



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

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

**The Basis of Evidence for Land Rights in Agrarian Law Based on UUPA  
In the View of Legal Philosophy (Law Philosophy Course Assignment)**

**Mega Tri Astuti <sup>1)</sup>, Alwan Hadiyanto <sup>2)</sup>, Anis Mashdurohatun <sup>3)</sup> & Jawade Hafidz <sup>4)</sup>**

<sup>1)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [megatriastuti.std@unissula.ac.id](mailto:megatriastuti.std@unissula.ac.id)

<sup>2)</sup> Faculty of Law, Universitas Riau Kepulauan (UNRIKA) Batam, Indonesia, E-mail: [megatriastuti.std@unissula.ac.id](mailto:megatriastuti.std@unissula.ac.id)

<sup>3)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [anism@unissula.ac.id](mailto:anism@unissula.ac.id)

<sup>4)</sup> Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: [jawade@unissula.ac.id](mailto:jawade@unissula.ac.id)

**Abstract.** *In Indonesia, the law of land plays a major role in shaping the legal landscape. Land is a primary source of livelihood and sustenance for individuals and communities, making it a fundamental human need. The belief in the immense value and usefulness of land for human life is deeply ingrained, leading to the inseparable connection between land and humans. Philosophy of law provides the perspective that justice is realized through law. Humans live, grow, and conduct their activities on land, which serves as a social symbol within society. Ownership of land signifies honor, pride, and personal success. Therefore, land ownership becomes a source of life, a symbol of identity, the right to honor and dignity for its holders. This necessitates the regulation of land registration as an implementation of ownership rights over land. Due to the economic value of land, land ownership rights can be traded or transferred through grants, sales, inheritance, and other means. Land ownership is the most privileged right compared to other land rights. The transfer of land rights contained and regulated in the Basic Agrarian Law (UUPA) protects the true right holders, meaning individuals who acquire a right in good faith from someone presumed to be the rightful owner. This principle is used to provide evidentiary weight to maps and public registers as stipulated in the UUPA. In this article, we will analyze land ownership rights under the UUPA.*

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**Keywords:** *Land; Philosophy of Law; UUPA.*

## 1. Introduction

Agrarian Law encompasses a wide range of land ownership rights. The Basic Agrarian Law (UUPA), Law No. 5 of 1960, establishes a hierarchy of land ownership rights and outlines a series of powers, prohibitions, and obligations for holders of these rights in utilizing and using their land.

Key provisions of the UUPA include: Land Ownership Rights, Right of Usufruct Building Rights, Right of Use, Building Lease Rights, Right to Open Land and Collect Forest Products, Water Use Rights, Air Space Use Rights, Land Rights for Social Purposes.

Dominant human activities related to land in the economic sphere are realized through the utilization of land in accordance with the provisions of the UUPA, encompassing various types of land rights such as ownership rights, building rights, usufruct rights, and usage rights. The utilization of land according to human needs through legal acts often gives rise to legal relationships, such as the ownership of land rights. Additionally, land is frequently the subject of disputes among various parties and groups.<sup>1</sup>

Land ownership in Indonesia is currently shrouded in concerns from all parties, including the public, private sector, and government agencies. This is due to the fact that the legalization of land titles has given rise to numerous legal issues. One of the primary causes is the ongoing conflict between the concept of land ownership under customary law and the concept of land ownership under applicable positive legislation.

Land law as a system does not regulate land in all its aspects. It only regulates one of its legal aspects, namely land ownership rights, not as a legal institution or concrete legal relationship. In the history of the development of agrarian law, there are still many things that are not regulated in the Basic Agrarian Law (UUPA). The UUPA only regulates most of the issues concerning land. For more specific issues, the UUPA does not explain in more detail. For example, cases of land ownership disputes that are not specifically regulated in the UUPA. Due to the lack of a law that specifically regulates cases of land ownership, there are still many cases like this that have not been resolved, and there are also no sanctions for the

<sup>1</sup> Boedi Harsono, 2003, Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Djambatan, Jakarta

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perpetrators or defendants in such cases. Therefore, the author is interested in writing a paper entitled "Land Rights. For human life, land plays a very important role because by nature there is always a direct relationship between humans and land. In this case, it can be described that the relationship between humans and land is very close because land is the main capital and for the most part of Indonesia, land is the only capital. Therefore, humans have a dependence on land because land existed before humans were born, so humans cannot exist without land.

The transfer of land rights is usually carried out through the process of making a deed, either a deed of sale, a deed of inheritance, or a deed of gift, which is signed by the parties involved in the transfer of land rights. Therefore, in the process of transferring land rights, a notary plays a very important role so that the principles of *nemo plus yuris* and good faith can be implemented by the parties involved to have legal force.

The measure of justice is often interpreted differently. Justice itself is multifaceted, in various fields, such as economics and law. Talking about justice, it is always a main and interesting topic because it is always related to solutions related to law enforcement. Many legal cases cannot be resolved or decided fairly because they are drawn into political issues. Legal truth and justice are manipulated in a systematic way, so that the court does not give a fair decision because it does not go through the correct procedure, the court's actions are often unwise because they do not satisfy the community.<sup>2</sup>

The upholding of the supremacy of law is the hope of all Indonesian people who live in the Indonesian Legal State. Law enforcement is inseparable from the existence of laws and regulations, law enforcement agencies and law enforcement officers, as well as the willingness or awareness of the community to obey the applicable law.

As is known, the term justice is always contrasted with the term injustice. Where there is the concept of justice, there is also the concept of injustice. Therefore, legal philosophy is relevant to building the actual legal condition, because the task of legal philosophy is to explain the basic values of law philosophically that can formulate the ideals of justice, order in life that is relevant to the statements-realities of applicable law, even radically changing with the pressure of human desires through new legal paradigms to fulfill legal developments at a certain time and place.<sup>3</sup>

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<sup>2</sup> Romli Atmasamita, *Integrative Legal Theory, Reconstruction of Development Law Theory and Progressive Legal Theory*, Yogyakarta: Genta Publishing, 2012.

<sup>3</sup> Handayani, *The Role of Legal Philosophy in Achieving Justice*, *Journal of Social Sciences, Humanities, and Arts*, Vol. 2, No. 2, October 2018, p. 721  
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Regarding the function of Legal Philosophy, Roscoe Pound<sup>4</sup> (1972: 3) stated that philosophers try to solve problems about ideas to create a perfect law that must stand firm forever, then prove to mankind that the law has been finalized, its power is no longer questioned.

The philosophy of legal science, some call it legal philosophy, is actually a sub-branch of human philosophy, called ethics or human philosophy. because the philosophy of legal science and legal philosophy are sciences that study law philosophically, then the object is law. Regarding the differentiation of legal science and law, Curzon said that legal science covers and discusses everything related to law. The scope of the problems covered by this science is so broad that it has provoked people to say that "its boundaries are not determined.<sup>5</sup>

Law is one of the tools of social control, where its use is commonly known as law-enforcement. Therefore, to find out how far the effectiveness of law is in its function as a means of control, it is necessary to examine the social control system as a whole. If for certain fields of life, for example formal education is more effective, then law can only function as an auxiliary or supporting tool. So, a thorough knowledge of social control can provide more or less indications of how far the effectiveness of law and its ability to function as a means of social control is.

The problem of justice is a complex problem, which can be found in almost every society, including Indonesia. This is mainly because generally people assume that law has the main task, namely to achieve legal certainty and achieve justice for all people. The problem of legal certainty and proportionality is still a difficult problem to solve in Indonesia, which has been undergoing a transformation in the legal field since 1942. Thus, a just situation is a situation where there is no conflict, a situation that can be achieved if citizens carry out their duties and obligations in accordance with their position and role in society."

## **2. Research Methods**

Normative legal research uses a normative case study in the form of a product of legal behavior, such as studying a Law. The main focus of the study is law that is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So, normative legal research focuses on the inventory of positive law, principles and legal doctrines, the discovery of law in in concreto cases, the legal system, and the level of

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<sup>4</sup> Roscoe Pound, Introduction to the Philosophy of Law, translated by Mohamad Radjab, Jakarta: Bhatara Karya Aksara, 1982.

<sup>5</sup> Satjipto Rahardjo, 2000, Legal Science, Citra Aditya Bakti, Bandung  
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### **3. Results and Discussion**

Philosophy studies specific problems in a specific way. These problems include the deepest and most important questions that have been found by philosophers. Among them are the true nature of man, the way we think, the nature of reality, and our ability to know that reality, and a set of interrelated problems.<sup>7</sup>

Philosophy of law is a branch of philosophy with a systematic and radical method related to the nature and fundamental and marginal aspects of law in all its aspects, the review of which focuses on the core problems of law. We can understand that philosophy of law is a science that studies law from a philosophical point of view. Law as the object of legal philosophy will be studied more deeply to the core of the problem.<sup>8</sup>

The formation of law in Indonesia will also be studied by the philosophy of law. Law is created by considering justice (gerechtigkeit), legal certainty (rechtssicherheit) and expediency (zweckmassigkeit). If we talk about the fairness, usefulness and certainty provided by law, then it will not be far from the name of human rights (HAM). It is so important that before forming or building a law that will be just to regulate society, the philosophy of law must be studied in more depth in order to realize real justice for every group in Indonesia.<sup>9</sup>

It must be acknowledged that law without justice will lead to arbitrariness. Actually, justice and truth are the most important values of virtue, so these values cannot be exchanged for any value. The relationship between philosophy, law and justice, with philosophy as the mother of science, is to find a way out of the shackles of life rationally by using the law in force to achieve justice in one's life. The role of philosophy is never finished, never ends because philosophy does not investigate one aspect but its object is unlimited, however, philosophy remains true to its own method by stating that nothing in this world is eternal, only change is constant, so it is true that the philosophy of science is limitless. Philosophy has objects, methods and systems that are universal

<sup>6</sup> Abdulkadir Muhammad, 2004, Law and Legal Research. 1st ed., PT. Citra AdityaBakti, Bandung, p. 52

<sup>7</sup> Peter Gibson, Everything You Need to Know About Philosophy (Jakarta: Gramedia Pustaka Utama, 2020).

<sup>8</sup> Teguh Prasetyo and Abdul Halim Barkatullah, Philosophy, Theory, & Legal Science: Thinking Towards a Just and Dignified Society (Depok: Raja Grafindo Persada, 2017)

<sup>9</sup> Bakir Bakir, "The Role of Legal Philosophy in Law Formation in Indonesia," AT-TURAS: Jurnal Studi Keislaman 4, no. 1 (2017): P 58–68



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Land rights are rights that empower the holder to use and/or benefit from the land they hold. The word "use" means that the land right is used for the purpose of building a building, while the word "benefit" means that the land right is used for purposes other than building a building, for example agriculture, contracts, animal husbandry, and plantations. Based on the provisions of Article 4 paragraph (2) of the UUPA, the holder of the land right is authorized to use the land in question, as well as the body of the earth and water and the space above it, as far as is necessary for the direct interests related to the use of the land within the limits according to the UUPA and other higher legal regulations. The control regulated in the UUPA is control by the State

The term "control" can be used in both a physical and a legal sense. It also has private and public aspects. In a legal sense, control is based on rights, protected by law, and generally gives the right holder the authority to physically control the land they own. For example, a landowner can use or benefit from the land they own without handing it over to another party. There is also legal control that, while giving the authority to physically control the land owned, is not handed over to another party. For example, someone who owns land but does not use it themselves but instead leases it to another party. In this case, the land is legally owned by the owner, but physically controlled by the tenant. There is also legal control that does not give the authority to physically control the land in question. For example, a creditor (bank) holding a security interest in land has legal control over the land used as collateral (security), but physical control remains with the landowner.

The legal and physical control over land is used in private aspects. There is also legal control with public aspects, namely the control over land as mentioned in Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the 1960 Basic Agrarian Law (UUPA), which reads: Article 33 paragraph (3): "The earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." Article 2 of the UUPA.

The authority originating from the state's right to control the earth, water and airspace, including the natural resources contained therein, is aimed at achieving the greatest prosperity of the people, in the sense of realizing welfare and happiness for all Indonesian people<sup>10</sup>. Based on the provisions of Article 2 paragraph (4) of the UUPA, the authority of the state's right to control can be delegated to regional governments and customary law

<sup>10</sup> Syukur, M. (2020). Juridical Analysis of Permenag Number 5 of 1999 Concerning the Existence of Ulayat Rights in National Agrarian Law. *Dinamika: Jurnal Ilmiah Ilmu Hukum*, Vol. 26, (No. 8), pp. 951-965. <http://www.riset.unisma.ac.id/index.php/jdh/article/view/5865>

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communities, as needed and not contrary to the UUPA and higher regulations. In the life of the state, individuals and society, land is a very much needed object. Land issues today are not only demands for land rights, but also concern the authority in the field of land between the central government, provincial governments, and district/city governments. The authority of the government in the field of land as regulated in Article 2 of Law Number 5 of 1960 concerning the Basic Provisions of Agrarian Law (UUPA), as an authority that is centralized

The mastery of land by the state in Indonesia gives it the authority to regulate all legal relationships concerning land, ensuring that various needs of individuals and groups are met.

<sup>11</sup>The state, as a national organization, is granted power by the people through law (constitution) to regulate all forms of power within society. According to Van Apeldoorn, this power is described as a force (macht) that is organized by law based on morality.

The common interest and benefit based on humanitarian values (formally realized in law) are aimed at achieving social justice for all Indonesian people and protecting the entire nation and all Indonesian territory based on unity as something to be regulated by the state. This statement presents the pattern of legal relationships between individuals, families, communities, and the nation in relation to land, placing the state as the organ that is given the power to regulate it. Land, as a strategic natural resource for the nation, requires state intervention for its regulation. Therefore, the relationship between individuals, families, and communities with land is based on their inherent nature as God's creatures to live individually and socially by exercising their rights (abilities and skills) and obligations (duties) in a balanced manner for the sake of justice and the benefit of individuals, families, and communities<sup>12</sup>

The right of land control is already linked to specific land as its object and specific individuals or legal entities as its subjects or holders of the right. Regulation of Land Rights in Land Law In Land Law, the regulation of land control rights is divided into two, namely: This right of control over land has not yet been linked to the land as an object and to a specific person or legal entity as the holder of the right. The provisions of the right of control over land are as follows:

1. Granting the name of the relevant ownership right.

<sup>11</sup> Sulistio, M. (2020). Legal politics of land rights in Indonesia. *Journal of Education and Development*, Vol.8,(No.2),pp.105-105. <https://doi.org/10.37081/ed.v8i2.1590>

<sup>12</sup> Yasa, Putu Gede Arya Sumerta., Sudiarawan, Kadek Augus., Dwijayanthi, Putri Trijari., & Pranajaya, Made Dandy. (2021). Legal Politics of Land Rights Certification in The Indonesian Context: Between Agrarian Conflicts and Demands for Legal Certainty. *International Journal of Criminology and Sociology*, Vol.10, pp.897-905.<https://doi.org/10.6000/1929-4409.2021.10.106>

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2. Determining its content, which regulates what is allowed, obligatory, and prohibited for the holder of the right, as well as the duration of the ownership.
3. Regulating matters related to its subject, who is eligible to hold the right and the conditions for its ownership, and 11 Article 2 of the Basic Agrarian Law.
4. Regulating matters related to the land.

In the legal perspective, land is studied based on land ownership rights as a legal system. This means how the law views land issues related to ownership rights within a system. As a system, land rights must be seen as a value. Since law is the embodiment of values, the regulation of land ownership and possession implies that its presence is to protect and promote the values upheld by society. Therefore, the ownership and possession of land rights must be protected. Studying land rights from a legal perspective means discussing land rights from the aspect of ownership and possession. The position of land in different value systems, when viewed from the study of the philosophy of law, means that land has different values, depending on the place and time where the value system grows and develops. This difference in value systems leads to different land law systems. In addition, the influence of economic, political, and legal factors has led to a tendency to impose certain value systems on other value systems, resulting in the deconstruction and reconstruction of specific land law systems. With a legal philosophy approach, we will seek the essence of land and land rights and what lies behind them. We will also investigate legal rules as a consideration of values. Thus, philosophically, land ownership and possession are laden with value burdens that underlie the birth of legal norms governing land ownership and possession, which contain authority, rights, obligations, and power. Philosophy of land law is a terminology used to understand land law as a whole reality with a holistic approach, which contains three aspects:

1. Justice: Justice is the equality of rights for all in the control and ownership of land.
2. Finality: Determining the content of the law, because the content of the law is indeed in accordance with the goals to be achieved over the control and ownership of land, namely a just and prosperous society.
3. Legality: Guaranteeing that land law can function as a regulation that must be obeyed and provides legal certainty.

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**4. Conclusion**

A party (individual/body) who raises objections and claims rights to land, whether regarding land status, priority, or ownership, with the hope of achieving a resolution administratively according to applicable regulations. Therefore, knowledge about Land Law and Land Rights is considered quite important in order to avoid problems concerning land disputes. Land rights originate from the state's right to control over land that can be granted to individuals, both Indonesian citizens and foreign citizens, groups of people collectively, and legal entities, both private and public. HGU is a right specifically for managing land, in other words, the right is granted by the state to a company. HGU occurs because of a government regulation through the issuance of a right decision by the Minister or designated official. The granting of HGU must be registered at the Land Office and takes effect from the time it is registered. HGU includes the requirements for granting it, as well as any transfer and termination of the right, must be registered according to the provisions referred to in Article 19 Jo Article 32 of the Basic Agrarian Law (UUPA).

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