

# Legal Assurance on the Status of Proprietary Rights to Land Destroyed Post Earthquake and Liquifaction Based on Regulation of The Minister of Agriculture Number 17 Year 2021

\*Armansyah

Law Study Program, Faculty of Business and Humanities, University of Nusa Putra, Indonesia

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## Article Info

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## ABSTRACT

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Analysis of legal materials is carried out by tracing or inventorying primary legal materials and secondary legal materials. The next step is to identify legal materials and develop legal arguments related to the legal issues discussed. and then conclude each legal issue. To guarantee the rights to land affected by liquefaction, Article 5 of Law Number 24 of 2007 concerning Disaster Management stipulates that the Government and regional governments are responsible for the implementation of disaster management. In the elucidation of the article, what is meant by the responsibilities of the Government and regional governments in the implementation of disaster management include natural disasters, non-natural disasters, and national disasters. In this article, it is explained that the government and local governments as the person in charge of disaster management are obliged to provide guarantees for land rights affected by liquefaction. The provisions regarding destroyed land on the status of ownership of this land have been regulated in Article 27 of the LoGA, that a plot of land can be categorized as destroyed land if the land has changed from its original form due to natural events such as liquefaction. the event of the land being destroyed, does not eliminate the government's responsibility in providing legal certainty guarantees this is based on the land parcels that cannot be functioned, used, and utilized properly. as a form of implementation of the provisions governing matters that may result in the nullification and destruction of land rights.

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## Corresponding Author:

Name: Armansyah

Institution: Law Study Program, Faculty of Business and Humanities, University of Nusa Putra

Email: [armansyah@nusaputra.ac.id](mailto:armansyah@nusaputra.ac.id)

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## 1. INTRODUCTION

At present, land issues are a very complex and complicated part of the solution. This can be seen from various aspects that intersect with land issues. Like, Social aspects; economic aspects; political aspects; as well as psychological aspects and so on. Apart from these aspects, problems also arise in terms of factors causing natural disasters such as: tsunamis, landslides, liquefaction and other natural disasters [1].

One form of phenomenal natural disaster that causes multidimensional and complex damage is liquefaction natural disaster. the existence of liquefaction resulted in the transfer of land and the loss of land boundaries against the object of the status of ownership of land rights above the original owner's land surface.

The problem is exacerbated by the destruction of land boundaries and the loss of proof of ownership of land rights which makes it difficult to reorganize and rediscover the identity of the land with property rights. If you look at the legal status of the physical land rights, it raises a problem with the status of ownership of land rights that have changed both in the physical form and boundaries of land parcels that can be categorized as destroyed land [2].

Referring to Article 27 of the Basic Agrarian Law (hereinafter referred to as UUPA) states that the status of ownership of land rights can be erased because the land is destroyed. a plot of land that can be categorized as destroyed land includes a plot of land that has changed from its original form due to natural events, cannot be identified and cannot be functioned and used properly.

Article 2 of the Ministerial Regulation of ATR/KBPN Number 17 of 2021 confirms that the management rights and/or land rights are nullified because the land is destroyed. A plot of land is said to be destroyed if it meets several criteria, namely:

- a. It has changed from its original form due to natural events;
- b. can no longer be identified; and
- c. cannot be used, used and utilized

as it should be

From these criteria, the earthquake and liquefaction that occurred in Palu City can be categorized as the Land of Destruction. because the plot of land is no longer in the form of land, some buildings have been submerged by more than half and have been abandoned by the right holders because they can no longer be used.

Considering the clarity of ownership status of land ownership rights after the earthquake and liquefaction, it can meet the category of destroyed land based on Article 27 of the LoGA. This is based on Article 66 of Government Regulation Number 18 of 2021 which states that land that has changed from its original form due to natural events and cannot be identified anymore so that cannot be functioned, used, and utilized properly, is declared as destroyed land through the determination of destroyed land in stages. namely identification, inventory, and assessment.

Based on the above, the status of ownership of land rights requires clarity of rights status and guarantees of legal certainty for land affected by liquefaction disasters and is also categorized as destroyed land.

## 2. LITERATURE REVIEW

### 2.1 *Definition of Land Ownership*

The provisions of Article 20 paragraph (1) of the BAL stipulate that "Property rights are hereditary, strongest, and fullest rights that can be owned by people on land, keeping in mind the provisions in Article 6". Then in paragraph (2), it is stated "Property rights can be transferred and transferred to other parties." Land ownership rights in the LoGA are included in the concept of primary land rights. Primary land rights are land rights that can be owned or controlled directly by a person or legal entity that has a long period and can be transferred to other people or their heirs [3].

### 2.2 *Ownership of Land Rights Against Legal Status of Land Destroyed*

Article 27 of the UUPA states that property rights can be annulled if the land

falls to the State either due to revocation, voluntary surrender, the land is abandoned and because the land is destroyed. A plot of land can be categorized as destroyed land including a plot of land that has changed from its original form due to natural events, cannot be identified anymore, and cannot be functioned, used, and utilized as it should be.

A plot of land is assigned to the category of destroyed land, based on Permen ATR/KBPN Number 17 of 2021, there are several stages, namely: location determination; the formation of a research team for destroyed soils; socialization; identification, investment, and assessment; announcement; implementation of reconstruction or reclamation if the land owner declares that he will carry out the reconstruction and/or reclamation and/or issuance of a decision on the determination of the destroyed land.

### **2.3 Legal Certainty Against Owners of Land Ownership**

Legal certainty implies that the registered land parcel is unique, in terms of its location, area, and boundaries, this uniqueness also guarantees that the boundary can be returned if in the future the signs of the boundaries of the land are lost.

In connection with this, it can be seen that the certificate is a letter of proof of strong rights regarding the physical data and juridical data contained therein. So that the physical data and juridical data are following the data contained in the letter of measurement and the relevant land book. Certificate as strong evidence means that as long as it cannot be proven otherwise, the physical data and juridical data contained therein. then the proof of the certificate must be accepted as correct data, as can also be proven from the data listed in the land book and the letter of measurement [4].

Legal certainty in the ownership of land rights means that the rights registered in the general register are guaranteed to be valid and actual rights holders whose owners are based on good faith, providing guarantees of legal certainty in the land sector, requiring the availability of complete and clear written laws

that are implemented consistently, following the spirit and content of its provisions.

## **3. METHODS**

This research uses legal research, which is a series of activities carried out by the scientific method in seeking the truth in a systematic, intact, and consistent way. In Marzuki (2013) view that legal research is a series of activities in the process of finding a rule of law, legal principles, and the views of previous legal experts to answer the legal issues faced [6]. As legal research, this research is included in normative legal research because it aims to find the truth of the legal issues studied and the approach to the problem is carried out by researching and studying problems (legal issues) with consistency and conformity between laws and regulations with other regulations [5].

Analysis of legal materials is carried out by tracing or inventorying primary legal materials and secondary legal materials. The next step is to identify legal materials and develop legal arguments related to the legal issues discussed. and then conclude each legal issue.

## **4. RESULTS AND DISCUSSION**

In the 1945 Constitution Article 28 D Paragraph (1) it is stated that "Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law". This provision also applies to the land sector. The provisions of the government's authority to regulate the land sector are rooted in Article 33 Paragraph (3) of the 1945 Law which affirms that the earth, water, and natural resources are contained. it is controlled by the state to be used for the greatest prosperity of the people and then confirmed in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or also called the Basic Agrarian Law (UUPA).

As we all know, it has been stated in Article 27 of the Basic Agrarian Law that the abolition of property rights can occur if: a. The land falls to the State: Due to the revocation of rights under Article 18; Due to voluntary

surrender by the owner; For being abandoned; Due to the provisions of Article 21 Paragraph 3 and Article 26 Paragraph 2. b. The land is destroyed.

In the second point, we can understand that if an earthquake occurs in an area and destroys a plot of land, then someone's ownership rights to that plot of land will be erased or lost. However, if the earthquake that occurs only makes the boundaries of a plot of land unclear and does not destroy the plot of land, then someone's ownership rights to that piece of land are not automatically lost. If the land affected by the disaster is not destroyed, it means that there are still ways that the victim can try to reorganize the boundaries of his land [7].

From the above criteria, by looking at the condition of the existing land parcels in Palu City which were affected by the liquefaction disaster, they have met all the criteria for destroyed land. Because the plot of land is no longer in the form of land, the building has sunk more than half and has been abandoned by the right holder because it can no longer be used.

As is well known, it has been stated in Article 27 of the LoGA that the abolition of property rights occurs because the land is destroyed, there are no further regulations regarding the destroyed land. Land that is destroyed due to liquefaction in the LoGA, there is no further regulation, it only determines that the land is deleted, so that the status of the land will be lost. At this point, it can be understood that if liquefaction occurs in an area and causes a plot of land to be destroyed, someone's ownership rights to that plot of land will be erased or lost.

The abolition of property rights because the land is destroyed, if it is returned to the basic understanding of land rights, especially property rights, it is very clear that the ownership rights originate from the existence of an intact plot of land. With the destruction of a plot of land, the land cannot be measured and proven its existence, so by law, the rights to the land are nullified.

the legal status of the land affected by the disaster is erased because the land is

destroyed, but it does not cover the fact that there are parties who are harmed by the abolition of the land rights and the government is implicitly in the legislation taking responsibility for the welfare of the people, is obliged to provide guarantees for the destroyed land. Article 28 D and Article 33 paragraph (3) of the 1945 Constitution serves as the basis for the guarantee and protection of these lands as a form of protection from the government [8].

Legal certainty according to Gustav Radbruch, namely certainty because of the law, and certainty in or the self of the law. Guaranteeing certainty because the law is the duty of the law. Laws that succeed in ensuring a lot of certainty in social relations are useful [9].

As for matters to ensure legal certainty of land rights, include [10]:

- a. Certainty regarding persons and legal entities who become holders of rights to a plot of land, apartment units, and registered rights so that they can easily prove themselves as holders of land rights, called certainty regarding the subject of land rights;
- b. Certainty regarding the location of land, and land boundaries with the land area so that it can provide information to interested parties including the government so that they can easily obtain the data needed to carry out legal actions regarding land parcels and flats that have been registered and certainty regarding the location of the land; and
- c. Certainty regarding what rights exist on the land (such as property rights, property rights to flat units, and registered rights) is called certainty regarding rights or status.

The abolition of land rights affected by earthquakes and liquefaction which are included in natural disasters, as explained above that the legal status of the land affected by the disaster is erased because the land is destroyed, but does not cover the fact that there are parties who are harmed by the abolition of land rights and the government

implicitly in the legislation is responsible for the welfare of the people, is obliged to provide guarantees for the destroyed land.

Given the clarity of ownership status on land after the earthquake and liquefaction in the city of Palu, it can meet the category of destroyed land based on Article 27 of the UUPA. This is based on Article 66 of Government Regulation Number 18 of 2021 which states that land that has changed from its original form due to natural events and cannot be identified anymore so that cannot be functioned, used, and utilized properly, is declared as destroyed land through the determination of destroyed land in stages. namely identification, inventory, and assessment. Natural events that can cause the land to be destroyed are earthquakes and liquefaction.

Then it was reaffirmed through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 17 of 2021 concerning Procedures for Determination of Destroyed Land, which is expected to be the answer to the certainty of the status of land that has been destroyed due to the earthquake and liquefaction disaster.

Based on Article 2 of the Ministerial Regulation of ATR/KBPN Number 17 of 2021, it is stated that the management rights and/or land rights are nullified because the land is destroyed. A plot of land is said to be destroyed if it meets several criteria, namely:

- a. It has changed from its original form due to natural events;
- b. can no longer be identified, and
- c. cannot be used, used, and utilized as should be.

The form of implementation of the provisions of Article 66 PP Number 18 of 2021, the Ministry of Agrarian and Spatial Planning / Head of the National Land Agency stipulates Ministerial Regulation Number 17 of 2021 concerning Procedures for Determination of Destroyed Land, based on Permen ATR / KBPN Number 17 of 2021 There are several stages, namely: location; the formation of a research team for destroyed soils; socialization; identification, investment, and

assessment; announcement; implementation of reconstruction or reclamation if the land owner declares that he will carry out reconstruction and/or reclamation and/or issuance of a decision to determine the destroyed land.

As the implementation of the provisions of Article 66 of PP Number 18 of 2021, the Ministry of Agrarian and Spatial Planning / Head of the National Land Agency stipulates Ministerial Regulation Number 17 of 2021 concerning Procedures for Determination of Destroyed Land. The regulation is expected to be a solution and legal protection from problems that occur in several areas of Indonesia that are prone to natural disasters that destroy land parcels, one of which is the liquefaction that occurred in Palu City.

The land parcel has been designated as destroyed land, then the Head of the Land Office announces the land parcel to be designated as destroyed land in writing and openly at the village/kelurahan office and land office or ministry website for 14 calendar days to give priority to land rights holders to implement reconstruction or reclamation.

In terms of legal certainty that can be fought for land rights holders who have lost their land rights, in the Ministerial Regulation above, it is stated that during the announcement period the right holder does not make a statement to carry out reconstruction or reclamation, it is considered disapproving and agrees that the land parcel is designated as destroyed land. However, if the right holder is willing to carry out reconstruction or reclamation, a period of 1 year is given to carry it out.

Before the land is destroyed, its administration is recorded, and the right holder is given priority to carry out reconstruction or reclamation of land use carried out by the government, both central and regional or other parties through the assistance of spiritual funds, then based on the socialization presented by the Directorate General of Determination of Rights and Land Registration concerning Government Regulation Number 18 of 2021, it is necessary

to carry out the stages of implementing the destroyed land affirmation activities, as follows:

- a. The Regent/Mayor forms a Research Team, consisting of an Assistant to the Regent/Mayor in charge of the government and land affairs, the Head of the Land Office as Deputy Head of Destroyed Land, elements from the agency in charge of Marine Affairs and Fisheries, elements from the Geospatial Information Agency, elements from the Resource Center Water (Ministry of Public Works and Public Housing), elements from the Academic Institution, Camat, Lurah/Village Head, other agencies if needed, and Land Office Officials appointed by the Head of the Land Office;
- b. Identification and inventory;
- c. Research and assessment; announcements and summons; reconstruction and reclamation (kerohiman funds); affirmation of destroyed land; and administering the destroyed land. Then the registration is carried out following Article 52 of Government Regulation Number 24 of 1997 which is carried out by the Head of the Land Office by affixing notes to the land book and measuring certificate and destroying the certificate of the right in question, based on the data in the land book, a copy of the decree of the competent official regarding the right in question. has been canceled/revoked, and a deed stating that the right in question has been relinquished by the right holder and if it is not submitted to the Head of the Land Office, it is recorded in the land book and the relevant letter of measurement.

To guarantee the rights to land affected by liquefaction, Article 5 of Law Number 24 of 2007 concerning Disaster Management stipulates that the Government and regional governments are responsible for the implementation of disaster management.

In the elucidation of the article, what is meant by the responsibilities of the Government and regional governments in the implementation of disaster management include natural disasters, non-natural disasters, and national disasters. In this article, it is explained that the government and local governments as the person in charge of disaster management are obliged to provide guarantees for land rights affected by liquefaction.

## 5. CONCLUSION

The provisions regarding destroyed land on the status of ownership of this land have been regulated in Article 27 of the LoGA, that a plot of land can be categorized as destroyed land if the land has changed from its original form due to natural events such as liquefaction. the event of the land being destroyed, does not eliminate the government's responsibility in providing legal certainty guarantees this is based on the land parcels that cannot be functioned, used, and utilized properly.

As a form of implementation of the provisions governing matters that may result in the nullification and destruction of land rights. the Ministry of Agrarian and Spatial Planning / Head of the National Land Agency stipulates Regulation of the Minister of ATR / BPN Number 17 of 2021 concerning Procedures for Determination of Destroyed Land as a form of guarantee of legal certainty to holders of land rights whose land is included in the category of destroyed land in the form of land rights to carry out reconstruction or reclamation; Obtain spiritual funds if the land parcel is reconstructed or reclaimed by the Central Government or Regional Government; If the holder of land rights is not willing to carry out reconstruction or reclamation, then the land is determined as destroyed land by the issuance of a Decision on Determination of Destroyed Land by the local Land Office.

Considering that it has not been specifically regulated regarding the status of ownership of land rights due to natural disasters and liquefaction which causes ownership status to be erased, because the

land is destroyed or difficult to identify. Therefore, it would be better if the Government made a special regulation at the level of the Law regarding the guaranteed

status of land ownership rights due to natural disasters. which this Law applies nationally and becomes a reference for the regulations under it.

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