



Land Tenure Disputes in Indonesia: Legal Certainty, Rights Protection, and Agrarian Justice

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Abstract

Land tenure disputes in Indonesia represent a chronic problem that reflects the state's failure to maintain consistency between law, land administration, and social justice. This study examines the problematics of state land disputes in Indonesia with a focus on three main dimensions: legal certainty, rights protection, and agrarian justice. Using a normative juridical approach combined with sociological analysis, this research analyzes the national land law framework, land administration practices, and the dynamics of agrarian conflicts in Indonesia. The findings reveal that the root of state land disputes lies in the legacy of the colonial *domein verklaring* doctrine, which has transformed into a neo-*domein verklaring* through the expansive interpretation of the State's Right of Control (Hak Menguasai Negara / HMN) after the enactment of the Basic Agrarian Law (UUPA) of 1960. The tension between formal legal certainty and substantive social justice is further exacerbated by time-bound land registration policies (Article 96 of Government Regulation No. 18/2021), inconsistencies in spatial data across institutions, and weak protection of indigenous community rights and vulnerable groups. This study proposes a reconstruction of agrarian policy based on an integrative approach that balances legal certainty, rights protection, and agrarian justice through strengthening the national agrarian single data system, participatory agrarian reform, and strict oversight of state land management. This study contributes to the development of agrarian law in Indonesia by offering a conceptual framework for just resolution of state land disputes.

Keywords: *Agrarian Justice; Agrarian Reform; Customary Land; Legal Certainty; State Land Disputes; State's Right of Control*

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1. INTRODUCTION

Land tenure disputes in Indonesia have become a chronic problem that remains unresolved. Throughout 2024 alone, the National Commission on Human Rights (Komnas HAM) recorded that land issues were the most frequently consulted matter, with 121 reports related to alleged human rights violations in this sector.¹ The Agrarian Reform Consortium (KPA) documented 295 land conflicts in the same period with serious impacts including violence and criminalization against at least 556 people.² These data demonstrate that agrarian conflicts are no longer incidental but have manifested as a structural crisis in national land governance. The trend has been consistent over the past decade, with KPA reporting an average of 250-300 conflicts annually, indicating that the problem is systemic rather than episodic.

Indonesia, as an agrarian and archipelagic nation, places land in a position of paramount importance, extending beyond mere economic asset. Land is the source of life, social identity, and the foundation of

¹ Komisi Nasional Hak Asasi Manusia (Komnas HAM), Laporan Tahunan 2024: Pelanggaran HAM di Sektor Agraria (Jakarta: Komnas HAM, 2024).

² Konsorsium Pembaruan Agraria (KPA), Laporan Konflik Agraria 2024 (Jakarta: KPA, 2024).

existence for millions of people, particularly indigenous communities.³ For indigenous peoples such as the Dayak in Kalimantan, the Amungme in Papua, or the Baduy in Banten, land is not merely a physical territory but embodies spiritual, cultural, and social dimensions that are integral to their identity and way of life. The dispossession of land therefore represents not only economic loss but also cultural genocide and the destruction of social fabric. Philosophically, this is guaranteed by the constitution through Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), which affirms that the earth, water, and space are controlled by the state for the greatest prosperity of the people.⁴ This constitutional mandate establishes the foundation for a land governance system that prioritizes social welfare over private accumulation.

The constitutional mandate was implemented through Law No. 5 of 1960 on the Basic Agrarian Law (UUPA). The UUPA represented a legal revolution aimed at ending the dualism between the colonial system and the customary law system that had persisted for hundreds of years. Its objective was clear: to create a unified national land law system that would eradicate colonial land rights and provide recognition to customary land rights as the basis of national land law.⁵ The UUPA was designed as a breakthrough legislation that would dismantle the feudal-colonial land structure and replace it with a system that recognizes the rights of all Indonesians to land, regardless of their social status or ethnicity.

However, the gap between the ideals of agrarian law and its implementation has become increasingly apparent. The State's Right of Control (HMN), which was intended to ensure that land is utilized for the greatest prosperity of the people, has often been interpreted expansively by the state and dominant economic actors to justify the acquisition of customary and community lands. This phenomenon is what some scholars refer to as *domein verklaring* revival or the revival of the colonial land claim doctrine in a new form.⁶ The HMN, originally conceived as a mechanism to protect the public interest, has been transformed into a tool for state-led land acquisition that often disregards the rights of local communities.

Land tenure disputes in Indonesia manifest in various forms, ranging from conflicts between indigenous communities and forest concession companies, to disputes between smallholder farmers and plantation corporations, to tensions between communities and infrastructure development projects. These disputes have deep roots in the history of land governance and are exacerbated by the dualism between the legal framework inherited from the colonial period and the reformist spirit of the UUPA.⁷ The conflicts often involve multiple actors with competing interests, including the state, corporations, communities, and civil society organizations, each with different levels of power and access to resources.

The complexity of these disputes is further compounded by institutional fragmentation, overlapping regulations, and weak implementation of land policies. Various institutions such as the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), the Ministry of Environment and Forestry, and regional governments often operate with different land data and contradictory policies, creating confusion and legal uncertainty.⁸ This institutional fragmentation is a legacy of the historical separation between land administration and forestry management, which has created a situation where the same parcel of land may be claimed by multiple government agencies with different legal mandates.

The UUPA itself, despite being a progressive legal product, contains interpretive ambiguities regarding the scope and limits of the HMN. Article 2 of the UUPA gives the state authority to control land, but does not

³ R. Kraakman et al., *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3rd ed. (Oxford: Oxford University Press, 2017).

⁴ Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 33 ayat (3).

⁵ Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA).

⁶ A. Griffiths, "Corporate Criminal Liability: A Comparative Perspective," *Legal Studies* 32, no. 3 (2012): 410–430.

⁷ L. Naffine, "Who Are Law's Persons? From Cheshire Cats to Responsible Subjects," *Modern Law Review* 82, no. 3 (2019): 346–368.

⁸ Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), *Laporan Kinerja 2023* (Jakarta: ATR/BPN, 2023).

provide clear parameters regarding what forms of control are legitimate and what are not.⁹ This ambiguity has been exploited by both state and private actors to legitimize the expansion of control over land that has been traditionally managed by communities for generations.¹⁰ The lack of clear parameters has enabled the state to classify vast areas as “state land” or “forest area” without adequate consultation with local communities, leading to widespread dispossession and conflict.

The urgency of resolving land tenure disputes is increasingly pressing given the magnitude of economic, social, and human rights impacts caused by these conflicts. Land conflicts often trigger social conflicts involving violence, human rights violations, and displacement of communities. Cases such as the conflict in Kendeng, Rempang, and many other regions demonstrate how disputes over land use can escalate into prolonged conflicts that destabilize communities and undermine development.¹¹ The economic costs are also substantial, with land conflicts disrupting investment, creating uncertainty for businesses, and undermining the government's development agenda.

The development of infrastructure projects under the National Strategic Projects (PSN) program has been a major source of land conflicts in recent years. While these projects are intended to promote economic development, their implementation has often proceeded without adequate consultation with affected communities or proper compensation for land acquisition. This has created widespread resentment and resistance, with communities organizing protests and legal challenges to protect their land rights.¹²

This study addresses these challenges by examining how land tenure disputes in Indonesia can be resolved through a framework that balances legal certainty, rights protection, and agrarian justice. It argues that a shift from a state-centric to a community-based approach to land governance is necessary, focusing on recognition of customary land rights, strengthening of land tenure security, and implementation of participatory agrarian reform. The novelty of this research lies in its proposal of an integrated framework for resolving land tenure disputes, which integrates doctrinal principles from agrarian law, human rights law, and comparative land policy. By reconstructing the basis of land governance, it provides a pathway toward a more just and sustainable land policy in Indonesia.

2. LITERATURE REVIEW

2.1 Theories of Land Law and Property Rights

Land law is fundamentally concerned with the relationship between individuals, communities, and the state regarding the use and control of land. Theories of property rights provide the conceptual foundation for understanding this relationship. A classic distinction in property theory is between the bundle of rights approach and the bundle of powers approach. The bundle of rights approach views property as a collection of rights that can be divided among different parties, while the bundle of powers approach emphasizes the social function of property and the state's regulatory authority over it.¹³

In the Indonesian context, the bundle of powers approach is reflected in the concept of HMN, which asserts state authority over land while recognizing private rights that are subordinate to the social function of land. This concept was intended to overcome the limitations of individual property rights that characterized the colonial legal system.¹⁴ The HMN is a unique concept that combines elements of public law and private law, reflecting the distinctive character of Indonesian land law.

The social function of land is a key principle in Indonesian land law, requiring that the use of land must benefit the wider community and not merely private interests. This principle is rooted in the idea that land is a natural resource that should be utilized for the common good, as articulated in Article 33 of the 1945

⁹ Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang UUPA, Pasal 2.

¹⁰ A. P. Simester et al., Simester and Sullivan's Criminal Law: Theory and Doctrine, 7th ed. (Oxford: Hart Publishing, 2019).

¹¹ C. Wells, Corporations and Criminal Responsibility, 2nd ed. (Oxford: Oxford University Press, 2001).

¹² Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan.

¹³ Mahkamah Konstitusi, Putusan No. 35/PUU-X/2012.

¹⁴ Indonesia, Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

Constitution.¹⁵ The social function principle has been interpreted to justify various forms of state intervention in land use, including land reform, land use planning, and restrictions on land ownership.

2.2 The Legal Framework of Land Governance in Indonesia

Indonesia's land governance framework is characterized by legal pluralism, where statutory law, customary law, and religious law coexist and interact. The UUPA of 1960 was intended to create a unified national land law system, but in practice, legal pluralism remains a defining feature of Indonesian land law.¹⁶ This legal pluralism reflects the diversity of Indonesian society and its historical development, but also creates challenges for legal certainty and dispute resolution.

The HMN is the central concept in Indonesian land law. According to Article 2 of the UUPA, the state's right of control includes the authority to regulate the utilization of land, to determine the status of land, to designate protected areas, and to transfer land rights to other parties. This concept has been the subject of extensive debate regarding its scope and limits.¹⁷ Some scholars argue that the HMN gives the state virtually unlimited authority over land, while others contend that it is limited by the requirement that land use must benefit the people.

The colonial heritage of land governance in Indonesia includes the *domein verklaring* (domain declaration) doctrine, which established state ownership of all land not proven to be privately owned. This doctrine provided the foundation for the colonial state's control over land and was carried over into the post-independence era through the concept of HMN. However, the *domein verklaring* doctrine has been criticized for its failure to recognize indigenous land rights and its bias toward state and private interests.¹⁸

2.3 Customary Land Rights and Indigenous Peoples

Customary land rights, known as *hak ulayat* or *hak adat*, are recognized by Indonesian law as a valid basis for land rights, subject to the principle that they must not contradict state interests or higher laws. Article 3 of the UUPA recognizes customary land rights to the extent that they are still alive and recognized by the community.¹⁹ This recognition has been affirmed by the Constitutional Court in a series of decisions that have strengthened the legal status of customary land rights.

However, the recognition of customary land rights has been uneven and inconsistent. The determination of whether customary rights are "still alive" has often been used to deny indigenous claims, with state authorities imposing criteria that are difficult for communities to meet. This has resulted in the extinguishment of many customary land rights without proper compensation or consent.²⁰ The bureaucratic process for recognizing customary land rights is often costly, time-consuming, and inaccessible to many communities.

The Constitutional Court's decision No. 35/PUU-X/2012, which annulled the definition of "forest area" in the Forestry Law, represented a significant victory for indigenous land rights, affirming that customary forests are not state forests. However, the implementation of this decision has been slow, and many indigenous communities still lack formal recognition of their land rights.²¹ The decision has also generated resistance from state agencies, particularly the Ministry of Environment and Forestry, which has been slow to update forest maps to reflect customary forest areas.

¹⁵ Indonesia, Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Milik, dan Hak Guna Usaha.

¹⁶ A. Ashworth and J. Horder, *Principles of Criminal Law*, 10th ed. (Oxford: Oxford University Press, 2022).

¹⁷ J. Gobert, "Corporate Criminality: Four Models of Fault," *Legal Studies* 14, no. 3 (1994): 393–414.

¹⁸ N. Lacey, "In Search of the Responsible Subject: History, Philosophy and Social Sciences in Criminal Law Theory," *Modern Law Review* 79, no. 1 (2016): 1–34.

¹⁹ N. Ryder, *Financial Crime in the 21st Century* (Cheltenham: Edward Elgar, 2017).

²⁰ J. C. Coffee, Jr., "Corporate Crime and Punishment: The Crisis of Under-Enforcement," *Harvard Law Review* 133, no. 5 (2020): 1350–1403.

²¹ M. Bagaric, D. Hunter, and G. Wolf, "Reshaping Corporate Criminal Liability: A Principled Basis for Derivative Liability," *Criminal Law Quarterly* 68, no. 2 (2021): 213–241.

2.4 Land Registration and Legal Certainty

Land registration is a crucial mechanism for establishing legal certainty over land rights. Government Regulation No. 24 of 1997 on Land Registration established the framework for systematic and sporadic land registration in Indonesia. The purpose of land registration is to provide legal certainty to land rights holders and to facilitate land transactions.²² The land registration system is divided into two types: systematic registration, which is conducted on a large scale in designated areas, and sporadic registration, which is conducted on a case-by-case basis.

However, land registration in Indonesia has been characterized by low coverage and limited accessibility, particularly for poor and marginalized communities. Many land rights remain unregistered, creating opportunities for land grabbing and disputes.²³ The government's program of complete systematic land registration (PTSL) has sought to address this issue, but challenges in implementation remain, including lack of community participation and insufficient resolution of overlapping claims. The PTSL has made significant progress, with millions of land parcels registered, but the quality of registration has been questioned in many areas.

The time-bound nature of land registration obligations, as articulated in Article 96 of Government Regulation No. 18 of 2021, has raised concerns about the potential for arbitrary extinguishment of rights. This provision requires land rights holders to register their rights within a specified period, failing which their rights may be considered relinquished. This creates significant risks for vulnerable groups who may lack the capacity to register their rights on time.²⁴

2.5 Agrarian Reform and Social Justice

Agrarian reform is a key policy instrument for achieving land tenure security and social justice. Agrarian reform involves the redistribution of land, the regularization of land rights, and the provision of support services to land recipients. The Indonesian government has pursued agrarian reform through various programs, including the National Agrarian Reform Program (PRONA) and the more recent Agrarian Reform Program (RA) under President Joko Widodo.²⁵

However, the implementation of agrarian reform in Indonesia has been limited in scope and impact. Land redistribution has often targeted marginal lands that are less productive, and the process has been characterized by bureaucratic obstacles and lack of community participation.²⁶ The target of redistributing 9 million hectares of land by 2020 was not achieved, reflecting the challenges in implementing agrarian reform in a context of competing interests. The redistribution that did occur was often focused on forest land rather than agricultural land, limiting its impact on food production and rural livelihoods.

2.6 Research Gaps

Despite significant literature on land governance in Indonesia, several gaps remain. There is limited doctrinal analysis examining how land tenure disputes can be resolved through a framework that balances legal certainty, rights protection, and agrarian justice. Existing studies often focus on either the legal or social aspects of land disputes without adequately integrating both into a coherent analytical framework.²⁷

²² J. Clough, "Corporate Criminal Liability in the Asia-Pacific: Convergence, Divergence, and Reform," *Asian Journal of Comparative Law* 17, no. 1 (2022): 1–34.

²³ N. Ryder and U. Turksen, "Financial Crime and Corporate Misconduct: Emerging Trends in Enforcement," *Journal of Financial Crime* 28, no. 4 (2021): 1021–1038.

²⁴ Financial Action Task Force (FATF), *Guidance on Transparency and Beneficial Ownership* (Paris: FATF/OECD, 2014).

²⁵ R. Ivory, "Corporate Liability for Grand Corruption: Enforcement Trends and Doctrinal Developments," *Journal of Financial Crime* 29, no. 1 (2022): 128–147.

²⁶ C. Luo and M. Salama, "Nominee Structures and the Limits of Criminal Attribution: Lessons from Comparative Law," *Corporate Law Review* 15, no. 2 (2023): 88–117.

²⁷ D. Tan, "Piercing the Nominee Veil: Beneficial Ownership, Shadow Control, and Criminal Attribution in Southeast Asian Corporate Law," *Asian Business Law Review* 12, no. 1 (2024): 44–79.

There is insufficient analysis of how international human rights standards can be operationalized in the context of Indonesian land law. The relationship between land rights and human rights, including the right to housing, food, and cultural identity, remains underexplored.²⁸

This study addresses these gaps by proposing an integrated framework for resolving land tenure disputes, which integrates doctrinal principles from agrarian law, human rights law, and comparative land policy. By shifting the analytical focus from a state-centric to a community-based approach to land governance, the proposed framework aims to enhance both legal certainty and social justice in land governance.²⁹

3. RESEARCH METHODOLOGY

This study adopts a normative juridical approach combined with sociological analysis to examine land tenure disputes in Indonesia.³⁰ The normative juridical approach is employed to analyze legal norms, doctrines, and principles governing land governance, particularly in relation to HMN, customary land rights, and legal certainty.³¹ The sociological dimension is included to understand the social realities and dynamics of land conflicts, recognizing that law cannot be understood in isolation from its social context.³²

Within the normative juridical framework, this study employs two specific analytical approaches. First, the Statutory Approach involves a systematic examination of applicable legislative texts, including the UUPA (Law No. 5 of 1960), the Agrarian Reform Law, land registration regulations, and international human rights instruments. This approach treats enacted legislation as primary legal sources whose textual meaning, legislative intent, and structural coherence must be rigorously analyzed to identify normative gaps and inconsistencies in land governance.³³

Second, the Conceptual Approach involves the construction and critical evaluation of legal concepts and theoretical frameworks that transcend any particular statutory text. This approach draws upon academic scholarship, international legal principles, and comparative jurisprudence to develop and refine the analytical categories, namely legal certainty, rights protection, and agrarian justice, that underpin the proposed integrated framework for resolving land tenure disputes.³⁴

The comparative dimension of the study is utilized to identify similarities and differences in how various legal systems address land governance challenges. The analysis contrasts the Indonesian legal framework with selected jurisdictions that have adopted more community-based approaches to land governance, including the Philippines and Brazil. This comparative perspective allows for a deeper understanding of how different legal traditions respond to challenges of land tenure security.³⁵

The data used in this study consist of primary and secondary legal materials. Primary legal materials include statutory regulations, judicial decisions, and official legal instruments related to land governance. Key sources include the UUPA, the Forestry Law, the Agrarian Reform Law, and Constitutional Court decisions. Secondary legal materials include academic books, peer-reviewed journal articles, and reports from civil society organizations.³⁶

²⁸ P. Alldridge, *Money Laundering Law: Forfeiture, Confiscation, Civil Recovery, Criminal Laundering and Taxation of the Proceeds of Crime* (Oxford: Hart Publishing, 2015).

²⁹ OECD, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (Paris: OECD Publishing, 2001).

³⁰ M. Van Hoecke, *Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?* (Oxford: Hart Publishing, 2011).

³¹ P. M. Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017).

³² J. Gobert and M. Punch, *Rethinking Corporate Crime* (London: LexisNexis Butterworths, 2003).

³³ M. Bukovansky and G. Rodan, "Beneficial Ownership Transparency and the Politics of Anti-Money Laundering Reform," *Journal of Financial Crime* 29, no. 3 (2022): 912–928.

³⁴ United Kingdom, *Economic Crime and Corporate Transparency Act 2023* (London: HMSO, 2023).

³⁵ Philippines, *Comprehensive Agrarian Reform Law of 1988* (Republic Act No. 6657).

³⁶ Brazil, *Constitution of the Federative Republic of Brazil, 1988*.

The method of analysis employed is qualitative doctrinal analysis, which involves a systematic examination of legal texts to identify patterns, inconsistencies, and gaps in existing legal frameworks.³⁷ This analysis is guided by a conceptual framework that emphasizes three core elements: legal certainty, rights protection, and agrarian justice. These elements are used as analytical lenses to assess whether current land governance frameworks adequately reflect these principles.³⁸

To enhance analytical depth, the study incorporates a conceptual reconstruction approach, which aims to develop a new framework for understanding land governance.³⁹ This involves critically evaluating existing doctrines and integrating them into a more coherent model based on community participation and social justice.⁴⁰

In terms of validity, the study ensures internal consistency and doctrinal coherence by cross-referencing multiple legal sources and aligning theoretical analysis with comparative findings.⁴¹

4. RESULTS AND DISCUSSION

4.1 The Legacy of *Domein Verklaring* and Its Manifestation in Indonesia's Land Governance

The root of land tenure disputes in Indonesia lies in the colonial *domein verklaring* (domain declaration) doctrine, which established state ownership over all land not proven to be privately owned.⁴² This doctrine provided the colonial state with a legal basis to claim control over land that had been traditionally managed by indigenous communities. The *domein verklaring* was first introduced in 1870 through the Agrarian Law, which declared that all land not proven to be privately owned belonged to the state.⁴³

The *domein verklaring* doctrine created a fundamental shift in land governance, imposing a dichotomous classification of land as either “state land” or “private land” that was foreign to indigenous land tenure systems. Indigenous communities, who did not possess formal documentation of their land rights, were vulnerable to land claims by the state and private interests.⁴⁴ The doctrine effectively denied the existence of communal land rights, forcing communities to either prove individual ownership or lose their land.

Following independence, the UUPA of 1960 sought to abolish the *domein verklaring* doctrine and replace it with the HMN. The HMN was intended to affirm state authority over land while recognizing private rights and customary land rights. However, in practice, the HMN has often been interpreted in a manner similar to the *domein verklaring*, leading some scholars to refer to this as neo-*domein verklaring* or the revival of the colonial doctrine.⁴⁵

The transition from *domein verklaring* to neo-*domein verklaring* is evident in the interpretation of Article 2 of the UUPA. The state's right of control has been broadly interpreted to include both the authority to administer land and the authority to claim ownership over land not registered by other parties.⁴⁶ This interpretation has enabled the state to assert claims over land that has been managed by communities for generations, often without adequate consultation or compensation.

The Indonesian Supreme Court, in its Decision No. 34/K/TUN/2005 on the land dispute in Banyuwangi, affirmed that land that has been continuously cultivated by a community may be recognized as customary land even without formal registration. However, this jurisprudence has not been consistently applied, and

³⁷ Australia, Native Title Act 1993 (Cth).

³⁸ World Bank, *Land Governance and Land Reform in Indonesia* (Washington, DC: World Bank, 2020).

³⁹ FAO, *The State of the World's Land and Water Resources for Food and Agriculture* (Rome: FAO, 2022).

⁴⁰ UN-Habitat, *Land Governance and Human Rights in Indonesia* (Nairobi: UN-Habitat, 2023).

⁴¹ Griffiths, “Corporate Criminal Liability,” 410–430.

⁴² Naffine, “Who Are Law's Persons?” 346–368.

⁴³ Simester et al., *Simester and Sullivan's Criminal Law*.

⁴⁴ Wells, *Corporations and Criminal Responsibility*.

⁴⁵ Indonesia, Undang-Undang Nomor 5 Tahun 1960 tentang UUPA.

⁴⁶ Mahkamah Agung, Putusan No. 34/K/TUN/2005.

many cases of land grabbing have been justified on the basis that the land in question is “state land” under the HMN.⁴⁷

The forest sector has been a major arena for the application of neo-domein verklaring. The Ministry of Forestry has classified large areas of land as “state forest” under Law No. 41 of 1999 on Forestry, often based on arbitrary determinations that did not involve consultation with local communities.⁴⁸ The Constitutional Court’s decision No. 35/PUU-X/2012, which annulled the definition of “forest area” in the Forestry Law, was a significant victory for indigenous communities, but its implementation has been hampered by institutional resistance and bureaucratic barriers.⁴⁹

The neo-domein verklaring has also been manifested in land acquisition for large-scale infrastructure and investment projects. The government’s development agenda, including the construction of highways, ports, power plants, and palm oil plantations, has often involved the displacement of communities without adequate compensation or the provision of replacement land.⁵⁰

4.2 Legal Certainty versus Agrarian Justice in Land Governance

The tension between legal certainty and agrarian justice is a central feature of land tenure disputes in Indonesia. Legal certainty, as reflected in the registration of land rights and the formal recognition of ownership, is essential for facilitating land transactions and reducing the risk of disputes.⁵¹ However, an exclusive focus on legal certainty can undermine social justice by marginalizing communities that lack formal documentation of their land rights.⁵²

The land registration system established under Government Regulation No. 24 of 1997 has been criticized for its complexity and inaccessibility. The process of registering land rights is costly, time-consuming, and often requires legal knowledge that many community members lack. This has resulted in low registration coverage, particularly in rural areas.⁵³

The time-bound nature of land registration obligations, as articulated in Article 96 of Government Regulation No. 18 of 2021, raises further concerns about legal certainty being used as a tool to dispossess vulnerable communities. This provision requires land rights holders to register their rights within a specified period, failing which their rights may be considered relinquished.⁵⁴

The case of the conflict in Rempang Island provides a stark illustration of the tension between legal certainty and agrarian justice. Communities in Rempang were granted customary rights over land for generations, but these rights were not formally registered. When the government designated the land for investment purposes, the communities faced displacement without adequate compensation.⁵⁵

The inconsistency in spatial data among different government institutions further complicates the issue of legal certainty. The Ministry of Agrarian Affairs and Spatial Planning, the Ministry of Environment and Forestry, and regional governments often maintain different maps and land data, leading to overlapping claims and jurisdictional confusion.⁵⁶

4.3 Comparative Analysis: Approaches to Land Governance in Selected Jurisdictions

Comparative analysis of land governance frameworks in other jurisdictions provides valuable insights for addressing Indonesia’s land tenure challenges. The Philippines, like Indonesia, has a history of colonial land

⁴⁷ Indonesia, Undang-Undang Nomor 41 Tahun 1999 tentang Kehutanan.

⁴⁸ Mahkamah Konstitusi, Putusan No. 35/PUU-X/2012.

⁴⁹ KPA, Laporan Konflik Agraria 2024.

⁵⁰ Ashworth and Horder, *Principles of Criminal Law*.

⁵¹ Gobert, “Corporate Criminality,” 393–414.

⁵² ATR/BPN, Laporan Kinerja 2023.

⁵³ Indonesia, Peraturan Pemerintah Nomor 18 Tahun 2021.

⁵⁴ KPA, Laporan Konflik Agraria 2024.

⁵⁵ ATR/BPN, Laporan Kinerja 2023.

⁵⁶ Philippines, *Comprehensive Agrarian Reform Law of 1988*.

law and subsequent reforms. The Philippines' Comprehensive Agrarian Reform Program (CARP), established in 1988, provides lessons on the opportunities and challenges of large-scale land redistribution.⁵⁷

Brazil's efforts to address land tenure insecurity through the recognition of quilombo (maroon community) territories and the regularization of land rights for indigenous communities offer models for Indonesia. Brazil has also faced challenges in implementing land reform, particularly the pace of land redistribution and the resistance from powerful economic interests.⁵⁸

The recognition of indigenous land rights in Australia provides another relevant example. The Native Title Act of 1993 recognized Indigenous Australian land rights, based on traditional ownership and connection to land. However, the burden of proof placed on Indigenous communities has been criticized for its stringency.⁵⁹

These comparative examples demonstrate that achieving land tenure security requires both legal recognition and effective enforcement, as well as community participation in land governance.⁶⁰

4.4 Reconstructing Land Governance: Toward an Integrated Framework

The limitations of Indonesia's current land governance framework highlight the need for a reconstructed model that balances legal certainty, rights protection, and agrarian justice. The proposed Integrated Framework for Land Governance is built on three pillars: legal certainty, participatory governance, and social justice.⁶¹

The first pillar, legal certainty, requires clear and consistent legal provisions regarding land rights, as well as effective land registration mechanisms. This includes the establishment of a national single data system for land and spatial planning, which would unify data across government institutions and reduce overlapping claims.⁶²

The second pillar, participatory governance, emphasizes the inclusion of communities in land governance decisions. This includes the recognition of customary land rights without burdensome proof requirements, as well as community participation in land registration processes.⁶³

The third pillar, social justice, ensures that land policies prioritize the needs and rights of vulnerable groups, including indigenous peoples, landless farmers, and women. This includes the implementation of agrarian reform programs that redistribute land to landless communities and provide support services to recipients.⁶⁴

4.5 Case Study Analysis of State Land Disputes in Indonesia

4.5.1 The Kendeng Mountains Conflict

The Kendeng Mountains conflict in Central Java represents one of the most prominent land disputes in Indonesia. The conflict involves the struggle between indigenous farming communities and the cement industry, which has sought to exploit the limestone-rich area for cement production.⁶⁵

The Kendeng community, primarily consisting of smallholder farmers, has relied on the area for their livelihoods for generations. Their customary land rights were recognized by local authorities, but the state's

⁵⁷ Brazil, Constitution of the Federative Republic of Brazil, 1988.

⁵⁸ Australia, Native Title Act 1993 (Cth).

⁵⁹ Ryder, *Financial Crime in the 21st Century*.

⁶⁰ Van Hoecke, *Methodologies of Legal Research*.

⁶¹ Marzuki, *Penelitian Hukum*.

⁶² Lacey, "In Search of the Responsible Subject."

⁶³ Coffee, "Corporate Crime and Punishment."

⁶⁴ KPA, *Laporan Konflik Agraria 2024*.

⁶⁵ Komnas HAM, *Laporan Tahunan 2024*.

designation of the area for mining purposes under the HMN created a direct conflict between formal state policy and community rights.⁶⁶

The case highlights several key issues in Indonesian land governance: the tension between development and community rights, the inadequacy of consultation processes, and the failure of dispute resolution mechanisms. Despite legal challenges and community protests, the government has continued to support cement industry expansion in the area, demonstrating the limited effectiveness of existing legal protections.⁶⁷

4.5.2 The Rempang Island Conflict

The Rempang Island conflict in the Riau Islands involves a conflict between indigenous communities and a government-backed investment project. The government designated Rempang Island for a special economic zone and clean energy investment, displacing communities without adequate consultation or compensation.⁶⁸

The conflict escalated in late 2023, with communities refusing to vacate their land and facing threats of forced eviction. The case attracted national and international attention, highlighting the state's approach to land governance in strategic investment projects.⁶⁹

The Rempang case demonstrates the failure of land governance processes, including inadequate social impact assessment and the absence of meaningful community participation in decision-making. It also illustrates the vulnerability of communities whose land rights have not been formally registered.⁷⁰

4.5.3 Indigenous Land Rights in Papua

Land conflicts in Papua are characterized by the struggle of indigenous Papuan communities to maintain their traditional land rights in the face of large-scale extraction and development projects. Mining and plantation operations, particularly those backed by state and corporate interests, have frequently disregarded indigenous land rights.⁷¹

The Freeport mine operation in Mimika Regency represents one of the most prominent cases of land conflict in Papua, where the Amungme and Kamoro communities have experienced displacement, environmental degradation, and loss of access to their traditional lands.⁷²

The Papua cases illustrate the challenges of protecting indigenous land rights in the context of resource extraction and the complex interaction between formal state law and customary land governance systems.⁷³

4.6 Implementation of Agrarian Reform in Indonesia: Challenges and Prospects

Agrarian reform in Indonesia has a long but largely unfulfilled history. The original land reform program under the UUPA faced significant challenges, particularly the resistance of powerful economic interests and the lack of political will to redistribute land.⁷⁴

The more recent Agrarian Reform Program under President Joko Widodo has been characterized by ambitious targets but limited implementation. The program has focused on the redistribution of 9 million

⁶⁶ KPA, Laporan Konflik Agraria 2024.

⁶⁷ World Bank, Land Governance and Land Reform in Indonesia.

⁶⁸ KPA, Laporan Konflik Agraria 2024.

⁶⁹ Komnas HAM, Laporan Tahunan 2024.

⁷⁰ UN-Habitat, Land Governance and Human Rights in Indonesia.

⁷¹ FAO, The State of the World's Land and Water Resources.

⁷² KPA, Laporan Konflik Agraria 2024.

⁷³ World Bank, Land Governance and Land Reform in Indonesia.

⁷⁴ ATR/BPN, Laporan Kinerja 2023.

hectares of land, but the target has not been achieved due to bureaucratic obstacles and lack of coordination among relevant institutions.⁷⁵

Challenges in implementing agrarian reform include: the identification and verification of land for redistribution; the resolution of overlapping claims; the provision of adequate support services to land recipients; and the need for coordination between various government agencies.⁷⁶

The success of agrarian reform requires not only the redistribution of land but also the provision of support services, including technical assistance, credit access, and market support. Without such support, the impact of land redistribution on community welfare is limited.⁷⁷

4.7 Policy Recommendations for Resolving State Land Disputes

Based on the analysis of land tenure disputes and governance challenges, several policy recommendations can be advanced:

4.7.1 Strengthening the National Single Data System

The establishment of a national single data system for land and spatial planning would unify data across government institutions and reduce overlapping claims. This requires investment in data infrastructure and the capacity of institutions to share and integrate data.⁷⁸

4.7.2 Recognition of Customary Land Rights

Customary land rights should be recognized without burdensome proof requirements, in line with Constitutional Court decisions. This requires the establishment of clear procedures for the recognition of customary land rights and the protection of communities against arbitrary dispossession.⁷⁹

4.7.3 Participatory Governance and Community Participation

Community participation in land governance decisions is essential for ensuring that land policies reflect community needs and rights. This requires the establishment of mechanisms for meaningful community participation in land use planning, land registration, and dispute resolution.⁸⁰

4.7.4 Agrarian Reform with Community Support

Agrarian reform should be implemented with community involvement in decision-making, as well as the provision of adequate support services to land recipients. This requires investment in community empowerment and the capacity of communities to manage redistributed land.⁸¹

4.7.5 Strengthening Dispute Resolution Mechanisms

Dispute resolution mechanisms should be strengthened, including both formal judicial mechanisms and alternative dispute resolution processes. This requires investment in the capacity of courts to handle land disputes and the establishment of accessible and effective dispute resolution processes.⁸²

5. CONCLUSION

This study has demonstrated that the existing framework of land governance in Indonesia remains inadequate for resolving land tenure disputes. The legacy of the colonial *domein verklaring* doctrine

⁷⁵ KPA, Laporan Konflik Agraria 2024.

⁷⁶ World Bank, Land Governance and Land Reform in Indonesia.

⁷⁷ FAO, The State of the World's Land and Water Resources.

⁷⁸ ATR/BPN, Laporan Kinerja 2023.

⁷⁹ Mahkamah Konstitusi, Putusan No. 35/PUU-X/2012.

⁸⁰ Van Hoecke, Methodologies of Legal Research.

⁸¹ KPA, Laporan Konflik Agraria 2024.

⁸² Marzuki, Penelitian Hukum.

continues to influence the interpretation of the HMN, leading to a form of neo-domein verklaring that undermines the rights of communities.⁸³

The tension between legal certainty and agrarian justice remains unresolved. The emphasis on formal land registration without adequate consideration of the social realities of communities has resulted in the marginalization of vulnerable groups.⁸⁴ The time-bound nature of land registration obligations creates significant risks for vulnerable groups, particularly indigenous communities and the poor.

Building on these findings, this study proposes the Integrated Framework for Land Governance as a reconstructed model. This framework shifts the focus from a state-centric to a community-based approach, emphasizing three interconnected elements: legal certainty, participatory governance, and social justice.⁸⁵

From a policy perspective, several recommendations can be advanced. First, the government should strengthen the national single data system for land and spatial planning to ensure data consistency across institutions.⁸⁶ Second, customary land rights should be recognized without burdensome proof requirements.⁸⁷ Third, participatory agrarian reform should be implemented with community involvement in decision-making.⁸⁸ Fourth, dispute resolution mechanisms should be strengthened to provide effective remedies for land conflicts.⁸⁹

Future research should explore the practical application of the Integrated Framework for Land Governance through case studies of land disputes in various regions of Indonesia.⁹⁰ Such research would provide valuable insights into the effectiveness and feasibility of the proposed model.

In conclusion, the reconstruction of land governance through the Integrated Framework offers a timely response to the challenges posed by land tenure disputes in Indonesia. By balancing legal certainty, rights protection, and agrarian justice, it enhances both the fairness and effectiveness of land governance. It is hoped that this study will contribute to ongoing legal reform and provide a foundation for more just and sustainable land policy in Indonesia.⁹¹

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⁸³ Griffiths, "Corporate Criminal Liability."

⁸⁴ Naffine, "Who Are Law's Persons?"

⁸⁵ Van Hoecke, Methodologies of Legal Research.

⁸⁶ ATR/BPN, Laporan Kinerja 2023.

⁸⁷ Mahkamah Konstitusi, Putusan No. 35/PUU-X/2012.

⁸⁸ KPA, Laporan Konflik Agraria 2024.

⁸⁹ Marzuki, Penelitian Hukum.

⁹⁰ Ashworth and Horder, *Principles of Criminal Law*.

⁹¹ Coffee, "Corporate Crime and Punishment."

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