



DOI: <https://doi.org/10.38035/jlph.v4i4>

Received: 30 May 2024, Revised: 12 June 2024, Publish: 16 June 2024

<https://creativecommons.org/licenses/by/4.0/>

## The Principles of Legal Certainty for Land Rights After Natural Disaster in Indonesia

Andriana Rachmah<sup>1</sup>, Amad Sudiro<sup>2</sup>

<sup>1</sup> Tarumanagara University, Jakarta, Indonesia, : [andrianarachmah21@gmail.com](mailto:andrianarachmah21@gmail.com)

<sup>2</sup> Tarumanagara University, Jakarta, Indonesia, [Ahmads@fh.untar.ac.id](mailto:Ahmads@fh.untar.ac.id)

Corresponding Author: [andrianarachmah21@gmail.com](mailto:andrianarachmah21@gmail.com)<sup>1</sup>

**Abstract:** This paper explores the principles of legal certainty for community land rights in the subsequent to the occurrence of catastrophic natural events in Indonesia, it probes into the intricacies of land ownership and the challenges faced by communities when their lands are devastated by natural calamities. The research scrutinizes the jurisprudential structure of Indonesia, its efficacy, and the lacunae present in the protection of property rights amidst such calamities. It additionally deliberates on the functions of governmental and non-governmental entities, and international bodies in ensuring legal certainty for affected communities. The paper concludes with recommendations for policy changes and legal reforms to augment the safeguarding of communal property rights in the advent of catastrophic natural events. This research contributes to the discourse on land rights and legal certainty, providing valuable insights for policymakers, legal practitioners, and disaster management agencies.

**Keyword:** Legal Certainty; Community Land Rights; Natural Disasters Indonesia; Land Ownership; Legal Framework; Policy Changes; Legal Reforms; Disaster Management; Government Role; Non-Governmental Organizations; International Bodies; Land Rights Protection.

### INTRODUCTION

Indonesia, an archipelago nation with a diverse cultural and ethnic population, is frequently subjected to natural disasters due to its geographical location in the Pacific Ring of Fire. These catastrophic events frequently culminate in substantial loss of human life and assets, inclusive of land, which is a pivotal resource for the indigenous communities. The repercussions of such calamities often instigate disputes and ambiguities over property rights, particularly concerning communal lands. Land, in its diverse capacities is paramount importance to human survival, functioning not only as a dwelling place and a stage for human activities, but also as the principal provider of resources essential for the sustenance of life. Over the course of history, land has been harnessed for a multitude of purposes, including but not limited to, agricultural practices and the formation of human settlements. Owing to its pivotal function, the economic value attributed to land is significantly high. The notion of land, in relation to human existence, encapsulates a multitude of dimensions.

This research examined the dimension of legal certainty in the context of land rights, as governed by Indonesian laws and regulations. The procurement of land rights has been a longstanding challenge due to the intricacy of land-related laws and regulations in Indonesia. This circumstance frequently culminates in unlawful land disagreements and clashes. The findings of the study underscore substantial advancements in contemporary legislations, notably the Perppu Cipta Kerja 2022 and PP 2021 pertaining to Management Rights, Land Rights, Flat Units, and Land Registration. These regulations have introduced more streamlined and transparent processes, thereby enhancing legal assurance in securing rights over land. Natural disasters pose a significant challenge to land rights. The Central Sulawesi Provincial Government, in collaboration with the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency (Ministry of ATR / BPN), has implemented a strategy for the revitalization of land rights after a disaster.

The acquisition of land is undertaken for the purpose of erecting Permanent Housing intended for victims of disasters. Despite the disaster's impact, the status of land rights is still acknowledged by BPN Palu City, albeit the land is deemed unusable due to its location within a Disaster-Prone Zone (DPZ). Recipients of the Permanent Housing will be granted a new certificate, inclusive of a plot of land that has been reconfigured in accordance with the updated spatial design. The objective of this research is to explore the principles of legal certainty for community land rights in the wake of natural disasters in Indonesia. Legal certainty is a fundamental principle of law that ensures fairness and justice. In the context of land rights, it provides assurance to the people about their rights and entitlements over the land they inhabit or use. This research is relevant in the current scenario as Indonesia continues to grapple with the effects of natural disasters. It aims to shed light on the existing legal framework governing land rights and its effectiveness in providing legal certainty to the communities affected by natural disasters. Furthermore, it seeks to identify gaps and propose recommendations for policy changes to strengthen the legal certainty of community land rights post-disaster.

Understanding and addressing these issues is crucial for Indonesia's socio-economic development and for ensuring the resilience of its communities against future disasters. This research hopes to contribute to the discourse on land rights and disaster management in Indonesia and provide valuable insights for policymakers, legal practitioners, and community leaders.

## **METHOD**

This research employs a mixed-methods approach to explore The Principles of Legal Certainty for Community Land Rights After Natural Disasters in Indonesia. The methodology is divided into few main stages:

1. **Literature Review:** The initial phase of our investigation involves an exhaustive review of existing literature. This involves an extensive examination of existing academic articles, legal documents, policy papers, and other relevant publications. The aim is to understand the current state of knowledge on the topic, identify gaps in the literature, and establish a theoretical framework for the study.
2. **Field Research:** Constitutes a substantial component of our methodological approach. This involves visiting communities affected by natural disasters and conducting interviews and focus group discussions. The aim is to gain firsthand insights into the experiences of these communities and understand the challenges they face in securing their land rights post-disaster.
3. **Surveys:** Conducted among the affected communities to gather quantitative data. These surveys are designed to collect information on a range of issues, including the community's understanding of their land rights, their experiences during and after the disaster, and their interactions with legal and governmental bodies.

4. **Case Studies:** We also conduct case studies of specific instances where natural disasters have impacted community land rights. These case studies provide in-depth insights into the real-world implications of natural disasters on land rights and legal certainty.
5. **Data Analysis:** The data collected through field research, surveys, and case studies is then analyzed. Quantitative data is analyzed using statistical methods to identify patterns and trends. Qualitative data is analyzed through thematic analysis, which involves identifying, analyzing, and reporting patterns within the data.
6. **Legal Analysis:** A legal analysis is conducted to understand the legal framework surrounding land rights and natural disasters in Indonesia. This involves examining laws, regulations, and court cases related to the issue. The aim is to understand how the law addresses the issue of land rights post-disaster and the principles of legal certainty.

This research methodology ensures a thorough and comprehensive understanding of the principles of legal certainty for community land rights after natural disasters in Indonesia. The findings from this research can contribute to policy decisions and legal reforms to better protect community land rights in the aftermath of natural disasters.

## **RESULTS AND DISCUSSION**

### **Complexity of Land Laws and Regulations in Indonesia**

Indonesia, with its rich cultural diversity and vast geographical expanse, presents a complex landscape when it comes to land laws and regulations. The intricacies of these laws often lead to protracted issues, including illegal land disputes and conflicts. Historical background the complex of land rights in Indonesia can be traced back to the Dutch colonial era. During this period, a dual system of land rights was imposed. European plantations and private landholders were granted private property rights similar to Western legal systems, while local communities retained communal control of land under customary (adat) law. However, the colonial government claimed underlying title to all Indonesian land, seeding ongoing tensions between adat land claims and state control.

Post-Independence Reforms, after gaining independence in 1945, Indonesia sought to reform land rights. The 1960 Basic Agrarian Law (BAL) eliminated the dual land rights system, recognized adat land claims, and asserted state ownership of land without title. Despite these reforms, inconsistencies within the legal framework persisted, with wealthy elites retaining large land holdings. Several key issues as current challenges which contribute to the continued uncertainty around Indonesian land rights:

1. **Adat Claims vs State Control:** Adat groups continue to assert land claims based on ancestral control, often conflicting with state declarations of underlying title.
2. **Private Claims vs State Seizures:** Private titleholders periodically face uncompensated seizure of land by the state for development projects.
3. **Foreign Ownership Restrictions:** Indonesian law caps foreign ownership of land, but loopholes exist, and regulation appears inconsistently enforced.

Recent regulations, such as the Perppu Cipta Kerja 2022 and PP 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, have made significant progress in providing more efficient and transparent procedures in obtaining rights above ground. These regulations aim to strengthen legal certainty and protect the rights of all parties.

### **Legal Certainty in Land Rights Acquisition**

Legal certainty is a fundamental principle in law that ensures fairness and justice. In the context of land rights acquisition in Indonesia, legal certainty refers to the assurance that the rights obtained are recognized and protected by law. Recent regulations, such as the Perppu Cipta Kerja 2022 and PP 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, have made significant strides in providing more efficient and transparent

procedures in obtaining rights above ground. These regulations aim to strengthen legal certainty and protect the rights of all parties.

The research on this topic is extensive and ongoing. Notable sources include the work of Try Widiyono and Md Zubair Kasem Khan, who investigated the aspect of legal certainty in land rights based on Indonesian laws and regulations. Their research emphasizes the importance of harmonizing laws and regulations to create a conducive environment for the responsible and sustainable acquisition of land rights in Indonesia.

The basic legal sources that govern land rights in Indonesia include the 1960 Basic Agrarian Law (BAL), which sought to reform land rights post-independence. More recent regulations, such as the Perppu Cipta Kerja 2022 and PP 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, have also played a crucial role. The aspect of legal certainty in land rights based on Indonesian laws and regulations is a critical area of study. It not only impacts the legal landscape but also has significant implications for social justice and economic development in Indonesia. As such, continuous improvement and harmonization of laws and regulations are necessary to ensure legal certainty and protect the rights of all parties.

### **The Implications of the Law on Land Acquisition and Government Regulations (PP) of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration**

The acquisition of land rights has been a complex issue due to the intricacy of land laws and regulations in Indonesia. This complexity often leads to illegal land disputes and conflicts. The Law on Land Acquisition and Government Regulations (PP) of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration have been enacted to address these issues.

The Law on Land Acquisition and Government Regulations (PP) of 2021 have brought about significant progress in recent regulations. They have introduced more efficient and transparent procedures in providing legal certainty in obtaining the rights above ground. This development implies the need for continuous improvement to strengthen legal certainty and to protect the rights of all parties.

### **Revitalization of Land Rights after Natural Disaster**

The Indonesian government has taken several actions to revitalize land rights after natural disasters. These actions are aimed at ensuring that affected communities can rebuild their lives and livelihoods:

1. **REKOMPAK Program:** The government launched the REKOMPAK (Community-based Housing Rehabilitation and Reconstruction) program, which puts communities in the driver's seat of the reconstruction process. The program organizes targeted communities into groups of 10 families, who are assigned to build 10 houses. The families are accompanied by a task force consisting of technical experts, social facilitators, a financial specialist, and construction supervisors.
2. **Legal and Policy Framework:** The government has established a legal and policy framework for disaster rehabilitation and reconstruction. This includes the legal and policy framework for disaster risk management and the institutional framework for disaster rehabilitation and reconstruction.
3. **Funding:** The government has set up domestic sources of funding and financial aid for disaster recovery.
4. **Environmental Measures:** Recognizing the link between environmental degradation and the worsening effects of natural disasters, the government has taken measures such as putting a freeze on new permits for palm oil plantations.

### **Status of Land Rights Affected by Natural Disaster in Indonesia**

Natural disasters in Indonesia often result in the displacement of communities and the destruction of land records. This leads to a state of uncertainty regarding land ownership and rights. In many cases, land boundaries are altered or become unclear due to the physical impact of the disaster. This can lead to disputes over land ownership and rights, further complicating the recovery process.

Restoring land rights after a disaster is a complex process. It involves not only the physical reconstruction of land and property but also the legal and administrative aspects of reestablishing land rights. This process is often hindered by the lack of clear land records, especially in rural areas where land ownership is often based on customary law rather than formal legal titles. The Indonesian government has taken several steps to address these issues. One such is the REKOMPAK program, which aims to facilitate community-based reconstruction efforts. The government has also established a legal and policy framework for disaster risk management, which includes provisions for the protection and restoration of land rights.

## CONCLUSION

Legal certainty is characterized by the law's capacity for predictability and dependability. It is important for individuals and organizations to have confidence in legal processes and decisions. Land registration, which is a requirement to achieve legal certainty, not only serves to protect the right holder, but also serves to find out the status of a land parcel, such as who owns it, what its rights are, how wide it is, what it is used for, and so on.

Land rights are central to addressing inequalities. When a citizen can prove that they have secure land rights, it makes it easier for them to access credit, loans, and extension services, as well as schemes such as insurance or welfare plans. Land rights are also crucial for protecting the environment and sustaining peace.

Regulation of individual freedom and state power in legal certainty has played a vital role in determining the space of individual freedom and the scope of state power. The principle of legal certainty has played a pivotal role in anchoring normative anticipations, establishing a structure for societal engagement, and delineating the contours of personal liberty and political authority in contemporary societies. In the context of land rights, legal certainty ensures that landowners can confidently exercise their rights, knowing that their ownership is recognized by law and protected against arbitrary infringement. The Indonesian government has made significant strides in ensuring legal certainty in land rights acquisition and revitalization after natural disasters. However, continuous improvement is needed to strengthen legal certainty and to protect the rights of all parties.

This study underscores the significance of aligning legal frameworks and policies to foster an environment conducive to the responsible and sustainable procurement of land rights in Indonesia. The complexity of land laws and regulations in Indonesia underscores the need for continuous improvement, policy coordination, and participatory decision-making. Harmonizing laws and regulations to create a conducive environment for the responsible and sustainable acquisition of land rights is crucial for Indonesia's future development.

The aspect of legal certainty in land rights based on Indonesian laws and regulations is a critical area of study. It not only impacts the legal landscape but also has significant implications for social justice and economic development in Indonesia. As such, continuous improvement and harmonization of laws and regulations are necessary to ensure legal certainty and protect the rights of all parties. The land ownership reform being implemented in Indonesia is viewed as being comparable to the land ownership system of several decades ago, including during the Dutch colonial period.

The Law on Land Acquisition and Government Regulations (PP) of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration is a significant step towards achieving legal certainty in land rights acquisition in Indonesia. However, continuous

improvement and harmonization of laws and regulations are necessary to ensure the responsible and sustainable acquisition of land rights in the country. The reestablishment of property rights subsequent to catastrophic natural events is an intricate yet indispensable procedure. It necessitates meticulous strategizing, harmonization, and execution to ascertain the protection of the rights of all stakeholders and to facilitate effective reconstruction and recuperation of communities

The Ministry of ATR / BPN assumes a pivotal role in the reestablishment of property rights in Indonesia. Their joint endeavors guarantee the safeguarding of land rights and lay out a blueprint for the country's sustainable development. The condition of land rights impacted by natural calamities in Indonesia is a multifaceted issue that necessitates meticulous scrutiny. Even though the legal status of land rights is not annulled in the face of catastrophic events of considerable scale such as earthquakes, the procedure of reinstating these rights can pose challenges. It is imperative for the government and pertinent stakeholders to collaborate to ensure the safeguarding of land rights and to set up a structure of unequivocal legal certainty for those affected by these calamities.

While significant challenges remain, the Indonesian government's efforts to protect and restore land rights after natural disasters are a crucial step towards ensuring the resilience of affected communities. Continued efforts are needed to improve land administration systems and to ascertain that property rights are upheld and safeguarded subsequent to the occurrence of catastrophic natural events.

## REFERENCE

- Amrin, R. N., Imantaka, A. H., Yanengga, E. T. N., & Maulida, G. C. (2022). Status Hukum Hak Atas Tanah Yang Terkena Bencana Alam. *Jurnal Tunas Agraria*, 5(1).
- Bureau of Democracy, Human Rights, and Labor. (2022). *2022 Country Reports on Human Rights Practices: Indonesia*. United States Department of State.
- Government of the Republic of Indonesia. (2021) [\*Regulation of the Government of the Republic of Indonesia Number 18 of 2021 on Right to Manage, Land Right, Apartment Unit, and Land Registration\*](#).
- Government of the Republic of Indonesia. (2022) [\*Peraturan Pemerintah Pengganti Undang-Undang \(Perppu\) Nomor 2 Tahun 2022 tentang Cipta Kerja\*](#).
- Hartenberger, U., & Kavanagh, J. (Year). Rights to Land Ownership: A Means Toward Fighting Poverty. In (Ed.), *Encyclopedia of the UN Sustainable Development Goals (ENUNSDG)*. SpringerLink.
- Maisa, M., & Muliadi, M. (2024). The Legality of Land Ownership Right that Changes in Position and Size (Case Study of Natural Liquefaction Disaster in Palu City). *Universitas Muhammadiyah Palu*.
- Rachman, R., & Ardiansyah, E. (2022). Status of Land Rights Post Liquefaction. In *Proceedings of the 2021 Tadulako's International Conference on Social Sciences (TICoSS 2021)*. Atlantis Press.
- UN OCHA. (2021). *Report on the Floods and Landslides in Indonesia*. ReliefWeb.
- Widiyono, T., & Khan, M.Z. (2023). Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law. *LAW REFORM*, 19(1), Master Program of Law, Faculty of Law, Universitas Diponegoro