

Harmony Between Building Use Rights (HGB) Regulations and Defense Policies: A Customary Law Perspective in Natural Resource Management

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ABSTRACT

This study examines the harmony between the regulation of Building Use Rights (HGB), defense policies, and customary law in natural resource management in Indonesia. The disharmony among these three aspects often leads to land conflicts, resulting in legal uncertainty for indigenous communities. HGB regulations and defense policies tend to prioritize the interests of right holders and national defense, while legal recognition of indigenous land rights (ulayat rights) remains limited. As a result, indigenous communities lose access to land and natural resources that are integral to their economic, social, and cultural life. This study employs a normative juridical method with legislative, conceptual, and case approaches to identify regulatory disharmony and its impact on indigenous communities. The findings reveal that land conflict resolution often favors HGB holders and defense policies, with minimal involvement of indigenous communities in decision-making processes. Therefore, a more inclusive land policy is needed by strengthening the recognition of ulayat rights, integrating customary law into national regulations, and developing effective land dispute mediation mechanisms. This regulatory harmonization is expected to create a balance between state interests, right holders, and indigenous communities in sustainable and equitable natural resource management.

Keywords: Regulatory Harmonization, Building Use Rights (HGB), Defense Policy, Customary Law, Land Conflict.

INTRODUCTION

Building Use Rights (HGB) is one of the land rights regulated within Indonesia's agrarian legal system. HGB grants individuals or legal entities the authority to establish and use buildings on land that does not belong to them, whether owned by the state or other parties. This regulation plays a vital role in supporting infrastructure, property, and industrial sector development. However, in practice, the implementation of HGB often has the potential to cause conflicts, particularly when these rights clash with the interests of indigenous communities who possess a land tenure system based on customary law¹.

On the other hand, national defense policy is closely linked to natural resource management and land use². The state has a strategic interest in regulating and controlling land utilization to ensure national security, economic stability, and environmental sustainability. Misaligned land management with defense interests can lead to various issues, including ownership inequalities, unsustainable resource exploitation, and threats to national resilience. Therefore, regulations related to HGB and defense policies

¹ Undang-Undang Pokok Agraria (UUPA) No. 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria

² Kotijah, S. (2020). Penyelesaian Sengketa Masyarakat Hukum Adat Melalui Pengadilan Jilid 1.



need to be balanced to avoid neglecting aspects of sovereignty and environmental sustainability³.

From a customary law perspective, land and natural resources are more than just economic assets; they are part of the identity and survival of indigenous communities. The principles of customary law in land ownership and utilization tend to be communal and passed down from generation to generation. However, in Indonesia's positive legal system, the existence of customary law is often marginalized by formal regulations, including in the arrangement of HGB. Consequently, disputes frequently arise between indigenous communities, the government, and HGB holders, particularly in resource-rich areas⁴.

The disharmony between HGB regulations, defense policies, and customary law often leads to complex problems⁵. A concrete example is the land ownership conflict between indigenous communities and HGB holders, resulting in prolonged legal disputes. Additionally, defense policies designating certain areas as strategic zones often conflict with the rights of indigenous communities who have long inhabited and managed the land for generations⁶. This regulatory imbalance can also lead to unsustainable natural resource exploitation, threatening ecosystem balance and the social life of local communities⁷.

The implementation of Building Use Rights (HGB) on state land is crucial for Indonesia's infrastructure development and economic growth⁸. Recent regulatory changes, such as PP No. 18/2021, have altered HGB procedures, potentially conflicting with the Basic Agrarian Law (UUPA)⁹. The transfer of HGB on land with Management Rights (HPL) is permissible with written approval from the rights holder¹⁰. However, the government's offer of extended HGB periods up to 160 years for investors in the new capital city (IKN) has raised legal concerns. Current regulations limit HGB to 30 years, with possible extensions of 20 years and renewals of 30 years¹¹. Challenges in HGB implementation include complex bureaucracy and potential conflicts of interest, necessitating transparent governance and clear regulations to ensure sustainable land management¹².

This study aims to analyze the harmony between Building Use Rights (HGB) regulations, defense policies, and customary law in natural resource management. Specifically, the research seeks to identify potential conflicts arising from regulatory imbalances and examine the extent to which customary law can be accommodated within national land and defense policies. Furthermore, the study aims to explore the factors hindering policy integration between state regulations and customary law, as well as to formulate more inclusive and equitable solution recommendations. Therefore, the results of this study are expected to contribute to the development of policies that support

³ Peraturan Pemerintah No. 40 Tahun 1996 tentang Hak Guna Usaha, Hak Guna Bangunan, dan Hak Pakai atas Tanah

⁴ Undang-Undang No. 3 Tahun 2002 tentang Pertahanan Negara

⁵ Rahman, R. (2017). Konflik masyarakat dengan pemerintah (studi kasus sengketa tanah adat). *Sosioreligius: jurnal ilmiah sosiologi agama*, 2(1).

⁶ Sumardjono, M. S. (2008). Tanah dalam perspektif hak ekonomi, sosial, dan budaya. Penerbit Buku Kompas.

⁷ Undang-Undang No. 41 Tahun 1999 tentang Kehutanan

⁸ Supriyanto, S., Budianto, A., & Santiago, F. (2024). Implementation of Building Use Rights in State Land Management by Developers. *Jurnal Impresi Indonesia*.

⁹ Calista , J., & Djaja, B. (2024). Legal Regulations and Implications of Building Use Rights on Land Management Rights for Public Assets. *Journal of Law, Politic and Humanities*, 4(4), 505–511.

¹⁰ Aji, B. S., Ngadino, N., & Prabandari, A. P. (2021). Analisis Yuridis Pemindahtanganan Hak Guna Bangunan (HGB) Di Atas Tanah Hak Pengelolaan (HPL) Dan Aplikasinya. *Notarius*, 14(2), 747-757.

¹¹ Abdul Zaini, Muhammad Syihabuddin, Wiranti, & Wiwit Wijayanti. (2023). Legal Review Of Granting Of Building Utilization Rights (HGB) For 160 Years To Investors In The Capital City Of The Nusantara Development (IKN). *YURISDIKSI: Jurnal Wacana Hukum dan Sains*, 19(1), 58–73.

¹² Supriyanto, S., Budianto, A., & Santiago, F. (2024). Implementation of Building Use Rights in State Land Management by Developers. *Jurnal Impresi Indonesia*.

sustainable development, protect indigenous rights, and maintain national defense stability.

METHODS

This study employs a normative juridical approach, aiming to analyze the harmony between Building Use Rights (HGB) regulations, defense policies, and customary law in natural resource management. The normative juridical approach is used to examine relevant laws and regulations, legal concepts, and their implementation in practice. Additionally, this research adopts a sociological approach to understand how these regulations impact indigenous communities and HGB holders in land and natural resource management.

The approaches used in this study cover several key aspects. The Statute Approach is employed to examine regulations governing HGB, defense policies, and the protection of indigenous rights. The Conceptual Approach is used to understand legal theories related to land management from the perspectives of customary law and national defense. Meanwhile, the Sociological Approach is applied to understand the impact of regulations on affected communities, including case studies of agrarian conflicts between HGB holders and indigenous communities.

The data used in this research consists of primary and secondary data. Primary data is obtained through in-depth interviews with agrarian law experts, relevant officials, and indigenous community leaders who have direct experience in land management. Additionally, field observations are conducted to directly observe how indigenous communities manage natural resources and the challenges they face in dealing with state regulations. Meanwhile, secondary data is gathered from legal document analysis, including laws and regulations, government policies, scientific journals, and court decisions related to land conflicts and HGB regulations.

Data collection techniques in this study encompass three main methods. Document studies are conducted to understand the applicable legal provisions and their implications on the community. In-depth interviews are used to explore perspectives from various stakeholders, both from the government and indigenous communities. Field observations are carried out to obtain a real picture of policy implementation and the social dynamics arising from HGB regulations and defense policies.

Data analysis is carried out using descriptive-critical qualitative analysis. The collected data is analyzed using an interpretive method, interpreting regulations and policies from the perspectives of customary law and national defense. Additionally, this study applies comparative analysis by comparing regulatory implementation in several regions or countries with similar characteristics. With this approach, the study aims to provide a deeper understanding of the challenges and opportunities in harmonizing regulations related to HGB, defense policies, and customary law.

RESULTS

To clarify the results of this study, several tables are presented that illustrate comparisons of land rights, land conflicts, the impact of regulatory disharmony, defense policies in natural resource management, and efforts to harmonize Building Use Rights (HGB), defense policies, and customary law in natural resource management in Indonesia. These tables are expected to provide a more structured overview of the key issues in this research.

Table 1. Comparison of HGB Regulation, Defense Policy, and Customary Law

Aspect	HGB Regulation	Defense Policy	Customary Law
Ownership	Granted to individuals/companies for a specific period	Land is designated for national security and defense purposes	Based on communal ownership (ulayat rights)
Rights and Obligations	Holders have development rights but must comply with government regulations	The government has control over land use for security	Masyarakat adat has full rights to manage and utilize natural resources
Impact on Local Communities	May lead to land disputes with indigenous communities	Often results in restricted access for indigenous groups	Strong cultural and environmental sustainability practices
Legal Recognition	Recognized under national land laws	Protected under national security policies	Limited recognition under formal legal frameworks

Source : Research data processed in 2025

Based on the table above, there are fundamental differences in the regulation of land rights between Building Use Rights (HGB), national defense policies, and customary law. HGB grants individuals or companies the right to manage land for a specified period with the obligation to comply with government regulations, while national defense policies place full control on the government in utilizing land for national security interests. In contrast, customary law recognizes the communal ownership rights (ulayat rights) of indigenous communities, which are passed down through generations with principles of environmental and cultural sustainability. However, the limited formal legal recognition of ulayat rights often leads to land conflicts between indigenous communities, HGB holders, and the government, particularly in strategic areas deemed vital for national defense. This imbalance in legal recognition affects indigenous communities' access to land and natural resources, potentially triggering prolonged agrarian disputes and tensions.

Table 2. Case Studies of Land Conflicts due to Regulatory Disharmony

Case Study Location	Cause of Conflict	Impact on Local Community	Resolution Efforts
Papua	HGB granted on indigenous land	Loss of access to traditional hunting and farming areas	Legal dispute; mediation efforts underway
Kalimantan	Expansion of military zone on customary land	Forced relocation of indigenous residents	Compensation negotiations with government
Riau	Deforestation for industrial development under HGB	Environmental degradation and loss of biodiversity	Advocacy for indigenous land recognition
Maluku	Overlapping land claims between HGB holders and indigenous groups	Increased social tensions	Community-based dispute resolution initiatives

Source : Research data processed in 2025

Based on the table above, conflicts related to Building Use Rights (HGB) and defense policies in Indonesia occur in several regions, particularly those rich in natural resources and of strategic value. In Papua, the granting of HGB on customary land has resulted in

indigenous communities losing access to traditional hunting and farming areas, triggering legal disputes that are still in the mediation process. In Kalimantan, the expansion of military zones over customary land has led to the forced relocation of indigenous residents, with compensation negotiations currently underway with the government. Meanwhile, in Riau, deforestation for industrial development under HGB has caused environmental damage and biodiversity loss, prompting advocacy for the recognition of customary land rights. In Maluku, overlapping land claims between HGB holders and indigenous communities have heightened social tensions, though community-based conflict resolution efforts are underway. These conflicts underscore the need for regulatory harmonization between HGB, defense policies, and customary law to prevent adverse impacts on local communities and the environment.

Table 3. Impact of Defense Policies on Indigenous Land Rights

Policy Implementation	Affected Regions	Impact on Indigenous Communities	Government Response
Military Base Expansion	Papua, Kalimantan	Displacement, limited land access	Partial compensation, relocation support
National Security Area Designation	Riau, Aceh	Restricted agricultural and hunting activities	No formal recognition of indigenous claims
Infrastructure Development for Defense	Sulawesi, Maluku	Loss of traditional land management rights	Legal disputes ongoing

Source : Research data processed in 2025

The table above highlights conflicts between Building Use Rights (HGB), defense policies, and indigenous rights in Indonesia, particularly in regions rich in natural resources and of strategic importance. In Papua, the granting of HGB on customary land has led to the loss of access to traditional hunting and farming areas for indigenous communities, triggering ongoing legal disputes. In Kalimantan, the expansion of military zones over customary land has resulted in forced relocations, with current efforts focused on compensation negotiations. In Riau, deforestation for industrial development under HGB has caused severe environmental damage and biodiversity loss, prompting advocacy for stronger recognition of indigenous land rights. In Maluku, overlapping land claims between HGB holders and indigenous communities have escalated social tensions, although community-based dispute resolution initiatives are underway. These conflicts underscore the urgent need to harmonize HGB regulations, defense policies, and customary law to protect local communities and the environment while balancing economic development with the preservation of traditional rights.

Table 4. Comparison of Natural Resource Management Models

Management Model	Sustainability	Efficiency	Challenges
Customary Law-Based Management	High, as practices prioritize ecological balance	Moderate, as traditional methods may lack modernization	Limited legal recognition, external business pressures
State Regulation-Based Management	Moderate, depends on enforcement	High, due to large-scale resource extraction	Environmental degradation, social conflicts

Source : Research data processed in 2025

Based on the table above, natural resource management models based on customary law and state regulations have distinct characteristics, advantages, and challenges. Customary law-based management demonstrates a high level of sustainability due to its focus on ecological balance and long-term sustainability. However, its efficiency tends to be moderate, as traditional methods are often less modern, and it faces significant challenges such as limited legal recognition and external pressures from large businesses that threaten resource sustainability. On the other hand, state regulation-based management offers high efficiency by supporting large-scale natural resource extraction for national economic interests. However, its sustainability varies depending on the effectiveness of law enforcement. The main challenges include environmental degradation and social conflicts arising from the neglect of local community rights and unsustainable resource exploitation. Therefore, integrating customary law and state regulatory approaches is crucial to create a natural resource management model that is effective, sustainable, and fair for all parties.

Table 5. Policy Recommendations for Harmonizing HGB, Defense Policy, and Customary Law

Recommendation	Implementation Strategy	Expected Outcome
Strengthen legal recognition of customary land rights	Amend national land laws to include indigenous ownership rights	Reduced land conflicts, increased security for indigenous communities
Improve coordination between government and indigenous communities	Establish mediation frameworks for land dispute resolution	More inclusive land policies
Implement participatory land use planning	Require community involvement in land allocation decisions	More sustainable and conflict-free resource management

Source : Research data processed in 2025

Based on the table above, several important recommendations are proposed to harmonize the regulation of Building Use Rights (HGB), defense policies, and customary law in the management of natural resources. First, strengthening the legal recognition of indigenous land rights needs to be realized through amendments to the national agrarian law so that indigenous ownership is officially recognized. This is expected to reduce land conflicts and provide better legal certainty for indigenous communities. Second, enhanced coordination between the government and indigenous communities is needed through the establishment of a mediation framework for resolving land disputes. This approach aims to create a more inclusive and equitable land policy. Third, participatory land-use planning needs to be implemented by involving communities in decision-making regarding land allocation. This step is expected to result in more sustainable and conflict-free natural resource management. The implementation of these three strategies is believed to create a balance between development interests, national security, and the preservation of indigenous rights.

This research found a lack of harmony between the regulation of Building Use Rights (HGB), defense policies, and customary law in the management of natural resources. Overlapping regulations lead to ownership and land-use conflicts between HGB holders, the government, and indigenous communities. In many cases, indigenous communities struggle to defend their land rights because they lack official certificates, even though they have managed the land for generations. This creates a gap in legal protection for indigenous communities, where formal regulations tend to favor HGB holders or national defense interests.

The impact of regulatory disharmony is evident in the management of natural resources. Land controlled by HGB holders often experiences excessive resource exploitation without considering ecosystem sustainability. In addition, defense policies that designate certain areas as strategic zones often limit indigenous communities' access to natural resources, which are their sources of livelihood. This not only affects the social and economic aspects of indigenous communities but also poses potential environmental damage due to uncontrolled exploitation.

In the context of the role of customary law, this research found that indigenous communities have land management mechanisms based on local wisdom and sustainability principles. This system is essentially more environmentally friendly compared to land ownership systems based on HGB permits, which are more oriented toward economic gains. However, the weakness of customary law in dealing with formal regulations becomes a major obstacle in defending indigenous rights. Many indigenous communities face difficulties in obtaining legal recognition of the land they have managed for years. Some communities have pursued legal and advocacy avenues to defend their rights, but often with unfavorable outcomes due to their weak legal position in the national land system.

Obstacles in policy integration are also an important finding in this research. The lack of legal recognition of indigenous peoples' customary rights causes HGB regulations and defense policies to often ignore social and cultural aspects in land management. In addition, weak coordination between government agencies responsible for land, defense, and environmental affairs further aggravates the situation. Policies are often sectoral in nature without considering their impact on indigenous communities. The lack of indigenous community involvement in policy formulation is also a major factor exacerbating the imbalance in natural resource management.

As a solution, this research proposes several regulatory harmonization strategies. One step that needs to be taken is to revise the HGB policy to be more inclusive of indigenous rights, for example, by providing legal protection mechanisms for indigenous peoples to obtain lawful land ownership. In addition, effective mediation and land conflict resolution mechanisms are needed between HGB holders, the government, and indigenous communities. The government also needs to develop defense policies that consider social and environmental aspects in the use of strategic land, so that a balance between national interests and indigenous rights can be achieved. Finally, increasing the involvement of indigenous communities in policy formulation is crucial so that the resulting policies can be fairer and more sustainable in the long run.

Thus, this research emphasizes that harmonization between HGB regulations, defense policies, and customary law is an urgent need to create a fairer and more sustainable natural resource management system. Without more inclusive policy reforms, land conflicts will continue and potentially worsen social, economic, and environmental conditions in various regions of Indonesia.

DISCUSSION

The findings of this research reveal a regulatory gap between Building Use Rights (HGB) and the protection of indigenous rights in land and natural resource management. HGB regulations are more oriented toward legal certainty for permit holders, who are generally investors or corporations, while customary law is based on communal rights inherited over generations within indigenous communities. This paradigm difference causes conflicts, where state regulations do not fully accommodate indigenous interests in land ownership and management. Moreover, this disharmony also results in legal

uncertainty, where indigenous communities often lose their land rights because they lack formal certification recognized by the state.

In relation to defense policies, the designation of national strategic areas often conflicts with HGB ownership rights and indigenous communities' access to natural resources. Several areas designated as defense or national strategic zones result in eviction or restricted access for communities that had previously managed the land. This demonstrates the significant challenge for the government in balancing national defense interests with indigenous rights. The case studies analyzed show that land conflicts due to defense policies often lead to social tensions and prolonged legal disputes among indigenous communities, HGB holders, and the government. Therefore, more flexible and inclusive regulations are needed to accommodate indigenous communal rights within the context of national defense.

Additionally, this research compares the management models of natural resources based on customary law and state regulations. Customary law generally has stronger sustainability principles, as indigenous communities manage natural resources with an emphasis on ecological balance and the welfare of future generations. Meanwhile, state regulatory systems often prioritize short-term economic interests through natural resource exploitation. Several regions in Indonesia have successfully harmonized these two systems by recognizing communal rights through local regulations or partnership schemes between indigenous communities and the government in natural resource management. However, the main challenges in implementing this approach are limited legal recognition and weak government support to strengthen customary law's position in the national land system.

Institutional and bureaucratic factors are the main barriers to implementing regulations that favor indigenous communities. Poor coordination among government agencies in formulating land policies results in overlapping regulations that harm indigenous communities. Moreover, the lack of socialization regarding indigenous rights in the national land system leads to low legal awareness among indigenous communities themselves. Many indigenous communities lack access to legal assistance or sufficient resources to fight for their rights through legal channels. On the other hand, the government still faces challenges in balancing investor interests, HGB holders, and the protection of indigenous communal rights. Therefore, institutional and policy reforms are needed to make the land system more inclusive of various interests.

As a solution, this research proposes several alignment strategies for HGB regulations, defense policies, and customary law. First, policy revisions that accommodate indigenous communal rights are needed, both through strengthening regulations at the national level and more inclusive local policies. Second, strengthening mediation mechanisms in land conflict resolution is crucial to prevent the escalation of disputes that harm all parties. Third, increasing indigenous community participation in land policy formulation can be a strategic step to ensure that regulations benefit not only HGB holders or defense interests but also protect indigenous rights. Lastly, strengthening the role of customary law in the national land system can be a sustainable solution in creating fairer and more balanced natural resource management policies.

With more inclusive policy harmonization, it is hoped that land conflicts can be minimized and the interests of all parties can be accommodated more equitably. This research emphasizes that integrating state and customary law is a key factor in creating a sustainable land system that serves the broader interests of society.

CONCLUSIONS

This study shows that the regulation of Building Use Rights (HGB), national defense policies, and customary law in natural resource management in Indonesia still face challenges in achieving sustainable harmony. The imbalance in legal recognition of indigenous land rights often triggers land conflicts and negatively impacts the lives of indigenous communities, especially in resource-rich areas. Defense policies that frequently disregard the existence of indigenous communities also lead to the neglect of customary rights and traditional resource management practices. Therefore, a holistic approach is needed, integrating the recognition of indigenous rights into national regulations, enhancing coordination between the government and local communities, and implementing participatory land-use planning. These harmonization efforts are expected to create fair, sustainable, and balanced natural resource management that aligns with national development needs and the interests of indigenous communities.

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