

*Research Article***Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law**Try Widiyono<sup>1\*</sup>, Md Zubair Kasem Khan<sup>2</sup><sup>1</sup>Faculty of Law, Universitas Islam Jakarta, Indonesia<sup>2</sup>Baruch College, City University of New York, USA

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**ABSTRACT**

Acquisition of land rights has been a protracted issue due to the complexity of land laws and regulations in Indonesia. This situation often leads to illegal land disputes and conflicts. This research investigated the aspect of legal certainty in land rights based on Indonesian laws and regulations. This study focused on the aspects of legal certainty in several laws and regulations related to land rights and examined 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 research methods involved a qualitative approach with a normative and juridical approach. The research results highlight significant progress in recent regulations, such as the *Perppu Cipta Kerja* 2022 and PP 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration, regarding more efficient and transparent procedures in providing legal certainty in obtaining the rights above ground. This finding implies the need for continuous improvement to strengthen legal certainty and to protect the rights of all parties. This 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.

**Keywords:** Land Rights; Land Acquisition; Legal Certainty; National Land Law.

**A. INTRODUCTION**

Land plays a significant and crucial role in the existence of humans. It serves not only as a habitat and platform for our activities but also as the main source of sustenance. Lands have been used for various undertakings over the ages, including farming and constructing communities. Due to its critical role, the value of land is highly economic (Deininger, Ali, & Yamano, 2008). The concept of land concerning human life encompasses various aspects. Firstly, it serves as a source of production that can lead to prosperity. Secondly, it can impact a person's involvement in community decision-making from a

political standpoint. Thirdly, it serves as a significant cultural asset that can elevate one's social status. Lastly, the land holds sacred importance as it is the ultimate destination where everyone returns after death. The land holds significant religious value for indigenous peoples and local communities, not solely as an object that cannot be moved but as a precious component of their community. Beyond its social and economic purposes, there are differing interpretations of its function, leading to disputes and demands for ownership (Caldwell, 1973). 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 (Tegnan, 2015; Noor, 2021).

In Indonesia, despite the existence of the 1960 Basic Agrarian Law (BAL), which sets out an admirable goal, the current policy primarily focuses on benefiting capital and does not work in favor of the lower-middle-class population. Furthermore, the aspect of fairness in land ownership is often neglected in land acquisition projects. Several groups, including the government, have breached their social responsibilities, disregarded the customary rights of indigenous communities, exceeded the maximum land ownership limit, taken away community land, and surrendered land. Land disputes typically arise due to differing viewpoints, competing claims, and conflicting interests among individuals who depend on land for their livelihoods and others who require it for significant economic endeavors, which adds to the complexity of the situation (Said, & Irwansyah, 2019).

However, the acquisition of land rights in Indonesia has been a longstanding issue due to the country's complex land laws and regulations. The process of acquiring land can often be difficult and inefficient. On the other hand, a state that upholds the rule of law is characterized by the safeguarding of human rights, the separation of powers, a government that operates under established regulations and laws, and the provision of administrative justice in disputes.

Fuller (1964) noted that the formal rule of law consists of crucial aspects such as the requirement for laws to be legitimately established and openly announced. These laws should be relevant to all individuals, unchanging, easily understood, coherent, and applicable to the future.

Although the specific principles of a rule of law state may differ across countries, the fundamental tenet is that all individuals in power within the state must comply with both written and unwritten legal norms. Put differently, the goal remains the same: to achieve and safeguard the liberty of the individual from the capriciousness of group authority (Grey, 1984; Tan, 2021; Tassinis, 2020). The 1945 Constitution clearly states that the foundation of the Indonesian State is the law (*rechtsstaat*) as opposed to mere power (*machtsstaat*) (Usman, 2020). This principle is reiterated in the third amendment (3), Article 1, paragraph (3) of the 1945 Constitution, which states that Indonesia is a state built on the law. After establishing the rule of law, the next step is to promote the well-being of society by safeguarding individuals' entitlement to land ownership, which is a fundamental human right (Ali et al., 2022).

Indonesia has established a legal foundation for the National Agrarian law, based on Article 33, paragraph (3) of the 1945 Constitution, which states that the state has control over the land, water, and natural resources and should use them for the benefit of

the people (Widiyono, & Khan, 2022). Before the amendment, Article 33 paragraph (3) of the 1945 Constitution declared that the wealth and well-being of the people are dependent on the land, water, and natural resources found within them. Hence, the government must regulate and utilize them in a manner that benefits the majority. On September 24, 1960, the legislation on land was introduced under the name of Law Number 5 of 1960 concerning Basic Agrarian Law (BAL), which is still employed as the legal reference in Indonesia's land-related procedures. In addition, the certainty of land ownership through legal certainty has been established by Government Regulation Number 24 of 1997, Land Acquisition Law No. 2 of 2012, and Government Regulation 18 of 2021. Currently, the Indonesian government also introduced more friendly regulations in regulating land rights acquisition through Government Regulation in lieu of the Job Creation Law (Perppu Number 2 of 2022) issued on December 30, 2022 as a substitute for Law Number 11 of 2020 concerning Job Creation. Another important regulation is Government Regulation (PP) Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest.

Legal certainty refers to the predictability and reliability of the law, which is important for individuals and organizations to have confidence in legal processes and decisions (Braithwaite, 2002).

Indonesia regards land as a crucial resource in achieving its national goals. The country sees land as a fundamental factor in creating an equitable and prosperous society guided by Pancasila and the 1945 Constitution. Upholding the rule of law requires ensuring legal certainty, order, and protection, which upholds the principles of fairness and justice through safeguarding citizens' rights. The 1945 Constitution does not only have a significant legal importance, but also holds philosophical meaning for the nation and state (Dimiyati et al., 2021; Wardhani, Noho, & Aga, 2022; Fernando et al., 2022). The main goal of implementing the Basic Agrarian Law as a system or service in the land sector is outlined in the general explanation of the law. This includes establishing the basis for creating the National Agrarian Law, which will serve as a means to promote the well-being, contentment, and fairness of the state and its citizens, with a special focus on providing legal certainty. It also aims to establish a simple and unified land law framework and ensure legal certainty for people's land rights (Bedner, & Arizona, 2019; Yubaidi, Mohamad, & Abd Aziz, 2022; Li, 2021). The process of land acquisition is also controlled by Government Regulation Number 24 of 1997 on Land Acquisition and Government Regulation Number 18 of 2021 on Managing Land, Flat Units, Land Rights, and Land Acquisition (Wijayanti, Muryanto, & Darori, 2021). Article 2 Paragraph 2 of the BAL establishes the state's control over land and its

use, distribution, and upkeep. It determines the legal relationship between individuals and the land, water, and space, including legal actions. This control leads to the creation of land rights (Article 4 paragraph 1), which may be owned individually or collectively with others and legal entities. The state has the power to determine land rights based on its authority to control land and may grant these rights to Indonesian citizens, foreigners residing in the country, domestic legal entities, and foreign legal entities with representatives in Indonesia (Syarif, 2022). Land rights are the rights that authorize the right holders to use and/or take advantage of the land that they claim. The term "use" implies that land rights are for building or non-agricultural purposes, while the term "take advantage" implies that land rights are for non-building purposes, such as the benefit of agriculture, fishery, livestock, and plantations (Bola, 2017). Article 4 paragraph 1 of the Basic Agrarian Law pertains to the entitlement of land, and this is expounded upon in Article 16 paragraph 1, and Article 53 paragraph 1 of the BAL. Article 16 paragraph 1 of the Basic Agrarian Law outlines the various types of land rights that individuals may possess, including ownership rights, the right to cultivate, the right to build, the right to use, the right to rent for buildings, the right to open land, and the right to collect forest products (Thorburn, 2004; Syarif, 2022). This show that Indonesia has been undergoing significant changes in its national land laws and regulations in recent years,

particularly to land rights acquisition. The country's national land law, known as the Agrarian Law, is the most relevant legal framework for the land sector. One of the significant amendments to the Agrarian Law was made in Law No. 2 of 2012 to strengthen legal certainty regarding land rights acquisition. However, the efforts of the government to secure better land rights acquisition under the law have been facing various challenges, including the complexity of existing regulations, corruption, the lack of land registration infrastructure, and conflicting regulations.

Recent studies of Krishna et al. (2017), Roestamy et al. (2022), Purnomo et al. (2019), Van der Muur (2018) have identified some key legal and regulatory challenges that need to be addressed to ensure a more robust process of land rights acquisition, specifically, legal certainty of the object of rights and legal certainty of land status. Furthermore, the research of Nurdin (2022) highlighted the legal certainty of the object of rights focusing on the accuracy and validity of land ownership information through proper documentation of land rights holders. Meanwhile, von Benda-Beckmann (2014) and Handayani et al. (2022) demonstrated the legal certainty of land status concerning ensuring clarity and accuracy over land-use classification, land ownership, and potential disputes regarding land rights. Silviana et al. (2023) describe the Agrarian Laws issued by the government regulating the ownership and utilization of lands often are not in concomitance

with the local wisdom. Kunz et al. (2017) have highlighted the need for more effective and efficient institutional arrangements, such as improving the registration system for land rights and strengthening governance mechanisms to address conflicts and to ensure greater consistency in the application of national land laws. Furthermore, promoting greater community participation and addressing the root causes of land disputes, such as issues of land tenure and governance, could potentially lead to a more secure, equitable, and sustainable future for Indonesian land rights acquisition.

Thus, the current research was conducted to investigate the legal certainty of the object of rights and legal certainty of land status in Indonesian land law, such as Law No. 5/1960 on Basic Agrarian Law, Law No. 2 of 2012, which regulates land acquisition, ownership, and rights, the Law on Spatial Planning No. 26 of 2007 which governs land use and planning, Government Regulation No. 24 of 1997, etc. Hence, the primary purpose of this study was to analyze the Indonesian National Land law and to assess other laws related to land rights acquisition, especially regarding legal certainty of the object of rights and legal certainty of land status.

## B. RESEARCH METHODS

This study applied a descriptive-analytical research method utilizing a normative juridical approach (Soemitro, 1982). Normative legal research used in this study concentrated on legal

resources linked to the subject of legal certainty in national land law regarding land rights acquisition. The main purpose of the normative juridical approach is to gather secondary legal materials through library research or document study (Soekanto, & Mamudji, 2014).

In the normative approach to legal research, Ali (2014) suggests that creating a systematic list of doctrinal concepts is beneficial for conducting research in the library or studying legal documents. The data sources used in this research were drawn from relevant past research and legislation regarding legal certainty in land rights acquisition, especially regarding legal certainty of the object of rights and legal certainty of land status. To analyze the legal material gathered, a qualitative approach was used, involving descriptive, analytical, and juridical reasoning.

## C. RESULT AND DISCUSSION

### 1. Legal Certainty in Contemporary Laws

Gustav Radbruch clearly articulates the legal trio with a sentence that he highlights as being important that 'law is the reality whose sense is to serve the value of law, the idea of law' (Alexy, 2021). According to Radbruch, the definition of law goes beyond just fairness, as it also encompasses elements of purposiveness and legal certainty (Leawoods, 2000). Although justice is deemed the most significant out of the three, it does not imply that the other two should be neglected. A sound law achieves a

harmonious equilibrium of these three aspects for the betterment and progress of the community. Radbruch defines legal certainty as the state where the law can be enforced as a rule. The establishment of social order is dependent on the law, which makes legal certainty its responsibility. The characteristic of legal certainty can only be present when the law is involved, specifically regarding the language that has been documented in legal writing (Hage, & Ningrum, 2022). The legal certainty conception implies that a law lacking legal certainty cannot serve as a universal behavioral guide. Legal certainty refers to the explicitness of regulations, enabling their use as instructions for those abiding by the law. Legal certainty according to Buitelaar, & Sorel (2010) is defined as a degree to which rightful claimants are certain of their defined rights, including the predictability of government actions in respect of these rights. Fenwick, & Wrba (2016) state that the concept of legal certainty is essential in upholding the rule of law. It requires that the law should be clear enough for those who are affected by it to regulate their conduct and to avoid the arbitrary use of public power. It has been a fundamental principle in determining the boundaries of individual freedom and state authority. Legal certainty has been crucial in establishing normative expectations and providing a framework for social interaction, thereby defining individual rights and political power in contemporary societies.

Van Apeldoorn (2021) states that legal certainty could also pertain to specific issues that can be addressed through the law. Legal certainty guarantees the enforcement of the law, enables individuals to exercise their legal rights, and facilitates the implementation of judgments. Legal certainty serves as a protection against capricious activities by assuring individuals of receiving anticipated benefits under predetermined circumstances. This implies that one of the fundamental principles of legal systems is legal certainty with clear legal guidelines. This means that laws must be specific enough that an individual, with the right guidance if needed, can reasonably anticipate the repercussions that may result from any particular course of action. As Maxeiner (2006) noted, legal certainty requires that "all law must be sufficiently precise to allow the person-if need be, with appropriate advice-to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail." Legal certainty refers to a definite state of provisions and stipulations, while law pertains to the legal instrument of a nation that secures the rights and obligations of its people. Thus, legal certainty guarantees the rights and obligations of all individuals through the regulations set by their country's legal instruments. Legal certainty is based on the implementation of a law that is specific, enduring, and uniform, and cannot be changed by personal circumstances (Rendas, 2021; Kharisma, 2020).

Lawrence M. Friedman (1975) states that to have legal certainty, it is necessary to have certain components such as legal content, machinery, and culture. This implies that one of the requirements for law enforcement is to have legal certainty, which implies protection from arbitrary actions and ensures the possibility of obtaining anticipated results under particular circumstances (Gaffar et al., 2021; Berteau, 2008). The idea of legal certainty typically necessitates a series of tangible laws and regulations that facilitate their implementation. To ensure consistent application, legal personnel must be adequately supported when carrying out their duties (Kirchmair, 2016; Taduri, 2021). Laws are created and disseminated because they regulate coherently and rationally (Truby, Brown, & Dahdal, 2020; Tamblyn, 2022). The term "clear" refers to the absence of ambiguity, allowing for a logical and consistent set of rules that do not contradict each other or lead to conflicts. When rules are unclear and subject to multiple interpretations, conflicts may arise in the form of disputes, weakening or distorting the intended norms. Legal certainty is achieved when regulations can be enforced in compliance with legal principles and criteria of formal guidelines (Moroni et al. 2021; Paech, 2016; Holtse, 2020).

## **2. Land Rights Acquisition in Indonesian Laws**

Land rights acquisition refers to the process of legally obtaining the rights to use, own or control a piece of land. This can involve a wide range of activities, from purchasing land or

obtaining a lease to negotiating land use agreements or acquiring rights through eminent domain procedures. The acquisition of land rights can be a complex and contentious process, particularly when multiple parties have competing claims to the same piece of land. The issues, such as land ownership, land use rights, zoning regulations, environmental concerns, and cultural heritage, can all come into play in land rights acquisition. Land rights acquisition may have significant social, economic, and environmental implications. It can shape the way land is used and developed, determine the distribution of resources and power within a community, and impact the natural environment and ecosystems. As such, it is a highly regulated and often contested process that requires careful consideration and negotiation (Martono et al., 2021).

Land rights acquisition in Indonesia has been a complex and controversial issue for many years. The country has a highly decentralized land tenure system in which multiple layers of government have the authority to allocate land rights. This complexity has resulted in conflicting land claims and disputes, leading to land grabbing, illegal land occupation, and social conflicts. The Indonesian government has implemented various laws and regulations to address land tenure issues, such as the Agrarian Law, the National Spatial Plan, and the Forest Law. However, the implementation has been challenging due to lack of resources, weak law

enforcement, and corruption (Said, & Irwansyah, 2019).

Land acquisition in Indonesia can be categorized into two types: government-led and private sector-led. In the case of government-led land acquisition, the government can take over private land for public purposes, such as infrastructure development, social housing, and conservation. The process of compensation and relocation of the affected landowners is often flawed, resulting in disputes, protests, and even violence. On the other hand, private sector-led land acquisition involves companies acquiring land for industrial, commercial, or agricultural purposes. Land acquisition by the private sector is governed by land acquisition law, which requires companies to negotiate with the affected communities, to provide fair compensation, and to conduct an environmental and social impact assessment.

However, despite the legal requirements, private sector-led land acquisition has often been controversial in Indonesia. Companies have been accused of using force, intimidation, and bribery to acquire land from communities, often resulting in social conflicts and environmental damage. This shows that land rights acquisition in Indonesia remains a complex and controversial issue that requires continuous efforts from the government, private sector, and civil society to promote transparency, accountability, and social justice.

There are several types of land rights acquisition in Indonesia, including:

1. Right of Ownership (*Hak Milik*): This is the highest level of land ownership in Indonesia and offers full ownership rights to the land and the right to use it as one wishes. This type of land acquisition is limited to Indonesian citizens and legal entities.
2. Right to Build (*Hak Guna Bangunan*): This type of land ownership is commonly used by foreigners or foreign companies. It grants the right to build and use a building on land owned by the government or by individuals, for a specified period (up to 30 years, extendable up to 70 years).
3. Right to Use (*Hak Pakai*): This is a temporary right to use a land or building owned by the government or private entity, for a specific period (up to 25 years, extendable up to 80 years for certain sectors). It can be granted to individuals, companies, or organizations for specific purposes such as agriculture, tourism, or manufacturing.
4. Leasehold (*Hak Sewa*): This is a contract-based agreement allowing a tenant to use a property owned by a landlord for a specific period. This type of land acquisition is most commonly used to lease residential properties.
5. Right to Exploit (*Hak Guna Usaha*): This is a type of land ownership that grants the right to utilize land resources for agriculture, mining, and other commercial purposes. It can only be granted to Indonesian citizens, the state, or Indonesian legal entities.



In Indonesia, the regulations related to Land Rights Acquisition are governed by the Land Acquisition Law No. 2 of 2012. Moreover, Government Regulation in lieu of the Job Creation Law (Perppu) was issued on December 30, 2022, as a substitute for Law Number 11 of 2020 concerning Job Creation. Another regulation is Government Regulation (PP) Number 19 of 2021 concerning the Implementation of Land Acquisition for Development in the Public Interest. These regulations set out the procedures for land acquisition by the government or other parties for public purposes, including infrastructure development, land utilization, and urban development. The Land Acquisition Law requires that the government or other parties obtain consent from the landowners before acquiring their land. If the landowners do not agree, the land can only be acquired through a court process. The court decides on the amount of compensation to be paid to the landowners based on the value of their land and the impact of the acquisition on their livelihoods.

The Land Acquisition Law also emphasizes the importance of social and environmental impact assessments before land acquisition. The process must involve consultations with affected communities and take into account their cultural, social, and economic rights. In addition to the Land Acquisition Law, other relevant regulations govern land rights in Indonesia, such as Agrarian Law No. 5/1960, which regulates land ownership and rights. Law No. 26/2007 on Spatial Planning

governs land use and planning, while the Forestry Law No. 41/1999 regulates forest land use and conversion.

### **3. Social Functions of Land Rights in Indonesian National Land Law**

The fundamental principles of property rights, which encompass land, goods, and other forms of rights, in Indonesia are primarily rooted in Pancasila and the 1945 Constitution of the Republic of Indonesia. The foundation of this concept is not solely rooted in one article of the Indonesian Constitution, specifically Article 33, it is also mandated that the state holds ownership over the country's land, water, and other natural resources to promote the utmost welfare for the people. This principle is outlined in Agustina (2018) and Sihombing & Lisdiyono (2018). However, it is also essential that the utilization of these resources adheres to the concepts embodied in Pancasila and correlates with the 1945 Constitution, which serves as the most comprehensive, institutional, and model framework for Indonesia's legal, political, and social system. When discussing property rights, it is important to remember that these rights stem from the reality of life and the authority that allows individuals to develop self-sustainability and capability. As such, certain essential goods must be owned, which is related to the philosophical concept that some goods must serve as natural resources for human existence. Traditional societies only recognized ownership of nature (*bezits*), which is determined from a legal

perspective. The notion is protected under the Indonesian Constitution, which guarantees property rights in Article 7 (2) and affirms citizens' entitlement to experience prosperity through work. Furthermore, the Constitution views property rights as having a social purpose, as stated in Article 33 (3), which recognizes the state's authority over natural resources for the betterment of the people. This highlights the importance of determining resource usage and management, including land rights (Agustina, 2018).

The ideology behind the Indonesian National Agrarian Law is rooted in Pancasila's principles, particularly the fifth principle of Social Justice, as well as the entirety of the 1945 Constitution of the Republic of Indonesia, with emphasis on Article 27 paragraph (2) and Article 33. Public Code is the foundation for state-owned land. Consequently, state-owned land implies that the state has the power to regulate, utilize, and supervise the land, rather than owning it outright. According to Indonesian agrarian law, land is considered to have a social function and aims to establish a significant connection between land and society. The regulation of land rights is necessary for the effective functioning of social activities in all land uses. The "*ulayat*" land concept, established by the government, is a unique legal concept that guarantees the community's capacity to control, occupy, and utilize land under customary law (Nasir et al., 2019; Wahanisa et al., 2021). This confirms the

importance of traditional law, which existed before the establishment of the Indonesian nation-state system, and the government guarantees that property rights, particularly land ownership, must benefit society. The government's recognition of customary rights for various legal aspects, including mining, building management, and others, is in line with this principle. This demonstrates the BAL's commitment to promoting social justice by utilizing land resources for social benefit and the well-being of the people. Alternatively, incorporating the State's notion of traditional rights into legal frameworks for ownership of resources, such as air, marine, and space territories, can prove advantageous in safeguarding both national autonomy and durability.

In addition, it is the primary responsibility of the government to ensure the protection, safety, and well-being of the entire community, including those who have been negatively impacted by land acquisition. Communities affected by this may struggle to find avenues to voice their grievances, leading to feelings of despair and a shift toward anarchy. Despite the community's determination to withhold land from the government, the ruling authority has various tactical options to attain it through the legal mandate of voiding Land Rights. Therefore, the State possesses the capability to seize the land employing negotiations and mediation in the acquisition process but ultimately resorting to force if necessary. In other words, the community will become socially submissive when

the State takes control of their land in the name of public interest (Roestamy et al., 2022; Said, & Irwansyah, 2019).

#### **4. Legal Certainty in Indonesian Land Rights Acquisition**

Land acquisition refers to the process of acquiring land for public or private use. It involves various legal, financial, and administrative procedures to transfer the ownership of a property from the original owner to the acquiring party. The process can be initiated by the government or private investors intending to develop a particular project, such as building infrastructure, agriculture, housing, and industrial development.

The acquisition process is governed by national and local land acquisition laws and regulations, and it involves negotiations, compensation, and resettlement of local communities and landowners who may be affected by the process. The acquisition process can take a considerable time to complete, and it often involves consultations with various stakeholders, including the community, civil society groups, and government authorities. Land acquisition is an important process for economic development, but it has been controversial, and it often results in social and environmental conflicts. The acquisition of land for public development by the government is part of their authoritative control over land usage, as outlined in Article 2 (2) of the Basic Agrarian Law No. 5 of 1960. This control extends to managing land for the greater good as stipulated in Article 33 (3) of the 1945

Constitution. Article 18 of the Basic Agrarian Law allows for the legal acquisition of land by the nation for a public interest, with fair compensation given to landowners using constitutionally mandated procedures. The Basic Agrarian Law also states that land rights come with social functions, meaning that land ownership is not solely for personal use when causing harm to the public (Wahanisa et al., 2021).

Guild (2019) conducted a study that examined the impact of legal reforms on land use policy in Indonesia by analyzing two cases of land acquisition. During the Suharto regime (1996-1998), the land was typically acquired in the public interest through coercive measures, with the government dictating unfair compensation and no option for appeal. This process was legally supported by Presidential Decree 55/1993, which granted the provincial governor ultimate authority in determining the issue. A new legal framework was introduced by the government in 2012 by enacting Law No. 2 of 2012 to redefine the grounds on which land could be acquired for the national interest. The revised framework imposed clear administrative procedures and deadlines for dispute resolution and land procurement, such as a legal appeal process. Although the effectiveness of the law can still vary depending on the factors like the capabilities of district court judges, comparative analysis suggests that it is moving Indonesia towards a more equitable policy framework. However, McCarthy et al. (2012) noted that according to Indonesia's agrarian law,

acquiring land for the purposes that are not specified in the license or for speculative reasons is considered illegal even though there is minimal enforcement of this law.

Land procurement has undergone a significant transformation, becoming notably more straightforward with the implementation of the Job Creation Law through Government Regulation in lieu of the Job Creation Law (Perppu) Number 2 of 2022, as a substitute for Law Number 11 of 2020 concerning Job Creation and Government Regulation (PP) No. 19 of 2021. The Job Creation Law, also known as *Perpu Cipta Kerja* in Indonesian, has introduced various measures to streamline the process of obtaining land for development or public projects. With the enactment of Government Regulation No. 19 of 2021, further provisions were put in place to facilitate the land procurement process. These regulations likely address specific aspects related to land acquisition, such as legal procedures, compensation mechanisms, and administrative requirements. As a result of these legal developments, potential bureaucratic hurdles and complexities that were once associated with land procurement have been reduced or eliminated. The intention behind these legislative changes is likely to expedite development projects and promote economic growth by providing a more conducive environment for land acquisition. It is essential to recognize that while the Job Creation Law and PP 19 of 2021 have simplified the land procurement process, it remains crucial to adhere

to legal and ethical principles in the acquisition of land to protect the rights of landowners and ensure sustainable and equitable development.

This shows that the Indonesian government can provide legal certainty in land rights acquisition by conducting accurate and transparent land surveys, implementing clear and consistent land laws and regulations, and ensuring fair and just compensation for any land acquisition. They can also establish a clear dispute resolution mechanism for any land disputes that may arise. Additionally, the government can promote public awareness and education on land rights and legal procedures to prevent misunderstandings and incorrect acquisition procedures. It is also essential to strengthen the role of the judiciary in enforcing land laws and regulations to provide effective legal protection to landowners and investors. Finally, collaboration with local communities and stakeholders in the decision-making process can help create a more equitable approach to land rights acquisition and reduce conflicts between landowners and investors.

For instance, Article 42 of Government Regulation in lieu of the Job Creation Law (Perppu No. 2 of 2022) states that when using state-owned land, land rights, customary land, and/or forest areas within the working area, holders of business licenses for direct utilization or business licenses in the geothermal sector must first resolve land use with land users on state-owned land or holders of rights or business

licenses in the forestry sector under the provisions of the legislation. This article also regulates compensation for land rights as a replacement for the release or transfer of land rights, including buildings, plants, and/or other objects located on the land. Additionally, compensation is provided by granting a sum of money to the holder of land rights, including buildings, plants, and/or other objects located on the land when the land is indirectly used for electricity development without the release or transfer of land rights. Furthermore, Government Regulation No. 19 of 2021 stipulates that Land Rights refer to the rights acquired through legal relations between the right holder and the land, including the space above and below the land, to possess, own, use, exploit, and maintain the land and the space above and below it. Any institution requiring land for development projects for public interests must create a Land Procurement Plan based on spatial planning; the development priorities outlined in the medium-term development plan; strategic plans; and/or government/institutional work plans of the institution requiring the land.

Article 18 (1) of Government Regulation No. 19 of 2021 stipulates providing legal certainty regarding the entitled parties, including individuals, legal entities, social organizations, religious institutions, the Central Government, Regional Governments, village governments, the Land Bank, state-owned enterprises, regional-owned enterprises, and village-owned enterprises

that possess or control the Object of Land Procurement by the provisions of legislation. The entitled parties mentioned above consist of Land Rights holders, holders of Management Rights, trustees for *waqf* land, holders of evidence of old rights, customary law communities; parties who possess state land with good faith; holders of basic land rights; and/or owners of buildings, plants, or other objects related to the land.

This demonstrates that these regulations and provisions were designed to enhance legal certainty throughout the land rights acquisition and land use processes, safeguarding the rights of landowners, users, and the institutions involved in development projects. By establishing clear guidelines and procedures, these regulations aim to promote a more stable and predictable environment for land-related activities in Indonesia.

#### **D. CONCLUSION**

The findings regarding legal certainty in land rights acquisition under Indonesia's national land laws reveal an evolving landscape. The 1960 Basic Agrarian Law lays the foundation for land rights recognition, but challenges remain in implementation and enforcement. Government Regulation Number 24 of 1997 attempts to address some issues, yet land disputes persist due to ambiguous provisions. Government Regulation Number 18 of 2021 introduces significant improvements by streamlining land acquisition procedures, promoting transparency,

and providing clear guidelines for compensation. It aims to ensure legal certainty for both landowners and developers during the acquisition process. Land Acquisition Law No. 2 of 2012 further expands rights protection, including customary land, but challenges in practice remain, leading to delays and disputes.

The issuance of the *Perppu* Number 2 of 2022 in December 2022 replaced Law Number 11 of 2020, aiming to streamline regulations and enhance investment. On the other hand, PP Number 19 of 2021 addresses land acquisition for development in the public interest, providing guidelines to promote legal certainty and public participation. The findings show that Indonesia's efforts to improve legal certainty in land rights acquisition have evolved with the implementation of various regulations. While strides have been made to protect rights and simplify procedures, challenges persist. Effective implementation and enforcement, along with continuous adaptation to changing needs, will be crucial to achieving robust legal certainty in land rights acquisition in Indonesia.

## REFERENCES

### JOURNALS

Agustina, E. (2018). The social function of land rights in Indonesia: The basic Agrarian Law and customary rights by the state. *Journal of Legal, Ethical and Regulatory Issues*, Vol.21, (Special Issue), pp.1-8. <https://www.abacademies.org/abstract/the->

[social-function-of-land-rights-in-indonesia-the-basic-agrarian-law-and-customary-rights-by-the-state-7573.html](https://www.abacademies.org/abstract/the-social-function-of-land-rights-in-indonesia-the-basic-agrarian-law-and-customary-rights-by-the-state-7573.html).

- Ali, Muhammad., Hasibuan, Fauzie Yusuf., Fautanu, Idzan., & Halim, Anris Nazaruddin. (2022). The Ideal Construction of Legal Ownership of Land Rights in the Administrative System of the National Land Agency. *International Journal of Science and Society*, Vol.4, (No.4), pp.375-387. <https://doi.org/10.54783/ijssoc.v4i4.583>.
- Bedner, Adriaan., & Arizona, Yance. (2019). Adat in Indonesian Land Law: A Promise for the Future or a Dead End? *The Asia Pacific Journal of Anthropology*, Vol.20,(No.5), pp.416-434. <https://doi.org/10.1080/14442213.2019.1670246>.
- Bertea, S. (2008). Towards a new paradigm of legal certainty. *Legisprudence*, Vol.2, (No.1),pp.25-45. DOI:10.1080/17521467.2008.11424672
- Bola, M. (2017). Legal standing of customary land in Indonesia: a comparative study of land administration systems. *Hasanuddin Law Review*, Vol.3,(No.2),pp.175-190. <http://dx.doi.org/10.20956/halrev.v3i2.1132>.
- Braithwaite, J. (2002). Rules and principles: A theory of legal certainty. *Australasian Journal of Legal Philosophy*, Vol.27, pp.47-82.<http://classic.austlii.edu.au/au/journals/AUJLegPhil/2002/2.pdf>
- Buitelaar, Edwin., & Sorel, Niels. (2010). Between the rule of law and the quest for control:

- Legal certainty in the Dutch planning system. *Land use policy*, Vol.27, (No.3), pp.983-989. <https://doi.org/10.1016/j.landusepol.2010.01.002>.
- Caldwell, Lynton K. (1973). Rights of Ownership or Rights of Use--the Need for a New Conceptual Basis for Land Use Policy. *William & Mary Law Review*, Vol.15, (No.4), pp.759-775. <https://scholarship.law.wm.edu/wmlr/vol15/iss4/3/>
- Deiningner, Klaus., Ali, Daniel Ayalew., & Yamano, Takashi. (2008). Legal knowledge and economic development: The case of land rights in Uganda. *Land Economics*, Vol.84, (No.4), pp.593-619. <https://doi.org/10.3368/le.84.4.593>.
- Dimiyati, Khudzaifah., Nashir, Haedar., Elviandri, Elviandri., Absori, Absori., Wardiono, Kelik., & Budiono, Arief. (2021). Indonesia as a legal welfare state: A prophetic-transcendental basis. *Heliyon*, Vol.7,(No.8). <https://doi.org/10.1016/j.heliyon.2021.e07865>.
- Fernando, Zico Junius., Pujiyono, Pujiyono., Susetyo, Heru., Candra, Septa., & Putra, Panca Sarjana. (2022). Preventing bribery in the private sector through legal reform based on Pancasila. *Cogent Social Sciences*, Vol.8,(No.1).<https://doi.org/10.1080/23311886.2022.2138906>
- Gaffar, Salahuddin., Karsona, Agus Mulya., Pujiwati, Yani., & Perwira, Indra. (2021). The concept of procedural law regarding the implementation of collective agreements with legal certainty in termination of employment in Indonesia. *Heliyon*, Vol.7,(No.4).<https://doi.org/10.1016/j.heliyon.2021.e06690>.
- Grey, Thomas C. (1984). The Constitution as scripture. *Stanford Law Review*, Vol.37, (No.1), pp.1-25. <https://doi.org/10.2307/1228651>.
- Hage, Markus Y., & Ningrum, Panggih Kusuma. (2022). Corrective Justice and Its Significance on the Private Law. *Journal of Indonesian Legal Studies*, Vol.7,(No.1), pp.1-30. <https://doi.org/10.15294/jils.v7i1.46691>.
- Handayani, I. Gusti Ayu Ketut Rachmi., Karjoko, Lego., Jaelani, Abdul Kadir., & Barkhuizen, Jaco. (2022). Politics Settlement of Land Tenure Conflicts in Forest Areas Indonesia in the era of President Joko Widodo. *JILS (Journal of Indonesian Legal Studies)*, Vol.7(No.2),pp.487-524. <https://doi.org/10.15294/jils.v7i2.57539>.
- Holtse, Camilla J. (2020). Navigating Through Uncertain Waters—The Importance of Legal Certainty, Predictability, and Transparency in Future Antitrust Enforcement. *Journal of European Competition Law & Practice*, Vol.11,(No.8), pp.446-449. <https://doi.org/10.1093/jeclap/lpaa081>.
- Kharisma, Dona B. (2020). Urgency of financial technology (Fintech) laws in

- Indonesia. *International Journal of Law and Management*, Vol.63,(No.3),pp.320-331. <https://doi.org/10.1108/IJLMA-08-2020-0233>.
- Kirchmair, L. (2016). What Came First: The Obligation or the Belief? A Renaissance of Consensus Theory to Make the Normative Foundations of Customary International Law More Tangible. *German Yearbook of International Law*, Vol. 59, pp. 289-319. <https://ssrn.com/abstract=3079749>.
- Krishna, Vijesh V., Kubitz, Christoph., Pascual, Unai., & Qaim, Martin. (2017). Land markets, property rights, and deforestation: insights from Indonesia. *World Development*, Vol.99,pp.335-349. <https://doi.org/10.1016/j.worlddev.2017.05.018>.
- Kunz, Yvonne., Steinebach, Stefanie., Dittrich, Christoph., Hauser-Schäublin, Brigitta., Rosyani, Ir Rosyani., Soetarto Endriatmo., & Faust, Heiko. (2017). The fridge in the forest': Historical trajectories of land tenure regulations fostering landscape transformation in Jambi Province, Sumatra, Indonesia. *Forest Policy and Economics*, Vol.81, pp.1-9. <https://doi.org/10.1016/j.forpol.2017.04.005>.
- Leawoods, H. (2000). Gustav Radbruch: An extraordinary legal philosopher. *Journal of Law & Policy*, Vol.2 ,(No.1), pp.489-515. <https://journals.library.wustl.edu/lawpolicy/article/966/galley/17801/view/>.
- Li, Tania M. (2021). Commons, co-ops, and corporations: assembling Indonesia's twenty-first-century land reform. *The Journal of Peasant Studies*, Vol.48,(No.3), pp.613-639. <https://doi.org/10.1080/03066150.2021.1890718>.
- Martono, Dwi Budi., Aditya, Trias., Subaryono, Subaryono., & Nugroho, Priyono. (2021). The legal element of fixing the boundary for the Indonesian complete cadastre. *Land*, Vol.10,(No.1),pp.49. <https://doi.org/10.3390/land10010049>.
- Maxeiner, James R. (2006). Legal certainty: a European alternative to American legal indeterminacy. *Tulane Journal of International & Comparative Law*, Vol.15,(No.2),pp.541-607. <https://ssrn.com/abstract=1150522>.
- McCarthy, John F., Vel, Jacqueline AC., & Afiff, Suraya. (2012). Trajectories of land acquisition and enclosure: development schemes, virtual land grabs, and green acquisitions in Indonesia's Outer Islands. *Journal of Peasant Studies*, Vol.39, (No.2), pp.521-549. <https://doi.org/10.1080/03066150.2012.671768>.
- Moroni, Stefano., Buitelaar, Edwin., Sorel, Niels., & Cozzolino, Stefano. (2020). Simple planning rules for complex urban problems: Toward legal certainty for spatial flexibility. *Journal of Planning Education and Research*, Vol.40, (No.3), pp.320-331. <https://doi.org/10.1177/0739456X18774122>



- Nasir, Gamal Abdul., Dimiyati, Khudzaifah., & Absori. (2019). Jaminan Hukum atas Pengakuan dan Eksistensi Hak Ulayat pada Masyarakat Hukum Adat. *Lex Publica*, Vol.6,(No.1),pp.32–40. <https://doi.org/10.58829/lp.6.1.2019.32-40>.
- Noor, A. (2021). Case Settlement of Nominee Agreement as A Mode of Land Tenure for Foreign Nationals in Indonesia. *International Journal of Criminal Justice Sciences*, Vol.16, (No.2), pp.177-190. <https://ijcjs.com/menu-script/index.php/ijcjs/article/view/59>.
- Nuridin, Z. (2022). Legal protection of customary rights under legal pluralism and its impact on the Minangkabau society: An empirical study in the district of Lima Puluh Kota, West Sumatra. *Cogent Social Sciences*, Vol.8,(No.1). <https://doi.org/10.1080/23311886.2022.2045722>.
- Paech, P. (2016). Securities, intermediation and the blockchain: an inevitable choice between liquidity and legal certainty? *Uniform Law Review*, Vol.21, (No.4), pp. 612-639. <https://doi.org/10.1093/ulr/unw040>.
- Purnomo, Eko Priyo., Ramdani, Rijal., Agustiyara, Agustiyara., Tomaro, Queenie Pearl V., & Samidjo, Gatot Supangkat. (2019). Land ownership transformation before and after forest fires in Indonesian palm oil plantation areas. *Journal of Land Use Science*, Vol.14, (No.1), pp.37-51. <https://doi.org/10.1080/1747423X.2019.1614686>.
- Roestamy, Martin., Martin, Abraham Yazdi., Rusli, Radif Khotamir., & Fulazzaky, Mohamad Ali. (2022). A review of the reliability of land bank institutions in Indonesia for effective land management of public interest. *Land Use Policy*, Vol.120. <https://doi.org/10.1016/j.landusepol.2022.106275>.
- Said, Siti Nur Faida., & Irwansyah. (2019). Land Acquisition by the Government and the Impact for the Community. *Papua Law Journal*, Vol.3,(No.2),pp.117-133. <https://doi.org/10.31957/plj.v3i2.788>.
- Sihombing, B. F., & Lisdiyono, Edy. (2017). Agrarian Reform In Indonesia: A Juridical Review. *International Journal of Civil Engineering*, Vol.8,(No.11),pp.248-356. <http://http://www.iaeme.com/ijciet/issues.asp?JType=IJCIET&VType=8&IType=11>
- Silviana, Ana., Utama, Yos Johan., Ismail, Nurhasan., Ardani, Mira Novara. (2021). Land Management Policy In The Coastal Area Based On The Local Wisdom. *AACL Bioflux*, Vol.14, Issue6, pp.3403-3415. <http://www.bioflux.com.ro/docs/2021.3403-3415.pdf>
- Syarief, E. (2021). Electronic Land Certificates: Its Goals and Challenges. *Research Horizon*, Vol.1,(No.4),pp.120-125. <https://doi.org/10.54518/rh.1.4.2021.120-125>.

- Syarief, E. (2022). Security Concerns in Digital Transformation of Electronic Land Acquisition: Legal Protection in Cybersecurity Laws in Indonesia. *International Journal of Cyber Criminology*, Vol.16,(No.2),pp.32-46. <https://cybercrimejournal.com/menuscrypt/index.php/cybercrimejournal/article/view/88>.
- Taduri, Januari Nasya A. (2021). The Legal Certainty and Protection of Foreign Investment Against Investment Practices in Indonesia. *Lex Scientia Law Review*, Vol.5,(No.1),pp.119-138. <https://doi.org/10.15294/lesrev.v5i1.46286>.
- Tamblyn, N. (2022). The Defence of Illegality in Private Law. *Liverpool Law Review*, Vol.43, (No.1), pp.33-55. <https://doi.org/10.1007/s10991-021-09287-y>.
- Tan, Seow H. (2021). Radbruch's Formula Revisited: The Lex Injusta Non-Est Lex Maxim in Constitutional Democracies. *Canadian Journal of Law & Jurisprudence*, Vol.34,(No.2), pp.461-491. <https://doi.org/10.1017/cjlj.2021.12>.
- Tassinis, Orfeas C. (2020). Customary international law: Interpretation from beginning to end. *European Journal of International Law*, Vol.31,(No.1), pp.235-267. <https://doi.org/10.1093/ejil/chaa026>.
- Tegnan, H. (2015). Legal pluralism and land administration in West Sumatra: the implementation of the regulations of both local and Nagari governments on communal land tenure. *The Journal of Legal Pluralism and Unofficial Law*, Vol.47, (No.2),pp.312-323. <https://doi.org/10.1080/07329113.2015.1072386>.
- Thorburn, Craig C. (2004). The plot thickens: land administration and policy in post-new order Indonesia. *Asia Pacific Viewpoint*, Vol.45, (No.1),pp.33-49. <https://doi.org/10.1111/j.1467-8376.2004.00226.x>.
- Truby, Jon., Brown, Rafael., & Dahdal, Andrew. (2020). Banking on AI: mandating a proactive approach to AI regulation in the financial sector. *Law and Financial Markets Review*, Vol.14,(No.2),pp.110-120. <https://doi.org/10.1080/17521440.2020.1760454>.
- Usman, A. (2020). The Role of Indonesian Constitutional Court in Strengthening Welfare State and the Rule of Law. *Lex Publica*, Vol.7,(No.1),pp.11-27. <https://doi.org/10.58829/lp.7.1.2020.11-27>.
- van Apeldoorn, L. (2021). Hobbes on Property: Between Legal Certainty and Sovereign Discretion. *Hobbes Studies*, Vol.34,(No.1), pp.58-79. <https://doi.org/10.1163/18750257-bja10024>.
- Van der Muur, W. (2018). Forest conflicts and the informal nature of realizing indigenous land rights in Indonesia. *Citizenship studies*, Vol.22,(No.2),pp.160-174. <https://doi.org/10.1080/13621025.2018.1445495>.

- von Benda-Beckmann, K. (2014). Trust and the Temporalities of Law. *The Journal of Legal Pluralism and Unofficial Law*, Vol.46,(No.1), pp.1-17. <https://doi.org/10.1080/07329113.2014.894743>.
- Wahanisa, Rofi., Hidayat, Arif., Riyanto, R. Benny., & Anggono, Bayu Dwi. (2021). Problems of disputes/conflicts over land acquisition towards development for public interest in Indonesia. *International Journal of Criminology and Sociology*, Vol.10, pp. 320-325.<https://doi.org/10.6000/1929-4409.2021.10.39>.
- Wardhani, Lita Tyesta Addy Listya., Noho, Muhammad Dzikirullah H., & Natalis, Aga. (2022). The adoption of various legal systems in Indonesia: an effort to initiate the prismatic Mixed Legal Systems. *Cogent Social Sciences*, Vol.8, (No.1). <https://doi.org/10.1080/23311886.2022.2104710>.
- Widiyono, Try., & Khan, Md Zubair Kasem. (2022). The Legal Philosophy And Justice Values In The Acquisition Of Land Rights In Indonesia: A Normative Legal Research. *International Journal of Law Reconstruction*, Vol.6,(No.2), pp.278-298. <http://dx.doi.org/10.26532/ijlr.v6i2.26841>.
- Wijayanti, Tania., Muryanto, Yudho Taruno., & Darori, M. Irnawan. (2021). Comparison of The Transfer of Land Rights to The Description Deed of Inheritance Rights. *Law Reform*, Vol.17, (No.1), pp. 121-134.<https://doi.org/10.14710/lr.v17i1.37558>.
- Yubaidi, Ricco Survival., Mohamad, Mazliza., & Abd Aziz, Saidatul Nadia. (2022). Land acquisition acceleration in Indonesia: a lesson-learned guideline from land acquisition issues in Malaysia. *UUM Journal of Legal Studies*, Vol.13,(No.1), pp.155-174. <https://doi.org/10.32890/uumjls.2022.13.1.7>.
- WORKING PAPER**
- Guild, J. (2019). *Land acquisition in Indonesia and law No. 2 of 2012* (No. 1036). ADBI Working Paper Series.
- BOOK**
- Alexy, R. (2021). Gustav Radbruch's Concept of Law. In *Law's Ideal Dimension* (pp. 107–118). Oxford: Oxford University Press. <https://doi.org/10.1093/oso/9780198796831.003.0008>.
- Friedman, Lawrence M. (1975). *The Legal system: A Social Science Perspective*. New York: Russell Sage Foundation.
- Fuller, Lol L. (1964). *The Morality of Law*. New Haven: Yale University Press.
- Rendas, T. (2021). *Exceptions in EU Copyright Law: In Search of a Balance Between Flexibility and Legal Certainty*. Alphen aan den Rijn, Zuid-Holland: Kluwer Law International B.V.
- Soekanto, Soerjono., & Mamudji, Sri. (2014). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: Rajawali Pers.

Soemitro, Ronny H. (1982). *Metodologi Penelitian Hukum*. Jakarta: Ghalia Indonesia.

#### CHAPTER IN EDITED BOOK

Fenwick, Mark., & Wrbka, Stefan. (2016). The Shifting Meaning of Legal Certainty. In M. Fenwick. & S. Wrbka (Eds.), *Legal Certainty in a Contemporary Context: Private and Criminal Law Perspectives* (pp. 1-6).Singapore:Springer.  
[https://doi.org/10.1007/978-981-10-0114-7\\_1](https://doi.org/10.1007/978-981-10-0114-7_1)