

## The Dynamics of Land Ownership Rights under Indonesian Agrarian Law: Legal Certainty and the Challenges of Social Justice

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### Abstract

*Land ownership rights constitute the strongest, fullest, and hereditary form of land rights within the Indonesian agrarian legal system as regulated by Law Number 5 of 1960 concerning Basic Agrarian Principles (the Basic Agrarian Law). In practice, however, the regulation and implementation of land ownership rights have undergone significant dynamics influenced by regulatory developments, socio-economic conditions, and national land policies. Agrarian reform initiatives and sectoral regulatory changes are intended to promote legal certainty and equitable land distribution, yet they simultaneously give rise to complex legal issues, including agrarian conflicts, overlapping land titles, uncontrolled land conversion, and the proliferation of land mafia practices. This study aims to examine the legal position and characteristics of land ownership rights within Indonesian agrarian law, analyze the development of the regulatory framework governing such rights, and identify the principal challenges in achieving legal certainty and social justice for land rights holders. The research employs a normative juridical method using a statutory and conceptual approach, supported by a literature review of relevant legislation, scholarly books, and academic journals, with particular reference to the Basic Agrarian Law and Government Regulation Number 24 of 1997 on Land Registration. The findings indicate that although the existing legal framework is designed to provide legal protection and certainty through land registration mechanisms, its implementation remains constrained by institutional weaknesses and enforcement gaps. Accordingly, the study underscores the necessity of strengthening land administration systems, reforming agrarian regulations to respond to contemporary social and economic developments, and enhancing law enforcement to ensure that land ownership rights function not only as instruments of legal certainty but also as vehicles for social justice and sustainable development in Indonesia.*

**Keywords:** Land ownership rights; Agrarian; Agrarian law.

### Abstrak

Hak kepemilikan tanah merupakan bentuk hak atas tanah yang paling kuat, terpenuhi, dan turun-temurun dalam sistem hukum agraria Indonesia sebagaimana diatur dalam Undang-Undang Nomor 5 Tahun 1960 tentang Prinsip Pokok Agraria (Undang-Undang Pokok Agraria). Namun, dalam praktiknya, pengaturan dan implementasi hak kepemilikan tanah telah mengalami dinamika yang signifikan yang dipengaruhi oleh perkembangan regulasi, kondisi sosial ekonomi, dan kebijakan pertanahan nasional. Inisiatif reforma agraria dan perubahan peraturan sektoral dimaksudkan untuk mempromosikan kepastian hukum dan pemerataan lahan, namun secara bersamaan menimbulkan masalah hukum yang kompleks, termasuk konflik agraria, tumpang tindih sertifikat tanah, konversi tanah yang tidak terkendali, dan proliferasi praktik mafia tanah. Penelitian ini bertujuan untuk mengkaji posisi hukum dan karakteristik hak kepemilikan tanah dalam hukum agraria Indonesia, menganalisis perkembangan kerangka peraturan yang mengatur



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hak-hak tersebut, dan mengidentifikasi tantangan utama dalam mencapai kepastian hukum dan keadilan sosial bagi pemegang hak atas tanah. Penelitian ini menggunakan metode yuridis normatif dengan menggunakan pendekatan perundang-undangan dan konseptual, didukung oleh tinjauan literatur terhadap peraturan perundang-undangan yang relevan, buku ilmiah, dan jurnal akademik, dengan mengacu khusus pada Hukum Pokok Agraria dan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah. Temuan menunjukkan bahwa meskipun kerangka hukum yang ada dirancang untuk memberikan perlindungan dan kepastian hukum melalui mekanisme pendaftaran tanah, implementasinya tetap dibatasi oleh kelemahan kelembagaan dan kesenjangan penegakan hukum. Oleh karena itu, studi ini menggarisbawahi perlunya penguatan sistem administrasi pertanahan, mereformasi peraturan agraria untuk menanggapi perkembangan sosial dan ekonomi kontemporer, dan meningkatkan penegakan hukum untuk memastikan bahwa hak kepemilikan tanah berfungsi tidak hanya sebagai instrumen kepastian hukum tetapi juga sebagai kendaraan bagi keadilan sosial dan pembangunan berkelanjutan di Indonesia.

**Kata Kunci:** Hak kepemilikan tanah; Agraria; Hukum agraria.

## INTRODUCTION

In many facets of life, including social, economic, and legal ones, land is crucial. In terms of society, land has intrinsic historical and cultural significance in addition to being a place to live. Land ownership is often associated with a person's social status in a community, and is part of the identity of individuals and community groups.<sup>1</sup> In the economic aspect, land is the main production factor that supports various economic activities, including agriculture, industry, and infrastructure development (Djadjuli, 2018).<sup>2</sup> The availability and legal certainty of land ownership contribute to investment stability and national development. From a legal perspective, the regulation of land rights is a crucial part of creating legal certainty, preventing disputes, and ensuring justice in the distribution of agrarian resources.<sup>3</sup> Therefore, legal regulations regarding land, especially land ownership rights, are a fundamental aspect of the Indonesian agrarian legal system.

Land ownership rights are a fundamental aspect of the Indonesian agrarian legal system which has the highest legal standing.<sup>4</sup> Land ownership rights are regarded as hereditary, the strongest, and most comprehensive rights that an individual can acquire over a piece of land, as stated in Article 20 of the Basic Agrarian Law (UUPA) Number 5 of 1960. This privilege includes full authority to use, utilize, and transfer land to other parties, with certain conditions.<sup>5</sup> Transfer of ownership rights can be carried out in various ways, including through sale, grant, inheritance, or other forms of transfer of rights, provided that such actions do not violate applicable laws and regulations.<sup>6</sup>

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<sup>1</sup> Supriyono Supriyono et Putri Maha Dewi. Eksplorasi Filosofis Mengenai Dasar Pembuktian Hak Tanah Dalam Hukum Agraria Indonesia, *Journal of Innovation Research and Knowledge* 4, n° 4 (2024) : 2359-66.

<sup>2</sup> Didi Djadjuli. Peran pemerintah dalam pembangunan ekonomi daerah, *Dinamika: Jurnal Ilmiah Ilmu Administrasi Negara* 5, n° 2 (2018) : 8-21.

<sup>3</sup> Adrian Bimantara. Politik hukum pertanahan dalam upaya penyelesaian sengketa pertanahan di Indonesia, *Jurnal Cahaya Hukum Nusantara* 1, n° 1 (2025) : 1-10.

<sup>4</sup> Ir Anita Dewi Anggraeni Kolopaking et MH SH, *Penyelundupan Hukum Kepemilikan Hak Milik Atas Tanah di Indonesia* (Penerbit Alumni, 2021).

<sup>5</sup> Glorya Tesalonika Timpua. Sertifikat Hak Milik Atas Tanah Bagi Warga Negara Indonesia Berdasarkan Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, *Lex Crimen* 11, n° 3 (2022).

<sup>6</sup> Miftahul Khair Patahuddin. Pengaturan Terhadap Peralihan Hak Milik Atas Tanah Melalui Jual Beli Tanah Menurut Uu No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria, *Lex Administratum* 11, n° 1 (2023).

With a clear hierarchy of land rights, restrictions on legal subjects of property rights owners, and acquisition procedures that have been regulated in regulations, the agrarian legal system in Indonesia seeks to create legal certainty in land ownership.<sup>7</sup> However, in practice, there are still many challenges faced in the implementation of land ownership rights, such as agrarian conflicts, land registration problems, and land redistribution policies in the context of agrarian reform. Therefore, the study of land ownership rights in the Indonesian agrarian legal system is important to understand how land policy regulation and implementation can ensure justice, legal certainty, and public welfare.

## RESEARCH METHODS

The normative juridical technique, which focuses on the examination of relevant legal norms pertaining to land ownership rights within Indonesia's agricultural law system, is the research methodology employed in this study. Government Regulation Number 24 of 1997 pertaining to Land Registration and the Basic Agrarian Law (UUPA) Number 5 of 1960 are two examples of legislation and regulations pertaining to land ownership rights that are studied using this method, and other regulations that affect ownership and protection of land rights. In addition, this study also applies a statute approach that aims to understand and interpret various relevant legal provisions in the land context. In addition to the statutory approach, this study also uses a conceptual approach. It is carried out by analyzing the basic concepts in agrarian law, such as land ownership rights, legal certainty, and legal protection for landowners. The conceptual approach assists in understanding how the basic principles of agrarian law are applied in practice and how existing regulations can develop in response to emerging legal challenges. As a supporting analysis, this study also conducted a literature study of various secondary legal sources, such as academic journals, and books related to land ownership rights issues. With the combination of these approaches, this study is anticipated to offer a thorough comprehension of the dynamics of land ownership rights inside the agricultural law system of Indonesia, as well as contribute to the development of fairer and more sustainable land law policies.

## RESULTS AND DISCUSSION

### Position and Characteristics of Land Ownership Rights in the Indonesian Agrarian Legal System

In Indonesia, land ownership rights are at the top of the land rights hierarchy. According to Basic Agrarian Law (UUPA) Number 5 of 1960, Article 20, the strongest and most inherited ownership rights, and most complete land rights that can be owned by individuals or certain legal entities. In the hierarchy of land rights regulated in the UUPA, ownership rights occupy the highest position compared to other rights such as Cultivation Rights (HGU), Building Rights (HGB), and Usage Rights, because these rights do not have a specific time limit and give full authority to their holders, as long as their use does not conflict with the public interest and applicable legal provisions.<sup>8</sup> In addition, land ownership rights are also recognized in Article 4 of the UUPA, which states that land rights give the owner the authority to use, utilize, and take the proceeds from the land owned. However, this right must still pay attention to the social function of the land as regulated in Article 6 of the UUPA.

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<sup>7</sup> Indah Sari. Hak-hak atas tanah dalam sistem hukum pertanahan di Indonesia menurut Undang-Undang Pokok Agraria (UUPA), *Jurnal Mitra Manajemen* 9, n<sup>o</sup> 1 (2017). <https://journal.universitassuryadarma.ac.id/index.php/jmm/article/view/492>.

<sup>8</sup> Remy Artmando Gabriel Manoppo. Kajian Yuridis Sertifikat Tanah Sebagai Jaminan Dalam Perjanjian Kredit, *Lex Privatum* 9, n<sup>o</sup> 3 (2021).

Only Indonesian nationals and specific legal organizations chosen by the government are eligible to acquire land rights in Indonesia. The UUPA's Article 21 Paragraph 1 makes it clear that only Indonesian citizens are entitled to land rights, while legal entities can only obtain land rights if they have met the criteria set by the government through statutory regulations.<sup>9</sup> In addition, The transfer of land ownership rights to foreign nationals is forbidden by Article 26 of the UUPA. The land must be transferred to another eligible party within a maximum of one year if ownership rights are transferred to a party that does not fit the requirements as an owner. If the ownership rights are not transferred, the land will be controlled by the state.<sup>10</sup>

In accordance with Land Registration Regulation (PP) Number 24 of 1997, there are various ways to go about securing land ownership rights in Indonesia. Ownership rights can be obtained through purchase, grant, inheritance, exchange, or granting of rights by the state.<sup>11</sup> When it comes to state land, the government may decide to award ownership rights by following the guidelines outlined in the National Land Agency's Regulation of the Minister of Agrarian Affairs and Spatial Planning (ATR/BPN).<sup>12</sup> To obtain ownership rights to land, applicants must register their land with the local land office by attaching the necessary documents, such as proof of land acquisition, applicant identity, and other supporting documents. The land office will issue a certificate of ownership as evidence of legal ownership following measurements and a status check.<sup>13</sup> According to Articles 19 of the UUPA and 23 of the UUPA, this land registration is required to offer legal certainty UUPA which states that ownership rights to land must be registered to obtain strong legal protection.

### **Legal Problems and Regulatory Challenges in Regulating Land Ownership Rights in Indonesia**

Protection and recognition of land ownership rights are fundamental aspects of the Indonesian agrarian legal system. One of the main instruments in ensuring Land certification provides legal assurance of land ownership rights. Land certificates serve as legitimate evidence of title and offer owners legal defense against future disagreements or claims from third parties.<sup>14</sup> Article 19 of the Basic Agrarian Law (UUPA) Number 5 of 1960 states that in order to ensure the legal certainty of community members' land rights, the government must register land. National Land Agency-issued land certificates (BPN) have a strong legal force and are the legal basis for land transactions such as buying and selling, grants, or inheritances. Without certification, landowners are at risk of experiencing difficulties in proving their ownership rights if a dispute occurs.<sup>15</sup>

More specific rules on the land registration procedure are contained in Government Regulation (PP) Number 24 of 1997 Governing Land Registration. According to Article

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<sup>9</sup> Triana Rejekiningsih. Asas fungsi sosial hak atas tanah pada negara hukum (suatu tinjauan dari teori, yuridis dan penerapannya di indonesia) , *Yustisia* 5, n° 2 (2016) : 298-325.

<sup>10</sup> Ega Permatadani et Anang Dony Irawan. Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia , *Khatulistiwa Law Review* 2, n° 2 (2021) : 348-58.

<sup>11</sup> Radinal Abraham. Kajian Yuridis Peralihan Hak Milik Atas Tanah Dalam Perspektif Hukum Islam , *Lex Privatum* 5, n° 1 (2017).

<sup>12</sup> Mira Novana Ardani. Tantangan pelaksanaan kegiatan Pendaftaran Tanah Sistematis Lengkap dalam rangka mewujudkan pemberian kepastian hukum , *Gema Keadilan* 6, n° 3 (2019) : 268-86.

<sup>13</sup> Juosfiel Sadpri Pansariang. Proses dan syarat untuk memperoleh hak milik atas tanah di indonesia , *Lex Privatum* 2, n° 3 (2014).

<sup>14</sup> Rezeki Aldila Rajab, Bambang Eko Turisno, et Anggita Doramia Lumbanraja. Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah , *Notarius* 13, n° 2 (2020) : 642-54.

<sup>15</sup> Noor Atikah. Kedudukan Surat Keterangan Tanah sebagai Bukti Kepemilikan Hak Atas Tanah dalam Sistem Hukum Pertanahan Indonesia , *Notary Law Journal* 1, n° 3 (2022) : 263-89.

1 of the PP, the goal of land registration is to give land rights holders legal protection and clarity. Systematic land registration and occasional land registration are the two main methods of land registration. Land registration in a methodical manner is land registration simultaneously in a certain area as part of a government program. Meanwhile, sporadic land registration is registration upon request for individual registration from the land owner. The land registration process consists of several stages, namely the collection and examination of ownership documents, measurement of land plots by BPN officers, publication of legal and physical facts, as well as the issuing of certificates of land title.

Furthermore, Article 23 of the UUPA emphasizes the importance of registering every transfer of land ownership rights to provide legal certainty for new owners.<sup>16</sup> However, in practice, various disputes related to land ownership rights still often occur due to overlapping ownership, falsification of certificates, and land administration problems.<sup>17</sup> To resolve land ownership rights disputes, there are several legal mechanisms that can be taken by statutory provisions. First, settlement through mediation facilitated by the local government or the National Land Agency (BPN) to arrive at a mutually advantageous arrangement.<sup>18</sup> Second, settlement through administrative channels by filing an objection to the BPN if there is an error in issuing the certificate. Third, settlement through the courts, either at the State Administrative Court (PTUN) if it concerns administrative land disputes, or at the District Court if it concerns civil disputes regarding land ownership. In certain cases, settlement can also be carried out through the Constitutional Court if the dispute relates to the constitutionality of land regulations.<sup>19</sup>

The next challenge is the impact of land conversion on land ownership status. The increasing demand for land for infrastructure, industrial, and residential development often causes major changes in land use patterns. Many agricultural lands are converted into residential or commercial areas, which may not be accompanied by changes in the legal status of the land. As a result, landowners face legal uncertainty regarding their ownership rights, especially when land is taken over by the government or private entities for development purposes. Furthermore, uncontrolled land conversion can exacerbate land inequality, where productive land is controlled by several agencies, while small communities lose access to land that they previously used.<sup>20</sup>

The problem of land mafia and the legality of land ownership is also a serious challenge in regulating land ownership rights. The land mafia operates by falsifying land documents, exploiting legal loopholes, and colluding with individuals in land institutions to obtain land certificates illegally. This not only harms the legitimate land owners but also weakens public trust in the land law system in Indonesia. Many cases show that victims of land mafia often have difficulty regaining their property rights even though

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<sup>16</sup> Mikha Ch Kaunang. Proses Pelaksanaan Pendaftaran Tanah Menurut Peraturan Pemerintah Nomor 24 Tahun 1997, *Lex Crimen* 5, n<sup>o</sup> 4 (2016).

<sup>17</sup> Teressyavira Luvianti et Rasji Rasji. Perlindungan Hukum Bagi Pemilik Tanah yang Tumpang Tindih (Overlapping) Kepemilikan (Studi Putusan Mahkamah Agung Nomor 221 PK/PDT/2014), *UNES Law Review* 6, n<sup>o</sup> 2 (2023) : 5076-83.

<sup>18</sup> Nia Kurniati. 'Mediasi-Arbitrase' untuk Penyelesaian Sengketa Tanah, *Sosiohumaniora* 18, n<sup>o</sup> 3 (2016) : 197-207.

<sup>19</sup> Putu Diva Sukmawati. Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia, *Jurnal Ilmu Hukum Sui Generis* 2, n<sup>o</sup> 2 (2022) : 89-102.

<sup>20</sup> Ika Pewista et Rika Harini. Faktor dan pengaruh alih fungsi lahan pertanian terhadap kondisi sosial ekonomi penduduk di kabupaten bantul. kasus daerah perkotaan, pinggiran dan pedesaan Tahun 2001-2010, *Jurnal Bumi Indonesia* 2, n<sup>o</sup> 2 (2013) : 78219.

they have gone through legal channels, due to power games and weak law enforcement.<sup>21</sup> To overcome this problem, reforms are needed in a more transparent land system, strengthening law enforcement against land crimes, and increasing public awareness of the matter of legality in land ownership.

To preserve land ownership rights, the government's role in settling property disputes must be maximized. In order to record land ownership more accurately and transparently, the government must fortify the land administration system through the National Land Agency/Ministry of Agrarian Affairs and Spatial Planning (ATR/BPN). One strategic step that can be taken is to accelerate the complete systematic land registration program (PTSL) to minimize cases of overlapping ownership. In addition, the government also needs to improve the mediation mechanism in resolving land disputes to reduce dependence on the litigation process which is often time-consuming and expensive. Supervision of the land mafia must also be tightened with cross-sectoral cooperation between law enforcement officers, BPN, and other related institutions to take firm action against the practice of falsifying certificates and abuse of authority in land administration.<sup>22</sup>

On the other hand, the need for agrarian law reform is urgent in increasing legal certainty for land ownership rights owners. The Basic Agrarian Law (UUPA) Number 5 of 1960, although it is the main basis for land law in Indonesia, is no longer fully able to accommodate the complexity of current agrarian problems. Therefore, it is necessary to revise or establish new regulations that are more adaptive to social, and economic dynamics, and technological developments, including the digitalization of the land system to minimize the practice of manipulating ownership documents. In addition, regulations related to land conversion and land redistribution also need to be clarified so as not to cause uncertainty for landowners or investors.<sup>23</sup> With stronger policies and an updated legal system, land ownership rights can be further protected, creating justice in land distribution, and supporting sustainable national development.

## CONCLUSION

Since land ownership rights are the most robust and comprehensive type of land rights, they are essential to the Indonesian agrarian legal system. The dynamics of land ownership rights regulations continue to develop along with the necessity of equitable land management, ownership rights protection, and legal clarity. Current laws, including the Basic Agrarian Law (UUPA) Number 5 of 1960 and Government Regulation Number 24 of 1997 on Land Registration, aim to ensure legal certainty in land ownership through certification and a transparent registration system. However, in practice, there are still many challenges faced, including agrarian conflicts due to overlapping ownership, the effect of land conversion on ownership status and the widespread illicit manipulation of ownership records by the land mafia. As a result, the land administration system needs to be strengthened, more effective law enforcement, and agrarian policy reform so that land ownership rights can provide maximum benefits to their owners and support sustainable development.

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<sup>21</sup> Iwan Permadi. Kejahatan Mafia Tanah sebagai Ancaman Penguasaan Tanah yang Berkepastian Hukum, *Perspektif Hukum*, 2024, 1-25.

<sup>22</sup> Nanda Riesta Nathania, Zakiya Az Zikra Ismail, et M Rivatul Ulum. Solusi Mengatasi Krisis Tanah Dan Pentingnya Pendaftaran Tanah Di Indonesia Dalam Mewujudkan Kepastian Hukum, *Management, Economics, Trade, and Accounting Journal (META-JOURNAL)* 2, n° 2 (2024) : 45-52.

<sup>23</sup> Nicholas Billy Trisno et Habib Adjie. Urgensi Pembaharuan Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 22, n° 3 (2024) : 319-27.

Changes in regulations related to land ownership rights have significant legal implications for society and the government. Policies that are less transparent or do not support the public interest can create legal uncertainty and increase the potential for agrarian disputes. Therefore, any revision or update of regulations must be implemented by considering the balance between individual rights, social interests, and the principle of justice in land distribution. The government needs to ensure that every policy implemented can strengthen legal protection for landowners, reduce the practice of misuse of property rights, and prevent irresponsible land exploitation. With more adaptive regulations, strict supervision, and a transparent legal system, land ownership rights can continue to be a legal instrument that supports certainty and justice in the management of agrarian resources in Indonesia.

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