying the views and doctrines that have developed in land law, particularly the concepts of state control rights, state land, and various individual rights to land recognized in the Indonesian legal system. A thorough understanding of these basic concepts is a prerequisite for conducting a sharp and accurate analysis of the legal implications that are the focus of this research.

The legal materials used in this study are categorized into three types.¹⁴ First, primary legal materials consist of applicable laws and regulations in the land sector, including the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning the Basic Agrarian Law (UUPA), Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, Law Number 11 of 2020 concerning

¹¹Abdurrahman, *Masalah Pencabutan Hak-Hak atas Tanah dan Pembebasan Tanah di Indonesia*, Edisi Baru (Bandung: Alumni, 2023), hlm. 56.

¹²Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Cetakan Ke-18 (Jakarta: RajaGrafindo Persada, 2021), hlm. 13.

¹³Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi Revisi Cetakan Ke-14 (Jakarta: Kencana, 2022), hlm. 55.

¹⁴*Ibid.*, hlm. 60-65.

Job Creation, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Government Regulation Number 20 of 2021 concerning the Regulation of Abandoned Areas and Land, and various relevant Regulations of the Minister of ATR/BPN. In addition to laws and regulations, primary legal materials also include court decisions, particularly decisions of the Constitutional Court and the Supreme Court that are relevant to the issue of state land utilization and individual rights. Second, secondary legal materials consist of land law textbooks, scientific journals, articles, seminar papers, and various other scholarly writings that discuss issues of state land and individual rights from a legal perspective. Third, tertiary legal materials consist of legal dictionaries, encyclopedias, and various other sources of information that assist in understanding the legal terminology and concepts used in this research.

The collection of legal materials was conducted through library research, which included a search for land law literature, a search for relevant laws and regulations through official legal databases, and a search for court decisions through the Supreme Court and Constitutional Court decision directories. The collected legal materials were then analyzed using qualitative analysis methods with the following steps: first, an inventory of relevant legal materials; second, a systematization of legal materials to find the relationship between one norm and another; third, an analysis and interpretation of legal norms using various legal interpretation methods such as grammatical, systematic, historical, and teleological interpretation; and fourth, a drawing of conclusions based on the results of the analysis that has been conducted. The validity and reliability of this research were maintained through source triangulation and critical analysis of the legal materials used, always considering the hierarchy of norms and the principle of *lex superior derogat legi inferiori* in resolving conflicts between the norms found.

RESULTS AND DISCUSSION

Legal Construction of State Land and State Control Rights in the Indonesian Land Law System

The concept of state control rights (HMN) is at the heart of the Indonesian land law system, which fundamentally distinguishes it from the land law systems of other countries which are based on full private ownership.¹⁵ Article 2 paragraph (1) of the UUPA confirms that based on the provisions of Article 33 paragraph (3) of the 1945 Constitution and matters as referred to in Article 1, the earth, water and space, including the natural resources contained therein, are controlled at the highest level by the State as the organization of power of all the people. This HMN authority is public in nature and cannot be equated with *eigendom* rights in the civil law sense. This confirms that the state does not position itself as the absolute owner of land in the civil sense, but rather as the holder of public authority that regulates and manages land for the benefit of all the people. A proper understanding of this concept is very important to avoid misuse of state authority in land management that could harm individual rights.

The authority of HMN as regulated in Article 2 paragraph (2) of the UUPA covers three fundamental aspects, namely: first, regulating and organizing the allocation, use, supply and maintenance of the earth, water and space; second, determining and regulating legal relations between people and the earth, water and space; and third, determining and regulating legal relations between people and legal acts concerning

¹⁵Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, Cetakan Ke-41 (Jakarta: Balai Pustaka, 2021), Pasal 570.

the earth, water and space.¹⁶ These three aspects of authority provide the basis for the state to regulate land use comprehensively, but simultaneously burden the state with the responsibility to ensure that the implementation of this authority is truly aimed at the greatest possible prosperity of the people, as mandated by the constitution. The Constitutional Court, in various decisions, has emphasized that the National Land Rights (HMN) is not an unlimited right, but rather is limited by its constitutional purpose, namely to achieve the prosperity of the people. If the implementation of the HMN actually results in poverty or suffering for the people, then this is unconstitutional and can be challenged through the judicial review mechanism at the Constitutional Court.

State land in the Indonesian land law sense is categorized into two types based on its origin: first, free state land (*vrij lands domein*), which is land that is directly under the control of the state because it has never been given to an individual or legal entity with any rights; and second, non-free state land, which is land that has been burdened with a right, whether ownership rights, business use rights, building use rights, or use rights, but these rights have expired or been revoked so that the land returns to the state.¹⁷ This distinction is important because it impacts the procedures and mechanisms required to utilize the land. Free state land can be directly applied for with the relevant authorities, while non-free state land requires a more complex procedure because it involves the termination of previously attached rights. In practice, the boundary between state land and certified land is often blurred and a source of dispute, particularly in areas lacking complete and accurate land maps. This unclear land status is one of the most common root causes of conflict between state claims to land and existing individual rights.

Constitutional Court Decision Number 35/PUU-X/2012 provides an important interpretation regarding the limits of HMN in relation to community rights.¹⁸ In the ruling, the Constitutional Court emphasized that customary forests are not state forests, and therefore the indigenous communities who inhabit and manage these forests have the right to protection and recognition of their rights.¹⁹ While this ruling specifically concerns indigenous peoples' forest rights, its implications for the development of Indonesian land law in general are far-reaching. This ruling establishes an important precedent that HMN cannot be used to override historically established rights, whether those of indigenous peoples or legally recognized individual rights. Furthermore, this ruling indicates that the state is obligated to inventory and recognize existing rights before state claims to land can be enforced, as part of constitutional protection of human rights.

The Indonesian land law system as regulated in the UUPA recognizes various types of land rights that can be owned by individuals and legal entities, which hierarchically originate from the state's right to control.²⁰ These rights include ownership rights, use rights, building rights, use rights, building lease rights, land clearing rights, forest harvesting rights, and other rights not included in the aforementioned rights which will be determined by law as well as temporary rights. Of the many rights to land, ownership rights are the strongest and most complete rights that an individual can have over land, while use rights, building

¹⁶Urip Santoso, op.cit., hlm. 134-137.

¹⁷Peraturan Menteri ATR/BPN Nomor 18 Tahun 2021 tentang Tata Cara Penetapan Hak Pengelolaan dan Hak atas Tanah, Pasal 7.

¹⁸Mahkamah Konstitusi RI, Putusan Nomor 35/PUU-X/2012, hlm. 175.

¹⁹Fajar, Paulus Pora Putra, Sukardan Aloysius, and Husni Kusuma Dinata. "Implikasi Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 Terhadap Pengaturan Hutan Adat Dan Dampaknya Terhadap Hak Masyarakat Adat." *Perkara: Jurnal Ilmu Hukum Dan Politik* 2.2 (2024): 39-61. <https://doi.org/10.51903/perkara.v2i2.1844>

²⁰Nurhasan Ismail, *Perkembangan Hukum Pertanahan: Pendekatan Ekonomi-Politik* (Yogyakarta: HuMa-Van Vollenhoven Institute, 2023), hlm. 88.

rights, and use rights are more limited in nature because they have a certain time period and conditions. The relationship between these individual rights and state land is very close, because most of these land rights are obtained through grants from the state on state land, so it can be said that state land is a reservoir or source from which individual rights to land originate.²¹

Ownership rights, as the strongest and most complete rights that an individual can have over land, are the most valuable rights and provide the strongest legal protection for the holder.²² Ownership rights are hereditary, transferable and assignable to other parties, and have no time limit as long as the conditions stipulated by law are met. In relation to state land, ownership rights can be obtained through the granting of state land rights, the conversion of existing rights before the enactment of the Basic Agrarian Law, or through sale, donation, and inheritance from existing land rights holders. However, even ownership rights are not absolute in the Indonesian legal system, as the Basic Agrarian Law emphasizes that all land rights have a social function, meaning that the public interest must take precedence over individual interests when necessary.²³ In practice, the social function of property rights is often used as justification by the government to take land for development purposes, even though the boundaries of this social function are not always clearly defined in statutory regulations.

The Right to Cultivate (HGU) is the right to cultivate land directly controlled by the state for a certain period of time for agriculture, fisheries or animal husbandry.²⁴ Based on Government Regulation Number 18 of 2021, HGU can be granted for a maximum period of 35 years and can be extended for a maximum period of 25 years, and can be renewed for a maximum period of 35 years. For foreign investment and domestic investment that has been approved by the government, the HGU grant period can be longer than these general provisions. The consequence of this time-bound nature of HGU is that after the term expires and is not extended or renewed, the land reverts to state land and can then be used by other parties or remains under state control. A frequently arising issue concerns the fate of the community whose livelihoods have depended on the HGU land for decades, especially farm laborers and their families who have no other choice but to use the land.

Building Use Rights (HGB) are the rights to construct and own buildings on land that is not one's own, with a maximum term of 30 years and can be extended for a maximum period of 20 years and renewed according to applicable provisions.²⁵ HGB can be granted for state land, land with management rights, or land with ownership rights.²⁶ In relation to state land, the HGB granted for state land gives the holder the right to construct buildings on the land, but the land itself remains under state control. The legal implication is that the HGB holder for state land cannot sell the land because it is not their property, but can only transfer the building and its rights while still observing the applicable provisions. When the HGB expires and is not

²¹ Bahari, Syaiful, Muhammad Panca Prana Mustaqim Sinaga, and Zahra Malinda Putri. "REKONSTRUKSI PEMAKNAAN HAK MENGUASAI NEGARA MENURUT PASAL 33 AYAT (3) UUD 1945." *JUSTLAW: Journal Science and Theory of law* 2.01 (2025): 46-55. <https://ojs.sains.ac.id/index.php/Justlaw/article/view/102>

²²UUPA, Pasal 28 jo. Pasal 29 tentang ketentuan Hak Guna Usaha.

²³ Ismaya, Samun. "KAJIAN TEORITIK DUALISME KEPENTINGAN DAN FUNGSI SOSIAL HAK ATAS TANAH." *Wijaya Putra Law Review* 4.2 (2025): 243-270. <https://doi.org/10.38156/wplr.v4i2.318>

²⁴PP Nomor 18 Tahun 2021, Pasal 22 tentang jangka waktu Hak Guna Usaha.

²⁵Bernhard Limbong, op.cit., hlm. 215-218.

²⁶ Laksono, Muchammad Agung, Ronny Winarno, and Istijab Istijab. "Tinjauan Yuridis Proses Peralihan Hak Guna Bangunan Menjadi Hak Milik Menurut Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun dan Pendaftaran Tanah." *Yurijaya: Jurnal Ilmiah Hukum* 5.2 (2023): 39-54. <https://doi.org/10.51213/yurijaya.v5i2.104>

renewed, the building standing on it can become the property of the state or the holder of the basic rights to the land, which has the potential to cause significant losses for the HGB holder who has invested significant resources in development on the land.

The Right to Use is the right to use and/or collect the proceeds from land directly controlled by the state or land belonging to another person, which gives the authority and obligations specified in the decision to grant it by the official authorized to grant it.²⁷ The right of use can be granted to Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia, foreign legal entities with representatives in Indonesia, departments, non-departmental government agencies, and regional governments. Unlike HGU and HGB, which have more definitive terms, the right of use can be granted for a specific period or as long as the land is used for a specific purpose. This flexibility in the timeframe allows various parties to utilize state land as needed, but on the other hand, it also has the potential to create legal uncertainty for the holder of the right of use, especially in situations where state interests change and require the use of the land for other purposes.

Legal Implications of the Use of State Land on Individual Rights and Their Legal Protection

The use of state land by the government or third parties who have been granted permission by the government has direct or indirect implications for the rights of individuals on or around it.²⁸ The most obvious direct implication is the revocation or restriction of individual land rights for the public interest, which in the language of the Basic Agrarian Law is known as "revocation of land rights" as stipulated in Article 18 of the Basic Agrarian Law. Revocation of land rights can only be carried out for the public interest, including the interests of the nation and state as well as the collective interests of the people, with the provision of appropriate compensation and in a manner regulated by law. This provision contains two fundamental conditions that must be fulfilled cumulatively: public interest as a substantive condition and appropriate compensation as a compensatory condition. Failure to fulfill either of these conditions may render the government's action legally invalid and give rise to an obligation to restore the revoked rights or provide adequate compensation.

Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest has attempted to provide a more comprehensive and equitable legal framework for the process of land acquisition in the public interest.²⁹ This law defines the public interest as the interests of the nation, state, and society that must be realized by the government and used to the greatest extent possible for the prosperity of the people. The Land Acquisition Law stipulates that land acquisition for the public interest is carried out by providing fair and appropriate compensation to entitled parties, including compensation for land, aboveground and underground space, buildings, plants, objects related to the land, and/or other assessable losses.³⁰ Although this law represents significant progress compared to previous regulations, its implementation in the field still faces various challenges, ranging from compensation assessments that are considered not in accordance

²⁷Maria S.W. Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi*, Edisi Revisi (Jakarta: Kompas, 2022), hlm. 130.

²⁸Peraturan Presiden Nomor 56 Tahun 2021 tentang Penataan Ekosistem Industri Musik, sebagai analogi mekanisme pembatasan hak dalam kepentingan publik.

²⁹UUPA, Pasal 18 tentang pencabutan hak atas tanah untuk kepentingan umum.

³⁰ Alim, Sofyan. "Pemberian ganti kerugian pengadaan tanah untuk kepentingan umum terhadap tanah hak milik." *Gorontalo Law Review* 7.1 (2024): 42-57. <https://doi.org/10.32662/golrev.v7i1.3332>

with market value, non-substantive deliberation processes, to approaches that tend to position landowners as parties who must give in to the interests of development.³¹

The legal implication that is no less important is the situation where the use of state land in fact ignores the existence of individual rights that already exist but have not been formally registered.³² In Indonesia's land registration system, which adheres to the principles of publicity and specialization, unregistered land rights are highly vulnerable because they do not receive the same legal protection as certified rights. In reality, millions of plots of land in Indonesia remain unregistered, and communities that control these lands based on unwritten rights such as customary rights, prolonged physical possession, or documents proving ownership not recognized by the formal system are in a very weak position when faced with state claims to the land. This phenomenon creates a legal paradox where the state, which should protect the rights of its citizens, actually becomes the greatest threat to those rights when planning to utilize land that is de facto controlled by the community.

The problem of overlapping land ownership or claims is one of the most complex legal implications of the unclear boundaries between state land and private land.³³ Overlapping claims often occur between certificates issued by the National Land Agency (BPN) and claims of indigenous communities or long-standing physical control, between two overlapping certificates due to administrative errors, between forest area claims determined by the Ministry of Environment and Forestry and land certificates issued by the BPN, and between mining concession rights and existing community land rights. Resolving these overlapping claims is highly complex because it involves various government agencies with varying authorities, a multi-layered legal system, and the significant economic interests of the parties involved. The lack of an effective and affordable dispute resolution mechanism is one of the main obstacles to achieving legal certainty in the land sector.

In the context of the Job Creation Law, there are several provisions that have significant implications for individual rights to state land.³⁴ First, the provisions regarding Management Rights (HPL) have been expanded, allowing more land to be classified as HPL under the control of a specific management body, which can then grant land rights to third parties over that HPL. Second, the provisions regarding land banking grant the Land Bank Agency the authority to acquire, manage, utilize, and distribute land, potentially impacting public access to state land.³⁵ Third, changes to the provisions regarding abandoned land, which expand the criteria for land that can be declared abandoned and reclaimed by the state, have the potential to disadvantage rights holders who, for various reasons, are unable to optimize their land use according to established productivity criteria. Fourth, changes to the risk-based business licensing mechanism, which have implications for the requirements and procedures for acquiring land rights originating from state land.

³¹Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum, Pasal 1 angka 2.

³²Arie Sukanti Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Cetakan Ke-3 (Jakarta: LPHI, 2022), hlm. 45.

³³Elza Syarif, *Menuntaskan Sengketa Tanah melalui Pengadilan Khusus Pertanahan* (Jakarta: KPG, 2022), hlm. 78.

³⁴Mahkamah Agung RI, *Putusan Nomor 2398/K/PDT/2021*, perihal gugatan hak atas tanah negara yang dimanfaatkan pihak ketiga.

³⁵ Susantio, Catherine, and Marvella Beatrice. "Badan Bank Tanah Indonesia dengan Land Bank Agency Belanda: Studi Komparasi." *UNES Law Review* 6.3 (2024): 8518-8538. <https://doi.org/10.31933/unesrev.v6i3.1758>

Legal protection for individual rights holders in the context of the use of state land is a very crucial issue and must be understood comprehensively from various legal dimensions.³⁶ The first dimension is preventive protection, which is protection provided through legal mechanisms aimed at preventing violations of individual rights before they occur. This preventive protection is realized through, among other things, a comprehensive and accurate land registration system, the issuance of land title certificates that provide legal certainty, strict procedural regulations for the granting of rights to state land that do not harm existing rights, and mandatory public consultation in the planning process for state land use. The second dimension is repressive protection, which is protection provided through dispute resolution mechanisms when individual rights have been violated. This repressive protection can be achieved through various channels, ranging from complaints to the National Land Agency (BPN), mediation through the Land Office, lawsuits to the District Court or State Administrative Court, to filing objections to the Supreme Court or the Constitutional Court.

The land registration system is the most fundamental legal protection instrument for individual rights to land.³⁷ Through land registration, individual land rights are officially recognized by the state in the form of a land title certificate. A land title certificate serves as a strong document that serves as proof of the physical and legal data contained therein, as long as the data matches the data contained in the land title certificate and the relevant land title book. The Complete Systematic Land Registration Program (PTSL), launched by the government in 2017, is an effort to accelerate land registration throughout Indonesia, with the target of registering all uncertified land plots. However, in its implementation, PTSL faces various technical and administrative challenges that prevent this target from being fully achieved. Furthermore, certificates issued through PTSL do not automatically resolve overlapping claims, so a more comprehensive adjudication mechanism is still needed to ensure that the certificates issued truly provide legal certainty that cannot be contested.

Legal protection through judicial mechanisms is an important pillar in the system of protecting individual rights to land.³⁸ Individual landowners who believe their rights have been violated by state actions in utilizing state land have several legal avenues available. First, if the lawsuit is against a decision by a state administrative official related to the granting of land rights, the lawsuit can be filed with the State Administrative Court (PTUN). Second, if the lawsuit is against an unlawful act committed by the government or a private party that has resulted in a loss of land rights, a civil lawsuit can be filed with the District Court. Third, if the dispute is against a provision of a law deemed unconstitutional and detrimental to the constitutional rights of landowners, a petition for judicial review can be filed with the Constitutional Court. In practice, judicial avenues for land disputes are often ineffective due to the lengthy trial process, high legal costs, and the difficulty of providing evidence faced by economically weaker parties, namely the public, when confronted by the power of the state or large corporations.

The principle of fair and just compensation is one of the fundamental principles of protecting individual rights in the context of utilizing state land for public interest.³⁹ The Land Acquisition Law stipulates that

³⁶Nurhasan Ismail, *op.cit.*, hlm. 100-105.

³⁷Badan Pertanahan Nasional (ATR/BPN), *Laporan Tahunan 2023: Penyelesaian Sengketa dan Konflik Pertanahan*, hlm. 22.

³⁸Eko Yulian Isnur, *Tata Cara Mengurus Tanah, Rumah serta Segala Perizinannya*, Cetakan Ke-5 (Yogyakarta: Pustaka Yustisia, 2021), hlm. 55.

³⁹Undang-Undang Nomor 30 Tahun 2014 tentang Administrasi Pemerintahan, Pasal 17 tentang larangan penyalahgunaan wewenang.

compensation must be independently assessed by a certified appraiser and that the results must reflect the actual value of the expropriated property, including a reasonable compensation value for non-physical losses such as loss of livelihood, moving costs, and other demonstrable losses. However, in practice, determining compensation often becomes a source of conflict between the government and affected communities, as the values offered by the government are often far below market value and do not fairly account for non-physical losses. Furthermore, there are issues regarding who is entitled to compensation when expropriated land is uncertified or its ownership is disputed, which often results in the most vulnerable communities receiving no compensation at all.

The development of recent land law doctrine shows an increasingly strong tendency to recognize and protect individual rights that stem from long-standing and continuous physical control (adverse possession), even without the support of formal documents.⁴⁰ This doctrine is rooted in the equity principle that a person who has continuously, clearly, and openly controlled and utilized land for a certain period of time should have their rights recognized. In the context of Indonesian land law, the Basic Agrarian Law (UUPA) recognizes customary land rights, which in many cases are not formally documented but are recognized by local communities. Court decisions that prioritize protection for long-term and continuous physical control need to be codified in more systematic legislation, so that the legal protection provided is consistent and predictable, rather than relying solely on the discretion of judges in individual cases.

Reform of Indonesian land law must take into account several fundamental principles that ensure a balance between the use of state land and the protection of individual rights.⁴¹ First, the principle of legal certainty requires that every policy on the use of state land be based on clear, transparent norms that can be understood by all affected parties. Second, the principle of justice requires that every individual rights holder affected by the use of state land must receive compensation equivalent to the economic and non-economic value of the rights relinquished. Third, the principle of participation requires that affected communities be meaningfully involved in the planning and decision-making process regarding the use of state land that affects their rights. Fourth, the principle of accountability requires that officials authorized to manage state land can be held accountable for decisions that harm individual rights. Fifth, the principle of benefit requires that the use of state land must provide real and measurable benefits to the wider community, not just to a handful of parties with access to power and capital.

In global dynamics, the protection of individual rights to land also needs to be linked to Indonesia's international obligations in the field of human rights.⁴² Indonesia, as a state that has ratified various international human rights instruments, including the International Covenant on Economic, Social and Cultural Rights, is bound to respect, protect, and fulfill the right to housing and an adequate standard of living, which includes protection against forced evictions. The UN Committee on Economic, Social and Cultural Rights has affirmed that forced evictions from land occupied by individuals constitute a human rights violation that can only be justified if they meet strict requirements, including a legitimate objective,

⁴⁰Peraturan Pemerintah Nomor 20 Tahun 2021 tentang Penertiban Kawasan dan Tanah Terlantar, Pasal 3.

⁴¹Kurniawan, Kuku, and Sri Wahyu Handayani. "Kepastian dan Keadilann Hak Atas Tanah di Indonesia Analisis Komprehensif Hak Atas Tanah di Indonesia: Dasar Hukum, Karakteristik, dan Tantangan Kontemporer." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3.5 (2025): 6950-6962. <https://doi.org/10.61104/alz.v3i5.2328>

⁴²Gultom, Pardomuan, and Romainur Romainur. "Analisis Yuridis Terhadap Kewajiban Pemenuhan Hak Asasi Manusia Dalam Praktik Bisnis Perkebunan Kelapa Sawit (Juridical Analysis of Obligations to Fulfill Human Rights in the Business Practices of Oil Palm Plantation)." *Jurnal HAM* 13.2 (2022). <https://ssrn.com/abstract=4216408>

proportionality, meaningful consultation, and adequate compensation. Integrating these international human rights principles into Indonesia's domestic land law system is an indispensable step if Indonesia is to become a truly legal state in the land sector.

One of the institutional reforms needed to strengthen the protection of individual rights in the context of state land use is the establishment of a more effective, efficient, and equitable land dispute resolution mechanism.⁴³ Current dispute resolution mechanisms, whether through mediation at the Land Office, general courts, or the State Administrative Court, are considered insufficient to address the extremely high volume of land disputes in Indonesia. The establishment of a specialized land court with absolute competence to handle all land disputes, with judges specialized in agrarian law, could be a significant structural solution. Furthermore, strengthening alternative dispute resolution (ALR) mechanisms such as mediation, negotiation, and arbitration facilitated by competent mediators or arbitrators in the land sector also needs to be encouraged as a faster and more affordable route for disputing communities.

Going forward, harmonization between the UUPA as the parent law of Indonesian land law with various sectoral regulations governing land use for specific purposes such as forestry, mining, plantations, and property will become an urgent legal agenda.⁴⁴ Overlapping authority between various ministries and institutions in land resource management is the root of many unresolved land conflicts. Better coordination between the National Land Agency (BPN/ATR), the Ministry of Environment and Forestry, the Ministry of Energy and Mineral Resources, and the Ministry of Investment in managing state land would reduce the potential for conflict. One concrete step that can be taken is the establishment of an integrated national land information system, which would enable all government agencies and the public to access accurate and up-to-date land data, allowing potential conflicts to be identified and resolved early. With a transparent and accessible information system, individual land rights holders can more easily determine the legal status of their land and take anticipatory measures if the land is potentially affected by state land use policies.⁴⁵

CONCLUSIONS

Based on the in-depth and systematic legal analysis conducted in this research, several important conclusions can be drawn. First, the legal construction of the utilization of state land in the Indonesian land law system is based on the concept of state control rights (HMN) which originates from Article 33 paragraph (3) of the 1945 Constitution in conjunction with Article 2 of the UUPA, which grants public authority to the state to regulate, manage, and supervise the use of land for the greatest prosperity of the people. HMN is not an ownership right in the civil sense, but rather a regulatory authority bound by its constitutional purpose, so that any use of state land that does not lead to the prosperity of the people can be questioned for its constitutionality. Second, the utilization of state land gives rise to various complex legal implications for individual rights, including: the revocation or limitation of individual rights for the public interest, the neglect of rights that have not been formally registered, overlapping claims that are difficult to resolve, and regulatory changes that have the potential to weaken the position of individual rights holders in relation to investment interests. Third, legal protection for individual rights holders is still not optimal due to the gap between ideal norms and implementation in the field, both in terms of legal certainty through

⁴³Wirjono Prodjodikoro, *Hukum Perdata tentang Hak atas Benda*, Cetakan Ke-4 (Jakarta: Intermasa, 2021), hlm. 44.

⁴⁴Muchtar Wahid, *Memaknai Kepastian Hukum Hak Milik atas Tanah* (Jakarta: Republika, 2023), hlm. 34.

⁴⁵UUPA, Pasal 26 tentang pengalihan Hak Milik atas tanah.

land registration, adequacy of compensation, effectiveness of dispute resolution mechanisms, and consistency of law enforcement.

Based on these conclusions, this study recommends several strategic steps that need to be taken. First, accelerate and improve the quality of the Complete Systematic Land Registration (PTSL) program by ensuring that issued certificates truly provide inviolable legal certainty, including through a comprehensive adjudication mechanism to resolve overlapping claims before certificates are issued. Second, comprehensive harmonization of land regulations between the Basic Agrarian Law (UUPA), the Job Creation Law, and other sectoral regulations to eliminate inconsistencies in norms that cause legal uncertainty for individual rights holders. Third, strengthen land dispute resolution mechanisms to be faster, more affordable, and more equitable, including considering the establishment of a special land court with judges with expertise in agrarian law. Fourth, integrate international human rights principles regarding land rights and protection from forced evictions into domestic land law, to ensure that Indonesia fulfills its international human rights obligations. Fifth, develop an integrated and transparent national land information system to prevent overlapping claims and provide equal access for all parties to information about the legal status of land throughout Indonesia.

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