

# THE ESSENCE OF THE STATE'S RIGHT TO CONTROL LAND FOR PEOPLE'S PROSPERITY ACCORDING TO ARTICLE 33 OF THE 1945 CONSTITUTION

*A ESSÊNCIA DO DIREITO DO ESTADO DE CONTROLAR A TERRA PARA A PROSPERIDADE DAS PESSOAS DE ACORDO COM O ARTIGO 33 DA CONSTITUIÇÃO DE 1945*

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## Abstract

This research aims to explain the essence, basis of policy and the occurrence of deviations from the state's right to control land to realize people's prosperity according to Article 33 of the 1945 Constitution, the basis of policy and the influence of deviations. This type of research uses normative empirical juridical legal research methods that use library data or primary, secondary and tertiary legal materials which focus on studying the state's right to control land for the prosperity of the people. The research results show that: 1) The essence of the state's right to control land to realize people's prosperity needs to be expressed more operationally, the greatest meaning of people's prosperity from a legal perspective is the existence of legal guarantees for the people's socio-economic rights, so that the people are entitled to be eligible as citizens as explained in Article 33 of the 1945 Constitution; then 2) The policy basis for the Right to Control the State is described in various regulations and policies which contain the authority to regulate, manage and control. There are still deficiencies in the provisions containing regulatory authority as outlined in the UUPA and other land regulations; and 3) The causes of

## Resumo

*Esta pesquisa visa explicar a essência, a base da política e a ocorrência de desvios do direito do estado de controlar a terra para realizar a prosperidade das pessoas de acordo com o Artigo 33 da Constituição de 1945, a base da política e a influência dos desvios. Este tipo de pesquisa usa métodos de pesquisa jurídica empírica normativa que usam dados de biblioteca ou materiais jurídicos primários, secundários e terciários que se concentram no estudo do direito do estado de controlar a terra para a prosperidade do povo. Os resultados da pesquisa mostram que: 1) A essência do direito do estado de controlar a terra para realizar a prosperidade das pessoas precisa ser expressa de forma mais operacional, o maior significado da prosperidade das pessoas de uma perspectiva legal é a existência de garantias legais para os direitos socioeconômicos das pessoas, para que as pessoas tenham o direito de ser elegíveis como cidadãos, conforme explicado no Artigo 33 da Constituição de 1945; então 2) A base política para o Direito de Controlar o Estado é descrita em vários regulamentos e políticas que contêm a autoridade para regular, gerenciar e controlar. Ainda há deficiências nas disposições que*



deviations from the State's Right to Control, which are oriented towards pursuing economic growth targets (economic growth development) by ignoring other dimensions, such as deviations in human behavior regarding both legal substance and quantity of social control, the status of land whose ownership is unclear, earth, water and natural resources controlled by a few individuals or private parties where control and ownership will be achieved thereby deviating from the livelihoods of many people. Recommendations are expected: 1) To realize the essence of the state's right to control land, land owners do not transfer the function of their land to anyone else, instead the government must intervene in the implementation of land as mandated by the State, Pancasila and the 1945 Constitution; 2) there is a need for a complete understanding of the aim of realizing the constitutional design of the Republic of Indonesia which is the basis for the design of a dual system of government (modern administration and cultural history). 3) To avoid irregularities, land regulations must be resource-based, there should no longer be any overlap in land laws between one regulation and another.

**Keywords:** State Master Rights. Land Reform. Welfare State. Land Reform.

*contêm autoridade regulatória, conforme descrito na UUPA e outras regulamentações de terras; e 3) As causas dos desvios do Direito do Estado de Controle, que são orientados para a busca de metas de crescimento econômico (desenvolvimento do crescimento econômico) ignorando outras dimensões, como desvios no comportamento humano em relação à substância legal e à quantidade de controle social, o status da terra cuja propriedade não é clara, terra, água e recursos naturais controlados por alguns indivíduos ou partes privadas onde o controle e a propriedade serão alcançados, desviando-se assim dos meios de subsistência de muitas pessoas. Recomendações são esperadas: 1) Para realizar a essência do direito do estado de controlar a terra, os proprietários de terras não transferem a função de suas terras para ninguém, em vez disso, o governo deve intervir na implementação da terra conforme determinado pelo Estado, Pancasila e a Constituição de 1945; 2) há uma necessidade de uma compreensão completa do objetivo de realizar o projeto constitucional da República da Indonésia, que é a base para o projeto de um sistema duplo de governo (administração moderna e história cultural). 3) Para evitar irregularidades, as regulamentações de terras devem ser baseadas em recursos; não deve mais haver sobreposição de leis de terras entre uma regulamentação e outra.*

**Palavras-chave:** Direitos do Estado Mestre. Reforma Agrária. Estado de Bem-estar Social. Reforma Agrária.

## 1 INTRODUCTION

Land is a fundamental human need, whether as a place to live, a source of livelihood, or an inheritance. The high economic value of land has led to increasing ownership conflicts. Land can be owned by individuals, groups or legal entities, and can even be a sacred cultural object.<sup>1</sup>

Legally, land in Indonesia is regulated within the framework of Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water and natural resources are controlled by the state and used for the prosperity of the people. The state is not the owner, but the ruler and regulator of land utilization for the public interest.

<sup>1</sup> Anderl, Felix. (2024). Epistemologies of Land.

UUPA No. 5/1960 emphasizes that the state has the authority to regulate the allocation, use, and legal relationship between people and land. Land rights must pay attention to social functions and be used for justice and the welfare of the people. Islamic teachings also support this concept, as stated in Surah Hud verse 61, which states that humans were created from the land and assigned to prosper it. Thus, the principle of justice in the distribution and utilization of land is important. However, in practice there are many irregularities. Land tenure tends to be controlled by capital owners and used as an economic commodity, not for the welfare of the people.<sup>2</sup>

The state is considered weak in controlling monopolistic land tenure. According to agrarian law expert Maria S.W. Sumardjono, there are three forms of land in the legal system: state land, customary land, and titled land, which require different management policies. Unfortunately, land management, especially state and customary land, has not been carried out in a consistent and integrated manner.

Customary land, which historically and culturally is communal land owned by indigenous peoples, still experiences various problems in its legal recognition and protection. The unclear legal status of customary land often leads to conflicts between indigenous peoples and the state, or with private parties who obtain land management licenses without involving local communities. In fact, customary land has high historical, social and spiritual value for indigenous peoples. Therefore, national land policy should be directed to ensure legal recognition and protection of the rights of indigenous peoples, as mandated in Article 18B paragraph (2) of the 1945 Constitution.<sup>3</sup>

Meanwhile, freehold land, which is generally owned by individuals or legal entities with official certificates, also faces its own challenges, especially in terms of the abuse of ownership rights for speculative or monopolistic purposes. The phenomenon of the concentration of land ownership by a few parties has widened social and economic inequality.

This is worrying, considering that land is the source of life and the main means of production for most people, especially in the agricultural and plantation sectors. In this context, the state has an important role as a regulator and facilitator to balance the interests

<sup>2</sup> Putri, M. M. (2025). Constitutionality Of The Existence Of Land Banks In The Management And Control Of Land By The State. *LEGAL BRIEF*, 14(1), 26–33. <https://doi.org/10.35335/legal.v14i1.1227>

<sup>3</sup> Arsyadi, Sunito S., & Kartodiharjo H. (2016). Analysis of Actors in Promoting Recognition of Indigenous Peoples Policy Post Constitution Court Ruling No.35 (Study on AMAN's and the Network's Role in Promoting the Recognition of Indigenous Peoples Through Village Law and Recognition and Protection of. *Sodality: Jurnal Sosiologi Pedesaan*, 4(3). <https://doi.org/10.22500/sodality.v4i3.14431>

of capital owners, indigenous peoples, and small people. The government needs to formulate and implement land redistribution policies in a fair and transparent manner, as well as strengthen supervision of land tenure that exceeds reasonable limits. Furthermore, the social function of land rights stipulated in Article 6 of the UUPA must be a basic principle in every land policy.<sup>4</sup>

Land rights are not absolute rights that stand alone, but must be utilized for the common good and must not harm the wider community. This means that every land right must consider its impact on the environment, community access to land, and the balance of the ecosystem. It is also important to emphasize that land management and utilization must pay attention to sustainability for future generations. In this case, the principle of sustainable development must be the basis for land policy formulation. Exploitation of land resources without control and without regard to the carrying capacity of the environment will only cause ecological damage which ultimately harms the people themselves. Therefore, true agrarian reform is a necessity. Agrarian reform is not just about distributing land, but includes rearranging the structure of land control, use and utilization in a fair and sustainable manner. The ultimate goal is to create social justice, food sovereignty and people's welfare, as the spirit of Article 33 of the 1945 Constitution and the noble values of Pancasila.<sup>5</sup>

## 2 THEORETICAL FRAMEWORK

This research is based on the theory of the welfare state, the concept of the right to control by the state (HMN) in the 1945 Constitution and the Basic Agrarian Law (UUPA), and the theory of agrarian law. Welfare state theory emphasizes the active role of the state in ensuring the welfare of the people, including through fair and equitable management of agrarian resources to support the socio-economic life of the community. In this case, the state is not only the guardian of order, but also the main actor in realizing social justice through intervention over land tenure. The concept of HMN as stated in Article 33 paragraph (3) of the 1945 Constitution and elaborated in Article 2 of the UUPA

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<sup>4</sup> Putu Ratih Kumala Dewi Ni Wayan Radita Novi Puspitasari Year: 2024 Indigenous Peoples Movement : The Case of Liquefied Natural Gas (LNG) Terminal Construction in Bali ICONIC-RS EAI DOI: 10.4108/eai.21-9-2023.2345665

<sup>5</sup> Utomo, Laksanto. (2025). Reconciling Indigenous Rights and Investment Agendas: Land Governance Challenges Under Indonesia's Cipta Kerja Omnibus Law in Natural Resource Exploitation. *International Journal of Science and Research (IJSR)*. 14. 677-682. 10.21275/SR25507104937.

authorizes the state to regulate the allotment, use and maintenance of land and determine the legal relationship between people and land. This right is not interpreted as state property rights, but rather as a form of control in a public sense that requires the state to act in the interests of the people. Furthermore, agrarian law theory views that national land law must guarantee social justice, the social function of land rights, and environmental sustainability. The state acts as a regulator, protector, and facilitator in the control and use of land to avoid inequality, resolve agrarian conflicts, and recognize and protect the rights of indigenous peoples. These three theoretical frameworks provide a normative and juridical basis for the state to act in managing land for the greatest prosperity of the people.<sup>6</sup>

### 3 RESULTS AND DISCUSSIONS

#### 3.1 The essence of the state's right to control land to realize the people's prosperity based on Article 33 of the 1945 Constitution

The Right to Control of the State has a complex legal force because it covers two aspects of legal subjects, namely the state as the sovereign and individual communities, which can move from weak rights such as use rights to strong rights such as property rights. However, this concept still contains ambiguity because Article 33 paragraph (3) of the 1945 Constitution is not explained in detail, giving rise to many interpretations depending on the point of view and interests of the interpreter, as expressed by Ida Nurlinda and Abrar Saleng. The state, in this case, has the authority to regulate the allocation, use, supply, maintenance and determine the rights and legal relations over land based on Article 2 paragraph (1) of the UUPA. Although the state has the right to control, its position is not as the owner of the land, but as a regulator for the greatest prosperity of the people, in contrast to the concept of *domein* in the Dutch colonial era which eliminated ownership by the people.<sup>7</sup>

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<sup>6</sup> Peturun, P. (2023). Land Management Rights Before and After the Enactment of Job Creation Law. *Administrative and Environmental Law Review*, 4(1), 69–82. <https://doi.org/10.25041/aer.v4i1.2947>

<sup>7</sup> Tomuschat, C. (2001). International law ensuring the survival of mankind on the eve of a new century : general course on public international law. In *Recueil des cours - Académie de Droit International de La Haye*. M. Nijhoff.

According to Notonegoro, there are three forms of the state's relationship with agrarian resources: as a subject, object, and as a representation of the people. The implementation of this right often faces obstacles due to legal vacuum, disharmonized regulations, weak political will, and lack of trust in local governments. Land management that is not in accordance with the allocation is exacerbated by weak supervision. While Article 33 of the 1945 Constitution is politically correct in placing state power for the prosperity of the people, its practical implementation is still weak. This concept is in line with the moral values of Pancasila and the Preamble of the 1945 Constitution, which emphasize justice, humanity and popular sovereignty. The historical aspect of the amendment of Article 33 also shows that despite the amendment, its understanding and implementation still require in-depth interpretation that is not sufficiently based on formal text.<sup>8</sup>

The state's right of control as stipulated in the 1945 Constitution and elaborated in the UUPA is not a property right, but rather the state's authority to regulate, manage, plan, and supervise the utilization of land, earth, water, and natural resources for the greatest prosperity of the people. This authority contains elements of protection of people's rights, utilization of land for welfare, and prevention of deprivation of land rights. The state as the ruling body is tasked with exercising this power while adhering to the principles of social justice, customary law, and the values of Pancasila, and must be in line with the principles of good governance. In this context, individual property rights are recognized in their social function, and land management must consider social, economic and political aspects for the sake of balance between rights and obligations and the sustainability of national development.<sup>9</sup>

### **3.2 Policy on the state's right to control land to realize equitable people's prosperity**

According to Soerjono Soekanto, society has characteristics such as living together for a long time, having awareness as a unit, and producing a shared culture. In customary law, individuals do not form the basis of society, but individual rights arise

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<sup>8</sup> Zhou, L., de Vries, W. T., Panman, A., Gao, F., & Fang, C. (2023). Evaluating Collective Action for Effective Land Policy Reform in Developing Country Contexts: The Construction and Validation of Dimensions and Indicators. *Land*, 12(7), 1401. <https://doi.org/10.3390/land12071401>

<sup>9</sup> Suartining, Ni & Djaja, Benny. (2023). Land Rights in the Land Law System in Indonesia According to the Basic Agrarian Law Number 5 of 1960. *Journal of Social Research*. 2. 1775-1785. 10.55324/josr.v2i6.903.

from community rights such as customary land rights. The principle of “right to control by the state” in Article 33 of the 1945 Constitution confirms that the state holds power over natural resources for the prosperity of the people, while respecting the rights of customary law communities. In the context of new and renewable energy, it is important that there is synergy between the central government, regions and communities to avoid the dominance of neoliberalism and ensure social justice. The protection of customary land is also important for environmental preservation and the identity of indigenous peoples, which requires legal recognition, inventory of customary territories, and coordination between institutions to systematically guarantee their rights.<sup>10</sup>

The policy of State Control over land is based on Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water and natural resources are controlled by the state for the greatest prosperity of the people. This control is not in the sense of absolute ownership, but rather a mandate from the people that gives the state the authority to regulate, manage and supervise the utilization of natural resources for the public interest. This principle contains the values of economic democracy and the principle of kinship, where the state must ensure social justice and prevent the control of resources by a few parties. For this reason, various decrees and laws such as TAP MPR No. IX/2001 and Basic Agrarian Law No. 5 of 1960 have also become important foundations in realizing agrarian justice and people's welfare through an equitable land system.<sup>11</sup>

After independence, the concept of state control over land underwent significant changes with the enactment of Law No. 5/1960 on Basic Agrarian Regulations (UUPA), which replaced the colonial agrarian system. UUPA stipulates that the land, water, and natural resources contained therein are controlled by the state as a manifestation of people's sovereignty, not as the absolute owner, but as the party that regulates their use for the greatest prosperity of the people, as affirmed in Article 33 paragraph (3) of the 1945 Constitution. The UUPA also repealed colonial agrarian laws, such as the Agrarische Wet 1870 and various domain declarations, and initiated agrarian reform with five main programs, including the abolition of foreign rights and feudalism, and the equalization of land ownership through land reform. The government was given broad

<sup>10</sup> Oka Parwata, A. A. G. ., Laksana, I. G. N. D. ., Harmini, A. A. A. N. ., & Pranajaya, M. D. . (2023). Customary Law during the Covid-19 Pandemic: Supporting Local Government's Policy. *Jurnal Hukum Prasada*, 10(1), 49–58. <https://doi.org/10.22225/jhp.10.1.2022.49-58>

<sup>11</sup> Permadi, I., & Fadhli Rahman Arif. (2024). Agrarian Conflicts After the Establishment of the Land Bank Agency in Indonesia. *JUSTISI*, 11(1), 36–47. <https://doi.org/10.33506/js.v11i1.2810>

authority to regulate the use of land and its rights, to ensure sustainability, social justice and economic efficiency. The UUPA also emphasizes the importance of land policies that favor the people, are free from discrimination, and pay attention to sustainability and community participation, especially in the context of equitable and sustainable national development.<sup>12</sup>

The Right of State Control in other laws and regulations shows the long and dynamic journey of agrarian policy in Indonesia, which continues to change in accordance with the prevailing constitutional system. Since the 1945 Constitution Article 33 stipulates that the land, water, and natural resources are controlled by the state for the prosperity of the people, various institutions and regulations have been established, such as the Agrarian Department, BPN, and TAP MPR IX/2001 which encourages agrarian reform and synchronizes regulations with the 1960 BAL. However, there is still a lack of synchronization between sectoral regulations, especially in the mining sector, which reflects the legacy of past partial policies. For this reason, democratic, planned and integrated national legal development is needed so that laws and regulations guarantee justice and protection of land rights, in line with Pancasila and the 1945 Constitution.<sup>13</sup>

#### 4 CONCLUSION

The essence of state control over land is a manifestation of the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people.

In a legal perspective, the meaning of “for the greatest prosperity of the people” implies that the state is obliged to provide legal guarantees for the socio-economic rights of the people, especially land rights, so that people can live a decent life as dignified citizens. The state's authority over land is not only formal control, but also includes the functions of policy, regulation, management, and supervision of the allocation, supply,

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<sup>12</sup> Syafitri, Cut & Kurdi, Kurdi & Rusli, Budiman & Azhari, Azhari. (2024). Land Rights and Their Environmental Implications for Indigenous Communities in Nusantara Capital City. *Jurnal Hukum Magnum Opus*. 7. 198-209. 10.30996/jhmo.v7i2.11569.

<sup>13</sup> Mahfud, Muh & Djohan, Naufal & Malik, Muhammad. (2024). Land Bank in Indonesia: Disoriented Authority, Overlapping Regulations and Injustice. *Jambura Law Review*. 6. 240-263. 10.33756/jlr.v6i2.24166.

utilization, and maintenance of land, including the regulation of legal relations between legal subjects and land and legal actions on land.

The policy foundation in the implementation of the state's right to control land is further derived into various regulations as a concrete form of state intervention in the land sector. This is reflected in various legal instruments, among others: Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which is the main basis for agrarian management in Indonesia; Law No. 26 of 2007 on Spatial Planning; Law No. 41 of 2009 on the Protection of Sustainable Food Agricultural Land; Law No. 11 of 2020 on Job Creation along with Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration; as well as various Presidential Regulations, Regulations of the Minister of Agrarian and Spatial Planning/Head of BPN, and Regional Regulations. These strategic policies are basically normative and not yet fully implementative as they still require further derivatives in the form of implementing regulations or technical guidelines in order to be effectively operationalized in the field. Therefore, collaboration between authorized state institutions is important in determining the direction, content, and form of regulations that are able to realize the principle of people's prosperity in state control over land.

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### **Authors' Contribution**

Both authors contributed equally to the development of this article.

### **Data availability**

All datasets relevant to this study's findings are fully available within the article.

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