

**PROCEEDING OF INTERNATIONAL CONFERENCE ON  
THE LAW DEVELOPMENT FOR PUBLIC WELFARE**

**ISSN: 2798-9313**

Topic: Human Right Issues of Artificial Intelligence (AI) Gaps and Challenges, and Affected Future Legal Development in Various Countries

**Analysis Of Justice Principles In Determining The 'Clean and Clear' Status Of Land Rights It Has Been Canceled**

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**Abstract.** Determination of 'clean and clear' status on rights on land is A complex issue in law land . In context this , especially when right on land has canceled , esp in context PK decision of the Supreme Court of the Republic of Indonesia number 28.PK/TUN/2005 dated 22 July 2009, question about justice becomes very important . Study This will do analysis deep to principle justice involved in determination of 'clean and clear' status on rights on land that has been cancelled . With use approach multidisciplinary , research This will explore aspects related legal , ethical , and social issues with solution conflict related ownership complex land . Through careful research to studies case and framework relevant laws , research This aim For give deep insight about How principles justice can applied in context determination of 'clean and clear' status on rights on land that has been cancelled . Expected results study This can give contribution significant to understanding We about law land and protection rights on land in system modern law .

**Keywords:** Clean; Clear; Legal Justice; Principles.

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**1. Introduction**

Growth economy and development cities in various countries often result complexity in problem ownership land . Top rights land become element crucial in determine certainty law and security for owner property. In the middle dynamics law property , the State Administrative Court (PTUN) appears as institution it's important to handle it dispute right on land .

One of interesting phenomenon attention is the applicant who submitted it return right on the land Alone after experience cancellation by PTUN. Case study certain , like PK Supreme Court decision number 28.PK/TUN/2005 dated July 22 2009, shows complexity and challenges in face submission repeat right on land .

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When PTUN cancels right on land, owner land often feel need to submit return right they with hope obtain clarity legal and "clean and clear" status above their land claim. This case started from exists Decree of the Regional Head of BPN West Kalimantan Province Number 1 of 2002 dated January 29 2002 which canceled the Certificate of Ownership No. 5938/Sungar Raya Village, last recorded an. DAHLAN ISKAN, on June 3 2002 a lawsuit was filed by DAHLAN ISKAN as Plaintiff against the Head of the West Kalimantan Province BPN Regional Office as Defendant at the Pontianak State Administrative Court, and currently a decision with permanent legal force has been obtained which wins DAHLAN ISKAN's lawsuit, namely : At the first instance at the Pontianak State Administrative Court Number: 18/G/PTUN/PTK/2002 dated 4 September 2002, with the ruling : <sup>1</sup>" Reject the Plaintiff's lawsuit in its entirety " ; At the appeal level at the Jakarta State Administrative High Court Number: 260/B/2002/PT.TUN.JKT dated 27 February 2003, with a ruling : <sup>2</sup>" Cancel the decision of the Pontianak State Administrative Court No. 18/G/PTUN-PTK/2002 dated 4 September 2002 which is being appealed " ; At the cassation level at the Supreme Court of the Republic of Indonesia No. 249.K/TUN/2003 dated March 15 2004, with the ruling; <sup>3</sup>" Cancel the decision of the Jakarta High State Administrative Court dated 27 February 2003 number: 260/B/2002/PT.TUN.JKT which cancels the decision of the Pontianak State Administrative Court dated 4 September 2004 Number: 18/G/PTUN/PTN/2002 " ; This was continued at the level of judicial review at the Republic of Indonesia Court No. 28.PK/TUN/2005 dated July 22 2009, with the ruling; <sup>4</sup>: " Grant the plaintiff's lawsuit; Declaring null and void the Decree issued by the Defendant issued by Defendant Number 01 of 2002 dated 29 January 2002 concerning the Cancellation of Certificate of Ownership No. 5938/Sungar Raya Village in the name of H Ali Lakan a covering an area of 16,109 M <sup>2</sup>, located in Sungai Raya Village, Sungai Raya District Raya, Pontianak Regency, West Kalimantan; Ordered the defendant to revoke State Administrative Decree Number 01 of 2002 dated 29 January 2002 concerning Cancellation of Certificate of Ownership No. 5938/Sungar Raya Village in the name of H Ali Lakana covering an area of 16,109 M <sup>2</sup>, located in Sungai Raya Village, Sungai Raya District, Pontianak Regency, West Kalimantan; . Discussion in context In this case, the meaning of "clean and clear" is not only covers validity formal law but also involves consideration principle justice is important can outlined from three base main : foundation philosophical , juridical , and sociological .

1. Base Philosophical : Philosophy right on land based on principles justice and certainty law . Top rights land No only formal aspects , but also includes dimensions justice . Understanding philosophical This push necessity study For explore what is the application process repeat right on land can reflect values mandated justice in law .

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2. Base Juridical : From perspective juridical , research This support understanding more carry on about implementation the principle of "clean and clear" after cancellation by PTUN.
3. Base Sociological : At level sociological, research This try fill in gap between "das sollen " (what should be) and "das sein" (facts existing social) . Study previously Possible Not yet covers in a way comprehensive problem emerging social from this cases.

**1. Problem .**

Writing This limited with formulation problem as following :

- Obscurity The concept of 'Clean and Clear' and This can give rise to uncertainty law and inequality in treatment to owner affected land impact cancellation right ?
- Justice in Handling Cases of Cancellation of Land Rights : Questions about How guard balance between individual justice and interests public become important in context This ?
- Responsibility : Question about not quite enough answer law in context this , as well How justice can confirmed for the owners the affected land, becomes relevant focus ?

**2. Research Methods**

Study This will use approach analysis law For understand framework laws governing the " Clean and Clear" status of rights on land as well as the cancellation process right on land . It's involving studies deep to regulations relevant laws , rulings court related, and literature law related . **Case Study** : Approach studies case will used For illustrate application concepts justice in context real cancellation right on land . Cases concrete will analyzed For understand What is the cancellation process ? right on land influence various parties involved and what principles justice maintained . **Interview** : Interview with various holder interests , incl owner affected land impact

<sup>1</sup> Copy of Pontianak State Administrative Court No : 18/G/PTUN/PTK/2002 dated 4 September 2002 .

<sup>2</sup> Copy of Jakarta High Administrative Court No : 260/B/2002/PT.TUN. JKT February 27, 2003 .

<sup>3</sup> Copy of the Constitution of the Supreme Court of the Republic of Indonesia No. 249.K/TUN/2003 dated 15 March 2004 .

<sup>4</sup> Copy of Judicial Review at the Republic of Indonesia Court No. 28.PK/TUN/2005 dated 22 July 2009 .

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cancellation , rep government , and experts law , will done For get corner look more comprehensive about related issues with the status "Clean and Clear" and responsibility the state answered . **Analysis Qualitative** : Data obtained from analysis law , studies cases , and interviews will analyzed in a way qualitative For identify patterns , trends , and findings important related with principle justice in determination of the "Clean and Clear" status of the rights on land that has been cancelled. **Comparative** : Approach comparative will used For compare existing practices and policies in various countries or regions concerned with handling of "Clean and Clear" status on rights on canceled land , with objective find possible lessons learned and recommendations applied .

### **3. Results and Discussion**

#### **3.1. The concept of the rule of law in Indonesia.**

The law becomes the most basic foundation in the something life <sup>5</sup>. If inside a country does not There is something law then that country will experience various problems that will arise. Law is mechanism in social control in the society , society apply law in a way systematic For straighten up laws existing in Indonesia <sup>6</sup>.

Indonesia as a rule of law country in accordance with Article 1 paragraph (3) which states "The State of Indonesia is a State of Law". In the concept of the rule of law , it is idealized that that should be made commander in dynamics life statehood is law <sup>7</sup> , no political or economy. Therefore , that is normal used in English For mention The principle of the rule of law is 'the rule of law, not of man'. Which are called government in essence is law as system , not just person to person Act as a ' puppet ' from scenario system that regulates it <sup>8</sup>.

<sup>5</sup> Kania Dewi Andhika Putri and Ridwan Arifin. "Review Theoretical Justice and Legal Certainty in Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia)." Pulpit Yustitia 2, no. 2 (2018): 142–158.

<sup>6</sup> Samsul Wahidin. "Supreme Judges as Agents of Change Towards Law and Legal Reform." Journal Horizons of Law 5, no. 2 (2014): 157–167.

<sup>7</sup> R. Bagus Irawan. "Constitutional Rights President in Granting Pardon and Its Implementation in the Republic of Indonesia." Journal De'jure Legal Sciences : Legal Scientific Studies 1, no. 2 (2016): 363–393.

<sup>8</sup> Jimmy Asshiddiqie . "The Idea of the Indonesian Rule of Law." This paper was presented at the National Legal Development Planning Dialogue Forum organized by the National Legal Development Agency of the Ministry of Law and , 2011.

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Rule of law concept developed with create device functional and just law <sup>9</sup>, with arrange infrastructure and superstructure institution political, economic, and social in a way orderly, as well grow culture and consciousness deep logical and impersonal laws life society, nation and state. For the rule of law there is source which law in essence source law is place We can find and dig the law <sup>10</sup>. Pancasila as source all source law in the legal system national tried two ways namely : first, making Pancasila as something Genre the law so it doesn't There is Again pluralism proven law each other contradiction One each other <sup>11</sup>. Second , positioning Pancasila as peak in hierarchy regulation legislation so that Pancasila has Power tie to all regulation legislation. With However, Pancasila does not Again just normative semantics as source all source law but truly can applied in system law national <sup>12</sup>.

The law has position strategic and dominant in life public nation and state <sup>13</sup>. Law as something system has dominate thinking part biggest circles law <sup>14</sup>, yes role with good and true in the middle public If instrument its implementation be equipped with authorities in field enforcement law . Implementation law That can taking place normally, but also can happen Because violation law. Therefore That the law has violated That must enforced optimally.<sup>15</sup>

Principle justice is one of hope that must be fulfilled <sup>16</sup>. Based on characteristics, Although certainty law tightly connection with justice , however law No identical with justice . Law is nature general , binding every person, nature generalize , whereas justice nature subjective ,

<sup>9</sup> Hezbollah , Hezbollah . "The Role of Faith in Legal Professional Ethics in Indonesia." Journal AlQadau : Islamic Family Justice and Law 7, no. 2 (2020): 101–113.

<sup>10</sup> M. Taufiq. "Concepts and Sources of Law: Analysis Comparison Islamic Legal System and Positive Legal System ." Istidjal : Journal of Islamic Economics and Law 5, no. 2 (2021): 87–98.

<sup>11</sup> Aga Wiranata. "Pancasila as Legal Sources and Influence Politics in the Formation of National Law." Journal Humanities Education and Social Humanities 1, no. 1 (2023): 1–14.

<sup>12</sup> Fais Yonas Bo'a . "Pancasila as Sources of Law in the National Legal System ." Journal Constitution 15, no. 1 (2018): 21–49.

<sup>13</sup> Hasaziduhu Moho. "Law Enforcement in Indonesia According to Aspect Legal Certainty , Justice and Benefits ." Warta Dharmawangsa 13, no. 1 (2019).

<sup>14</sup> Nur Iftitah Isnantiana . "Law and Legal System as Pillars of the State." Journal of Sharia Economic Law 2, no. 1 (2019): 19– 35.

<sup>15</sup> Laurence Arliman . "Realize Good Law Enforcement in the Indonesian Rule of Law." Dialogia Iuridicia : Journal of Business and Investment Law 11, no. 1 (2019): 1–20.

<sup>16</sup> Arfiani , Arfiani Arfiani , Khairul Khairul Fahmi, Beni Kharisma Arrasuli , Indah Nadilah Nadilah , and Miftahul Fikri Fikri . "Law Enforcement is Appropriate Principle Justice that is Certain , Fair and Humane : Monitoring Study of the Law Enforcement Process in 2020." Riau Law Journal 6, no. 1 (2022): 48–74.

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individualistic , and not generalize <sup>17</sup>. If enforcer law drip weigh it to mark justice whereas mark usefulness and certainty law ruled out , then law That No can walk with Good . Vice versa If drip weigh it to mark expediency whereas certainty law and justice ruled out , then law That No road.

Ideally in straighten up law That values base justice which is mark base philosophy and values base expediency is something unity applies in a way sociological, as well mark base certainty the law which is unified unity juridical must applied in a way balanced in enforcement law <sup>18</sup>. Sociological basis as basis that will give birth to mark expediency felt to be very important and not can ignored If linked with implementation something regulation legislation <sup>19</sup>.

Can not denied that justice become something mark base life man or society still become problem classic yet Once solved in a way finished. Absence suitability in translate justice That Alone so that necessity discuss matter This. Justice can interpreted as constant and continuous division continuously For give rights to everyone individual <sup>20</sup>.

### **3.2. Draft Justice**

Justice originate from Language Arab is what it means behave and act in balance. Balance covers balance between rights and obligations and harmony with fellow creature <sup>21</sup>. Justice in essence is treat somebody or others accordingly his rights on obligations that have been carried out . Which become right everyone is recognized and treated in accordance the same honor and dignity degree in the eyes of God Almighty. Rights man is necessary rights man for continuity his life inside public. Following This a number of opinion understanding about justice <sup>22</sup>. Speak about justice is something important concept in life man . Problem justice No only the study area law only , but also problems This Can studied from various discipline sciences social and humanities. Justice is objective whereas law only tool than objective the. It turns out draft or

<sup>17</sup> Dollar, Dollar, and Khairul Riza. " *Application of the Principle of Good Faith in Online Buying and Selling Transactions to Make It Happen Legal certainty* ." Journal Legal Sciences and Human Rights Human 1, no. 2 (2022): 77–85.

<sup>18</sup> Hasaziduhu Moho. " *Law Enforcement in Indonesia According to Aspect Legal Certainty , Justice and Benefits* ."

<sup>19</sup> Elfa Murdiana . " *Analysis Juridical Sociological To Change Constitution Cooperative* ." Istimbath : Law Journal 12, no. 1 (2015): 133–152.

<sup>20</sup> Tata Wijayanta . " *Principles of Legal Certainty , Justice and Benefits in Relation With Decision Bankruptcy Court Commerce* ." Journal Legal Dynamics 14, no. 2 (2014): 216–226.

<sup>21</sup> Arfah, Aryati , and Muhammad Arif. " *Economic Development, Social Justice and Sustainable Economy from an Islamic Perspective* ." SEIKO: Journal of Management & Business 4, no. 1 (2021): 566– 581.

<sup>22</sup> Afifa Rangkuti . " *Draft Justice in an Islamic Perspective* ." TAZKIYA: Journal of Islamic Education 6, no. 1 (2017).

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even mark justice often influenced by the elements subjectivity human, so justice sometimes only can felt by the parties certain. What do you feel? fair by someone Not yet Of course felt by others or group certain<sup>23</sup>.

A number of expert opinion about meaning justice, among others, according to WJS Poerwadarmint that justice means No heavy adjacent. justice means No exists partiality to one party<sup>24</sup>. As it should be, no arbitrary. So, deep understanding fair including No there is arbitrariness. People of action arbitrary means Act No fair. Whereas according to Frans Magnis Suseno in his book Political Ethics state that justice as something a state in which an insider same situation treated in a way The same.

About meaning Justice, Aristotle distinguishes two kinds justice , that is Justice Commutativeness and Justice Distributive. Justice commutative is something justice that delivers to everyone is the same many without remember respective<sup>25</sup>services , meanwhile is fairness determined by the maker legislation , its distribution load services , rights and goodness for members public according to principle similarity proportional<sup>26</sup>. On the other hand, Plato, Aristotle's teacher, mentioned There is three kind, Justice Commutative, Justice Distributive, and Legal Justice or Moral Justice .

Justice is matter important in life nation and state . Charles E. Merriam in Miriam Boedihardjo (1982) puts it justice This as one of the principle in objective a country, that is security external, internal order, justice, prosperity public , and freedom . Is to be task state administrators for create justice . The goal of Indonesian citizenship is fulfillment justice for all over Indonesian society. This matter can is known Good in The opening of the 1945 Constitution means that the country wants to established Indonesia is a just and purposeful country create justice social<sup>27</sup>.

According to Hobbes, without law one human will become wolf for other humans ( *homo homini lupus* ). In condition natural , human is wolf for another human. They No will stop plunder even

<sup>23</sup> Agus Romdlon Saputra. " *Draft Justice According to the Qur'an and the Philosophers* ." Dialogia 10, no. 2 (2012): 185–200.

<sup>24</sup> Zakkia Abdillah. " *Thematic Study About Draft Justice in the Perspective of the Al- Qur'an and Hadith* ." TERAJU: Journal of Sharia and Law 1, no. 01 (2019): 21–27.

<sup>25</sup> Mertokusumo Sudikno . " *Knowing the Law Introduction* ." Liberty, Yogyakarta, 2005.

<sup>26</sup> Subhan Amen. " *Justice in Perspective Legal Philosophy towards Society* ." ElAfkar : Journal Thinking Islam and Tafsir Hadith 8, no. 1 (2019): 1–10.

<sup>27</sup> Afifa Rangkuti . " *Draft Justice in an Islamic Perspective* ."

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kill man other until prosperity and happiness they achieved <sup>28</sup>. There is n't any draft fair or No fair , if want to exists justice so must There is regulations governing , for That required existence of the State.

**3.3. Principle of deep clean and clear status law and justice as well as not quite enough the state answered .**

Regarding the "clean and clear" status of the rights on land refers to the status of rights on free land from disabled law or possible ambiguity bother legal ownership. By specifically, the status "clean and clear" shows that something right on land has through a legal process that ensures that No There is disabled law or another disturbing claim or limit right the.

Following is a number of things in general considered For determine is something right on land can considered "clean and clear":

1. Legal Ownership : Rights to land the owned in a way valid by the party claiming it, accordingly with applicable regulations and procedures set. This includes purchase land is done in a way legitimate, inherited, or giving right in a way valid.
2. Free of Load or Limitation : The status "clean and clear" indicates that right on land the No encumbered by a mortgage , guarantee, or right dependents others who can limit right owner For use or divert land the.
3. Free from Legal Dispute : The land No currently in dispute law or conflict possible ownership bother rights the owner. This includes claims disputed by the parties others, include claim custom or claim descendants.
4. Appropriate with Rules and Requirements : Rights to land the acquired and managed in accordance with regulations and requirements applicable in the area concerned. This includes obtain necessary permits and approvals from party authorized before do purchase or diversion land .

<sup>28</sup> Wijaya State Power. " *The Social Contract According to Thomas Hobbes and John Locke.*" Journal Sociology of Humanist Education 1, no. 2 (2016): 183–193.

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"Clean and clear" status on rights on land important Because give certainty law to owner land , candidate buyers , and parties related other . Land that has a "clean and clear" status is considered more easy For traded or used

as guarantee in transaction finance, because risk related laws with ownership land the has minimized.

Meanwhile, in the "clean and clear" status context justice can become key For ensure fair treatment to owner affected land impact cancellation right . Following is a number of aspect related to the "clean and clear" status in context justice :

1. Equal Access to Law: Important for all owner land involved in case cancellation right For own same access to system Justice. This matter covers clear understanding about what is needed For obtain "clean and clear" status as well ability For fight for right they in legal proceedings.
2. Giving Clear Information : Justice need that all parties involved in the cancellation process right on land given clear and comprehensive information about the process , incl about what is needed For obtaining "clean and clear" status and consequences from cancellation right.
3. Protection To Discrimination : Important For ensure that the process for determining "clean and clear" status is not based on discrimination or oppression to group certain. All owner land must treated in a way fair and equal, without looking factors such as social status, culture, or economy.
4. Fair Compensation : If appropriate on land canceled Because No fulfil "clean and clear" criteria , important For ensure that owner affected land impact accept fair and adequate compensation . Compensation the must covers loss financial and non- financial experiences experienced by the owner land as consequence from cancellation right.
5. Consideration To Social and Cultural Context : Justice also requires consideration to context social and cultural conflict land happen. This includes take into account rights public custom or possible minority caught impact , as well ensure that decision law No harm groups the in a way No fair.
6. Transparency and Accountability : The process for determining "clean and clear" status must be done with transparent and accountable . Owner land must given chance For know and

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understand the reason behind decision cancellation right on land as well as own adequate access For fight for rights they.

With notice aspects this , the status "clean and clear" can be become instrument For reach justice in handling case cancellation right on land. This ensures that legal process walk in a way justice , rights individual protected, and decisions law take into account interest all parties involved.

Furthermore about not quite enough answered the internal state context cancellation right on land by the government is very important For considered in frame ensure justice for the owners affected land. Following is a number of relevant points related not quite enough answer state law and how justice can confirmed that is :

- Obedience on Laws and Procedures : Government own not quite enough answer For Act in accordance with applicable laws and procedures in cancellation right on land . This includes ensure that decision cancellation right based on foundation laws are strong and obeyed procedures that have been done set in a way clear.
- Fair Reimbursement : In case of cancellation right on land by the government result loss for owner land , government own not quite enough answer For give fair and adequate compensation to the owners affected land. Replacement This must covers all loss financial and non- financial experiences experienced by the owner land as consequence from cancellation right.
- Transparency and Accountability : The government also has not quite enough answer For Act in a way transparent and accountable in the cancellation process right on land. This includes give clear and comprehensive information to owner land about the reason behind decision cancellation , as well give chance for owner land For fight for right they in legal proceedings.
- Prevention Conflict and Resolution Disputes : Countries also have not quite enough answer For prevent happen conflict that is not need or worsen existing conflict There is as consequence from cancellation right on land . This includes give mechanism solution effective and fair disputes for the owners affected land.

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- Protection towards Human Rights Human : Government own not quite enough answer For protect right basic humans , incl right on land , share all citizen . This includes ensure that decision cancellation right No ignore rights individual and that owner affected land impact treated in a way fair and equal in the face law.

With notice not quite enough answer state laws and principles underlying justice, government can ensure that cancellation right on land done with fair and ensuring manner that the owners affected land accept fair and adequate treatment in accordance with laws and principles justice.

#### **4. Conclusion**

"Clean and Clear" status on rights on land is aspect important in effort legalization ownership the land that gives certainty law to owner land. However, when right on land the cancelled, either because violation regulations or decision government, problems related justice show up, and bear it the state's responsibility becomes very relevant. Protection of Rights Landowner : "Clean and Clear" status guaranteed rights owner land For own , use , and utilize land in a way valid. When this status cancel, bear it the state's responsibility is ensure that owner land No disadvantaged in a way No fair and that the cancellation process done with fulfil principles justice . Process Justice : The State has not quite enough answer For ensure that the cancellation process right on land done in a way transparent, inclusive, and considerate rights all parties involved , incl owner land and society local. Social and Economic Protection : Cancellation right on land can own significant impact to life social and economic affected communities impact. The country has not quite enough answer For mitigate impacts negative this and give support to those affected impact in a way No fair. Justice Distributive : In the process of cancellation right on land , the state also owns not quite enough answer For ensure justice distributive, with give fair compensation to owner lost land right on land them, as well ensure allocation repeat fair land to parties in need. Law and Policy Reform : The country needs it carry out strengthening legal and policy reforms protection rights land and make sure that the cancellation process right on land done with notice principles justice. With understand not quite enough the state's responsibility regarding the "Clean and Clear" status of the title on soil and impact Cancellation is expected government can take necessary steps For protect rights land individuals and communities , as well ensure justice in every aspect from the cancellation process right on land.

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