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## Legal Certainty of Private Land Ownership Against the Control of Land by the Indonesian National Armed Forces

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**Abstract:** The Indonesian Army's control of the private land presents serious challenges to legal certainty in Indonesia and the protection of civilians' rights. Disputes may arise from the Army's physical control to the land because there is no a clear legal basis and it impacts citizens' property rights and their economic access. This study adopts a normative juridical approach through the analysis of legal documents, laws and regulations in Indonesia, and other related academic legal literature. The inquiries shows that any control to the land without a clear legal procedure constitutes a legal uncertainty, disadvantages the land owners, and it contradicts to the rule of law and social justice. Moreover, The study also emphasizes the need for a dispute resolution mechanism through administrative and civil frameworks, alongside with the harmonization of its legal implementation, to ensure constitutional rights and mitigate future land-related conflicts between civilians and the military.

**Keyword:** Legal Certainty, Land Ownership, Indonesian Army

### INTRODUCTION

Land has an important meaning in the lives of Indonesian people, land has an economic value that is contested by many parties, both government and private, legal entities and individuals. Therefore, to avoid continuous disputes, to create order, justice and legal certainty, it is necessary to regulate it. Regulation of land control and ownership must be within the legal corridor, as emphasized in Article 1 paragraph (3) and Article 33 paragraph (3) of the 1945 Constitution. Article 1 states, "Indonesia is a state of law", which means that all activities of society and the state must be subject to the laws in force in Indonesia.

The concept of the State of Law, in the practice of the state, positive law should be the main basis in dealing with every problem. Law has a central position in regulating the course of government and determining the direction of state policy. The principle known as "the rule of law, not of man" emphasizes that power is exercised through a systematic legal order (Asshiddiqie, 2005). Government officials function as implementers of the legal provisions that have been designed, and their role is within the framework of the established system. The principle of a state based on the rule of law is embodied in the management of natural and agrarian resources in Indonesia, particularly in terms of land ownership, as regulated in Law No. 5 of 1960 concerning Agrarian Affairs (UUPA).

Article 1 paragraphs (1) and (2) of the UUPA explain that all resources within the territory of Indonesia including land, water, and all their contents belong to the entire Indonesian people (Winanti, Qurrahman, Agustanti, 2020). In this context, the state has the authority to control, meaning it only has power or control over these resources, while ownership rights remain with the Indonesian people (Harsono, 2002). The concept of a state based on the rule of law places positive law as the limit on state authority in regulating land. Accordingly, the principle of legal certainty is the primary foundation for protecting land rights.

This principle is reflected in the 1945 Constitution and the UUPA. Article 28H paragraph (4) of the 1945 Constitution affirms that everyone has the right to private ownership that cannot be arbitrarily confiscated. This provision is reinforced by Article 16 paragraph (1) letter a of the UUPA which recognizes Ownership Rights as one type of land rights, as well as Article 20 paragraph (1) of the UUPA which states that Ownership Rights are hereditary, strongest, and most complete rights that a person can have over land. With this legal framework, it is clear that privately owned land has the strongest legal position in the hierarchy of land rights in Indonesia.

The principle of legal certainty cannot be separated from the principle of justice. Gustav Radbruch, in his theory, states that law must be based on three basic values: justice, legal certainty, and utility. According to him, without legal certainty, law cannot be enforced, while without justice, law becomes merely a rigid rule and loses moral legitimacy (Mertokusumo, 2006). Therefore, in the context of land ownership, legal certainty over private property rights must go hand in hand with the principle of justice to ensure that no party is disadvantaged, especially civilians whose constitutional rights are protected by the 1945 Constitution. The principle of legal certainty, guaranteed by the 1945 Constitution and the Basic Agrarian Law (UUPA), should be the foundation of all land regulations.

However, the practice of land ownership in Indonesia demonstrates that these two principles are often not consistently realized. The dispute between civilians and the Indonesian Army (TNI AD) is a clear example of the disharmony between the principle of the rule of law, which guarantees certainty and justice, and the practice of land ownership by state institutions. To understand the current issues, it is important to review the history of Indonesian land law, from the colonial period to the enactment of the 1960 Basic Agrarian Law (UUPA).

Before Indonesian independence, the land system was regulated according to the interests of the Dutch colonial government through various regulations, one of which was the *Agrarische Wet* (Agrarian Law) of 1870. This regulation opened the way for foreigners to control land owned by local residents. Within this system, land rights were recognized, known as *eigendom* (land ownership), a form of absolute land ownership that could only be held by European citizens or legal entities subject to Western law. A land tax system was also implemented, known as *verponding* (a tax on immovable property). Land law during the Dutch East Indies colonial period adhered to a Western legal system with individualistic characteristics, with private ownership as the highest form of land control, as stipulated in Article 570 of the Civil Code. After Indonesia's independence, Law Number 5 of 1960 concerning Basic Agrarian Regulations was enacted, which abolished the concept of *eigendom* and replaced it with Ownership Rights, as an effort to re-establish the principle of social justice in the use and control of land for all Indonesian people (Polwanti, 2022).

In its development, although a national agrarian legal framework has been established to ensure justice and legal certainty, practices in the field still face various problems, especially those related to land ownership and use by state institutions. Land disputes between civilians and government agencies, particularly the Indonesian National Armed Forces (TNI), are one form of agrarian conflict that still frequently occurs in Indonesia. These conflicts generally arise because of the military's need for land to build defense facilities, such as military bases, training areas, and housing, which then conflicts with the interests of civilians who have claims

to the land, either based on a history of hereditary control or official ownership documents(Deslin, 2023).

One concrete example is the case of the Syafei Saridi family, who owns 6,359 m<sup>2</sup> of eigendom verponding land within the Kodam Jaya Complex in Central Jakarta. Although a lease agreement was signed, from 1964 to 1968 but since 1965 and continuing to the present, payments have never been made (Shigeno, 2023), while control over the land remains in the hands of the military. This case reflects the practice of state institutions taking control of privately owned land without a strong legal basis, thereby violating the constitutional rights of citizens to land ownership. Protection of land rights must be based on a national legal system that guarantees certainty and justice, especially in the relationship between citizens and the state((Sumardjono, 2006).

Based on this background, the main issue in this study focuses on the problem of legal certainty and protection of private land rights controlled by the Indonesian Army (TNI AD). In this context, questions arise regarding the legal implications of such land control on the rights of landowners that are legally recognized in the national agrarian law system, as well as the extent to which such control is in accordance with the principles of the rule of law and the provisions of the Basic Agrarian Law. In addition, it is also necessary to examine the dispute resolution mechanisms available to landowners when their rights are violated, whether through administrative, civil, or litigation channels in court, to assess the extent to which the applicable legal system is able to provide effective legal certainty and protection for the community.

## METHOD

This study focuses on the control of former eigendom land by the Indonesian Army (TNI AD) and conflicts with the private property rights of civilians that have not been converted in accordance with the Basic Agrarian Law (UUPA). This study highlights the practice of physical control of land by military institutions since 1965 and its impact on legal certainty and the constitutional rights of citizens. This case is relevant in the context of the protection of private property rights and land dispute resolution mechanisms. The object of analysis includes written legal norms, legal principles, legal theory, and expert opinions, with a focus on the interaction between the TNI AD's physical control and private property rights and the resolution of disputes according to national law.

This research uses a normative legal method through a literature study, examining positive legal norms in legislation, jurisprudence, doctrine, legal literature, and official documents(Marzuki, 2006). Secondary data sources are divided into primary legal materials (1945 Constitution, 1960 Basic Agrarian Law, Civil Code), secondary materials (books, journals, scientific articles), and tertiary materials (legal dictionaries, encyclopedias, legal terms). All sources were selected based on their direct relevance to the TNI AD's land control practices and land rights disputes. Data collection techniques were carried out through library research by searching for, collecting, and reviewing relevant printed and digital literature, including laws and regulations, official government documents, court decisions, legal textbooks, journals, and academic articles (Fajar, Achmad, 2010). The search was conducted through university libraries, national and international legal databases, and credible online sources.

The analysis technique used qualitative normative legal analysis with a deductive and comparative analysis approach. Deductive analysis draws conclusions from general legal norms to specific cases, while comparative analysis compares legal mechanisms between military institutions and civil rights. The analysis includes the interpretation of legal norms, legal principles, and judges' considerations in related decisions, so that it can assess the conformity of the Indonesian Army's land control with national agrarian law provisions and examine alternative dispute resolutions that are fair, transparent, and legally valid.

## RESULTS AND DISCUSSION

### Legal Implications of Control Over Landowners' Rights

In the Indonesian legal system, agrarian rights are rights that arise from the legal relationship between legal subjects and agrarian objects, which give legal subjects the authority to control, regulate, own, and utilize these agrarian objects. The scope of agrarian rights includes land rights, usage rights, management rights, and other rights related to agrarian resources. In this context, land rights are one of the main forms of agrarian rights because they are directly related to people's basic needs for shelter, business space, and livelihoods.

Land rights are granted to legal subjects to be used, owned, and utilized in accordance with applicable laws. Based on their nature, land rights are divided into two types, namely permanent land rights and temporary land rights. Permanent land rights are rights granted to legal entities for an unlimited period of time and cannot be replaced by other rights. The types of rights included in this category include ownership rights, land use rights, building use rights, right of use, and land lease rights.

Meanwhile, temporary land rights are rights granted to legal entities to utilize land for a limited period of time and may expire or be replaced by other rights in accordance with legal provisions. These types of temporary rights include agricultural land lease rights, land mortgage rights, and squatting rights. Thus, control over the earth, water, space, and natural resources therein gives rise to various forms of agrarian rights, while control over land in particular gives rise to land rights.

Land ownership rights are hereditary, absolute, and the strongest property rights in the Indonesian agrarian legal system. Based on the principle of nationality, ownership rights can only be held by Indonesian citizens and are individual in nature, meaning that legal entities cannot hold them unless determined by the government. The Basic Agrarian Law (UUPA) emphasizes that freehold title is the strongest and most complete right to land, with the characteristics of being inheritable or transferable through sale and purchase, grants, and wills; it can be used as collateral with a mortgage; and it must be registered in the national land registration system.

In addition to freehold title, there are also cultivation rights (HGU) and building rights (HGB). HGU is a right to state land granted to individuals or legal entities for a certain period of time for agricultural, fishery, or livestock activities. Meanwhile, HGB is a right to state land granted to individuals or legal entities to erect and own buildings on land that is not their own. These two rights are not individual in nature like property rights and have a time limit in accordance with the provisions of the law (Fuady, 2005).

As stipulated in Article 16 paragraph (1) letter a of Law Number 5 of 1960 concerning Basic Agrarian Principles 1960 (UUPA), one of the land rights recognized in the Indonesian legal system is ownership rights, in addition to cultivation rights, building rights, usage rights, lease rights, and other rights. Ownership rights over land are the strongest, most complete, and hereditary rights, and give the holder full authority to use the land in accordance with their interests as long as it does not conflict with applicable laws and regulations.

The concept of ownership rights in the UUPA has essential similarities with the definition of eigendom in Article 570 of the Civil Code (KUHPperdata), which states that ownership rights are the rights to fully and freely enjoy an object, while still observing the restrictions set by law and not interfering with the rights of others. However, the UUPA adjusts this definition within the framework of national law based on the principle of the social function of land, as emphasized in Article 6 of the UUPA, so that property rights are not absolute but remain subject to the public interest, the interests of the nation, and the state.

Furthermore, Article 21 paragraphs (1) and (2) of the Basic Agrarian Law 1960 (UUPA) stipulate that land ownership rights can only be held by Indonesian citizens, and cannot be held by legal entities, except for legal entities designated by the government. This

provision indicates that ownership rights are individual and based on the principle of nationality. Therefore, state institutions, including the Indonesian National Armed Forces (TNI), do not have the legal authority to own land. As a state institution, the TNI is not a legal entity that can own property, but can only be granted the right to use or manage land controlled by the state for national defence and security purposes.

This is also clarified in Government Regulation No. 40 of 1996 concerning Land Use Rights, Building Use Rights, and Usage Rights, which states that government agencies or state institutions can only use land through a mechanism of usage rights granted by the state, with a specific term and function in accordance with their needs. Thus, although the state has supreme authority over all land in the territory of Indonesia as affirmed in Article 2 of the UUPA, its implementation cannot be interpreted to mean that every state institution has the right to own land as property rights. Land used by state agencies remains state land controlled for public interests through limited usage rights.

The seizure of citizens' land by the Indonesian National Armed Forces (TNI) without a valid legal basis raises serious issues in terms of legal certainty and the protection of citizens' constitutional rights. Normatively, Article 28H paragraph (4) of the 1945 Constitution guarantees that everyone has the right to private property and that it cannot be arbitrarily seized by anyone, including the state. In the context of legal certainty theory, Gustav Radbruch's view emphasizes that the law must reflect three fundamental values, namely justice, legal certainty, and utility. The control of private land without legal basis by state institutions can be said to fail to fulfil two of these three values, namely justice and legal certainty (Sudikno, 2006). This means that the use or control of land by state institutions without formal rights is a form of deviation from the principle of the rule of law itself.

In practice, land law provisions are often not consistently enforced, especially when state institutions take control of land without going through legal mechanisms. This condition shows a gap between *ius constitutum* (the law that applies) and *ius constituendum* (the law that should apply) in the implementation of national agrarian policy. According to Maria S.W. Sumardjono, land acquisition by state agencies without a clear legal basis reflects the weak enforcement of the rule of law in the agrarian sector, where the state often acts as the owner of the land rather than as the authority that regulates its use for the prosperity of the people. In fact, Article 2 paragraph (2) of Law Number 5 of 1960 concerning Basic Principles of Agrarian Law (UUPA) explicitly states that the state's authority in the agrarian sector includes the regulation, allocation, and maintenance of land, not ownership of the land itself. (Sumardjono, 2011)

This means that the state only functions as a regulator and manager of agrarian resources for the public interest, not as a subject that can directly own land. Therefore, any act of land acquisition by state institutions, including the Indonesian National Armed Forces (TNI), must be based on legal procedures, such as granting land use rights or through land acquisition mechanisms for public interests as regulated in Law No. 2 of 2012 concerning Land Acquisition for Public Interest Development. Without such a legal basis, land seizures can be categorized as violations of private property rights guaranteed by the constitution, while also creating legal uncertainty and injustice in the national land system.

One case of land acquisition by the Indonesian Army (TNI AD) is that of the Syafei Saridi family, who owned 6,359 m<sup>2</sup> of *eigendom verponding* land in the Complex, Central Jakarta. This case clearly illustrates how land acquisition by state institutions without a legal basis has direct implications for the loss of legal certainty and protection of citizens' land rights. In this case, although a lease agreement was made between the family and the military institution during the period 1964–1968, lease payments starting in 1965 have never been realized to date, while control over the land remains with the Indonesian Army (TNI AD). This practice demonstrates a form of de facto control without formal legality as stipulated in agrarian



laws and regulations. When the TNI controls the land without a right of use or a land acquisition process for public interests, legally, the Saridi family's ownership rights remain attached and cannot be revoked simply because of physical control by the state. This is in line with Article 27 of the Basic Agrarian Law, which stipulates that ownership rights can only be revoked if: (a) the land falls to the state, (b) it is relinquished by the owner, or (c) it is revoked by law. Since none of these conditions have been met, the TNI's control of the land constitutes an *onrechtmatige overheidsdaad* (unlawful act by the authorities). (Hadjon, 1987)

The legal implications of the TNI's control of the land owned by Syafei Saridi's family cover various important aspects of Indonesia's agrarian legal system. From the perspective of legal certainty, control without a legal basis creates uncertainty regarding the status of the land and hinders the owners from exercising their legal rights, such as selling, inheriting, or mortgaging the land. This uncertainty demonstrates the weakness of the law as a means of protecting legitimate property rights. From the perspective of legal protection, the TNI's seizure of land without going through the proper administrative or judicial mechanisms is a violation of the principle of due process of law, whereby every government action must be based on legally testable procedures. From a human rights perspective, these actions clearly violate the provisions of the 1945 Constitution, which guarantees that everyone has the right to legally own property and that it cannot be arbitrarily seized. Meanwhile, from the perspective of state accountability, the seizure of land without legal basis can be held accountable through civil lawsuit mechanisms based on Article 1365 of the Civil Code (KUHPerdota) concerning unlawful acts (*onrechtmatige daad*), as it has caused both material and immaterial losses to the landowners.

In addition to legal and economic losses, the seizure of land by state institutions without due process also causes immaterial losses that are no less significant, such as the loss of security of ownership and access to economic resources that should be protected by the state. Such practices demonstrate a shift from the principle of rule of law to rule by law, where the law is used as a tool to legitimize power rather than as a means to uphold justice (Susanti, 2021). Thus, the TNI's seizure of land belonging to the Syafei Saridi family not only violates applicable positive law, but also undermines the principle of substantive justice, which is the spirit of national agrarian law. Indonesian agrarian law must, in essence, balance the interests of the state and the protection of individual rights, so that there should be no unilateral action by state institutions that disregards citizens' rights to their land.

Therefore, the legal implications of land acquisition by the TNI on the rights of landowners can be categorized into two main dimensions, namely normative and practical. Normatively, this action constitutes a violation of positive law provisions that guarantee property rights, legal certainty, and the protection of human rights as stipulated in the 1945 Constitution and regulations related to land. Meanwhile, in practical terms, occupation without a legal basis causes various losses for landowners, both in the form of loss of land ownership and utilization rights, economic losses due to loss of utility value, and social losses in the form of disruption to the sense of security over legal ownership. In this context, the state, through the government and the TNI, has a legal and moral obligation to restore the situation as it should be through land dispute resolution mechanisms, either administratively through mediation at the National Land Agency (BPN) or through litigation in court. Thus, the case of the Syafei Saridi family's land ownership is a clear reflection and test of the effectiveness of agrarian law enforcement in Indonesia, as well as a benchmark for the extent to which the state upholds the principles of substantive justice and legal certainty as guaranteed by the constitution.

## Mechanism for Resolving Disputes over Private Land Ownership Controlled by the Indonesian Army

Land ownership disputes between citizens and state institutions such as the Indonesian Army (TNI AD) reflect the weak implementation of agrarian law and overlapping authorities in the state's land control practices. The case of the Saridi family in the KPAD Complex, Central Jakarta, is one concrete example of this problem. The Saridi family owned 6,359 m<sup>2</sup> of land, with proof of ownership in the form of an *eigendom verponding*, which was initially leased to Kodam Jaya (TNI AD), but after 1965 the rent was never paid again. The Saridi family's land has been controlled by the Indonesian Army since 1965 without a valid legal basis and without compensation or a valid lease agreement. This situation demonstrates a conflict between citizens' constitutional rights to land ownership and the state's claim to control based on defence needs.

In the context of positive law, disputes over land can be resolved through two main channels. First, the administrative channel, which is used when the problem relates to the status of land data, overlapping certificates, or errors in the registration process. Based on Article 19 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), the state is obliged to organize land registration to ensure legal certainty for land rights holders. This provision is further elaborated in Government Regulation No. 24 of 1997 concerning Land Registration, which authorizes the National Land Agency (BPN) to correct, cancel, or amend land administration data if legal defects or procedural violations are found.

Dispute resolution in this case can be pursued through administrative channels via the National Land Agency (BPN), which plays an important role in enforcing legality and rectifying unlawful land ownership practices. If administrative channels are unsuccessful, civil litigation becomes an alternative means of claiming rights and obtaining compensation for losses. Thus, legal protection of land does not only depend on written rules, but also on the consistency of implementation and supervision of land ownership practices by state institutions. This case shows that there are still many challenges in harmonizing legal certainty, social justice, and the implementation of agrarian law in Indonesia. The state, including government institutions, must uphold the principles of justice and legal certainty in land management and ensure the protection of citizens' rights from arbitrary actions. Land is not only a vital asset, but also a symbol of sovereignty and citizens' rights to living space. Fair, transparent, and consistent law enforcement is key to reducing agrarian disputes, protecting private property rights, and upholding the fundamental principles of the rule of law in Indonesia.

In relation to this norm, in the case of Syafei Saridi, whose land was blocked and unilaterally seized by the TNI, administrative mechanisms are an important first step in ensuring the legality of such actions. Based on Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 13 of 2017 concerning Procedures for Blocking and Seizing Land Registration, administrative blocking of land can only be carried out by parties with a valid legal basis, such as a seizure letter from law enforcement officials or a court decision. If the TNI carries out a block without a clear legal basis, for example, based only on a claim of use of defence facilities without a right of use or management document, then this action can be categorized as an illegal block. In situations like this, the landowner can submit a request for the block to be lifted to the local Land Office by attaching valid proof of ownership, such as a certificate of ownership or proof of *eigendom verponding*.

If administrative efforts through the National Land Agency (BPN) are unsuccessful or the Indonesian National Armed Forces (TNI) refuses to revoke its control, the case can be resolved through civil proceedings in a District Court. This route is taken if there has been a violation of civil rights, such as unauthorized control of land or unlawful acts. Based on Article 1365 of the Civil Code, any act that violates the law and causes harm to another party obligates

the perpetrator to provide compensation (Santoso, 2015). In this context, control by the TNI without legal basis and without adequate compensation can be classified as an *onrechtmatige daad* or unlawful act that gives rise to civil liability. Property rights are the strongest and most complete rights that can only be revoked in the public interest with fair compensation and based on clear laws. Thus, unilateral seizure without a valid legal mechanism violates the principles of legal certainty and justice.

In addition, settlement through civil proceedings also has a corrective function against administrative actions by the state that exceed its authority (abuse of power). The management of state-owned land and buildings by the TNI must remain subject to national agrarian law provisions. In the event of misuse of state assets against the civil rights of citizens, the settlement must be pursued through the general court system (Mumpuni, Mudiparwanto, 2021). The National Land Agency plays a central role in administrative corrections and providing legal recommendations before cases are brought to court (Sahnan, Arba, Suhartana, 2019). Thus, administrative and civil channels are two complementary legal instruments in ensuring certainty of land rights and preventing the domination of state power over the civil rights of citizens.

## CONCLUSION

The Indonesian Army's (TNI AD) control of privately owned land, as exemplified by the case of the Syafei Saridi family, demonstrates the inconsistency of the principles of the rule of law, legal certainty, and justice in agrarian practices in Indonesia. Although the 1945 Constitution and the 1960 Basic Agrarian Law recognize and guarantee the protection of private land ownership rights and regulate state control over land in accordance with applicable legal procedures, in reality, the rights of the community are often neglected when the state takes control of land. This clearly creates legal uncertainty for landowners and also eliminates their property rights. In reality, however, the rights of the community are often neglected when the state takes control of land. This situation clearly creates legal uncertainty for landowners and also eliminates their land ownership rights and causes economic losses, while at the same time undermining their sense of security regarding their ownership rights, which should be protected. The seizure carried out by the TNI AD without any rent payments or clear legal basis confirms that private property rights remain attached and cannot be eliminated without a clear legal process. This practice is in stark contrast to the principle of the rule of law, which requires all government actions to comply with the law and be legally testable, and is also inconsistent with the principle of justice that upholds the protection of citizens' rights. Therefore, land acquisition without legal procedures can be categorized as a violation of the law that incurs liability for the acquiring party.

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