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A Customary Law (Adat Recht) Study on the Impact of Defense Policy on the Management of Right to Build (HGB) in the Property Sector

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ABSTRACT

This study aims to normatively examine the impact of national defense policies on the existence and legal certainty of Building Use Rights (HGB) within the property sector, with a specific focus on areas overlapping with customary land. The establishment of strategic national zones by the government as part of defense planning frequently results in overlapping claims, legal ambiguity, and conflicts. These policies, while essential for national security, often disregard the socio-legal context of land ownership, particularly in regions inhabited or claimed by indigenous communities whose land tenure systems are rooted in customary law (adat). Through a statute approach, the research identifies significant disharmony among defense regulations, agrarian law, and laws recognizing indigenous peoples' rights. This legal fragmentation has resulted in inadequate protection for HGB holders and customary landowners, leading to heightened vulnerability, social tensions, and the systemic marginalization of local populations. Furthermore, the lack of inclusive consultation processes in defense-driven land designations exacerbates the problem. Thus, there is an urgent need for an integrated legal framework that harmonizes national defense objectives with land rights recognition and equitable development. Such reform should balance strategic interests, uphold the rule of law, and respect the rights of indigenous peoples to ensure sustainable and socially just land governance.
Keywords: *Building Use Rights (HGB), defense policy, customary law, agrarian conflict, agrarian law*

INTRODUCTION

Land holds a strategic position in national development, serving as a means of production, a place of residence, and an investment asset. In the Indonesian legal system, land ownership and utilization are systematically regulated under Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA). The UUPA introduces various types of land rights, one of which is the Right to Build (Hak Guna Bangunan/HGB), which grants individuals or legal entities the right to construct and own buildings on land that is not their property, for a specified period. HGB plays a crucial role in the property and housing sectors, especially in urban areas and economically strategic zones. However, in practice, the issuance and management of HGB often intersect with local social and legal realities, including the presence of customary (adat) land.

Indonesia is legally pluralistic, particularly in the context of land ownership. In addition to national laws codified in the UUPA, customary law (Adat Recht) continues to exist and is acknowledged, particularly in non-Java regions such as Papua, Kalimantan, Maluku, and Nusa Tenggara. Customary law governs land control and use based on communal principles and traditional values passed down through generations. The concept of *ulayat* rights, as part of customary law, grants indigenous communities legitimacy over specific territories, even if they do not possess formal land certificates issued by the state. Although Article 3 of the UUPA provides recognition of these rights,

the acknowledgment is conditional and limited, and often inconsistently implemented in agrarian policies.

In recent years, the Indonesian government has increasingly implemented strategic defense policies, including the designation of certain areas as military zones or national security zones. Such designations frequently encompass territories traditionally controlled by indigenous communities or areas already granted land rights to individuals or entities through HGB. In several cases, the development of defense infrastructure or strategic national interests has resulted in restrictions on land rights, including the revocation or denial of HGB extensions. This has led to potential conflicts between indigenous peoples, property developers, and the state as the authority in defense matters.

This situation creates a complex conflict of interest: on one hand, the state seeks to preserve sovereignty and national security; on the other hand, indigenous communities feel that their rights are neglected, while business actors face legal uncertainty in managing their property assets. Many cases have shown that the absence of a clear mechanism for harmonizing defense interests, customary legal recognition, and HGB management is a primary source of social and legal disputes. Some of these disputes have escalated into court cases, indigenous protests, or stalled investments in areas affected by defense policies. Such conflicts are exacerbated by the lack of synchronization between land regulations, customary law, and defense-related policies. In certain technical regulations, for instance, there is no clarity on how to treat HGB land located within areas newly designated as defense zones. Additionally, indigenous communities that have historically inhabited these lands but lack formal state recognition are easily marginalized in development planning processes.

Amid these overlapping and uncoordinated legal frameworks, an in-depth and systematic legal study is urgently needed to examine the position of customary law (*Adat Recht*) within the context of HGB management affected by defense policies. This study is essential to understand the extent to which customary law can operate within the national legal system and how state law can protect and accommodate indigenous communities without disregarding strategic defense interests. Through a normative legal approach, this research will analyze applicable legal norms, including legislation, legal principles, and doctrines, in an effort to identify a meeting point between customary interests, legal certainty for HGB holders, and national defense priorities.

This study aims to analyze, from a normative juridical perspective, the position of customary law (*Adat Recht*) in the context of managing Right to Build (HGB) lands affected by national defense policies. Through a statutory and doctrinal approach, the research seeks to explore the extent to which recognition and protection of indigenous *ulayat* rights are accommodated within the national agrarian legal system, particularly when they intersect with strategic defense interests. Furthermore, this study aims to examine potential disharmony between defense policies, agrarian law, and customary law, and to offer a normative framework for fair and sustainable legal solutions for all involved parties, including the state, indigenous communities, and property sector actors. Thus, the findings of this research are expected to provide valuable input for policymakers in drafting regulations that align with the principles of justice, legal certainty, and respect for Indonesia's legal pluralism.

METHODS

This research is a normative legal study, which is a type of research that focuses on the study of legal norms as written in statutory regulations, legal principles, and legal doctrines. A normative approach is used because this study does not aim to explore

empirical facts in the field, but rather to examine and analyze the applicable legal provisions regarding the Right to Build (Hak Guna Bangunan/HGB), customary law (Adat Recht), and national defense policy in the context of land and property management. Law in this research is positioned as an autonomous system of norms, which must be examined based on the structure, principles, and hierarchy of legal norms in a systematic manner.

The approach used in this research is the statute approach, which is considered highly relevant for examining the applicability and interrelation between various statutory regulations that govern the object of the study. This research analyzes several key legal instruments directly related to the topic, including Law Number 5 of 1960 on Basic Agrarian Principles (UUPA), which serves as the legal foundation for regulating land rights, particularly the Right to Build. In addition, the researcher also examines Law Number 3 of 2002 on State Defense, which forms the basis for defense policy formulation, including the designation of strategic defense zones that frequently affect the legal status and management of land. Other analyzed regulations include government regulations, ministerial regulations, and other legal products that regulate customary land, defense, and the property sector.

Through this statute-based approach, the researcher seeks to examine the extent to which the synchronization of legal norms across these regulations can guarantee legal certainty for HGB holders in areas also claimed as customary territories or designated as defense zones. Furthermore, this approach is also used to identify potential norm disharmony, overlapping authorities, or legal loopholes that may lead to conflict between the state, indigenous communities, and business actors. By focusing on the normative aspects, this research emphasizes juridical reasoning on how legal rules should be formulated and applied fairly and proportionately amid various intersecting interests.

Legal materials were collected through library research, by accessing and reviewing various sources of law categorized as primary, secondary, and tertiary legal materials. Primary legal materials include all relevant statutory regulations. Meanwhile, secondary legal materials comprise legal literature, academic journal articles, previous research findings, and expert opinions related to the legal issues being studied. Tertiary legal materials such as legal dictionaries or legal encyclopedias are used as supporting references to clarify the meaning or use of certain legal terms in the analysis.

The data analysis technique in this research is conducted qualitatively, by interpreting the legal norms obtained and then analyzing them systematically and critically based on the principles of justice, legal certainty, and utility. The analysis is aimed at formulating an ideal legal construction, as well as constructing logical and structured legal arguments to answer the research questions previously formulated. With this approach, the research is expected to provide a comprehensive normative overview of the position of customary law in the management of HGB within the context of national defense policy, and to offer appropriate juridical solutions to prevent and resolve emerging legal conflicts.

RESULTS AND DISCUSSION

To provide a more structured understanding of the normative analysis regarding the impact of defense policy on the management of the Right to Build (HGB), this section presents a series of tables that serve as supporting components of the legal analysis. These tables include a comparison of relevant legal instruments, a classification of land rights under the agrarian legal system, and selected case studies of conflicts involving defense interests and land tenure, including customary (ulayat) lands. The tabular presentation aims to clarify the interrelationship between legal norms, highlight

recurring patterns of conflict, and emphasize the urgency of cross-sector policy harmonization. It is important to note that the data presented are not quantitative in nature, but rather based on normative juridical approaches developed from legal literature reviews and relevant case analysis.

Table 1. Comparison of Legal Provisions Related to Land Rights and Defense Policy

No	Legal Instrument	Key Provisions	Relevance to HGB and Defense Policy
1	Basic Agrarian Law (Law No. 5/1960)	Governs land tenure in Indonesia, including HGB	Provides legal basis for granting HGB to individuals and entities
2	Law No. 3/2002 on State Defense	Grants state authority to designate strategic defense areas	May override land rights, including HGB, for national security
3	Law No. 23/2014 on Local Government	Delegates authority to regions including spatial planning	Regional policies must align with national defense priorities
4	Constitutional Article 18B (2)	Recognizes traditional rights of indigenous peoples	Supports protection of customary (ulayat) land

Source : Author's Data Ananlysis 2025

The comparison of legal instruments in Table 1 illustrates the normative tension between land rights and national defense policies in Indonesia. The Basic Agrarian Law (Law No. 5/1960) serves as the fundamental legal framework for land tenure, including the Right to Build (HGB). However, Law No. 3/2002 on State Defense grants the government the authority to establish strategic areas for defense purposes, which can override existing land rights such as HGB, particularly in zones deemed vital to national security. Additionally, the decentralization framework under Law No. 23/2014 gives local governments the power to regulate spatial planning, which sometimes conflicts with central defense policies. Moreover, the recognition of customary land under Article 18B of the Constitution underscores the state's obligation to protect indigenous land rights, yet in practice, these rights often clash with defense-related land use. This legal interplay reveals the need for regulatory harmonization to prevent normative overlaps and legal uncertainty.

Table 2. Classification of Land Rights under Indonesian Agrarian Law

No	Type of Land Right	Holder	Duration	Transferability	Notes
1	Right to Build (HGB)	Legal entity/person	Up to 30 years (extendable)	Yes	Often used for commercial property
2	Right of Ownership	Individual citizen	Unlimited	Yes	Strongest form of land tenure

No	Type of Land Right	Holder	Duration	Transferability	Notes
3	Right to Use (Hak Pakai)	Individual/entity	Varies (25 years or more)	Conditional	Often given for state/public use
4	Customary Land (Ulayat)	Indigenous groups	Inherited/communal	No	Recognized but rarely registered

Source : Author's Data Ananlysis 2025

Table 2 outlines the diversity of land rights under Indonesian agrarian law and highlights the legal disparities in tenure strength and protection. The Right to Build (HGB) is typically granted to individuals or legal entities for commercial or residential development, with a set duration and potential for extension. It is transferable, making it favorable for property investment. In contrast, the Right of Ownership provides the strongest legal status but is limited to individual citizens. The Right to Use (Hak Pakai) is more flexible but usually granted for specific, often public, purposes. Meanwhile, customary (ulayat) land rights are collective and based on traditional systems, often lacking formal registration. These customary rights, while recognized constitutionally, remain vulnerable when conflicting with formal rights such as HGB or when located in zones later designated for strategic defense. This classification underscores the structural imbalance in legal protection across different land tenure regimes, especially when facing state interventions.

Table 3. Selected Cases of Conflict between Defense Policy and Land Rights

No	Location	Type of Land Affected	Parties Involved	Nature of Conflict
1	Natuna Islands	Customary land	Indigenous community vs. TNI	Military base development vs. traditional territory
2	Jakarta (North)	HGB on reclaimed land	Private developers vs. Ministry of Defense	Strategic zoning for naval access vs. property rights
3	Papua Highlands	Ulayat and HGB mix	Local tribe, investors, TNI	Overlapping claims due to lack of integrated mapping

Source : Author's Data Ananlysis 2025

The selected conflict cases in Table 3 demonstrate real-world implications of overlapping land claims between defense policies and both formal and informal land rights. In the Natuna Islands, indigenous communities were displaced or restricted due to the expansion of military installations, despite long-standing customary claims. In North Jakarta, private developers holding HGB on reclaimed land faced policy reversals when the Ministry of Defense reasserted control for strategic maritime interests. Similarly, in Papua, conflicting claims emerged between indigenous tribes, business investors, and the military due to the absence of integrated spatial and legal mapping. These examples reflect not only the lack of legal certainty but also the failure to adequately accommodate participatory land governance. The cases emphasize the urgent need for integrated land-use planning, inclusive legal frameworks, and conflict resolution mechanisms that can balance state security interests with property rights and indigenous entitlements.

Position of HGB in the National Agrarian Legal System

The Right to Build (Hak Guna Bangunan, or HGB) is one of the individual land rights, granting its holder the authority to construct and own a building on land that does not belong to them. Under the Basic Agrarian Law (UUPA), HGB is characterized as a strong right but with a fixed term, limited to a maximum of 30 years and extendable up to 20 years. The state often grants HGB to entrepreneurs, property developers, and legal entities for commercial purposes. HGB plays a crucial role in developing Indonesia's property sector, as it provides legal foundation for land utilization without transferring ownership of state-owned land. However, the position of HGB also reflects its dependence on state policy, especially when land-use functions change or when an area is designated for public interest or national defense. In this context, the reallocation of land given HGB becomes possible, and the right-holder potentially faces unilateral revocation of their rights. Therefore, although HGB guarantees legal authority to use the land, it remains under the state's control and influenced by political dynamics and national strategy, including defense policy.

Recognition and Protection of Ulayat Rights in Positive Law

In the Indonesian national legal system, indigenous communal land rights (*hak ulayat*) are recognized, as stated in Article 3 of the UUPA. However, this recognition is conditional: communities must still exist, the recognition must align with societal development, and it must not conflict with national interest. The problem arises when claims to communal land lack administrative or legal force comparable to other land rights like HGB or Ownership Rights. Many indigenous communities lack formal legal proof because their customary systems are oral and undocumented. Consequently, *hak ulayat* is often disregarded during land permitting and allocation processes by the state, including allocation through HGB to third parties. This imbalance indicates that, in practice, the recognition of *hak ulayat* is insufficient to protect indigenous communities from dispossession or eviction, especially when intersecting with national strategic projects or military interests. Therefore, strengthening legal protection for indigenous communities is necessary either through formal ratification of the Indigenous Peoples Bill or via administrative recognition mechanisms based on active indigenous participation.

Impact of Defense Policy on the Legal Certainty of HGB

Indonesia's defense policy is grounded in Law No. 3 of 2002 on State Defense, which empowers the state to designate specific zones as part of the national defense and security system. When an area is designated as a strategic defense zone, all land-use activities, including property development, may be limited, suspended, or even revoked. This has direct implications on the legal certainty of existing HGB rights. In practice, property development in areas deemed sensitive or strategically significant is often rejected or canceled. Although the HGB holder has legal rights, these rights can be overridden by the national interest principle of *salus populi suprema lex esto* (the safety of the people is the supreme law). Unfortunately, there is no clear and equitable legal mechanism to resolve conflicts between HGB holders and defense policy. The lack of detailed provisions regarding compensation, renegotiation, and public participation in designating strategic zones creates uncertainty and potential significant losses for investors and affected communities. This demonstrates a weakness in legal certainty within the land system when intersecting with strategic state authority.

Implications of Overlapping Between HGB, Customary Land, and Defense Interests

Agrarian conflicts involving customary land, HGB, and defense policy are not merely juridical; they reflect social, political, and cultural tensions. In many instances, the state grants HGB to developers over land culturally recognized by indigenous communities as

their territorial domain (*ulayat*). When these same lands are later designated as strategic defense zones, legal disorder arises because three actors assert legitimacy: indigenous communities under customary law, HGB holders under formal law, and the state under its constitutional defense mandate. Regulatory disharmony is the root cause of this overlap. There is no integration between customary land data, defense zone maps, and land registration systems managed by the National Land Agency (BPN). Weak interagency coordination and difference in paradigms between security approaches and land rights further exacerbate the situation. Therefore, the state needs to establish an integrated information system and develop cross-sector forums to effectively address these conflicts.

Urgency of Legal Harmonization and Authority Restructuring

The misalignment between agrarian, defense, and indigenous rights regulations underscores the need for comprehensive legal harmonization. Currently, each sector operates under its own regulations and authority, increasing the likelihood of conflicts. The Ministry of Agrarian Affairs (ATR/BPN) regulates permits and land certification; the Ministry of Defense designates strategic defense zones without involving local stakeholders; and local governments lack adequate authority to protect indigenous territories. Harmonization is not only about aligning legal texts but also involves restructuring authority to prevent overlap. Developing a grand design for national spatial management that safeguards customary territories while facilitating strategic national projects is urgent. In this context, strengthening the legal framework such as issuing government regulations on strategic defense spatial planning and enforceable customary land protection regulations is necessary as part of comprehensive land law reform.

Legal Reconstruction of HGB Management Based on Adat Recht and National Interests

A normative approach to this issue calls for legal reconstruction that bridges state interests and protection of indigenous rights. Reconstruction does not mean rejecting strategic defense policy; rather, it seeks to adapt it in a way that respects the basic rights of communities that have inhabited areas for generations. One approach is to require social audits and customary law assessments before granting HGB or designating defense zones. Moreover, there is a need for legal models that allow the *co-existence* of indigenous land and defense use through participatory frameworks, such as community-based land management or co-management schemes. This is where the state should act as a facilitator, not a dominator. Legal reform must embody restorative justice by acknowledging historical land tenure, cultural values, and development needs. With this approach, the law does not only serve as a formal regulator but also creates substantive justice amid complex inter-actor relations.

Normative Conflict Between State Interest and the Legal Certainty of HGB

The normative conflict between state interests and the legal certainty of HGB holders arises due to the overlap of statutory norms that guarantee individual land rights and the state's authority to establish strategic policies especially in defense. Legally, HGB is protected under UUPA and its implementing regulations, granting corporate or individual holders the right to use land for a specific period. However, in reality, this right is not absolute and can be revoked for public interests, including national defense. Problems emerge when such revocation lacks fair, transparent, and accountable procedures. HGB holders often do not receive adequate compensation or due process during land expropriation. Within a legal-state framework, this generates legal uncertainty and a violation of land rights protection principles. Therefore, it is essential for the state to balance its strategic powers and individual rights by establishing clear, proportional legal mechanisms addressing the impact of defense policy on land rights.

Lack of Cross-Sector Regulatory Synchronization

One root cause of agrarian conflict in Indonesia is the absence of coordinated regulations among sectors with authority over land. Agrarian, defense, and customary laws operate within their own corridors without comprehensive integration. The ATR/BPN does not always coordinate with the Defense Ministry when designating national strategic zones, and vice versa. On the other hand, indigenous land rights are viewed as separate from the formal legal system, preventing full integration into permitting or HGB issuance processes. As a result, permits are often granted on land that remains socially and culturally contested. This lack of synchronization creates legal disorder and heightens the risk of conflict. Resolving this issue requires binding cross-sector regulations and establishing a national legal coordination system supported by spatial, administrative, and juridical data integration.

CONCLUSIONS

Based on the results of the normative study conducted, it can be concluded that national defense policies that designate certain areas as strategic zones often have significant impacts on the ownership and management of the Right to Build (HGB), particularly in the property sector. The lack of synchronization between defense, agrarian, and indigenous rights regulations leads to legal uncertainty that disadvantages rights holders, including indigenous communities whose customary territories are affected by state policies. The designation of defense areas without participatory and transparent mechanisms results in overlapping interests, social conflict, and the neglect of agrarian justice principles. On the other hand, the weak legal protection of the collective rights of indigenous peoples reflects the limited reach of the national legal system in addressing social realities at the local level. Therefore, legal and policy reforms are needed, emphasizing cross-sectoral regulatory harmonization, the strengthening of the legal status of indigenous communities, and the establishment of fair, participatory, and substantively just conflict resolution mechanisms.

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