

# A Holistic Eclectic Approach To Land Law In Indonesia

Widhi Handoko

Universitas Islam Sultan Agung

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## ABSTRACT

Land law in Indonesia is an important matter. Land is a resource that significantly affects people's lives. Therefore, a law is needed to regulate it. Therefore, researchers need to find out about land law in an eclectic-holistic way to understand land lawfully. Researchers used normative juridical methods in collecting data for research. The results of the study found that land law in Indonesia already exists. However, there are still laws that can lead to misinterpretations, making land law need to be reviewed. The government has the authority to regulate land in Indonesia. The government must develop and use the land as best as possible for the welfare of all Indonesian people. All land disputes returned by the government from land rights owners legally need compensation that benefits all parties because the landowner has rights to the land.

**Keywords:** Land Law, Government, Dispute, Law in Indonesia, Government

## INTRODUCTION

The life of an individual is very complex and requires a variety of needs. Then an individual will try to fulfill these needs in various ways that he can do (BAKRI, 2018). These needs are essential for the body. If essential needs are not met, the quality of a person's life can decrease. Human needs broadly consist of Primary (Principal), Secondary, and Tertiary (Engkus, 2018).

Labor Organization (ILO) explains what basic needs are. The main needs or primary needs are needs that must be met at least for the sake of quality of life (Adhityatama, 2021). All groups of society must meet this need without exception. These needs are tangible in food, clothing, education, shelter, and many others. Directly or indirectly, land affects humans in meeting these needs (Notohadiprawiro, 1998). The direct effect given can be seen from agriculture, where food such as vegetables and fruit results from agriculture that requires fertile soil. Another example that we can see is mining, which affects the economy of the general public and the community around the mining (Risal et al., 2017). Indirectly,

individuals need lands, such as a place to live, because of the human need for a sense of security and a place to be called home or live (Djanggih& Salle, 2017).

So regardless of what humans do to fulfill all their needs. So land is a very extraordinary resource in terms of its benefits. Everyone needs land, whether it has owned land or land only used, aka rented land, as a foundation of life (Ahadi et al., 2015). Not to mention that the land on Earth is not an increasing resource but is a non-renewable resource which means that in the end, the status of the resource to be obtained will run out, and the amount of land on Earth cannot be increased. Even the land on Earth decreases with time due to global warming, which causes beaches to erode and seawater to rise. This is because the rising seawater causes the land that used to be a resource to be devoured by the ocean (BI Amalia&Sugiri, 2014).

So it can be concluded that land is a resource needed by everyone, directly or indirectly. So there is a need for the law to regulate these resources because humans with all their characteristics will think of ways to get them even if they use inappropriate methods (Ramadhani, 2021). Law is needed as a source of mediation and certainty for humans affected by it. The law will provide certainty for humans in land ownership, such as certainty of ownership rights, use, and so on. The law also ensures that landowners do not do things detrimental to society at large (Putri, 2017).

Land law is urgently needed to regulate land rights owned by a person to create an order that makes people feel comfortable. Land law is also a determinant of the boundaries of land owned by a person. Land law is considered very important because of its role in determining the rights and obligations of all parties involved. The legal function does not stop there; it also has a use in determining land disputes that occur so that those who have felt aggrieved can get justice. We can understand that land law greatly influences the regulation of land rights. Therefore, the researcher sees a need to look at land law in its entirety or in an eclectic-holistic way. The researcher uses the normative juridical method to find data relevant to the applicable land law in Indonesia (Zaini, 2011).

## DISCUSSION

### Applicable Legal Approach

Indonesia is a state of law. Based on this, it can be interpreted that everything that affects people's lives will be regulated by law (Asshiddiqie, 2011). All individual activities carried out on Indonesian soil need to be regulated by law. If the law does not yet exist to regulate something, it is necessary to hold a law that can regulate this so that people's lives are guaranteed by law (Bakri, 2008). Land law itself is regulated in Indonesia. The following are some of the laws that govern Land Law.

Applicable law	Legal Meaning
1945 Constitution	<ul style="list-style-type: none"><li>• Earth's resources, water, and natural resources are controlled by the state</li><li>• The state must use natural resources for</li></ul>

	<p>the prosperity of the Indonesian people</p> <ul style="list-style-type: none"> <li>• The relationship between the state and natural resources is a dominating relationship</li> </ul>
Law No. 5 of 1960 concerning Basic Agrarian Regulations	<ul style="list-style-type: none"> <li>• The government can regulate the use of natural resources including land</li> <li>• Can regulate the relationship between humans and natural resources</li> </ul>
Law No. 41 of 1999 on Forestry	<ul style="list-style-type: none"> <li>• Prohibition of using forest or destroying forest, without government permission</li> </ul>
Law No.26 of 2007 concerning Spatial Planning	<ul style="list-style-type: none"> <li>• Spatial planning is required to be safe for all parties and ensure the continuity of existing resources</li> </ul>
PP No. 16 of 2004 concerning Land Use	<ul style="list-style-type: none"> <li>• Ensuring rights through law regarding community relations with land such as land tenure, use and utilization rights</li> </ul>
Minister of Home Affairs Regulation No. 5 of 1974	<ul style="list-style-type: none"> <li>• Land that will be used as a company must avoid fertile soil and use less fertile land</li> </ul>
Regulation of the Head of BPN No. 4 of 1991 concerning Land Consolidation	<ul style="list-style-type: none"> <li>• Utilization as best as possible for the benefit of development and improve the quality of the environment and resources with the active participation of the community.</li> </ul>

Sourced from (Sumarja, 2008) and (Bakri, 2008)

It can be seen that the law on land is constantly updated to meet the community's needs. The community's growing needs make land law must be able to accommodate these needs. It is necessary for the government to always review existing regulations (Sumardjono, 2006).

### **Authority Theory**

Following existing law, the government can regulate the use and ownership of land in Indonesia. In theory, HDSoud explains that the government has a right to regulate and manage based on existing law (Orlando, 2017). According to P. Nicolai, authority is the ability to take legal action. Authority can be obtained through three sources known as attribution, delegation, and mandate (Monteiro, 2020).

Attribution is the authority possessed by the government, which is owned by material laws and is owned through his position in government. Delegation is the granting of authority from one component of government to another. A mandate is an apprenticeship relationship where a person is given the authority to do something on behalf of the authorities (Gandara, 2020). By doing these three things, the government has obtained the authority to take legal action to make arrangements for land in the Indonesian part of the Earth because it has been delegated the position as ruler by the applicable law.

The authority entrusted to the government for the gift of the people is that the government must think about the welfare of the people. This can happen because the government is an organization born on the people's need for a ruler who regulates so that there is an order among the people. So if the people feel that the government has conducted government arbitrarily, it will cause a conflict between the government and its people. So a too arbitrary government using its authority will cause the government to distrust and even ostracize (Johan, 2015).

### **Repressive Law Theory from Philip Nonet and Selznick**

Repressive law follows what Nonet-Selznick said that the law becomes repressive when the power in the government does not pay attention to the interests of the people it governs (Budi Handoyo SH, 2018). If the government makes such laws, it will deny its legitimacy and make its position weak because it does not prioritize the interests of the community.

When the government implements a law that does not prioritize the interests of the community's welfare, the government has made a repressive law. Repressive law is a tool the government easily manipulates to consolidate its power. Laws of this nature will make the government open to the possibility of becoming a dictatorial government. Such a government will make the people feel uncomfortable because the government will feel like the government is the master. He must be satisfied by the people and what the government wants the people to fulfill. So it should be remembered that the government is an organization born from the people and exists for the welfare of all its people and not only the welfare of the people in the government.

This is inseparable from politics in Indonesia itself, which causes a change in the orientation of legal goals from being for the welfare of society and social values to being the interests of a particular group (Maladi, 2013)—in the name of the government's public interest through Presidential Decree no. 36 of 2005, taking the land occupied by the community with development. This is, in fact a forced sale of land and can cause the government to arbitrarily, not to mention the compensation that the government must give is not necessarily sufficient for the purchase of a new residence. What if the price of land to be purchased by the government is relatively cheap, but the people who live in the environment only have the land to live in (Sangalang, 2012).

This is because there is no synchronization between the regulations made by the government, which makes the need for reconsideration. Presidential Regulation No.36 in 2005, which has

been changed to Presidential Regulation No.65 issued in 2006 which causes the government to entrust compensation to the owner of land rights to the district court, which causes a form of coercion of will because judicial decisions do not require consensus and may landowners disagree. This is a form of repressive law (R. Amalia, 2012).

### **Rights and Obligations of Owners of Land Rights**

When a person owns something in a state of law, he is confident that he has the right to it, including land. The landowner will have the right to the land he owns. The law will also ensure that the rights of the landowner are fulfilled. Owners of land rights do not have to worry about their rights being violated by others, even from the government, because the law functions as a legal regulator in this regard.

It is a stipulation that if a person has a right to something, he also has an obligation because he has obtained that right. So if someone has a right to land, he will automatically get an obligation for the land (Simatupang, 2015). Owners of land rights have an obligation that must be fulfilled so that their rights are not violated, and the owner of land rights also does not violate land rights owned by others. This obligation also helps land owners' rights to protect their land so that it cannot be taken unilaterally by other parties who want it. The obligations of a holder of land rights can be divided into two: the owner's obligation of the right to register the land he owns and the obligation after registering the land (Fabian, 2017).

Landowners must register land that is their right to own it to be recorded what the boundaries of which land are their rights. Landowners can fulfill these obligations by applying for land rights that they own. The owner of land rights is obliged to apply regardless of whether the land he owns already has a certificate or does not have a certificate (Saranaung, 2017). The owner of land rights has a certificate as proof that he is an individual who has land rights, following applicable law, namely Article 32 paragraph (1) Government Regulation no. 24 of 1997, which made certificates to be strong evidence of physical data on land and reliable juridical data. This will assist the owner of land rights in ensuring their rights in the eyes of the law.

The obligations of the owner of land rights do not stop there. Owners of land rights after that are required to maintain signs of boundaries for land that has been owned. For those who do not have a boundary on their land, they are required to place a boundary so that it is immediately known which boundaries are their rights. By Article 17, paragraph 3 of Government Regulation Number 24 of 1997, this limitation can be in the form of a fence that can be made of concrete, wire, and the like. If the land that has been purchased or owned already has limitations when received, then it is no longer required to install new boundaries. It is enough to take care of the old boundaries that already exist.

### **Legal Actions for Land Owners who Neglect their Obligations**

The law becomes a regulator in life to create an order and security for every party it influences. Each regulated by law has its rights and the day of that right involves an obligation that the holder of the right must fulfill. For the sake of creating a society that obeys

the law, firm action is needed for lawbreakers or parties who neglect the obligations that have been delegated by law. This is done as a deterrent for violators or people who neglect their obligations to create a law-abiding society.

The law has regulated the landowner's obligations so that the rights of the landowner do not overlap with the rights of other landowners because they already have fixed laws and provisions. The law becomes effective if everyone obeys it, and for those who neglect, it means he has violated the law. For violators of the law, firm action must be taken to deter the violators from repeating the act.

Article 1365 of the Civil Code states actions that have violated the law. Acts that violate the law have caused other people to experience a loss in any form. According to the article, a person who has violated the applicable law and harms another person is obliged for the violator who caused the loss suffered by the other party to compensate for the loss. Compensation that violators of the law must give to the injured person can be in the form of money or in-kind (returning the situation to its original state).

A person has committed an act against the law if he has fulfilled several elements in his act. The following elements are met to be said to have violated the law (Fabian, 2017).

- a. There is an act that is against the law
- b. There is a mistake in the perpetrator's actions
- c. The victim suffers a loss
- d. There is a cause-and-effect relationship between what was done by the violator and the loss suffered.

### **Dispute Resolution Theory based on the theory of Dean G. Pruitt and Jeffrey Z. Rubin**

Every government has carried out development to develop and prosper its people from the past. The government, in this case, builds facilities that can be used by its people, such as roads, buildings, public transportation, hospitals, and many others. To carry out this development, the government needs a space. So to meet the need for space, the government bought the land. However, sometimes the development requires land that another party already owns. If it is possible, the government may take other alternatives, but if it turns out that there is no other alternative, then the government can dispute the land, and this is not a new act. Dispute activities have occurred from various governments. Land disputes will show the nature of a government. A government that does not pay attention to the welfare of its people will provide unreasonable compensation. In contrast, a good government for the people will undoubtedly provide satisfactory and reasonable compensation for all parties.

Land disputes carried out by the government based on public interests lead to conflicts between the interests of the landowners to be taken by the government (Sutedi, 2020). Even though the author previously described the government's ability to take over land arbitrarily, it is also necessary to look at how to resolve the conflict. This is because the land is needed for the public interest to enable better economic, social, and educational conditions (Haris,

2009). The development conditions of a country also affect the need for land retrieval activities by the government.

According to Pruitt and Rubin, there are five ways land disputes can be resolved, namely (1) Contending, applying a settlement favored by only one party; (2) Yielding, lowering what is asked for, and accepting the lack of what is desired; (3) Problem Solving (solving problems), seeking the desired solution by both parties or more involved; (4) Withdrawing (withdraw), leaving the overall conflict; (5) Inaction (silence), can be solved by staying silent and doing nothing (Boboy et al., 2020). Based on this theory, the landowner can do some of the things that have been mentioned, but it is necessary to pay attention to which party is more disadvantaged. This is because if it turns out that the land taken is very detrimental to the owner and reduces the quality of his welfare significantly, this will cause misery for the community if it is ignored. (Ahmad, 2019).

## CONCLUSION

Indonesia is a state of law. This has been aspired by the Indonesian people in the 1945 Constitution (Siallagan, 2016). Land law in Indonesia is not something new. The law even exists in the 1945 Constitution, which is the basis of all laws or can be said to be the spirit of all laws in Indonesia (Indrayana, 2007). So the law that was made after that could not possibly contradict this. By applicable law, the government can regulate natural resources in Indonesia and one of these resources is land. The government must optimize the use of land for the welfare of all Indonesian people. The government is also obliged to maintain these resources to be used sustainably. To regulate land, the government can issue new regulations governing land use. Regrettably, this arrangement is still not optimal. It needs to be re-examined given the regulations that have been misinterpreted, leading to land disputes such as forced purchases. This could be seen as an action taken by political elites to benefit their group and lead to a lack of trust in the government. Taking land back by the government does not mean that it is always wrong and oppresses the community.

There are times when reclaiming land is for the good of the welfare of the Indonesian people. This does not mean that people have to give up their land voluntarily without paying attention to their welfare. However, the government must provide a suitable solution that benefits all parties without being harmed. This is because the landowner has rights to the land. Landowners who have fulfilled all their obligations and have physical and juridical evidence, namely land certificates, have a right to ask for appropriate compensation so that their welfare does not decrease and their rights are not violated.

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