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Analysis of the Social Function of Land Rights for Public Interest

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ABSTRACT

This research examines the evolution of land rights in Indonesia, focusing on their social function. Drawing on von Savigny's perspective, which emphasizes the influence of family, nation, and state on law and culture, this research explores how these factors have shaped Indonesian land rights, blending customary and European legal traditions. This research aims to analyze the shift in land rights following the enactment of the Basic Agrarian Law (UUPA) in 1960, which transformed land control from communal and religious systems to state regulation for the benefit of the people. The UUPA establishes that all land rights carry a social function, requiring their use to align with public interest and community welfare. Using a normative juridical approach, this research reviews key legal frameworks, including Law No. 5 of 1960 and Law No. 2 of 2012. The research findings reveal that the state plays a central role in ensuring the social function of land, particularly through policies that balance individual rights with public benefit, aligning with utilitarian ideals. This research concludes that while land rights are guaranteed under Indonesian agrarian law, their social function is prioritized, ensuring land use serves public interest and promotes equitable development.

Keywords: *Land Acquisition Policies, Land Rights, Public Interest, Social Functions*

INTRODUCTION

Indonesia is a state of law, as stipulated in the 1945 Constitution of the Republic of Indonesia in Article 1 Paragraph 3. As a state of law, Indonesia has an obligation to protect all its people, including regulating the benefits of all aspects of life in order to provide prosperity for all Indonesian people. The Indonesian state of law is based on the concept of a welfare state, which aims to achieve maximum prosperity for the people. This is a constitutional mandate, as stipulated in Article 33 Paragraph 3, which states that: “The earth, water, and natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people.” The purpose of a welfare state is to guarantee the rights of citizens, especially in this modern era, which is highly dependent on the availability of natural resources.

One of the natural resources that is very important in ensuring welfare in the Indonesian legal state in the current era of globalization is land. The existence of land as an important natural resource in ensuring prosperity in the Indonesian legal state is regulated in Law No. 5/1960 concerning Basic Regulations on Agrarian Principles (UUPA), Article 1 Paragraph 1 states that, “All land rights have a social function.”¹ This article is then stated as one of the principles of land law, which is termed the principle of social function of land rights. The existence of the principle of social function of land rights in land law is a fundamental basis for the realization of land that is beneficial for the greatest prosperity of the people in a welfare state.

Land acquisition is an action taken by the Government to acquire land for various development activities, especially for the public interest. In principle, land acquisition is carried out through deliberation between the party that is in need of land and the holder of the land rights needed for development. Land acquisition for the public interest is a key term in the development process. Referring to Article 6 of the UUPA, every land right has a social function. The general elucidation of the UUPA also emphasizes that land rights, regardless of its form, cannot be justified if its use is only for private interests, especially if it harms the community.

The use of land must be in accordance with the conditions and nature of its rights, so that it can benefit both the welfare and happiness of the owner as well as the community and the state. However, this does not mean that private interests are completely superseded by public interests. The interests of society and the interests of the individual must be balanced, in order to achieve the ultimate goal of prosperity, justice and happiness for all the people. Article 18 of the UUPA states that “in the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights may be revoked.”

The main purpose of this manuscript is to examine the principle of the social function of land rights in Indonesia, as established by Law No. 5 of 1960 on

¹ Pemerintah Pusat, “Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria” (Jakarta, 1960).

Agrarian Principles. It aims to highlight the importance of balancing individual land rights with social and public interests, emphasizing that land use should serve the common good. The research also seeks to analyze the historical context of land rights, the role of the government in land acquisition for public development, and the connection between the social function of land rights and utilitarianism. Ultimately, the manuscript advocates for a framework where land serves as a shared resource that contributes to collective prosperity and equitable development.

LITERATURE REVIEW

Jeremy Bentham argues that lawmaking should be able to enact laws that reflect justice for all individuals.² Adhering to this principle, laws and regulations should provide the greatest happiness for the greatest number of people. Based on Bentham's view of the usefulness of law, the enforceability of a legal provision must thoroughly consider the positive impact it will have. Although there are various considerations in measuring the usefulness of law, everything ultimately results in the principle of “the greatest happiness for the greatest number.” Bentham's Utilitarianism theory states that happiness is pleasure and a life free from suffering. Jeremy Bentham, as one of the leading figures of the Utilitarianism, places great emphasis on the way a legal system is supposed to work.

In his theory of law, Jeremy Bentham used one of the principles of Utilitarianism, that humans act to maximize happiness and minimize suffering. The measure of whether a human action is good or bad depends on whether it brings happiness or not. Bentham emphasized that lawmaking should produce laws that are fair to every individual in society. However, the weakness of his theory lies in the fact that not all humans share a common measure of justice, happiness, and suffering.

The ultimate goal of legislation according to Bentham is to serve the greatest happiness for as many people as possible, thus he opposed the theory that teaches inviolable rights. In his book entitled *Theory of Legislation*, Bentham defines the main functions of law, which is: providing livelihood through material abundance, promoting equality, and maintaining security. Among these three functions, security is the most important, and this emphasis on the protective function of law connects Bentham to the analytical positive school.

Utilitarianism is included in legal positivism because ontologically both share the same view of law as a positive norm in the legislative system. However, there is a difference, because Utilitarianism is not only concerned with legal certainty. If positive norms are only directed at achieving certainty, the work of the law is completed after a legal decision is applied. Instead, Utilitarianism also pays

² Anita Afriana, “Dasar Filosofis Dan Inklusivitas Gugatan Sederhana Dalam Sistem Peradilan Perdata,” *University Of Bengkulu Law Journal* 3, no. 1 (April 28, 2018): 1–14, <https://doi.org/10.33369/ubelaj.3.1.1-14>.

attention to the benefits of legal decisions to measure the extent to which positive norms can continue to be maintained.³

Utilitarianism according to Rudolf von Jhering in Germany serves the same purpose as Bentham, which is to protect interests, describing it as the pursuit of pleasure and the avoidance of suffering.⁴ Jhering also challenged the idea that natural law provides a fixed and universal legal content.⁵ In contrast to Bentham, Jhering considers individual interests as part of social goals by linking personal goals with the interests of others.⁶ This unification of interests creates cooperatives, trades, societies, and countries as a result of a common goal.

Jeremy Bentham emphasized Individual Utilitarianism, while Rudolf von Jhering emphasized Social Utilitarianism. According to Jhering, laws are consciously created by humans to achieve certain desired goals. He recognizes that law develops historically, but rejects the view of historical school theorists that law is the result of purely unplanned historical forces. According to Jhering, law is made consciously by the state and is intended to achieve certain goals.⁷

In relation to the conception of law in the Utilitarianism school, Roscoe Pound explained that the benchmark for lawmakers is what provides the greatest happiness for the largest number of individuals. If associated with social justice in Article 33 Paragraph 2 and Paragraph 3 of the 1945 Constitution and the precepts of Just and Civilized Humanity, this mandates harmony, conformity, and balance between human rights and obligations in society. These human values can be seen in Article 6 of the UUPA, which regulates the social function of land rights. Rudolf von Jhering's Utilitarianism theory, as a development of Bentham's theory, is preferred as an analytical tool in the government's problems in implementing development for the public interest.⁸

One school of law that has influenced law is von Savigny's school of history. This theory states that law is not made, but rather grows and develops with society, and arises from the legal consciousness of the community.⁹ In Savigny's opinion,

³ Endang Pratiwi, Theo Negoro, and Hassanain Haykal, "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?," *Jurnal Konstitusi* 19, no. 2 (June 2, 2022): 268, <https://doi.org/10.31078/jk1922>.

⁴ Zainal B. Septiansyah and Muhammad Ghalib, "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia," *Ijtihad* 34, no. 1 (2018), <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/63>.

⁵ M. Zulfa Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa," *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 201–36, <https://doi.org/10.22437/ujh.3.1.201-236>.

⁶ Septiansyah and Ghalib, "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia."

⁷ Nur Ifitah Isnantiana, "Hukum Dan Sistem Hukum Sebagai Pilar Negara," *JURNAL HUKUM EKONOMI SYARIAH* 2, no. 1 (May 21, 2019): 19, <https://doi.org/10.30595/jhes.v2i1.4470>.

⁸ Septiansyah and Ghalib, "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia."

⁹ Indra Rahmatullah, "Filsafat Hukum Sejarah: Konsep Dan Aktualisasinya Dalam Hukum Indonesia," *ADALAH* 5, no. 6 (August 19, 2021): 1–18, <https://doi.org/10.15408/adalah.v5i6.22203>.

the law emerges not as a result of a ruler's order or custom, but rather from the feeling of justice that exists in the soul of the nation, which is the source of law.¹⁰ As Savigny points out, "Law is the expression of the general consciousness or spirit of the people."¹¹ He also emphasized the importance of historical studies in building a nation's law.

Following von Savigny's views, customary law was recognized as the applicable law for indigenous Indonesians, as advocated by van Vollenhoven, Ter Haar, and Holleman, who adhered to Savigny's views. This school places customary law on a par with written law. Von Savigny also asserted that no human being is truly individual.¹² Every human being is part of a larger whole, such as a family, nation, or state, and every era is connected to the previous one. Therefore, law and culture originate from the soul of the nation and remain linked to the past. Law is the creation of a free human being, yet that free human being is not an arbitrary individual, but part of the soul of the nation intertwined with history.

RESEARCH METHODOLOGY

The methodology employed in this research is primarily normative legal research, focusing on the examination of legal norms and principles within the context of Indonesian land law. This approach involves analyzing existing laws, regulations, and legal frameworks related to land rights, including the Basic Agrarian Law (UUPA) and other relevant legislation such as Law No. 2 of 2012. The research utilizes a combination of statutory, comparative, and conceptual approaches to provide a comprehensive understanding of the social function of land rights in Indonesia.

The approach used by the researchers in this research is the statute approach, which emphasizes the analysis of applicable regulations. In addition, a comparative approach and conceptual approach are also used. This research uses literature legal materials, which include laws and regulations, documents, books, reports, archives, and other relevant literature. The legal materials used in this research consist of primary legal materials, such as the Criminal Code (KUHP), as well as secondary legal materials, in the form of official documents, written works, textbooks, legal journals, and commentaries on court decisions. In addition, this research also utilizes supporting sources such as the Great Dictionary of Indonesian Language and other sources to look up terms used in primary and secondary legal materials.

The technique of collecting legal materials in this research is a literature review, which is limited to the use of documents and library materials. The collection of legal materials is carried out by collecting written data relevant to the

¹⁰ Hanina Ben-Menahem and Yemima Ben-Menahem, "The Rule of Law: Natural, Human, and Divine," *Studies in History and Philosophy of Science Part A* 81 (June 2020): 46–54, <https://doi.org/10.1016/j.shpsa.2019.05.001>.

¹¹ Aulia, "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa."

¹² Aulia.

problem under study. Furthermore, to present a more holistic research, analytical criticism analysis techniques are used, that is, critical interpretation of legal materials, especially legislation. This analytic criticism utilizes legal theories, both micro-macro legal theories and sociological theories.

RESULT AND DISCUSSION

Historical Context of Land Rights in Indonesia

The evolution of land rights in Indonesia reflects a significant transition from communal and religious frameworks to a more structured legal system governed by state control. Historically, land was viewed as a communal resource, deeply embedded in the cultural and social fabric of local communities. However, the enactment of the Basic Agrarian Law (UUPA) in 1960 marked a pivotal change, establishing the principle that all land rights must serve a social function, thereby prioritizing public interest and community welfare.

The Social Function of Land Rights

The principle of the social function of land rights is central to understanding the legal framework governing land use in Indonesia. This principle asserts that land rights are not merely individual entitlements but must also consider the broader societal implications. The UUPA explicitly mandates that land use should promote community welfare, aligning with utilitarian ideals that advocate for the greatest happiness for the majority. This duality ensures that individual land rights cannot be exercised in ways that undermine public welfare.

Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia states: “The land and water and the natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.” What needs to be underlined from the article is the word “controlled.” On initial thought, the word “controlled” appears to indicate that the state is the owner. However, this is not the case. The General Elucidation of the UUPA states that the state (government) only “controls” land. The definition of “controlled” does not mean “owned,” but rather gives certain authority to the state as an organization of power. This is formulated explicitly in Article 2 Paragraph 2 of the UUPA, which asserts that the authority of the state is:

1. Regulate and organize their allocation, use, supply or maintenance;
2. Determine and regulate the rights that can be owned over (part of) the earth, water and space;
3. Determine and regulate legal relationships between persons and legal acts concerning the earth, water and airspace, all of which are intended

to achieve the greatest prosperity of the people in a just and prosperous society.¹³

The state's authority strengthens the implementation of the principle of social function in the utilization and allocation of land, which is not absolutely the right of the right holder alone, but involves the role of the state directly to ensure the fulfillment of needs for the public interest. The interpretation of socially functional land rights is vast, considering the concept of public necessity, public good, or public utility.

Government Role in Land Acquisition

The government's role in land acquisition is crucial for facilitating equitable development. Various laws, including Law No. 2/2012, outline procedures for land acquisition that aim to protect community rights while enabling public development projects. This legal framework emphasizes the importance of dialogue and consensus between landholders and the state, ensuring that land is utilized for the common good. The findings suggest that effective implementation of these. The land rights referred to are specified in Article 16 in conjunction with Article 53 of the UUPA, including:

1. Property rights;
2. Right to cultivate;
3. Building use right;
4. Right of use;
5. Right of lease;
6. Right to open land;
7. Right to collect forest products;
8. Other rights not included in the rights mentioned above which are stipulated by law as well as temporary rights as mentioned in Article 53.¹⁴

The Development of the Interpretation of the Social Function of Land Rights

The development of land rights arrangements in Indonesia reflects various government policies implemented at certain times. Historically, there have been three legal systems governing land rights:

1. Land Law System during the Royal Period: During this period, the king was considered the owner of all land, while the people only acted as cultivators.
2. Land Law System during the Dutch East Indies Period: The Dutch colonial government applied the principle of *domein verklaring*, which stated that all land belonged to the state unless there was proof of private ownership. Under this system, society was divided into three groups:

¹³ Pusat, "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria."

¹⁴ Pusat.

- a. Europeans: Allowed to have *eigendom* (property rights) over land.
 - b. Foreign Orientals: Also allowed to have *eigendom* over land.
 - c. Indigenous: Only recognized as holders of *Agrarisch Eigendom* (customary use rights indigenous to Indonesia).¹⁵
3. Land Law System based on UUPA: After independence, Indonesia adopted the Basic Agrarian Law (UUPA) which stipulates that the state only controls the land, while the people have rights over the land.

Before the UUPA was issued, the principle of social function of land rights underwent several stages of development:

1. In the Customary Law System before the Arrival of the West: Property rights to land in customary law that developed before the arrival of the Westerners are the original law of the indigenous group, which is unwritten and contains original national elements, namely the nature of society and kinship based on balance and engulfed in a religious atmosphere.¹⁶
2. After the Arrival of the West: In 1602, Dutch traders established the Verenigde Oost Indische Compagnie (VOC) in Jakarta, which aimed to prevent competition and monopolize trade in South Asia. Under the octrooi of March 20, 1602, the VOC could act as a governing body equipped with the right to issue regulations, settle special disputes, and adjust legal needs between the officials of the respective regions where the VOC trading offices were located. In this period, the social function of land rights was not apparent as the common good and individual interests were ignored.¹⁷
3. After Indonesian Independence: During this period, Indonesian Agrarian Law had yet to be established, hence referring to Article 11 of the Transitional Rules of the 1945 Constitution, since the current State Agencies and regulations were still in place and valid as long as a new one had not been established. The social function of land rights for the public interest after independence is still contrary to the conception of Pancasila, because in this era Western agrarian law with a liberal spirit of individuality was still enforced until 1960.

¹⁵ Jeffrey Neilson, "Domein Verklaring: Colonial Legal Legacies and Community Access to Land in Indonesia," *Georgetown Journal of International Affairs*, 2020, <https://gjia.georgetown.edu/2020/11/25/domein-verklaring-colonial-legal-legacies-and-community-access-to-land-in-indonesia/>.

¹⁶ Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018): 315–30, <https://doi.org/10.22304/pjih.v5n2.a6>.

¹⁷ Nathan John Franklin, "Islam and the Dutch in the East Indies: Oppression or Opportunity?," *The European Legacy* 25, no. 5 (July 3, 2020): 572–87, <https://doi.org/10.1080/10848770.2020.1760467>.

Thus, the regulation of land rights in Indonesia has undergone a significant evolution, from the royal, colonial, to the national system that seeks to accommodate the interests of the people and the country.

Social Function Principle of Land Rights for Public Interest

The relationship between the social function of land rights is strictly stipulated in the provisions of the Law No. 5 of 1960 concerning basic agrarian regulations, which include:

1. Article 6: All land rights have a social function.
2. Article 18: In the public interest, including the interests of the nation and state and the common interests of the people, land rights may be revoked by providing adequate compensation and in a manner regulated by law.¹⁸

The social function of land rights as referred to in Article 6 of the UUPA contains several principles of virtue, among others:

1. It is an important statement regarding land rights that briefly formulates the communal or societal nature of land rights according to the principles of national land law. In the concept of national land law, it has a communalistic-religious nature, which states that all of the earth, water and airspace, including the natural resources contained therein, are within the territory of the Republic of Indonesia.
2. Land owned by someone does not only function for those who hold the right but also for the Indonesian people as a whole. As a consequence, in using the land in question, not only the interests of the individual are used as guidelines, but also the interests of the community must be remembered and considered. There must be a balance between personal interests and the interests of the community.
3. The social function of land rights obliges those who have the right to use the land concerned in accordance with its circumstances. This includes the state of the land, its nature and the purpose of granting the right. It is intended that the land must be well maintained and preserved the quality of fertility and soil conditions in order that the benefits of the land are enjoyed not only by the owner of the land rights but also other communities.¹⁹

¹⁸ Pusat, "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria."

¹⁹ Pusat.

CONCLUSION

The research presented in this study emphasizes the fundamental principle of the social function of land rights in Indonesia, as established by Law No. 5 of 1960 on Agrarian Principles. The findings indicate that land rights encompass not only individual interests but also social and public considerations. The government's role in land acquisition is framed within a collaborative dialogue between landholders and those in need of land, ensuring that development serves the common good. Furthermore, the study connects the principle of social function to utilitarianism, highlighting the importance of promoting the greatest happiness for the community through equitable land use. The historical context reveals a significant shift from communal and religious land rights to a framework where the state exercises control over land for the benefit of the populace, particularly following the enactment of the Basic Agrarian Law (UUPA).

Ultimately, while the state guarantees individual land rights under agrarian law, it prioritizes their social function to serve the public interest. This principle is operationalized through various land acquisition policies, including Law No. 2 of 2012, aimed at protecting community rights and ensuring equitable development. The conclusion underscores the necessity of maintaining a balance between individual and societal interests in land use, fostering a just and equitable society where land serves as a shared resource for collective prosperity.

REFERENCES

- Afriana, Anita. "Dasar Filosofis Dan Inklusivitas Gugatan Sederhana Dalam Sistem Peradilan Perdata." *University Of Bengkulu Law Journal* 3, no. 1 (April 28, 2018): 1–14. <https://doi.org/10.33369/ubelaj.3.1.1-14>.
- Aulia, M. Zulfa. "Friedrich Carl von Savigny Tentang Hukum: Hukum Sebagai Manifestasi Jiwa Bangsa." *Undang: Jurnal Hukum* 3, no. 1 (July 7, 2020): 201–36. <https://doi.org/10.22437/ujh.3.1.201-236>.
- Ben-Menahem, Hanina, and Yemima Ben-Menahem. "The Rule of Law: Natural, Human, and Divine." *Studies in History and Philosophy of Science Part A* 81 (June 2020): 46–54. <https://doi.org/10.1016/j.shpsa.2019.05.001>.
- Franklin, Nathan John. "Islam and the Dutch in the East Indies: Oppression or Opportunity?" *The European Legacy* 25, no. 5 (July 3, 2020): 572–87. <https://doi.org/10.1080/10848770.2020.1760467>.
- Isnantiana, Nur Iftitah. "Hukum Dan Sistem Hukum Sebagai Pilar Negara." *JURNAL HUKUM EKONOMI SYARIAH* 2, no. 1 (May 21, 2019): 19. <https://doi.org/10.30595/jhes.v2i1.4470>.
- Judiasih, Sonny Dewi, and Efa Laela Fakhriah. "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia." *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 5, no. 2 (2018): 315–30.

<https://doi.org/10.22304/pjih.v5n2.a6>.

Neilson, Jeffrey. "Domein Verklaring: Colonial Legal Legacies and Community Access to Land in Indonesia." *Georgetown Journal of International Affairs*, 2020. <https://gjia.georgetown.edu/2020/11/25/domein-verklaring-colonial-legal-legacies-and-community-access-to-land-in-indonesia/>.

Pratiwi, Endang, Theo Negoro, and Hassanain Haykal. "Teori Utilitarianisme Jeremy Bentham: Tujuan Hukum Atau Metode Pengujian Produk Hukum?" *Jurnal Konstitusi* 19, no. 2 (June 2, 2022): 268. <https://doi.org/10.31078/jk1922>.

Pusat, Pemerintah. "Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria." Jakarta, 1960.

Rahmatullah, Indra. "Filsafat Hukum Sejarah: Konsep Dan Aktualisasinya Dalam Hukum Indonesia." *ADALAH* 5, no. 6 (August 19, 2021): 1–18. <https://doi.org/10.15408/adalah.v5i6.22203>.

Septiansyah, Zainal B., and Muhammad Ghalib. "Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia." *Ijtihad* 34, no. 1 (2018). <https://journals.fasya.uinib.org/index.php/ijtihad/article/view/63>.