



The Legality of Transmigrant Land Evictions from a Constitutional Law Perspective

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Abstract: The transmigration program is a strategic instrument of the state within the Welfare State framework that aims to equalize development and the welfare of the people. However, in its implementation, agrarian conflicts often occur in the form of evictions of transmigrant land for infrastructure development or other strategic projects. The problem becomes complex when the government unilaterally categorizes uncertified transmigrant land as free state land, thereby ignoring the constitutional rights of citizens. The purpose of this study is to analyze the legal status and constitutional guarantees for transmigrant land and to test the legality of these evictions in terms of the principles of the rule of law and the General Principles of Good Governance (AAUPB). The research method used is normative juridical with a statutory approach and a conceptual approach. The results of the study indicate that transmigrant land rights are a manifestation of Article 28H paragraph (4) and Article 33 paragraph (3) of the 1945 Constitution, which have the status of vested rights (rights that have been born) since the legal placement by the state was carried out. The absence of a land ownership certificate is not a legal basis for evictions, but rather a form of maladministration and state negligence in carrying out the certification mandate as mandated by the Transmigration Law. The unilateral eviction of the land has been proven to violate the principles of accuracy and legal certainty in the AAUPB and indicates an abuse of authority (*detournement de pouvoir*). The conclusion of this study emphasizes that the government is obliged to carry out collective certification progressively and prioritize equal deliberation to ensure legal certainty and the dignity of the Indonesian rule of law.

Keywords: Transmigrant Land; Eviction; Constitutional Law; Legality; Constitutional Rights

Introduction

The transmigration program in Indonesia is not simply a policy of moving people from densely populated islands to wider areas, but rather a manifestation of the constitutional mandate to achieve general welfare¹. As a strategic instrument of the state within the framework of the Welfare State, transmigration is designed to synergize population equality with the optimization of regional economic development². From the perspective of Constitutional Law, the existence of this program is rooted in the state's obligation to manage natural resources for the greatest prosperity of the people as outlined in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945). The state's promise in this program is reciprocal: the people are willing to leave their homeland to open up new territory, and as compensation, the state guarantees the fulfillment of basic rights, including ownership rights to the land that is the basis of their livelihoods.³

¹ Chalid, Ibrahim. *Transmigrasi: dari diferensiasi menuju kohesi sosial*. Deepublish, 2024

² Susetyo, Heru, et al. "Kebijakan Transmigrasi dalam Kerangka Kesejahteraan Sosial dan Ketahanan Nasional di Provinsi Lampung." *Jurnal Ilmu Kesejahteraan Sosial* 25.2 (2024): 1

³ Slamet, Eva Mustaqimah. *ANALISIS PERLINDUNGAN HAK MILIK TANAH BERDASARKAN PERATURAN DASAR POKOK-POKOK AGRARIA*. Diss. Universitas Islam Sultan Agung Semarang, 2024

Normatively, land rights guarantees for transmigrants are affirmed in Law Number 29 of 2009 concerning Amendments to Law Number 15 of 1997 concerning Transmigration. This law mandates that every transmigrant has the right to obtain residential land and business land with ownership rights. The granting of this right is a form of constitutional legal protection, considering that Article 28H paragraph (4) of the 1945 Constitution explicitly states that every person has the right to private property and that this right may not be taken over arbitrarily by anyone. In this context, the state acts as a grantor who is legally bound by administrative and constitutional promises to provide legal certainty for transmigrants⁴

However, in the reality of government practice, there is a disconnect between this constitutional mandate and land acquisition policies for development. The phenomenon of evictions of transmigrant land in the name of "public interest" or national strategic projects has created a highly complex legal discourse⁵. The main problem is often rooted in weak land administration by the government itself. Many transmigrant lands have been occupied continuously for decades but have not yet received certificates from the land authorities (Ministry of ATR/BPN). This administrative delay creates systemic legal vulnerabilities. where the state, through its instruments of power, then categorizes the land as "State Land" which is considered clean and clear from third party rights so that it can be taken over at any time without proper compensation.

This situation demonstrates a disregard for the principle of fair legal certainty. Theoretically, transmigrants' land rights should be viewed as vested rights from the moment they are placed and issued a Placement Decree. The lack of land certificates should be viewed as state administrative negligence (maladministration), not as a basis for revoking citizens' civil rights. When the government carries out evictions by exploiting the gap in the certification administration, what is known as a legal antinomy occurs a situation where two rules or authorities conflict. On the one hand, the state is obliged to grant rights through the Transmigration Law, but on the other, the state revokes those rights through a narrow interpretation of the Land Acquisition Law.

The perspective of Constitutional Law provides space to critique this phenomenon through the principle of the rule of law (*rechtsstaat*). In a state governed by the rule of law, every action by public officials or state authorities must be based on applicable law and respect the human rights of citizens. Evictions of transmigrant land without due process of deliberation and without consideration of the historical status of the state's settlement constitute an abuse of authority (*detournement de pouvoir*). Public authorities tend to use overly broad discretion to define "public interest" to facilitate investment or physical projects, at the expense of the "legal interests" of citizens that should be protected.

Furthermore, when viewed from the perspective of the General Principles of Good Governance (AAUPB), particularly the Principles of Accuracy and Justice, evictions from transmigrant land often exhibit legal flaws.⁶ The state is not permitted to profit from its own negligence. This means that the government has no right to use the argument of "uncertified land" as a justification for evictions, when the delay in certification is the result of the slow performance of the government bureaucracy itself. In the principles of international and national law, the doctrine of *venire contra factum proprium* is known, which prohibits a person (including a state) from acting contrary to his own past actions which have given rise to legal expectations for other parties.

Previous studies on transmigration land conflicts have generally focused more on the technical aspects of agrarian disputes, civil compensation mechanisms, or horizontal conflicts between residents. However, there remains a lack of analysis specifically examining the legality of these evictions within the framework of state responsibility under Constitutional Law. The novelty of this research lies in its analytical focus, which positions transmigrant land as an "Irrevocable Constitutional Mandate." This

⁴ BUTAR-BUTAR, IRNA JUITA A. "Kepastian Hukum Mengenai Hak Warga Negara Asing Pemegang Izin Tinggal Terbatas Atas Sponsor Suami Atau Istri Wni Di Indonesia." (2024).

⁵ Shohibuddin, Mohammad, and Adi D. Bahri, eds. *Perjuangan keadilan agraria*. INSISTPress, 2019

⁶ Suyudi, Bambang. *Rekonstruksi Regulasi Pemberian Ganti Kerugian Pada Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Yang Berbasis Nilai Keadilan*. Diss. Universitas Islam Sultan Agung (Indonesia), 2024.

research offers a new perspective, emphasizing that transmigrant rights are rights born from a social contract between citizens and the welfare state. Therefore, the legality of evictions cannot be measured solely by the presence or absence of land certificates, but rather by the state's consistency in implementing its constitutional mandate.

The urgency of this research is also driven by the increasingly massive land conversion in various transmigration areas for extractive industries and infrastructure. Without a strong constitutional legal framework to protect transmigrants' constitutional rights, citizens will always be at a disadvantage to the executive branch, which controls land administration. Therefore, a redefinition of the legality of evictions is needed, relying not only on formal administrative legality but also on material legality rooted in the values of justice enshrined in the constitution.

Based on this background, this study aims to untangle the tangled threads between state authority in land acquisition and state obligations in protecting the rights of transmigrants. The analysis will focus on the extent to which the principles of Constitutional Law can provide a protective barrier for transmigrants from repressive actions by public authorities who seek to protect themselves under the guise of development interests. Therefore, it is hoped that this research will contribute to the improvement of land and transmigration regulations that are more synchronized and oriented toward protecting human rights in Indonesia.

Method

1. What is the constitutional status and protection of transmigrants' land rights within the Indonesian Constitutional Law system?
2. How is the legality of transmigrants' land evictions viewed from the perspective of the principles of the Rule of Law and the General Principles of Good Governance (AAUPB)?

Types of Research

This research uses a normative juridical method (literature). The approaches employed are the statute approach and the conceptual approach. Primary legal materials consist of the 1945 Constitution, the Transmigration Law, and the Land Acquisition Law. Data analysis was conducted descriptively and analytically using deductive reasoning.

Discussion

The Constitutional Position and Protection of Transmigrants' Land Rights in the Structure of Indonesian Constitutional Law

Analysis of the status of land rights for transmigrants must begin with an understanding of the nature of the relationship between the state and citizens in the concept of the Welfare State.⁷ From the perspective of Constitutional Law (HTN), granting land to transmigrants is not merely an ordinary administrative action, but rather an implementation of the constitutional mandate to realize social justice. Theoretically, the existence of the transmigration program stems from the state's obligation to manage the land, water, and natural resources for the greatest prosperity of the people, as mandated in Article 33 paragraph (3) of the 1945⁸ Constitution. However, in practice, there is often confusion in the interpretation of the status of this "grant," whether it is the granting of absolute ownership rights or merely a permit to use state land that can be withdrawn at any time by public authorities.

⁷ Sumarja, F. X. *Hak Atas Tanah Bagi Orang Asing, Tinjauan Politik Hukum Dan Perlindungan Warga Negara Indonesia*. Vol. 1. No. 1. Stpn Press, 2015.

⁸ Lapasian, Yeremia Orlando. "Kajian Yuridis Tentang Tugas Pemerintah Memfasilitasi Hak Atas Tanah Dalam Rangka Penanaman Modal." *Lex Administratum* 12.1 (2023).

Theoretical Review: Land Rights as Constitutional Rights and Human Rights

Doctrinally, land rights are an integral part of the right to a decent life. Jimly Asshiddiqie stated that private property rights are one of the main pillars in fulfilling constitutionally guaranteed human rights. In the context of transmigration, land rights are compensatory rights, rights born from the sacrifices of citizens (transmigrants) who are willing to move and develop new areas. Therefore, the state has a legal obligation to transform the land status from "State Land" to "Property Rights" for transmigrants as a form of fulfilling the promise of prosperity.

Using the theory of the rule of law (Rechtsstaat), protection of transmigrants' rights must be based on the principle of legal certainty (rechtzekerheid).⁹ The state's recognition of transmigrants' land ownership, which has persisted for decades, constitutes vested rights, or rights that have been born and materially established. Neglecting these rights through evictions without a synchronous legal basis violates the principle of due process of law. From a HTN perspective, the state cannot allow its citizens to live in legal uncertainty due to bureaucratic negligence in certifying the land promised at the time of their initial placement.

Analysis of Constitutional Norms: Article 28H Paragraph (4) as a Fortress of Protection

A review of constitutional norms shows that Article 28H paragraph (4) of the 1945 Constitution explicitly protects private property rights: "Everyone has the right to private property, and such property rights may not be arbitrarily appropriated by anyone."¹⁰ The phrase "by anyone" in this article also includes the state or government. In the Indonesian legal hierarchy, this article is the highest norm that must serve as the basis for all regulations below it, including those concerning land acquisition for development.

It is important to understand that while Article 28J paragraph (2) allows for restrictions on rights through law in the public interest, such restrictions must not diminish the substance of the property right itself. In the case of transmigration land, constitutional impairment often occurs, where rights that should be protected by the constitution are instead degraded by implementing regulations under the law. From a National Land Law perspective, the status of transmigration land allocated through a Decree of an authorized Official provides a legally valid "right of expectation," the level of protection of which is equivalent to that of a materially certified property right.

Approach to the Theory of Power Relations and the Right to Control the State (HMN)

When analyzing the status of transmigrant land, the concept of the State's Right to Control (HMN) as stipulated in Article 33 of the 1945 Constitution cannot be separated. However, there is often a misinterpretation of HMN as state ownership (Staatseigendom). Constitutionally, the Constitutional Court, through various decisions (such as MK Decision No. 001-021-022/PUU-I/2003), has emphasized that HMN does not mean the state owns the land absolutely, but rather that the state is authorized to regulate, plan, and implement land use for the welfare of the people.

In the context of transmigration, the state has used its authority to allocate HMN to citizens through official programs.¹¹ When the state designates an area as a transmigration area and places citizens there, this automatically limits the state's authority. The state no longer has full authority to reclaim the land without exceptionally strong legal grounds, as this authority is "locked" by the promise of ownership rights granted to transmigrants. Ignoring this principle is a form of anomaly in Constitutional Law, where the executive seems to have unlimited power to cancel its own legal commitments simply for technical administrative reasons.

⁹ Salim, Hananda Rachman. "Perlindungan hukum terhadap stateless person di Indonesia." *Novum: Jurnal Hukum* 4.1 (2017): 141-155.

¹⁰ Kurnianingrum, Trias Palupi. "Urgensi perlindungan data pribadi konsumen di era ekonomi digital." *Kajian* 25.3 (2020): 197-216.

¹¹ Yulisetyaningtyas, Bintang. *Evaluasi Pelaksanaan Program Transmigrasi melalui Model Kerjasama Antar Daerah (Studi Kasus di Kabupaten Temanggung Provinsi Jawa Tengah)*. Diss. program Pascasarjana Universitas Diponegoro, 2008

Vertical Synchronization and Antinomy of Norms: Transmigration Law vs. Land Acquisition Law

Vertical synchronization is a test of whether lower-level regulations do not conflict with higher-level regulations. This normative-juridical research found a lack of synchrony or antinomy between Law Number 29 of 2009 concerning Transmigration and Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

Vertically, the Transmigration Law (specifically Article 12) mandates a very specific obligation for the government to grant land as ownership rights to transmigrants. This mandate is a special statutory instruction (*lex specialis*). However, in land acquisition practice, the government often uses the Land Acquisition Law in general (*lex generalis*) to "violate" this right, arguing that uncertified land is "Free State Land." This lack of synchrony is exacerbated by implementing regulations (PP/Ministerial Regulations) that tend to ignore the historical aspects of transmigrant placement. This analysis reveals a "logical flaw" in the regulation: the state requires transmigrants to manage land, but facilitates the process of revoking these rights through other, seemingly independent legal instruments.¹²

Maladministration as an Instrument for the Suppression of Constitutional Rights

The main obstacle to protecting transmigrant rights is the incomplete land administration process. The "uncertified" status of transmigrant land is not the fault of the residents, but rather a form of state maladministration. Under Law Number 25 of 2009 concerning Public Services, the state is obligated to provide legal certainty in administrative services. When the relevant ministries delay issuing certificates for decades, the state has committed systemic negligence.

Theoretically, using its own negligence as a weapon to evict citizens is an act contrary to the principles of good governance. From a Constitutional Law perspective, the state's actions in leaving transmigrant land without legal certainty constitute an unlawful act by the authorities (*onrechtmatige overheidsdaad*).¹³ If the courts only examine formal legality (certificates) without examining the origins of the transmigration program, the judiciary is trapped in narrow legal positivism and fails to fulfill its role as guardian of the constitution.

Political Reconstruction of Transmigration Land Law

This analysis of constitutional norms and the synchronization of regulations brings to mind the urgent need for a reconstruction of legal policy. Protection of transmigrants' land rights must be positioned as "Inherent Constitutional Rights."¹⁴ This means that such protection is active from the moment of placement, not only upon the formal issuance of the certificate. Certificates are merely administrative proof, while basic rights arise from the constitutional mandate of Article 28H and Article 33 of the 1945 Constitution.

Transmigration land should no longer be viewed as "Free State Land" (*vrij staatsdomein*), but rather as "Land Burdened with Constitutional Rights." This understanding is crucial to maintaining the authority of the rule of law. If the state can easily evict residents it has placed without adequate legal protection, the principle of trust in the state will be undermined. Therefore, every eviction effort must begin with a legal audit of the placement history. If the state is proven to have failed to provide the promised certificates, then the eviction must be considered constitutionally illegal or at least require much higher compensation as a form of state accountability for the loss of citizens' expectations and devotion in a very strict, transparent and fair procedure.

¹² Andalas, Adithya Virio. *Implementasi Peraturan Pemerintah Republik Indonesia Nomor 3 Tahun 2014 Mengenai Larangan Pemindehan Hak Milik Atas Tanah yang di Peroleh dari Hasil Pelaksanaan Transmigrasi (Studi di Kabupaten Sorong)*. Diss. Universitas Islam Indonesia, 2024.

¹³ Wardhana, Ardoyo. *Perbuatan Melanggar Hukum Pemerintah (Onrechtmatige Overheidsdaad) Dalam Konteks Kompetensi Absolut Peradilan Tata Usaha Negara*. Diss. UNIVERSITAS AIRLANGGA, 2020.

¹⁴ Medaline, Onny, and Juli Moertiono. "Legalisasi Aset Tanah Transmigrasi Dalam Rangka Penguatan Reforma Agraria di Sumatera Utara." *Jurnal Ilmiah Penegakan Hukum* 10.1 (2023): 21-32.

Legality of Transmigrant Land Eviction Actions Reviewed from the Principles of the Rule of Law and General Principles of Good Governance (AAUPB)

After understanding the constitutional status of transmigrant land in the previous section, the next legal problem arises at the level of policy implementation, namely when the state carries out factual actions in the form of evictions. The legality of government actions (*bestuurshandeling*) in evictions of transmigrant land is often viewed only from the perspective of the formal-procedural legality of land acquisition, while ignoring the substantive legality and ethics of government. The analysis in this section will examine how these evictions often contradict the principles of the rule of law and violate the General Principles of Good Governance (AAUPB), as well as provide a legal critique of the dominance of executive power in transmigration agrarian disputes.

The Phenomenon of Eviction: Between Strategic Projects and the Marginalization of Rights

Over the past decade, the phenomenon of transmigrant land evictions in Indonesia has increased in line with the ambition to accelerate National Strategic Projects (PSN)¹⁵ and the expansion of extractive industries.¹⁶ This pattern demonstrates a worrying trend: land that has been managed by transmigrants for two to three generations is suddenly reclaimed by the state or granted Cultivation Rights (HGU) to corporations under the pretext that the land is still administratively free state land.

This phenomenon reflects an unequal legal sociology, where transmigrants, originally brought in as "heroes of development" to open isolated areas, are now positioned as "obstacles to development" when the land they clear has high economic value for industrial or infrastructure purposes. Legally, this action is often disguised as the legitimacy of Law Number 2 of 2012 concerning Land Acquisition. However, the historical fact that their presence there is at the behest and facility of the state is ignored. Eviction in this context is not simply a physical displacement, but rather the erasure of the legal identity of citizens who have fulfilled their social contract with the state.¹⁷

Legal Analysis of AAUPB in Law Number 30 of 2014 regarding Eviction Actions

The legality of government actions in evicting transmigrant land is no longer solely based on unwritten principles, but has become a positive legal norm since the enactment of Law Number 30 of 2014 concerning Government Administration (AP Law). Article 10 paragraph (1) of the AP Law explicitly codifies AAUPB as the main parameter for government officials.¹⁸ In cases of transmigrant land evictions, there are at least four main principles that are frequently violated by public authorities:

- a. Principle of Accuracy (*Zorgvuldigheidsbeginsel*-Article 10 paragraph (1) letter d): The explanation of this article states that the principle of accuracy requires actions based on complete information and documents. In evictions of transmigrant land, the government is often careless in verifying the history of the land. They only rely on empty land registration data at the National Land Agency (BPN) (uncertified), without looking at the transmigration placement documents (Placement Decree or Transmigration Family Card). This lack of care in synchronizing data between agencies results in substantively flawed eviction decisions. If the government were careful, they should admit that the lack of certificates is the result of state negligence, not evidence of the lack of citizens' rights.
- b. The Principle of Legal Certainty (*Rechtszekerheid* - The legality of government actions in evicting transmigrant land is no longer based solely on unwritten principles, but has become a positive legal norm since the enactment of Law Number 30 of 2014 concerning Government Administration (AP

¹⁵ Zein SGN, Subhan. *REKONSTRUKSI REFORMA AGRARIA DALAM IMPLEMENTASI PENGADAAN TANAH UNTUK PEMBANGUNAN BERDASARKAN NILAI KEADILAN*. Diss. UNIVERSITAS ISLAM SULTAN AGUNG, 2022.

¹⁶ Kaputra, Iswan. "KERENTANAN PERLAWANAN PERI-URBAN Gerakan warga menolak penggusuran Desa Pasar VI dan pembangunan Bandara Internasional Kualanamu, Sumatera Utara

¹⁷ Wahyuni, Ridha. "Perlindungan Hak Atas Tempat Tinggal Warga Terdampak Penggusuran Di Kawasan Perkotaan Berdasarkan Perspektif HAM." *Jurnal Yuridis* 9.1 (2022): 37-55.

¹⁸ Kristin, Juliana. *IMPLEMENTASI ASAS-ASAS UMUM PEMERINTAHAN YANG BAIK DALAM UNDANG-UNDANG NOMOR. 30 TAHUN 2014 TENTANG ADMINISTRASI PEMERINTAHAN PERSPEKTIF FIQH SIYASAH*. Diss. UIN Raden Intan Lampung, 2020

Law). The legality of government actions in evicting transmigrant land is no longer based solely on unwritten principles, but has become a positive legal norm since the enactment of Law Number 30 of 2014 concerning Government Administration (AP Law).¹⁹ When the state places citizens in the transmigration program with the promise of property rights, the state has built protected legal expectations (legitimate expectations). Sudden evictions destroy this certainty. The state may not use new authority (Land Acquisition Law) to erase old obligations that have not been completed.

- c. The Principle of Justice and Benefit²⁰ (Article 10 paragraph (1) letter c): Justice demands a balance between development interests and individual protection.²¹ If transmigrants are evicted with compensation that only calculates the value of the building or plants (not land value) because they are considered to be encroaching on state land, then a clear injustice has occurred. The state is carrying out unjust enrichment by taking back land whose economic value has been increased by the sweat of transmigrants for decades.
- d. Principle of Prohibition of Abuse of Authority²² (Article 10 paragraph (1) letter e): Articles 17 and 18 of the AP Law prohibit the use of authority for other purposes (*detournement de pouvoir*). Using the pretext of "State Land" to facilitate the conversion of land for capital interests at the expense of citizens who are deliberately not "certified" by the state is a strong indication of abuse of authority.

Doctrinal Review: Legal Protection and Progressive Law

To strengthen legal criticism of executive dominance, it is important to refer to the thoughts of legal experts:

- a. Philipus M. Hadjon: Emphasizes that legal protection for the people is a condition sine qua non in a state based on the rule of law. Evictions without equal deliberation violate preventive legal protection. Government legality must not only be based on law, but also on law/justice.
- b. Satjipto Rahardjo: Through the concept of Progressive Law, he emphasized "Law is for people, not people for law." A progressive approach requires judges to view the transmigrant's history of "blood and sweat" as evidence of legitimate material control, going beyond the formality of a certificate.
- c. Maria S.W. Sumardjono: Land registration is merely a strong means of proof, not absolute. Physical control in good faith is a strong basis for rights, so the state lacks the legal morality to evict transmigrants under the pretext of free state land.

Legal Criticism: The Paradox of Power and *Detournement de Pouvoir*

There has been sharp criticism of this eviction practice from the perspective of abuse of authority. The state often uses public power not to serve citizens, but rather to facilitate the conversion of land for capital interests through administrative pressure.

Criticism has also been directed at the rigid nature of Legal Positivism. Judges often become dry "mouths of the law," seeking only certificates. The absence of certificates leads to the rejection of transmigrant lawsuits²³, a procedural injustice. Sutrisno, Anom. "The Role of Judges in Realizing Due Process of Law in the Indonesian State Administrative Court System."

¹⁹ Muhsin, Mustika Sari. "Kajian Yuridis Terhadap Penyalahgunaan Kewenangan Diskresi Oleh Pejabat Pemerintahan Menurut Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan." *Lex Administratum* 7.3 (2019).

²⁰ Sutrisno, Sutrisno, Fenty Puluhulawa, and Lusiana Margareth Tijow. "Penerapan asas keadilan, kepastian hukum dan kemanfaatan dalam putusan hakim tindak pidana korupsi." *Gorontalo Law Review* 3.2 (2020): 168-187.

²¹ Hananto, V. Andri. "Utilitarianisme dan Keseimbangan Antara Kepentingan Umum dan Kepentingan Individu." *Jurnal Hukum IUS QUIA IUSTUM* 32.1 (2025): 72-98.

²² Yulia, Rena, and Duke Arie Widagdo. "Penyalahgunaan Wewenang: Perspektif Hukum Administrasi Dan Viktimologi." *Proceeding APHTN-HAN* 2.1 (2024): 243-264.

²³ Sutrisno, Anom. "Peran Hakim dalam Mewujudkan Due Process of Law Pada Sistem Peradilan Tata Usaha Negara di Indonesia." *Locus: Jurnal Konsep Ilmu Hukum* 5.1 (2025): 17-28.

Analysis of the Antinomy of Norms and State Responsibility

Mandates protection, while the Land Acquisition Law authorizes revocation²⁴. This demonstrates a structural injustice in which the state acts as both "judge and player."

The state, which neglects to issue certificates, is also the one punishing transmigrants with eviction.²⁵ From the perspective of HTN, this is a serious violation of the social contract. State responsibility should be realized through rights restoration (rehabilitation), not simply a paltry sum of money insufficient to start a new life.

Legality Reconstruction: Towards Fair Protection

The legality of evictions must be reconstructed in layers:

1. Has the state fulfilled its obligations under the Transmigration Law (certification)?
2. Does the action adhere to the principle of due diligence regarding land history?
3. Does compensation cover immaterial losses due to the loss of living space?

Without this review, evictions will continue to be a blemish on development. The state must return to the philosophy of *Salus Populi Suprema Lex Esto* the welfare of the people is the supreme law. Protection of transmigrants' land rights must be restored to the constitutional framework as an inviolable right without strict, transparent, and just legal procedures

Conclusion and Suggestion

Conclusion

Based on the research results and discussions outlined above, two main conclusions can be drawn:

1. The position of transmigrants' land rights within the structure of Indonesian Constitutional Law is inherent constitutional rights. Normatively, this right is guaranteed by Article 28H paragraph (4) of the 1945 Constitution as private property that cannot be arbitrarily appropriated. Within the framework of a Welfare State, the provision of transmigrant land is a constitutional mandate and a social contract between the state and its citizens. The lack of land ownership certificates for transmigrants does not automatically revoke their material ownership status, but rather constitutes state maladministration in fulfilling certification obligations. Therefore, vertically, the protection of transmigrants' rights under the Transmigration Law must be viewed as *lex specialis*, affording a higher degree of protection than general land acquisition regulations.
2. The act of evicting transmigrants' land without considering the history of their placement and the protection of their material rights is legally flawed and contrary to the General Principles of Good Governance (AAUPB). Judging from Law Number 30 of 2014, this action violates the Principle of Accuracy because it ignores the historical facts of placement, the Principle of Legal Certainty because it destroys the legitimate expectations of citizens, and indicates an Abuse of Authority (*Detournement de Pouvoir*). From a legal perspective, this eviction reflects the dominance of executive power that hides behind narrow legal positivism. The legality of the eviction should not only be measured by administrative formalities (certificates), but must be tested materially based on the principles of distributive justice and state responsibility in protecting its citizens.

Suggestion

To provide solutions to the legal issues discussed, the following recommendations are proposed:

1. To the Government (Ministry of Agrarian Affairs and Spatial Planning/National Land Agency and Ministry of Villages, Development of Disadvantaged Regions, and Transmigration): Strict

²⁴ MAKMUR, M. *TINJAUAN TERHADAP PENYELESAIAN SENGKETA TANAH EKS TRANSMIGRASI (Studi Kasus Tanah Lokasi Perumahan Eks Transmigrasi Di Desa Sungai Sitolang, Kecamatan Rambah Hilir, Kabupaten Rokan Hulu)*. Diss. Universitas Pasir pengaraian, 2022.

²⁵ Sulistyono, Eko. *Tindakan Kekerasan Dalam Penggusuran Yang Dilakukan Aparatur Negara Di Kota Bandung (Kajian Dalam Prespektif Hak Asasi Manusia)*. Diss. UII, 2017.

synchronization and harmonization of regulations between the Land Acquisition Law and the Transmigration Law are needed. The government must immediately conduct a legal audit and expedite collective certification of all transmigration land whose administration has not yet been completed. The state must not evict land whose certification status is hampered by government bureaucratic negligence. If the land is absolutely necessary for the public interest, the compensation process must be based on the full ownership value, not simply compensation or "tali asih" (love interest).

2. To the Judicial Institution (Judges): In deciding agrarian disputes involving transmigrants, judges are advised to use a Progressive Legal approach. Judges should not simply act as "mouthpieces of the law" in a legalistic-formal manner, relying solely on certificates. Judges must have the courage to make legal discoveries (*rechtsvinding*) by looking at the history of material land ownership and the constitutional mandate for protecting human rights, in order to realize substantial justice for citizens who have carried out the state's mandate in transmigration areas.

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