

Winarsi et al., 2020

Volume 6 Issue 2, pp. 535-543

Date of Publication: 3<sup>rd</sup> October 2020

DOI- <https://doi.org/10.20319/pijss.2020.62.535543>

This paper can be cited as: Winarsi, S., Rachmawati, E. A. & Moechthar, O. (2020). A Study of Priority Principle in Indonesian Agrarian Law System. *PEOPLE: International Journal of Social Sciences*, 6(2), 535-543.

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## **A STUDY OF PRIORITY PRINCIPLE IN INDONESIAN AGRARIAN LAW SYSTEM**

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### **Abstract**

*Land rights in agrarian law consist of two types, namely land rights for a specified period and land rights with no specific period. The community has a lack of understanding regarding land rights over a specified period, and thus, it has caused problems in the community; precisely, if the land rights have expired, the government will erase the rights and claim it as state-owned land. However, the previous landowners assumed that the existing building was their property even though the land rights had been terminated. There are a high number of disputes over ownership of land rights due to maturity. Therefore, we examine the existence of priority principles in the acquisition of land rights that have matured. The research is qualitative legal research that uses the statutory approach, conceptual approach, and case approach. Results*

*show that the holder of land rights that have matured can be given a priority in regaining land rights, but with certain conditions set by the government.*

### **Keywords**

Land Law, Land Rights, Priority Principle, Indonesian Agrarian Law, Indonesian Law

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## **1. Introduction**

The land is one of the most critical factors in the life of a community, especially in the environment of Indonesian society, where most residents depend on land for their livelihoods. The land is a basic human need. Since birth, humans need land for various necessities such as shelter, agricultural business, and social activities. The land has many essential functions for human life. It is the basis for human settlements & daily human activities, it provides habitats for plants and animals, and it becomes a final resting place for humans. The land has a central and strategic position for human life, for instance, facilities and infrastructure, such as roads, markets, buildings, housing, defense, and security (Rahmanto, 2014). In principle, humans cannot be separated from the existence of land.

The existence of land is relatively not increasing. If the number of land rises, for example by reclamation of the coast, it will be unequal with the rapid population growth that all require land. The existing land will be a place to invest for those who have capital money because the price of land is getting more and more expensive. On the other hand, people may have a dispute over land, and thus, land problems often occur in the community.

The Constitution Article 33 Paragraph (3) states that the earth, water, and natural resources contained therein are used for the greatest prosperity of the Indonesian people. The government issued Law No. 5 of 1960 concerning Basic Rules for Agrarian Principles (referred to as UUPA), which is essentially principles and need further development in the implementing regulations of UUPA (Hairani, 2014). Land rights stipulated in the UUPA are divided into two, namely for a specified period and with no specific period. The lack of understanding regarding land rights over a specified period has caused problems in the community, i.e. if the land rights have expired, the government will erase the rights and declare the land as state-owned land. However, the previous landowners may assume that the existing building is their property even though the land rights have been removed.

This research presents a lawsuit case of Panca Wira Usaha East Java, Ltd., the owner of the land and building assets located on Comal Street No. 27-29 Surabaya with an area of 779 m<sup>2</sup> based on Building Certificate No. 55 /K on behalf of the “Patna Surabaya Paint Company” of East Java Province. The assets were initially inhabited by Aanhard, a Dutch citizen who at that time occupied the leadership of the Patna Paint Factory with official residence status, which then there was a change in the occupants of the assets without a clear legal basis. The land right was valid for 20 years and had expired on April 5, 2003. The assets are currently inhabited by Nuryahya without any legal basis and are used for Mahadita Law Firm Office. Nuryahya argued that the land right, which previously belonged to Panca Wira Usaha East Java, Ltd. ended on April 5, 2003, and the right was erased and became state-owned land.

The annulment of the Right of Building, Right of Exploitation, and Right of Use is due to the expiration period. Debate and legal interpretation always arise regarding the status of land and objects after the expiration date, and thus, the land belongs to the state (Mujiburohman, 2016). Therefore, this research will explain concerning who is entitled to the state land with former rights and a legal relationship between the owners and land.

## **2. Methodology**

The research is an analytical descriptive law study. We examined the settlements of land disputes regarding the agrarian laws and regulations. The research used a legislation approach to focus on the applicable rules to analyze the hierarchical relationship, consistency, and suitability between the laws of control over land rights and other laws.

The research also used a conceptual approach that is conducted by studying and analyzing concepts and theories about the legal consequences of land rights annulment associated with the status of ownership of land rights. Also, the research presents a case study to analyze and examine cases related to the issues discussed. Qualitative analysis was carried out by presenting legal principles (such as constitutional principles of laws and regulations) and procedural requirements (mechanisms) of law as well as analyzing various social, economic, and political factors in the process of affecting procedural and substantive case settlements about control over land.

Data collection in this study consists of primary and secondary data collection. Secondary data was collected through a legal document, journal, agencies, online documents, and primary data was obtained through observation procedure and snowballing method (Wahid and Widyawati,

2018). In qualitative research, there is a possibility that the predetermined problem may change when it is in the field, as there are more important and urgent things than what has been previously formulated. Therefore, it is necessary to check the data validity collected so that no interpretation is incorrect or not following the concept.

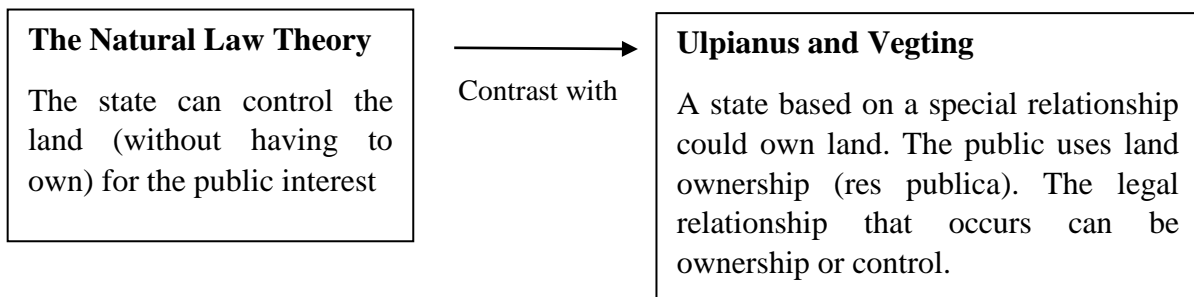
### **3. Discussion**

The main problems of the population growth and housing are congestion, the concentration of the workplace in the city center, and the migration from villages to the city. These problems added pressure on the services, irregular construction, and housing activities. Also, housing development impacted on the fragile archaeological remains and the traditional houses and buildings (Al-Saad, 2007). Indonesia is a state based on the rule of law, where the legal order that operates in a society is essentially the embodiment of the constitutional ideals adopted in various positive legal rules, legal institutions, and processes. The rule of law places the interests of individuals in a balanced way with the public interest. The state recognizes the fundamental rights and obligations of citizens and makes arrangements that ensure a safe and peaceful society. Efforts to achieve a just and prosperous society require the active participation of all humans in all fields of life, such as economics, politics, law, and social culture. One way to achieve prosperity for all the people is by using the law as a tool. In other words, the law is used as a means to create justice and prosperity, especially in the agrarian sector. The existence of regulations in a country based on the law (*rechtstaat*) is a must. Hence, in the state of law, there is a principle of legality, which means that all good actions that are state, national, and social, must be based on the law/regulations (Yanto, 2018).

The priority rights involve getting precedence based on sequences of recipients of land rights to obtain recognition and award/determination of land rights. However, civil rights are considered higher than priority rights. Furthermore, civil rights involve the legal relationship between the subject of rights and the land. Even though their rights have ended, the civil law relationship still exists. They must settle the civil rights before precedence can be given. The 2015 STPN Strategic Research stated that the rights had been recognized in the implementation. With the rights, landowners could obtain or could lose their land rights. Also, the abolishment of land rights is possible.

The right is owned by former rights holders to be prioritized. Thus, their rights are given back to the former rights holders. If the Right of Building has expired, the land will be controlled by the state. However, the position of the rights owned by the right holders is preferable so that his rights will be given back. Hence, even though the rights over land have been erased, they still belong to the former right holders (Hakim, Pujiwati, Rubiati, 2018).

However, some argue that the right is not a right that must be recognized. If the term of the ‘limited land rights’ expires, the status of the land will become state land (Sitorus, 2016). According to the natural law theory, there is no specific explanation that the state cannot own land in the sense of possessing (*eigendom*), which contains absolute power over the land. Still, the state can control the land (without having to own) for the public interest. In contrast to the understanding adopted by the natural law, Ulpianus and Vegting stated that a state based on a special relationship could own land (although it was all apparent). The public uses land ownership (*res publica*). The legal relationship that occurs can be ownership or control (Fitri, 2018). However, the practice of land administration has so far shown that former land title holders are referred to by the land bureaucracy as “priority rights” or “civil rights”.

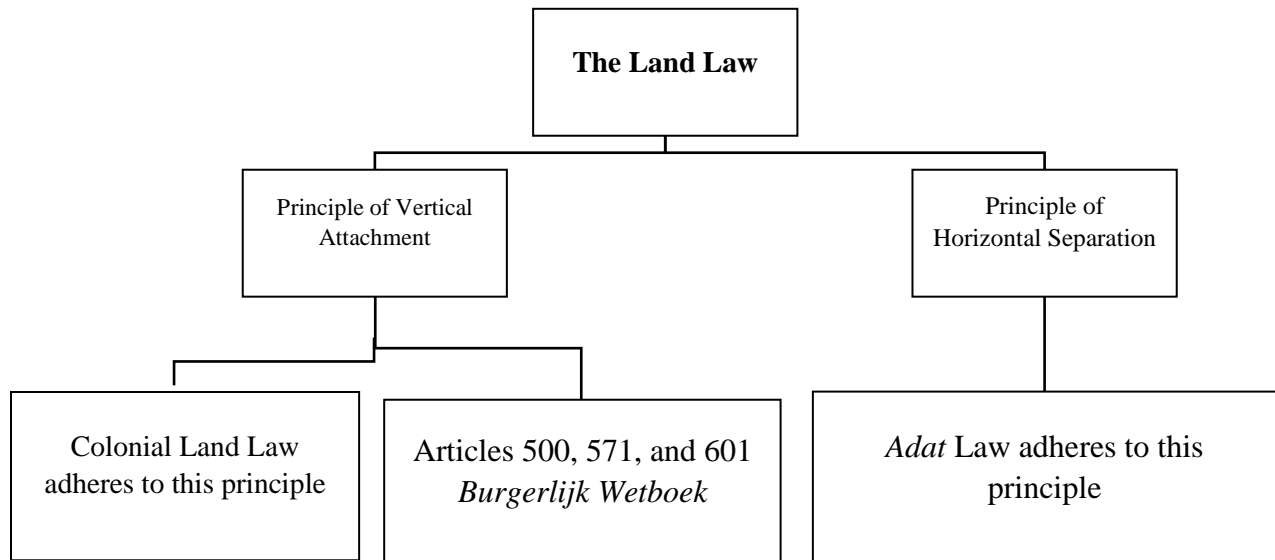


**Figure 1:** *The Contrasting Theory Regarding Possession of Land (Created by the Authors)*

The land has a lasting relationship with humans. Its vital function in supporting human life is essential in an acquisitive society. The human relationship with the land, labeled as ‘cosmic-magical-religious’, has caused the land to be valued more than just economically (Maladi, 2013). A critical aspect of land law is the legal relationship between land and other objects attached to it. The legal certainty of the legal position of objects attached to the land is crucial because this has a broad influence on all legal relations concerning land and objects (Rubiati, Pujiwati, Djakarta, 2015). In the case of rented land, the land use of households focused on maize growing, follow with rice/upland rice. Some households, however, faced conflict on land tenure and land use with the government agency; the Royal Forest Department seized those lands and did not allow the farmers

to encroach the reserved forest areas and the lands without title deeds (Pampasit and Pampasit, 2018).

In the land law, two principles contradict each other, namely the principle of vertical attachment (*vertical accessie beginsel*) and the principle of horizontal separation (*horizontal scheiding beginsel*). There is a significant difference between these laws, where the colonial land law derived from *Burgerlijk Wetboek (Indonesian Civil Law)* adheres to the principle of attachment (*natrekking/accessie*). Articles 500, 571, and 601 *Burgerlijk Wetboek* expressly stated the attachment principle; land ownership included in the ownership of the building in the area. The principle of attachment is contrary to the *adat* law that adheres to the principle of horizontal separation. The principle of horizontal separation signifies that buildings, plants, and other economical objects on the ground are not part of the land. In this case, ownership of the land does not include the building above it because the building belongs to the party who built it (Ganindra and Kurniawan, 2017).



**Figure 2:** *The Hierarchy of the Land Law (Created by the Authors)*

Disputed assets that are not affected by Law No. 86 of 1958 concerning Nationalization is regulated by Law No. 3/PRP/1960. In Article 1, all objects remain to Dutch citizens who are not affected by the nationalization of Dutch companies, whose owners have left the territory since the effective date of the regulation controlled by the government. With the departure of the Dutch people who owned land and buildings, the status of ownership of the land rights became controlled directly by the government. However, based on Article 4, there are priorities given to the citizens

for housing. Therefore, the control of the disputed objects by Panca Wira Usaha, Ltd. is justified by law because of regulations related to the nationalization of Dutch assets in Indonesia.

As a result of the influence of modernization in land management, there is a shift in socio-cultural values and the resulting emergence of various behaviors that do not comply with the law, especially in terms of land rights, including (Rejekiningsih, 2016): (a) an act of land abandonment; (b) selfish behavior in owning land, hence there are many land tenure whose land area exceeds the minimum and maximum rules of land ownership and absentee land ownership; (c) the tendency of people to convert agricultural land to non-agricultural land; (d) land use that does not pay attention to the ecological function of the soil and causes a tendency for soil damage; (e) the deteriorating behavior of the community in the use of land to meet the needs of people's lives; (f) land use for economic gain without regard to the interests of sustainable land.

Regarding the case of Panca Wira Usaha East Java Ltd., the legality of land ownership does not belong to Mahadita Law Firm Office. Even though the land right has not matured, it does not necessarily justify Mahadita Law Firm's action to control the land and building, primarily because a clear basis of rights does not support it. Panca Wira Usaha Ltd., which is legally a former holder of the land rights, still has precedence to extend their rights because the building above is based on the *horizontale scheiding* principle. Mahadita Law Firm is prohibited from using the land without the right permit or legal authority. If there is any violation, it will result in criminal law. The Mahadita Office can apply to the government to obtain the building and land.

#### **4. Conclusion**

Land rights are the legal relationship between the subject of rights and land, where the link has legal protection. The purpose of land rights is to provide legal certainty over the legal relationship so that those right holders can exercise authority/content of their land rights properly. The state regulates legal relations between humans and the land so that humans, as holders of land rights, receive protection in managing and utilizing their area. In connection with the priority principle, the government should immediately establish special rules relating to former land rights that have matured, whether the government will give a preference to regain or return to state land so that in the future, this land dispute can be avoided.

#### **4.1 Research Limitation**

The research is limited to legal principles relating to the repossession of land rights as regulated in Indonesian agrarian law. Secondly, the conclusion of this research is based on one case study, utilizing relevant legal document analysis and primary data collected from the observation procedure.

#### **4.2 Future Scope**

Future researches may further investigate the issues addressed in this research by using a broader range of data and case studies. Secondly, future researches should analyze the relationship between the state and citizens concerning the relationship between natural resources, especially land, which must be recognized in the existence of a country. Several case studies with different underlying problems should be used to create more insightful research results.

### **REFERENCES**

- Al-Saad. (2017). Sustainable Tourism Management At Potential World Heritage Sites: Land Use Analysis By Using Gis: Case Study: Jerash Archaeological Site, Jordan. *PEOPLE: International Journal of Social Sciences*, 3 (3), pp.614-636. <https://doi.org/10.20319/pijss.2017.32.614636>
- Fitri, R. (2018). Agrarian Law in the Land Sector After Regional Autonomy. *Kanun Jurnal Ilmu Hukum*, 20 (3), p. 423. <https://doi.org/10.24815/kanun.v20i3.11380>
- Ganindra, D., & Kurniawan, F. (2017). Horizontal Separation Principle Criteria for Ownership of Land and Buildings. *Jurnal Yuridika*, 32 (2), p. 229. <https://doi.org/10.20473/ydk.v32i2.4850>
- Hairani. (2014). Studies on Land Reform in the Perspective of Agrarian Law Reform. *Jurnal Cakrawala Hukum*, 19 (1), p. 10.
- Hakim, R. I., Pujiwati, Y., & Rubiati, B. (2018). Priority Rights in Acquisition of Land Use Rights for Buildings that have expired from Law Number 5 of 1960 concerning Basic Agrarian Regulations and Decree of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 6 of 1998 concerning the Granting of Right to Land for Residence. *Acta Diurtal Journal*, 1 (2), p.116. <https://doi.org/10.24198/acta.v2i1.164>
- Maladi, Y. (2013). Agrarian Reform with Pancasila Paradigm in Realizing National Agrarian Politics. *Jurnal Mimbar Hukum*, 25 (1), p. 28.



- Mujiburohman, D. (2016). The Problems of Regulating State Land Rights that Have Expired. *Jurnal Bhumi*, 2 (2), p. 152.
- Pampasit, R. and Pampasit, S. (2018). Socioeconomic Condition and Land Use Transformation Of Farmer S In Maize Farming: The Case Study Of Nan Province, Thailand. *PEOPLE: International Journal of Social Sciences*, 4 (3), pp.382-395.  
<https://doi.org/10.20319/pijss.2018.43.382395>
- Rahmanto, D. (2014). Conflict and Dispute Resolution on Land Rights Ownership Certificate. *Adil Jurnal Hukum*, 5 (1), p. 42.
- Rejekiningsih, T. (2016). Principles of Social Functioning of Land Rights in the State of Law (An Overview of Theory, Juridical and Its Application in Indonesia). *Jurnal Yustisia*, 5 (2), p.315 <https://doi.org/10.20961/yustisia.v5i2.8744>
- Rubiati, B., Pujiwati, Y., and Djakaria, M. (2015). The Principle of Horizontal Separation in Ownership of Land Rights and Flats for Low-Income. *Jurnal Sosiohumaniora*, 17 (2), p.96.  
<https://doi.org/10.24198/sosiohumaniora.v17i2.7295>
- Sitorus, O. (2016). Structuring Legal Relations in the Control, Ownership, Use, and Utilization of Agrarian Resources: Preliminary Study of the Concept of Land Rights and Mining Business Permits. *Jurnal Bhumi*, 2 (1), p.3. <https://doi.org/10.31292/jb.v2i1.29>
- Wahid, A. G. A., and Widyawati (2018). Sociocultural Landscape of Rural Community In New Town Development Of Bumi Serpong Damai City Kota Tangerang Selatan Indonesia. *PEOPLE: International Journal of Social Sciences*, 4 (3), pp.164-180.
- Yanto, N. (2018). Implementation of the Nemo Plus Yuris Principle as Legal Protection for Land Rights Holders. *Era Hukum: Jurnal Ilmiah Ilmu Hukum*, 16 (1), p. 135.  
<https://doi.org/10.24912/erahukum.v16i1.2376>