

Legal Urgency Regarding Efforts To Regain Rights To Land Taken From The Government Based On The Basic Agrarian Law

Anak Agung Kompiang Gede ^{1*}, Faisal Santiago ²

^{1,2} Universitas Borobudur, Indonesia

Email : aristokrat.bali18@gmail.com ¹, faisalsantiago@borobudur.ac.id ²

Abstract. *This study examines the role of the state in managing land as a natural resource controlled by the state, by the mandate of Article 33 Paragraph (3) of the 1945 Constitution and Article 2 Paragraph (2) of the UUPA, which emphasizes the use of land for the prosperity of the people. Through the social function of land contained in Article 6 of the UUPA, land is viewed as the right of individuals or legal entities and must benefit the wider community. The land reclamation process, as one of the state's efforts to return or transfer control of misused land, is key to ensuring fair and sustainable management. This study also highlights the importance of state authority in regulating the use and distribution of land to prevent monopolies and maintain public welfare through agrarian policies that favor the public interest.*

Keywords: *Agrarian Law, Basic Agrarian Law, Reclamation, Land Rights.*

1 Introduction

Land disputes in Indonesia are a long-standing legal and social issue that often triggers tension between various parties, such as communities, companies, and the government (Anastasia et al., 2024). This conflict arises due to differences in claims to land ownership, whether on customary land, state land, or land managed by companies. Overlapping land rights often occurs due to weak land administration systems, lack of socialization of agrarian law, and uncoordinated land management policies (Guntur, 2024). This has led to many cases where Indigenous people or communities feel that the land they have controlled and managed for generations has been taken over by other parties without a clear legal process.

The negative impacts of land disputes are very broad and affect various sectors of life. Economically, land disputes can hinder investment and development, because investors are reluctant to invest in areas prone to conflict (Wirawan, 2020). Socially, communities involved in land disputes often experience legal uncertainty which impacts their welfare, including loss of livelihoods and rights to housing (Legiman et al., 2025). In addition, this land conflict also has the potential to cause tension between community groups which could trigger riots (Leylana & Sarjito, 2024). From a political perspective, land disputes are a sensitive issue and can affect social stability because the government is considered unable to carry out its supervisory and law enforcement functions effectively. Thus, resolving land disputes is urgent to maintain social balance and advance equitable development.

The history of land disputes in Indonesia began during the colonial era when the colonial land policy implemented by the Dutch government caused a separation between land controlled by the state and land controlled by the community (Arisaputra & Mardiah, 2019). At that time, many lands that originally belonged to indigenous peoples were taken over for colonial interests without fair compensation. After independence, land disputes continued due to agrarian policies that did not fully accommodate the rights of indigenous and local communities. The Basic Agrarian Law, which was passed in 1960, aimed to regulate land use more fairly, but in practice, the implementation of the law still encountered obstacles, one of which was the unclear status of the land which caused conflict (Andri, 2024).

Overlapping land ownership is often a major source of disputes in Indonesia. This problem occurs when more than one party has a claim to the same land, be it Indigenous people who have long managed the land, companies that obtain rights through government permits, or the government that claims it as state land (Astriani & Indrawati, 2024). Many cases show that indigenous communities who have controlled land for centuries often do not have legal proof of their ownership, while companies or governments can obtain rights to the land through administrative processes that are often not transparent (Ramli et al., 2024).

In the management of natural resources, the Indonesian state has a critical function as the highest authority over land and space, by the provisions of Article 33 of the 1945 Constitution and Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter UUPA). The state has the authority to regulate and manage the use of natural resources, including land, for the welfare of the people (Sari, 2021). However, even though the state has such authority, in many cases, land management by the state worsens the conflict due to the lack of coordination between the central government, regional governments, and communities. For example, licensing policies issued by the government often do not consider the rights of local communities, which then triggers disputes between communities and companies or other parties who have rights to the land (Pamungkas et al., 2025).

Land reclaiming is an action taken to regain rights to land that has previously been controlled by the government or another party (Astuti, 2011), which in some cases, the land has been misused or converted without regard to the rights of the local community. The main purpose of land reclaiming is to protect the rights of communities who have long controlled the land according to customary law or based on valid legal provisions (Bachriadi, 2010). Land reclaiming also aims to re-regulate the use of land not by its designation, ensure that land is managed fairly and provides maximum benefits to the community, and avoid land monopolies that can harm the wider community.

Land reclaiming actions have great urgency to the provisions of the UUPA. Article 13 of this law states that the government must regulate land use to improve the prosperity of the people and prevent monopolies in land management that can harm the community (Pinontoan & Muaja, 2024). Land reclaiming is important to ensure sustainable and fair land management as well as to provide legal certainty for communities that have legally controlled land according to customary law or other provisions. Thus, this step is part of the government's efforts to achieve the goal of people's welfare and avoid inequality in the distribution of natural resources.

The government's authority in controlling land in Indonesia is regulated in Article 2 of the UUPA. This article emphasizes that the state has the right to control the earth, water, and space, as well as the natural resources contained therein (Kunu, 2012). This authority gives the state the authority to regulate and manage land use systematically and sustainably. The government is tasked with determining land use and regulating legal relations between individuals and land, as well as ensuring that land use is carried out for the greatest prosperity of the people (Rompas, 2024). In this case, the state has a responsibility to prevent land monopolies that can harm the community and ensure fair land distribution.

However, the implementation of land reclamation often encounters various obstacles, both administrative, political, and social. Administratively, there are problems related to inaccurate land data, overlapping ownership, and difficulties in proving legitimate land claims. On the political side, uncoordinated government policies can cause inconsistencies between central and regional policies, which hinders the reclamation process. Socially, there is resistance from various parties who feel disadvantaged, such as companies that have controlled the land or communities that feel they have not received the rights to the land they have controlled for a long time. These problems are major challenges in the implementation of fair land reclamation and under applicable laws and regulations.

Legal protection provided by the government to communities who carry out land reclamation is significant in maintaining their rights to land that is legitimate according to the law. The government provides legal guarantees through various mechanisms, such as resolving land disputes through authorized institutions, as well as providing access to communities to submit their land claims to the courts or related institutions (Koeswahyono & Maharani, 2022). The state also ensures that every land reclaiming action is performed under relevant procedures and involves a transparent process. It aims to protect the community from potential abuse or arbitrary actions by other parties who illegally control the land, as well as provide guarantees for land rights that have been legally recognized and recorded.

Government policies in land management must support community rights to land by ensuring fair and equitable distribution (Maulana & Hutagalung, 2025). The government must have an obligation to prevent abuse of land rights, including land monopolization by certain parties that can harm the interests of the community. One step that can be taken is to optimize the use of existing land and avoid land use practices that are not following their designation. In addition, the government also needs to implement policies that support the granting of land rights to people who are entitled, including groups that have been marginalized from the land distribution process (Jumali, 2024). In this case, clear and coordinated policies between the central and regional governments are essential for land management to run effectively and fairly.

This research is essential regarding agrarian law in Indonesia, especially to understand the legal urgency related to efforts to regain land rights that have been taken by the government under the provisions of the UUPA. Through this research, it is hoped that a deeper understanding can be obtained regarding the legal procedures and mechanisms that must be taken by the community in reclaiming their legitimate land rights, as well as the legal protection provided by the government in the land reclamation process. The relevance of this research also lies in its contribution to improving land dispute management and resolution policies in Indonesia by providing recommendations to improve legal protection and optimize land management fairly and sustainably, considering that there are still many problems of overlapping ownership and abuse of land rights that occur in the community.

2 Method

This study uses a normative legal method with a statutory and conceptual approach. The statutory approach is used to analyze the legal norms contained in the UUPA and other related regulations to understand how the law regulates land ownership and management in Indonesia. Meanwhile, the conceptual approach is used to explore the legal concepts underlying the protection of land rights and the implementation of land reclamation, as well as to provide an understanding of the relationship between legal norms and government policies related to land disputes and management. This method is expected to provide a comprehensive picture of the urgency of land reclamation law and legal protection for the community involved in the process.

3 Result and Discussion

Legal Urgency Regarding Efforts to Regain Land Rights Taken from the Government Based on the Basic Agrarian Law Based on the Basic Agrarian Law

Article 33 Paragraph (3) of the 1945 Constitution states that "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This underlines the state's role as the leading manager of natural resources, including land, which should provide the greatest possible benefits for the welfare of the community. Land as part of the natural resources controlled by the state cannot be viewed as a resource owned only by certain individuals or groups but must be used for the public interest (Mandey, 2022). In this framework, the state is responsible for land management to ensure that land is managed fairly and sustainably and benefits the people for economic, social development, and general welfare.

The constitutional implication of Article 33 Paragraph (3) of the 1945 Constitution is that every land management policy must pay attention to the principles of social justice and the prosperity of the people (Arizona, 2011). Land management by the state cannot be carried out solely for the benefit of a handful of parties but must prioritize the welfare of the wider community. Therefore, every effort to transfer, control, or manage land must be carried out to provide maximum benefits for the people. This article also serves as the legal basis for various agrarian policies, such as granting land rights to individuals or legal entities, which are expected to encourage more equitable and sustainable development.

Land reclaiming is an effort to regain legal land rights, whether the land has been controlled by another party without a clear legal basis or land that was previously used not following its intended usefulness. Article 33 Paragraph (3) of the 1945 Constitution, land reclamation can be understood as a step to ensure that land management is carried out fairly and in favor of the people. Land reclaiming can also be a tool to return land that was previously misused or controlled by irresponsible parties so that the land can be used for the prosperity of the people.

The role of the state in ensuring that land controlled by the state or other parties can be used for the benefit of the community is very important in the land reclamation process. The state is not only responsible for managing land but also for protecting the community's rights to the land they legally control. In this case, land reclamation is not only about regaining land rights but also about reorganizing more equitable land use. Land reclaiming is the state's responsibility to ensure that land is used for purposes that are by the principle of people's prosperity, as mandated in the 1945 Constitution.

Article 6 of the UUPA states that land rights in Indonesia are not only individual rights but must also pay attention to the social function of the land. The social function of land requires land rights owners to use the land following the public interest and public welfare. It means that even though a person or legal entity has land rights, their use must not harm the wider community or conflict with social interests. The land owned must be used for purposes that can benefit the community, such as for agriculture, housing, or public infrastructure development.

The social function of land also prioritizes the principle of social justice in land management, which aims to prevent misuse or concentration of land control in the hands of a handful of parties. Therefore, although land rights are legitimate rights protected by the state, their use must still consider the needs and welfare of the community. This social function is the basis for the state to regulate land use in various agrarian policies, as well as to prevent monopolies or abuse of land rights that can harm other parties or the community as a whole.

The application of the social function of land in the land reclamation process is very important to ensure that the management of land that is reclaimed by the community can provide benefits to the wider community. Land reclaiming is not only about regaining land rights but also about ensuring that the contested or reclaimed land can be used for public and social interests. In this case, the social function of the land influences decisions in the land reclamation process, where the government and community must consider whether the land will be used for greater interests, such as infrastructure development, agriculture, or housing for people in need.

The government must ensure that the land is managed under the principle of social function. If the reclaimed land was previously used for the benefit of individuals or companies without considering the needs of the community, then the land reclamation step becomes important to return the land to the community in a fairer manner. In dealing with conflicts related to land use, the implementation of the social function of land requires the state to balance the interests of various parties, ensuring that land that is controlled or reacquired can be used to advance the prosperity of the people, as regulated in the UUPA. Thus, the social function of land provides a legal framework that allows land to be used for the benefit of the wider community, reduces conflict, and ensures fair and sustainable land management.

Article 2 Paragraph (2) of the UUPA stipulates that land in Indonesia is controlled by the state, which means that the state has the right to manage and regulate land use for the public interest. This concept of "state control rights" is a legal basis that ensures that land is not only owned by individuals or legal entities but must be managed with the principle of public interest.

The state functions as the main regulator in terms of land control and allocation, which aims to ensure that land is used efficiently and fairly. This state's right to control also means that the state has the authority to establish policies that regulate the use, distribution, and management of land, as well as prevent misuse of land rights that can harm the community or lead to monopolistic practices.

The state's responsibility in regulating and managing land for the public interest is not only limited to administrative supervision but also includes protective measures for communities that have land rights. The state is obliged to ensure that land use is in line to improve people's welfare, and in the event of a land dispute, the state acts as a liaison to resolve the conflict through applicable legal mechanisms. This article is the basis for the state to establish agrarian policies that favor social welfare, regulate more equitable land distribution, and avoid inequality in land control.

The implementation of the state's authority to control land to protect people's rights can be seen in the land reclamation process, namely the state's efforts to return land rights that were previously controlled by other parties. The state has an important role in ensuring that land controlled or reclaimed for a specific purpose is not misused by individuals or legal entities, and is reused for the benefit of the community. In the land reclamation process, the state uses the right to control land to regulate land distribution, ensure its use for entitled communities, and prevent misuse of land ownership rights by certain parties.

The role of the state in resolving land disputes through the land reclamation mechanism is very crucial, especially when land rights are questioned or contested by various parties. The state is responsible for providing a fair legal path in resolving disputes, through appropriate administrative or court arrangements. By applying this state authority, the state not only protects the legitimate rights of the community to land but also safeguards broader social interests. The state must ensure that reclaimed land can be used to advance the prosperity of the people, and avoid land domination or concentration that is detrimental to many parties, especially communities that need access to land for settlement, agriculture, and economic development.

Legal Protection Against Efforts to Regain Land Rights by the Government

The government has clear authority to control and manage land based on Article 2 Paragraph (2) of the UUPA, which stipulates that land in Indonesia is controlled by the state for the public interest. Article 6 of the UUPA. The main objective of the state's land management policy is to support the welfare of the people, shared prosperity, and social justice, by ensuring that land is used by its social function. The state is responsible for regulating,

allocating, and distributing land fairly, so that it can provide equitable benefits to the community and avoid monopolistic practices or abuse of land rights.

The government also plays an important role in protecting the legitimate rights of the community to land, so that the land is not misused or controlled by unauthorized parties. Within the framework of the UUPA, the government is obliged to maintain and protect land rights from abuse that can harm the community or threaten the public interest. This protection includes supervision of land use and the implementation of policies that ensure that land is used under relevant legal provisions, as well as for broader social interests.

The government, as an institution that has the authority to manage land in Indonesia, is also responsible for handling land disputes that arise in the community. The state has an important role in resolving these disputes through applicable legal mechanisms, both through judicial and administrative mechanisms. The land justice system, such as the district court and the National Land Agency (BPN), plays a key role in resolving disputes involving land claims. This process aims to ensure legal certainty and justice for all parties involved, by applicable agrarian law principles.

Settlement of land disputes, especially those related to land reclamation, involves an active role of the government in ensuring that the land managed and re-occupied is not only in the interests of the state, but also in the interests of the entitled community. In this case, the government must carefully identify the disputed land ownership claims and take steps to resolve the conflict fairly. Land reclamation efforts must be carried out by paying attention to the rights of the community, and ensuring that the decisions taken do not harm the party that has the right to the land.

The land reclamation procedure in Indonesia, based on the provisions of the UUPA, requires several legal steps that must be followed by individuals or communities who wish to reclaim rights to land previously controlled by other parties. This procedure begins with the submission of an application to the authorized agency, such as the National Land Agency (BPN), by attaching evidence supporting the claim to the land. The applicant must apply to clear administrative and legal channels, which may involve the process of verifying and researching the land involved. In addition, this mechanism also regulates the time and provisions for providing an opportunity for other parties who may have claims to the land to provide responses or objections.

In the land reclamation process, the law protects parties carrying out the reclamation. This includes guarantees that legitimate rights to the land remain protected throughout the procedure, and that parties submitting the reclamation will receive justice based on valid

evidence and arguments. The government must ensure that this process is carried out fairly and transparently and that there is no misuse or manipulation of data that could harm legitimate parties. This legal protection includes the right to obtain decisions by applicable regulations, as well as the right to receive compensation if errors occur in the process.

The government has a major responsibility in supervising and ensuring that the land reclamation procedure is carried out by applicable laws. This supervision is critical to prevent abuse of authority or deviations that could harm the community or parties entitled to the land. The government acts as a facilitator in the land reclamation process by ensuring that every step is carried out under applicable laws, as stated in the UUPA. In this case, the government not only functions as a regulator but also as a protector of community rights by ensuring that the land reclamation procedure continues to run fairly and transparently.

4 Conclusion

Article 33 Paragraph (3) of the 1945 Constitution, Article 6 of the UUPA, and Article 2 Paragraph (2) of the UUPA emphasize that land as a natural resource controlled by the state must be managed with the principle of social justice and for the prosperity of the people. The state must regulate land use by the public interest, avoid misuse of land rights, and ensure that land is utilized fairly and sustainably. Land reclaiming is one way to ensure land management by social functions, where the state plays a critical role in restoring land rights that are misused or contested while maintaining the welfare of the community at large. Thus, land management and transfer must always be oriented towards the welfare of the people and avoid monopolies or inequality in land ownership.

The Indonesian government has clear authority to control, manage, and regulate land for the public interest, with the main objective of supporting the welfare of the people, shared prosperity, and social justice by the principle of the social function of the land. In this case, the government is responsible for protecting the rights of the community to land, resolving disputes that arise, and ensuring that the land reclamation process is carried out fairly and under applicable laws. Careful oversight of land reclamation procedures is essential to prevent abuse and ensure that community rights remain protected, with the government acting as a facilitator and protector of the public interest.

REFERENCES

- Anastasia, S., Nurohman, R., Zaidan, D. T. N., & Mubarok, A. (2024). Implikasi Hukum Agraria terhadap Konflik Pertanahan Indonesia. *Arus Jurnal Sosial Dan Humaniora*, 4(2), 545–553.
- Andri, G. (2024). Rekontruksi Hukum Agraria Pasca Amandemen Undang-Undnag Dasar 1945 Guna Menunjang Otonomi Daerah. *Mauriduna: Journal of Islamic Studies*, 5(5), 599–613.
- Arisaputra, M. I., & Mardiah, S. W. A. (2019). Kedudukan Hukum Tanah Adat dalam Pengembangan Administrasi Pertanahan di Indonesia: Studi Komparatif. *Amanna Gappa*, 67–87.
- Arizona, Y. (2011). Perkembangan konstitusionalitas penguasaan negara atas sumber daya alam dalam putusan Mahkamah Konstitusi. *Jurnal Konstitusi*, 8(3), 257–314.
- Astriani, B. A., & Indrawati, S. (2024). *Sengketa Tanah dalam Perspektif Hukum Agraria di Indonesia*. Yayasan Tri Edukasi Ilmiah.
- Astuti, P. (2011). Kekerasan dalam konflik agraria: kegagalan negara dalam menciptakan keadilan di bidang pertanahan. *Forum*, 39(2), 52–60.
- Bachriadi, D. (2010). Refleksi Satu Dasawarsa Reformasi Dalam Perspektif Reforma Agraria. *A Reflection of One Decade of Reformation from Agriculture Reform Perspective) Jurnal Analisis Sosial*, 15(1), 10–73.
- Guntur, M. (2024). ANALISIS KEBIJAKAN KEPEMILIKAN HAK ATAS TANAH TUMPANG TINDIH DALAM PERSPEKTIF PERATURAN PEMERINTAH NO. 24 TAHUN 1997. *Indragiri Law Review*, 2(3), 32–38.
- Jumali, J. (2024). Pelaksanaan Redistribusi Tanah Objek Reforma Agraria (Tora) dalam Rangka Pembangunan Sumber Daya Alam Berkelanjutan untuk Kesejahteraan Masyarakat. *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat*, 3(12), 4780–4797. <https://doi.org/10.59141/comserva.v3i12.1273>
- Koeswahyono, I., & Maharani, D. P. (2022). Rasionalisasi pengadilan agraria di Indonesia sebagai solusi penyelesaian sengketa agraria berkeadilan. *Arena Hukum*, 15(1), 1–19.
- Kunu, A. B. D. (2012). Kedudukan Hak Menguasai Negara Atas Tanah. *Fiat Justisia: Jurnal Ilmu Hukum*, 6(1).
- Legiman, A. P. P., Farizqa, N. S., Niravita, A., & Fikri, A. H. (2025). Studi Kasus Sengketa antara Pemilik Tanah HGU dengan Masyarakat dan Upaya Perbaikan Pendaftaran Tanah di Wilayah Simongan. *JOURNAL SAINS STUDENT RESEARCH*, 3(1), 186–198.
- Leylana, N., & Sarjito, A. (2024). Dampak pemekaran daerah terhadap pertahanan negara: Studi undang-undang nomor 23 tahun 2014 tentang pemerintahan daerah. *Jurnal Terapan Pemerintahan Minangkabau*, 4(1), 29–45.

- Mandey, D. (2022). Perlindungan Hukum Hak Atas Tanah Terhadap Masyarakat Adat Minahasa Dalam Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum (Studi Kasus Gugatan No. 117/Pdt. G/2012/Pn. Btg). *LEX ADMINISTRATUM*, 10(6).
- Maulana, A., & Hutagalung, H. (2025). Reformasi pengelolaan tanah dalam sistem hukum agraria di Indonesia: Tantangan dan solusi untuk mewujudkan keadilan sosial dan keberlanjutan. *Jurnal Ilmu Multidisiplin*, 3(1), 245–256.
- Pamungkas, G. S., Hutaeruk, G. A., & Fathurrahman, R. (2025). Membedah Kebijakan Pemerintah: Strategi Menuntaskan Konflik Pertanahan Demi Keadilan yang Berkelanjutan. *JHIP-Jurnal Ilmiah Ilmu Pendidikan*, 8(1), 26–37.
- Pinontoan, E. S. G., & Muaja, H. S. (2024). PENGATURAN TANAH GUNTAI DAN HAK KEPEMILIKAN TANAH DI SULAWESI UTARA DAN AKIBAT HUKUMNYA DITINJAU DARI UNDANG-UNDANG NOMOR 5 TAHUN 1960. *LEX PRIVATUM*, 13(3).
- Ramli, D. H., Nobatonis, O. J., & Pello, H. F. (2024). Faktor Penyebab dan Mekanisme Penyelesaian Sengketa Tanah Warisan:(Studi Kasus: Kampung Ulayat Mbehal Menjerite, Kecamatan Boleng, Kabupaten Manggarai Barat). *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL*, 3(4), 205–221.
- Rompas, S. A. (2024). KAJIAN HUKUM SURAT KETERANGAN GARAPAN SEBAGAI BUKTI PENGELOLAAN DAN PENGUASAAN TANAH. *LEX PRIVATUM*, 13(5).
- Sari, N. L. A. (2021). Konsep hak menguasai negara terhadap tanah dalam hukum tanah (uupa) dan konstitusi. *Ganec Swara*, 15(1), 991–998.
- Wirawan, V. (2020). Sengketa Tanah Dan Konflik Tanah: Dampak Munculnya Mafia Tanah. *Jurnal Hukum Ius Publicum*, 1(I), 98–108.