

Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights

Fokky Fuad¹, Heriyono Tardjono², Aris Machmud^{3*}, Nizla Rohayah⁴, Prosper Maguchu⁵

^{1,2,3}Faculty of Law, Universitas Al Azhar Indonesia, Indonesia

⁴Faculty of Law, Universitas Muhammadiyah Tangerang, Indonesia

⁵Faculty of Law, Vrije University Amsterdam, Netherlands

*Corresponding Author: aries_machmud@uai.ac.id

ARTICLE INFO

Keywords:

Land; Legal Culture; Philosophy; Relation; Wealth

How to cite:

Fuad, F., Tardjono, H., Machmud, A., Rohayah, N., Maguchu, P. (2023). Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights. *Jurnal Media Hukum*, 30(2), 98-116.

Article History:

Received: 23-03-2023

Reviewed: 27-11-2023

Revised: 12-12-2023

Accepted: 16-12-2023

ABSTRACT

Land stands as a fundamental aspect of human existence, serving as a cornerstone for meeting diverse needs and holding considerable economic significance. Its limited capacity often becomes a trigger for societal conflicts, spanning both vertical and horizontal dimensions. A well-crafted land policy holds the potential to foster community prosperity and ensure environmental sustainability. However, the imposition of state-driven evictions often leads to agrarian conflicts, undermining customary rights. This study examines the intricate relationship between land and humanity through the lenses of legal philosophy and the concept of land property rights within legal culture. Employing a formative juridical research approach, the authors aim to uncover a comprehensive human understanding rooted in philosophical perspectives, legal theory, dogmatic legal norms, and legal culture. From a philosophical standpoint, land represents a space where the spiritual connection between humans and their divine entities takes form. Furthermore, within the realm of legal culture, land is perceived as an integral part of the human essence, symbolizing the place of birth, growth, mortality, and final resting.

DOI: <https://doi.org/10.18196/jmh.v30i2.18264>

1. Introduction

The significance of land in society intertwines both economic and religious-magical dimensions. The inherent relationship between land and society underscores a symbiotic mutualism, each reliant on the other. The constitution mandates prosperity through state

policy, emphasizing the role of the state as the steward of land, water, and other natural resources.¹

The land tenure system in Sardinia is characterized by a unified political, economic, and legal model that is notably multidimensional and multifunctional. In this system, the state governs ownership through local and urban communities, employing a distinct legal framework known as 'jurisdictional pluralism', wherein two different systems coexist. This approach reflects the state's concern for its indigenous peoples.

The regions of Gallura and Ogliastra in Sardinia exhibit different legal systems, each recognizing the coexistence of distinct land management and tenure systems - Stazzi in Gallura and Usi Civici in Ogliastra. The interpretation and practice of ownership in each province result from historical perspectives on land use, prevailing and past moral economic considerations, and negotiations between various levels of authority. A common thread in both systems is the imperative for local communities to ensure access to their lands from an intergenerational perspective. This commonality is observed in privately owned Stazzi in Gallura and Usi Civici in Ogliastra, representing distinct forms of land ownership.

Kugbega highlighted that in African nations, particularly in Ghana, the economy and livelihoods are heavily reliant on natural resources. To ensure sustainable economic practices that prioritize environmental preservation, Ghana employs a communal system of land ownership and management rooted in traditional regulations, known as customary law. This approach curtails individual property rights, emphasizing collective ownership of natural resources, especially land.

The legal framework guiding property rights plays a crucial role in conflict prevention and environmental management. Ghana's land dynamics reflect a competitive landscape, with customary ownership regulations serving as protective measures against disputes. Land allocation and management lie under the jurisdiction of tribal leaders within their communities. Kasanga & Kotey note that roughly eighty percent of land rights follow customary practices, overseen by local tribal leaders, while the remainder involves individual or organizational ownership through various mechanisms, regulated by these leaders. However, the transitional era has witnessed a shift. Long-term agreements and transactions have risen, favoring private ownership rights and influencing poverty levels. Ghana responds by implementing agrarian reforms as part of its development policy, encompassing regulations governing land access, use, transfer, and validation, incorporating recognition of customary, individual, private, and state ownership.²

Similar to Indonesia, the concept of land ownership is rooted in customary law. However, community land ownership rights often face challenges from corporate interests that hold permissions to manage land in close proximity to community-owned land. This situation has given rise to agrarian conflicts, often resulting in harm to the community.³ Large number of conflicts over customary land tenure in the name of development, but ignoring sustainability and neglecting local community participation has an impact on equal distribution of income

¹ Nadia Astriani and others, 'Pengelolaan Sumber Daya Air Berdasarkan Kearifan Tradisional: Perspektif Hukum Lingkungan', *Arena Hukum*, 13.02 (2020), 197-217 <https://doi.org/10.21776/ub.arenahukum.2020.01302.1>.

² Inez Naaki Vanderpuye, Samuel Antwi Darkwah, and Iva Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana', *Journal of Agricultural Science*, 12.5 (2020), 57 <https://doi.org/10.5539/jas.v12n5p57>.

³ Rachma Listyaningrum, 'Upaya Penyelesaian Sengketa Hak Atas Tanah di Kawasan Wonorejo Kabupaten Blora', *Jurnal Multidisiplin Indonesia*, 1.3 (2022), 979-84 <https://doi.org/10.58344/jmi.v1i3.93>.

between migrants and local communities.⁴ The concept understood in land ownership is based on certification to ensure legal certainty.⁵ Confiscation or piracy of property rights is still a serious phenomenon that occurs because of limited resources, and land grabbing can result in permanent violations of sovereign rights.⁶

Santoso and Sastroatmodjo, as cited by Sulastriyono, contend that a profound connection exists between humans and their land. This sentiment is encapsulated in a Javanese saying, translating to the idea that land and humans are inseparable entities in human life - "*sedhumuk bathuk senyari bumi den lakoni taker pati, sanadyan kacang dhadha wutahing ludira*". Hence, martyrdom is preferred over accepting the illegal confiscation of one's land. Legal provisions safeguard land ownership rights against unlawful seizures. Any transfer or inheritance of land ownership rights must adhere strictly to the relevant laws and can only be executed by the rightful owner.⁷

A digital land registration system can provide optimal community welfare through the digital land registration system. The digital land registration system is a form of integrated land innovation that can provide community welfare because it can guarantee the effectiveness and efficiency of implementing accountable, effective and efficient governance through the Complete Systematic Land Registration (PTSL) program.⁸ This makes registration simple, fast, easy and inexpensive for those who need land services, but one cannot turn a blind eye to the fact that digitization of certificates must be supported with maximum security data so that the land mafia would not take advantage of it. Legal protection for indigenous communities in Indonesia is still weak because land conflicts still occur within indigenous communities and environmental damage often occurs as a result of development that encourages exploitation of natural resources which directly or indirectly harms people's lives.⁹ Conflicts between countries and communities occur as a result of legal pluralism, namely implementing more than one legal system that applies to all groups in one area. As we know, Indonesia recognizes the existence of customary law systems, national laws, and colonial legacy legal systems.

In a previous study by Gunawan Wibisono, and Yeni Widowaty said it is urgent to protect the conversion of communal land to residential land and industrial plantations, which impacts land quality degradation and community welfare.¹⁰ A study by Inez Naaki Vanderpuye, Samuel Antwi Darkwah, and Iva Živělová found that land ownership arose through a system

⁴ Rembrandt, 'Kedudukan Hak Ulayat dalam Status Kawasan Lindung di Sumatera Barat', *Bina Hukum Lingkungan*, 1.2 (2017), 249-63 <https://doi.org/10.24970/jbhl.v1n2.19>.

⁵ I Made Suwitra, 'Eksistensi Tanah Adat dan Masalahnya terhadap Penguatan Desa Adat di Bali', *Wicaksana: Jurnal Lingkungan dan Pembangunan*, 4.1 (2020), 31-44 <https://doi.org/10.22225/wicaksana.4.1.1816.31-44>.

⁶ Anna Jurkevics, 'Land Grabbing and the Perplexities of Territorial Sovereignty', *Political Theory*, 50.1 (2022), 32-58 <https://doi.org/10.1177/00905917211008591>. See Dicky Dwi Ananta, 'Politik Oligarki Dan Perampasan Tanah Di Indonesia: Kasus Perampasan Tanah Di Kabupaten Karawang Tahun 2014', *Jurnal Politik*, 2.1 (2017), 101 <https://doi.org/10.7454/jp.v2i1.83>.

⁷ Sulastriyono Sulastriyono, 'Juridical and Philosophical Aspects of Joint Land (Gandhok/Gamblok) Ownership System: Adat Land Law Perspective', *Jurnal Media Hukum*, 26.1 (2019), 23-33 <https://doi.org/10.18196/jmh.20190120>.

⁸ Mira Novana Ardani, 'Langkah Kementerian ATR/BPN Menghadapi Disrupsi Digital: Dalam Telaah Filsafat Hukum', *Gema Keadilan*, 9.1 (2022), 19-35 <https://doi.org/10.14710/gk.2022.14551>.

⁹ Yordan Gunawan, 'Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14 <https://doi.org/10.20956/halrev.v3i1.948>.

¹⁰ Gunawan Wibisono and Yeni Widowaty, 'Urgensi Perlindungan Lahan Pertanian Pangan terhadap Alih Fungsi Lahan di Daerah Istimewa Yogyakarta', *Krtha Bhayangkara*, 17.1 (2023), 93-106 <https://doi.org/DOI:https://doi.org/10.31599/krtha.v17i1.1962>.

of patrilineal inheritance, with men inheriting more than women, and family ownership being the most common form of land inheritance in Ghana. In a study by Angela Kaccar argues that in contrast to the general land tenure system of the European Union (EU), land tenure in Sardinia is governed by local leaders in Sardinia, regardless of public, private, or public interest. On the other hand, the failure of laws aimed at reducing the burden on citizens shows that laws often fail to work without an appropriate system of incentives and disincentives. Therefore, legislative changes are needed to refer to national and local laws on rural development.¹¹

The novelty of this research is the emphasis on the land ownership culture of Indonesian society, based on the legal culture of Indonesian society, which considers land to be a gift from God and still has no knowledge about land management. Implementing legal quality audits through the quadruple helix is a necessity in ensuring certainty, justice, and protection of customary property rights and can resolve potential conflicts between the state and the community in land matters because disadvantaged communities receive protection from the state. Besides that, a positive publication system in land registration can be an alternative for resolving disputes in the community. As per Presidential Instruction (INPRES) No. 2 of 2018 on the Acceleration of Complete Systematic Land Registration in all regions of the Republic of Indonesia, implementing the orders of Article 19 of the Basic Agrarian Law No. 5 of 1960.

Agrarian conflicts persist in Indonesia, stemming from conflicting interests between authorities and local communities, often leaning towards supporting investors granted business permits, resulting in the displacement of residents. Additionally, conflicts arise due to land overlaps, leading to evictions without proper compensation or in contrast to community expectations. Beyond its economic value, the relationship between land and society transcends mere financial aspects, representing an integral and inseparable unity for communities.¹²

Sudikno emphasizes the necessity of statutory regulations for transferring land ownership rights, particularly in cases where the state requisitions land for public purposes. In such instances, communities surrender their ownership rights, and it becomes imperative for the government, specifically the National Land Agency (BPN), to offer equitable and comparable compensation determined by an assessment team. However, the government's focus on enhancing the investment climate to boost regional economic potential raises concerns. Issuing business permits and usage rights to investors often leads to land overlapping, sparking agrarian conflicts, as evident in Rempang Island and Wadas village. This tendency arises due to prioritizing economic considerations over legal aspects, disregarding the unity established by customary law. Sudikno underscores the importance of participatory government policies that account for land origins, status, and community conditions, offering potential prosperity for both communities and the national economy.¹³

Land, fundamentally owned by God, is entrusted to humans for management and community welfare. Rooted in customary norms, land laws prioritize communal values over individual interests, emphasizing communal ownership while acknowledging individual rights within communal obligations. Utilization must respect community rights and fulfill land-related responsibilities. This legal mandate requires the state to protect communal interests,

¹¹ Vanderpuye, Darkwah, and Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana'.

¹² Irischa Aulia Pancarani and Ridha Wahyuni, 'Perlindungan Hak Kepemilikan Tanah Masyarakat Desa Pakel: Penelusuran Legal Standing Akta 1929 Dalam Sengketa Tanah Dengan PT. Bumi Sari', *Tunas Agraria*, 6.2 (2023), 110–24 <https://doi.org/10.31292/jta.v6i2.225>.

¹³ Pancarani and Wahyuni.

recognizing historical communal ownership (*ulayat*) that has nurtured land as a biological entity. Land stands as a vital life source, embodying societal identity and human dignity. The intimate bond between people and their land necessitates active state efforts for recognition through land registration, yet indigenous communities often lack awareness, posing a challenge. The prevalent negative approach to land rights registration falls short in resolving societal conflicts.

2. Research Method

The research employs a normative legal method aiming to comprehend the human aspect of legal philosophy, theory, dogmatic legal norms, and legal culture pertaining to land. The author utilizes primary legal sources and secondary legal materials, adopting a descriptive qualitative approach. Normative juridical research employs a statutory approach, analyzing primary and tertiary legal sources alongside legal documents such as literature, journals, and relevant research. These legal sources undergo qualitative descriptive analysis to provide explanations.¹⁴ This research delves into the intricate relationship between humans and land, exploring the philosophical framework surrounding land ownership rights.¹⁵ It particularly addresses the concept of ownership, specifically concerning objects, notably land, which hold significant cultural and social value, aiming to elucidate their role in economic development and progress.¹⁶

3. Results and Discussion

3.1 The Relation between Land and Human

Land, a multifaceted resource, secures prosperity by meeting daily needs, comprising agricultural, forest, freshwater, and coastal resources, alongside diverse flora, fauna, and river systems. Beyond its economic role, land ownership grants authority to defend against unauthorized control. The state shoulders the responsibility of safeguarding these rights through ownership policies, thereby fostering economic growth and influencing resource control. Property rights, especially for land and natural resources, shape incentives for sustainable resource management, spanning various landscapes like agriculture, forests, water bodies, and wildlife, crucial for effective governance.¹⁷

Sustainable development entails a model of development that integrates social and environmental values. Both the government and private sector bear the responsibility of implementing sustainable governance, which involves a life cycle approach to utilizing and conserving natural resources in line with societal and environmental norms.¹⁸ The

¹⁴ Lastuti Abubakar and Tri Handayani, 'The Urgency of Strengthening Appraisal Regulations to Realize a Legal Protection for Appraiser', *Jurnal Media Hukum*, 26.2 (2019), 131-45 <https://doi.org/10.18196/jmh.20190129>.

¹⁵ Listyowati Sumanto, 'Kepemilikan Rumah Tempat Tinggal atau Hunian oleh Orang Asing yang Berdomisili di Indonesia', *Jurnal Legislasi Indonesia*, 14.4 (2017), 455-62 <https://doi.org/doi.org/10.54629/jli.v14i4>.

¹⁶ Darwin Ginting, 'A Comparison of the Ideal Agrarian Reform Law to Be Implemented in Indonesia', *Jurnal Wawasan Yuridika*, 6.2 (2022), 197-214 <https://doi.org/10.25072/jwy.v6i2.544>.

¹⁷ Vanderpuye, Darkwah, and Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana'.

¹⁸ Muhamad Haris Aulawi and others, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *BESTUUR*, 11.1 (August) (2023), 26 <https://doi.org/10.20961/bestuur.v11i1.69178>.

government is obligated to impose sanctions on environmental violators (as disincentives) and offer rewards (as incentives) to companies that fulfill their responsibilities.¹⁹

As well as being a source of community life, the land is a complete unity between the material and spiritual community is reflected in the local wisdom of the community in behavior because land and its sustainability are the pillars of the community's economic life,²⁰ which can be used as a source of life as well as for business capital.²¹ Land is also a source of disputes or conflicts due to conflicts of interest over land and limited area.²² Conflict is a social fact, and the history of human life such as colonialization that discriminated against rules of land tenure and ownership²³ has an impact on people's poverty.²⁴

Land reform is a paradigm of State domination in regulating all resources including land for the welfare of the people. This includes renewal of land law in the colonial agrarian law into the national law of Basic Agrarian Law in Indonesian it is known as *Undang-Undang Pokok Agraria* (UUPA) No. 5 of 1960 with the intention of mobilizing resources for the national economy.²⁵

State ownership of people's land sometimes causes vertical disputes, but in the past, from the Dutch colonial era to the New Order era, the transfer of land rights was done through intimidation, violence, and violent property theft. There was also the exploitation of people's land continues under the pretext of expanding the economy but eliminating social justice. Therefore, the form of state control over land rights is limited to regulation and control to achieve state objectives, not in the sense of ownership.²⁶

Conflicts and wars that happened in the past as well as at present cannot be separated from land problems. Land can become sources of human prosperity, but on the other side, it can become a disaster for humans. Land problems cannot be solved easily through legal dogmatic approach such as issuing regulations on land. Land problems are very complex and need to be analyzed from the legal philosophy side and legal culture. Conflicts can appear because of difference of perception over a land between those who occupy the land and the ruler who is trying to build an infrastructure on it.²⁷

¹⁹ David Tan, 'Assessing Indonesia's Environmental Laws Pertaining to the Abatement of Marine Plastic Pollution: A Euphemism?', *Jurnal Media Hukum*, 29.1 (2022), 1–33 <https://doi.org/10.18196/jmh.v29i1.13414>.

²⁰ Muhammad Arif Hidayat and Akhmad Noor, 'Pengaruh Pertumbuhan Ekonomi Terhadap Alih Fungsi Lahan Di Kota Samarinda', *Inovasi*, 16.2 (2020), 10 <https://doi.org/10.30872/jinv.v16i2>.

²¹ Elviana Sagala and Ade Parlaungan Nasution, 'Pendaftaran Tanah Tentang Hak Milik Ditinjau Dari Nilai Ekonomi', *Jurnal Ilmiah Advokasi*, 7.1 (2019), 52–63 <https://doi.org/10.36987/jiad.v7i1.245>.

²² Hazar Kusmayanti and Sandi Yusta Hawari, 'Praktik Eksekusi Riil Tanah Milik Masyarakat Adat Sunda Wiwitan', *Sasi*, 26.3 (2020), 341 <https://doi.org/10.47268/sasi.v26i3.285>.

²³ Ria Renita Abbas and others, 'Land Grabbing in Telukjambe Barat, Karawang, West Java and Its Theoretical Hook to David Harvey's and SMP Tjondronegoro's Works', *Sodality: Jurnal Sosiologi Pedesaan*, 9.3 (2021) <https://doi.org/10.22500/9202135107>.

²⁴ Inez Naaki Vanderpuye, Samuel Antwi Darkwah, and Iva Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana', *Journal of Agricultural Science*, 12.5 (2020), 57 <https://doi.org/10.5539/jas.v12n5p57>.

²⁵ Cita Citrawinda Nurhadi Machmud, Aris, Basuki Rekso Wibowo, Gunawan Widjaja, 'Land Pawning in the Archipelago : a Study of Legal Anthropology', *Baltic Journal of Law & Politics*, 15.1 (2022), 199–218 <https://doi.org/10.2478/bjlp-2022-000>.

²⁶ Machmud, Aris, Basuki Rekso Wibowo, Gunawan Widjaja.

²⁷ Elmira Arofah, Nasrullah Nazsir, and Pipin Hanapiah, 'Strategi Pemecahan Masalah Konflik Sosial Akibat Pembangunan Waduk Jatigede', *Jurnal Ilmu Pemerintahan*, 1.2 (2015), 301–21 <https://doi.org/https://doi.org/10.24198/cosmogov.v1i2.11840>.

The human understanding of land often clashes with legal dogmatic concepts, creating a divergence with the legal positivism framework. Consequently, legal rules concerning land necessitate a philosophical foundation that incorporates the rationality of human-juridical and sociological perspectives. Despite the multifaceted values inherent in land, often abstract and not explicitly outlined in legal regulations, it plays a crucial role in societal dynamics.

Sociologically, within religious and cultural systems, land transcends its economic utility and assumes a spiritual significance in society, being equated with notions such as 'mother' and 'bloodshed'. The absence of a cultural foundation can potentially lead to horizontal and vertical conflicts²⁸ Recognizing the various meanings attached to land is imperative for legislators, as they play a pivotal role in shaping laws. This nuanced understanding is crucial for ensuring that land functions not only as an economic asset but also as a source of prosperity for the human spirit.

Land is the source of life. Humans occupy the land, live and have social interactions on it, and will die in it. Land is not an economic relation, not only viewed from the aspect of *homo economicus* in which human sees land as a circle of economic value. Land is also a place on which religious relations exist between human spiritual life and God.²⁹ The fact is, human relation with land comes from the belief that God rules the land (earth) and universe. Human as a creature with the highest degree or *khalifah* has the function to make the earth prosperous, in this case, in the form of land management. Cultivating, planting, fertilizing, and making the land benefit other humans are the human's role and task on earth.

The human task of managing and fostering prosperity on the land is an obligatory responsibility. Consequently, humans possess a right granted by God to own everything they have diligently managed as a reward for their efforts in cultivating the earth. In this context, ownership rights manifest as a divine gift to humanity, acknowledging their diligent work in enhancing the prosperity of the earth. Given the monetary value of the object, ownership rights bestow upon the owner complete and absolute authority to utilize it as leverage in legal proceedings for personal benefit, whether they opt to retain it or transfer it to another party.³⁰

In Islamic doctrine, ownership is defined by the principle that humans possess the right to manage resources according to the provisions outlined by Allah (based on the law of Allah SWT). According to M. Shidiq Al-Jawi, humans are designated as mere stewards on Earth, with the absolute ownership of land belonging to Allah. Humans are entrusted with the responsibility of managing and utilizing it.³¹ As stewards, they are tasked with harnessing all potentials for the prosperity of humanity.³²

Locke posits that ownership, akin to the rights to life and freedom, constitutes an inherent human right, warranting defense. Land serves as a means to satisfy human needs through

²⁸ Yul Ernis, 'Perlindungan Hukum atas Tanah Adat Kalimantan Tengah', *Jurnal Penelitian Hukum De Jure*, 19.4 (2019), 435-54 <https://doi.org/10.30641/dejure.2019.v19.435-454>.

²⁹ Aarce Tehupiory, 'Kepemilikan Dan Pengolahan Tanah Dalam Perspektif Hukum Tanah Adat', *Journal Manager APHA*, 2.2 (2018), 45-64 <https://doi.org/10.46816/jjal.v2i2.32>.

³⁰ H.R. Adianto Mardijono Niken Widya Intan Permatasari, 'Status Hak Kebendaan Terhadap Tencent Selaku Pemegang Hak Milik Kebebasan Yang Mutlak Atas Game Pubg Mobile Dalam Hukum Perdata', *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 3.1 (2023), 724-34 <https://doi.org/10.53363/bureau.v3i1.212>.

³¹ Nafi'ah Aini, 'Relasi Antara Peran Manusia Sebagai Khalifah Dengan Kerusakan Alam Perspektif Al-Qur'an', *At-Tibyan*, 3.1 (2020), 32-54 <https://doi.org/10.30631/atb.v3i1.18>.

³² Arba Arba and Israfil Israfil, 'Hubungan Hukum Antara Manusia Dengan Tanah, Air Dan Lingkungan Alam Menurut Konsepsi Hukum Islam Dan Hukum Agraria Nasional (UUPA)', *Jurnal Risalah Kenotariatan*, 2.1 (2021) <https://doi.org/10.29303/risalahkenotariatan.v2i1.23>.

collective ownership, compelling individuals to procure sustenance. This transitioned communal rights to private property rights, termed by Locke as the foundation of property creation. Islamic law stipulates that only God has the authority to establish property, suggesting that private property rights stem from encroaching on communal rights.³³

Land, according to Locke, isn't inherently a personal right but a source of prosperity. Conversely, in Islam, land is viewed as a communal right, aspiring to provide welfare rather than suffering. This communalistic view of land ownership is deeply rooted in religious beliefs. In Indonesia, the belief in God necessitates the shared ownership of resources, perceived as a divine gift to the nation, administered by the state for the populace's prosperity.³⁴

The connection between humans and the land as their place of residence is marked by a profound interdependence. The more diligently humans manage and cultivate the land, the greater its intrinsic value. Consequently, the recognition of land ownership becomes evident. The depth of human commitment to cultivating the land establishes the identity of ownership for those who invest effort. However, this intensity weakens the recognition of what has already been cultivated on the land, leading to a diminishing acknowledgment of land ownership.

The religious perspective regards land as a divine gift for human effort, establishing ownership rights. Land's highest authority stems from its status as a divine blessing. Its sacred connection is acknowledged as humans perceive it as an object owned, explored, and utilized through the grace of God. This view contrasts with the concept of humans solely as economic beings, as it requires recognition of the divine structure within the land—not just as an exploitable economic object. While operating as economic actors, humans derive benefits from managing the land. Malak emphasizes that land is not just integral to the identity of indigenous Papuans but also holds a religious-magical significance in their relationship with it.³⁵

The religious relationship between humans and land holds two distinct meanings: positive and negative. The positive interpretation denotes an unalterable bond immune to legal changes, rejecting any attempt to alter the land until it undergoes isolation. Individuals are prohibited from managing, inhabiting, cultivating, or engaging in any activity on the land, as these actions do not establish identity or rights of ownership. For instance, in Bali, ownership rights over *ulayat* land remain unrecognized, with *ulayat* or *prabumian* rights prevailing, distinct from individual property rights beyond *ulayat* land. *Ulayat* land, originally communal, may transition into private rights based on the sensitivity of *prajuru adat* and village customs toward their controlled customary lands.³⁶

³³ Johan Olsthoorn, 'Between Starvation and Spoilage: Conceptual Foundations of Locke's Theory of Original Appropriation', *Archiv Für Geschichte Der Philosophie*, June.16 (2022), 1–30 <https://doi.org/10.1515/agph-2021-0121>.

³⁴ Zuman Malaka, 'Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat Dan Hukum Islam', *Al-Qānūn, Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 21.1 (2018), 101–19 <https://doi.org/10.15642/alqanun.2018.21.1.101-124>. See Mohamad Muhibbin, 'Perspektif Hukum Islam Tentang Konsep Penguasaan Tanah', *Al Risalah*, 17.1 (2017), 61–74 <https://doi.org/10.30631/alrisalah.v17i01.25>. See Rembrandt.

³⁵ Joseph Eliza Lopulalan, 'Jati Diri Orang Asli Papua dalam Pusaran Otonomi Khusus di Provinsi Papua Barat', *SOCIA: Jurnal Ilmu-Ilmu Sosial*, 15.1 (2018), 37–49 <https://doi.org/10.21831/socia.v15i1.20801>.

³⁶ Suwitra.

Conversely, the negative interpretation depicts a weaker relationship between humans and land, allowing free occupation without limitations by certain individuals or entities based on processing capabilities. This action contradicts legal regulations, notably Article 7 of the Basic Agrarian Law (UUPA) and Minister of Agrarian Affairs/KBPN Regulation No. 6 of 1998, opposing both legal and social dimensions. Exploiting loopholes for personal gain is facilitated by the absence of binding penalties. Socially, monopolizing land tenure leads to injustices and hampers fair land distribution, impeding agrarian reform efforts³⁷

The historical occupation of unclaimed land led to colonization and human enslavement. Elite occupation of such land results in unlimited control and dominance. This allows the elite to monopolize ownerless land (*res nullius*) due to their considerable power. Locke's idea faces criticism for its significant influence on liberal land concepts. Consequently, state intervention becomes necessary to regulate ownership.³⁸

Customary rights gain recognition under customary law, particularly within community territories inhabited by indigenous peoples. These groups adhere to a system of values and norms, integral to their daily lives and essential for meeting their needs. As a result, the community heavily depends on their territory for sustenance.³⁹

I Made Suwitra and Valerine Jaqueline Leonoere Kriekhoff said that the community has the right to control and utilize its land as a source of life in accordance with customary law rules. The existence of customary law communities must be recognized and protected by the state as part of citizens. Customary law views the relationship between customary law communities and land what is occupied has a close meaning and is religious in nature magical.⁴⁰

Generally, no-man's land or *res nullius* is found on *ulayat* rights land, whereas according to customary law *ulayat* rights are the rights that belong to a customary law alliance which is managed in a partnership if it is carried out jointly under the head of the association or carried out by residents individually.⁴¹ Land that is occupied but whose title cannot be proven is unowned (*domein verklaring, res nullius*). After the enactment of UUPA No. 5 of 1960, all land whose ownership cannot be proven is controlled by the state as mandated by the constitution, for this reason, its use must be regulated to prevent conflict and provide a sense of justice (Article 27, Article 37 and Article 40 UUPA). *Ulayat* is land managed by the community based on customary law whose ownership is communal (*ulayat* rights).⁴²

The shift in the power dynamics of great nations during the Middle Ages evolved from colonization to the assertion of capital power in land governance. Land, serving as a resource

³⁷ Pancarani and Wahyuni.

³⁸ Chris Rojek, 'John Locke, Private Property and the Birth of Achieved Celebrity', *City Research Online*, 16.4 (2022), 548–62 <https://doi.org/10.1177/17499755211051835>. See Sam Spiegelman and Gregory C Sisk, 'Cedar Point : Lockean Property and the Search for a Lost Liberalism', *Cato Institute*, 2072 (2021), 165–190.

³⁹ Tetty Marlina Tarigan, Pagar Hasibuan, and Zulham, 'Grand Sultan Sebagai Bukti Kepemilikan Tanah Di Kota Medan (Perspektif Hukum Nasional Dan Hukum Islam)', *Istinbath*, 21.1 (2022), 1–26 <https://doi.org/10.20414/ijhi.v21i1.484>.

⁴⁰ Tarigan, Hasibuan, and Zulham.

⁴¹ Arina Novizas Shebubakar, Marie Remfan Raniah, 'Hukum Tanah Adat/Ulayat', *Jurnal Magister Ilmu Hukum (Hukum dan Kesejahteraan)*, 4.1 (2019), 14. <https://doi.org/10.36722/jmih.v4i1.758>.

⁴² Asih Retno Dewi Monica Puspita Agus Triana, Dian Aries Mujiburohman and Harvini Wulansari, 'Dinamika Pengaturan Dan Penyelesaian Sengketa Pemilikan Tanah Bekas Hak Barat Di Kabupaten Pekalongan', *Jurnal Ilmu Hukum*, 10.1 (2021), 79 <https://doi.org/10.30652/jih.v10i1.7985>.

base, became a cornerstone in the process of capitalizing on natural resources.⁴³ Possessing vast tracts of land equated to substantial capital, fostering widespread compliance and authority. This transformation altered the religious connection between humans and land into an economic relationship, resulting in potential land disputes. The concept of land as an object shifted from ipso facto, where ownership was tied to land management, to ipso jure, where ownership was linked to efforts in land exploitation. Consequently, the state, as an autonomous entity, validated de facto land ownership to de jure status, recognizing individuals as legitimate land managers. While Roman law initially validated land ownership based on factual management, contemporary validation is absolute and state-driven. Tjondronegoro contended that perpetual social phenomena, such as land grabbing, provoke conflicts rooted in land control and oppression, historically linked to territorial expansions by colonizers and contemporary instances of strong groups dominating the weak.⁴⁴

Agrarian conflicts often occur because of control and legality in land ownership, which sometimes become social conflicts because of the polarization of authority and power that defends the interests of the bourgeoisie (entrepreneurs), where ownership of land and natural resources owned by the community is claimed by other parties who feel they have there are business permits, where the permits are not known to the public (land invasion) which creates confusion over ownership rights and also overlapping land. Apart from that, the involvement of state officials makes disputes even more complex because it emphasizes a repressive approach.⁴⁵

Wehrmann said land disputes are a form of human greed due to land scarcity and high economic value, causing land disputes. On the other hand, Ruud, Nolan, Brown, and Clements argued that land disputes were caused by the transfer of land titles to common land and governments without genuine records or evidence, and indigenous peoples' dual ownership or double ownership of land.⁴⁶

Agricultural land disputes arise from deviations from the philosophy and spirit of the UUPA, as well as from the spirit of social functioning of land, such as the Mesuji and Sodong incidents involving state institutions, the private sector, and land rights holders. To do agrarian reform to achieve maximum prosperity for the people.⁴⁷

Land conflicts have occurred since the VOC (Vereenigde Oost-Indische Compagnie/Dutch East India Company) era because of the initial concept of land ownership, the Dutch assumed that the land found belonged to the state if it could not be proven - the *Domein Verklaring* principle applied in the Dutch East Indies (Indonesia) during the Dutch colonial era based on Article 1 *Agrarisch Besluit* of 1870 promulgated in S.187G-118. This shows that all land belongs to the state (*staat ter bechikking van de landsdverheid*) which creates legal uncertainty so that Indonesia carries out legal reforms related to the right to control the state based on the constitution which

⁴³ Yordan Gunawan and Mohammad Hazyar Arumbinang, 'The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 288–307 <https://doi.org/10.53955/jhcls.v3i2.116>.

⁴⁴ Abbas and others.

⁴⁵ Frizky Eka Ramadani and Sugeng Harianto, 'Konflik Sosial Perebutan Lahan Perkebunan', *Journal Paradigma*, 11.1 (2020), 1–34 <https://ejournal.unesa.ac.id/index.php/paradigma/article/view/51013>.

⁴⁶ Vanderpuye, Darkwah, and Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana'.

⁴⁷ King Faisal Sulaiman, 'Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), 091–111 <https://doi.org/10.31078/jk1815>.

regulates the relationship between the protection of property rights and the interests of the state to utilize community land.⁴⁸

So that governments, i.e. states and societies that need land for the public good, do not create disputes in recognizing their right to fair and just compensation for the liberation of state lands,⁴⁹ so as to create justice and legal protection for the parties who are entitled.⁵⁰ Land ownership now is not only seen from people's effort, but from validation of land ownership and *property* by the State. There should be a decision from the national official on object ownership, thus creating juridical land ownership. Herman Soesangobeng argued that in individual relations under customary rights only the community members have the rights to land within the jurisdiction of indigenous peoples, and every community member who controls and occupies a land for a certain period of time can have rights to growth and structure of land rights. According to Iman Sudiyat said that the ownership and secondary rights as a result of the conversion of Dutch law to customary land law.⁵¹

Individual land rights may come from state land rights, including ownership rights (HM), business use rights (HGU), building use rights (HGB), usage rights (HP), and building use rights over state land, or they may come from rights acquired from a controlling party. Control over you may come from third persons in the form of main and secondary land rights, in the Land rights are fundamental: The most important land rights are those that come from state-owned property and include ownership, business use, building use, and usage rights over that property. Secondary land rights can take the shape of rights above management rights when secondary land rights come from land that is under the authority of another party.⁵²

In the *ipso jure* concept, the relation and intensity and human efforts made on a land do not determine whether someone will have a right over the land. In fact, efforts cannot become the base for issuance of land ownership, instead it is the law that determines whether there is a base of right over a land such as law validation in the form of document of land ownership certificate. Such concept of land ownership is an anti-thesis from the *ipso facto* concept. This concept sees that the religious relation and intensity of works on the land by humans have been changed by some juridical concepts which creates an ownership based on law validation, not validation on someone's efforts made on the land. In this condition, the landowner does not need to have an intensive approach for the land, but only need to present a legal proof.⁵³

The collision between the concepts of *ipso facto* and *ipso jure* is inevitable. While some individuals possess unlimited land with legal proof in the form of certificates confirming

⁴⁸ Suharyono Suharyono, Khalisah Hayatuddin, and Muhamad Sadi Is, 'Perlindungan Hukum Hak Asasi Manusia Dalam Memperoleh Hak Atas Tanah Di Indonesia', *Jurnal HAM*, 13.1 (2022), 15 <https://doi.org/10.30641/ham.2022.13.15-28>.

⁴⁹ Fifik Wiryani and Mokhammad Najih, 'The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia', *Sriwijaya Law Review*, 5.2 (2021), 175-91 <https://doi.org/10.28946/slrev.Vol5.Iss2.1073.pp175-191>.

⁵⁰ Betty Rubiati Wibowo, Shelin Nabila, Yani Pujiwati, 'Kepastian Hukum Ganti Kerugian Pengadaan Tanah Bagi Pembangunan Jalan Tol Cisumdawu', *Ilmu Hukum Kenotariatan*, 4 (2021), 197 <https://doi.org/https://doi.org/10.23920/acta.v4i2.480>.

⁵¹ Vanessa Virgonia and others, 'Hak Menguasai Dari Desa Atas Tanah, Hak-Hak Individual Atas Tanah, Konversi Hak Atas Tanah Swapraja', *Jurnal Hukum Lex Generalis*, 1.6 (2020), 66-77 <https://doi.org/10.56370/jhlg.v1i6.256>.

⁵² Putu Eva and others, 'Mekanisme Penyelesaian Sengketa Sertifikat Hak Atas Tanah Ganda Oleh Kantor ATR / BPN Kabupaten Manggarai Barat', *Journal of Law, Society, and Islamic Civilization*, 11.1 (2023), 13-24 <https://doi.org/10.20961/jolsic.v11i1.66947>.

⁵³ Safrin Salam, 'Penguasaan Fisik Tanah Sebagai Alat Bukti Kepemilikan Tanah Ulayat Di Pengadilan', *Jurnal Crepido*, 5.1 (2023), 1-14 <https://doi.org/10.14710/crepido.5.1.1-14>.

ownership, there is a significant population heavily reliant on land for livelihoods. The scarcity of land intensifies disputes and contention over its ownership. Additionally, the relationship between humans and land clashes with the principles outlined in national land laws. The fundamental idea behind state control over national land is to regulate and prevent unjust land governance.

The country's lax enforcement of land area restrictions (agrarian reform) results in unchecked land ownership by corporate entities. Regulations stipulate minimum and maximum land control limits and prohibit absentee or *guntai* ownership (where land and owner domicile differ in sub-districts). Additionally, regulations cover land redistribution, addressing excess land possession, absenteeism prohibition, former self-government, state lands, and protocols for reclaiming mortgaged land.⁵⁴

3.2. Land and Law Culture

Land holds a profound religious significance across human cultures, extending beyond its economic utility to embody strong transcendental and cultural ties. For instance, in Javanese culture, a proverb signifies the sacredness of land, equating intrusion on dignity, particularly related to women and land, with the severity of bloodshed.⁵⁵ This reflects the belief that land isn't merely an economic asset but a source of life, birth, residence, and even final resting. The inseparable bond between land and the Javanese people is emphasized in their saying that an owner and their land share one soul. Moreover, the concept of relinquishing land equates to losing its owner, highlighting the profound connection between individuals and their land.⁵⁶ Land, infused with religious significance, resists easy claims, as human understanding shapes cultural values. It's not merely an object but encompasses spiritual significance linked to the divine power, as echoed in over one hundred Al-Quran verses discussing the earth (*fil-ardh*) always in conjunction with the power of God. This intrinsic relationship with land gives rise to a magical cultural aspect in human societies.

Agrarian conflicts arise from disputes over land and its associated attributes, spanning plantations, water resources, or mining. These conflicts frequently stem from land takeovers in the name of development, often leading to inadequate compensation compared to people's expectations.⁵⁷ Human's deep-rooted connection to the land shapes a robust legal culture. Within human societies, certain lands hold religious significance, ranging from sacred to holy, rooted in the perceived divine value attributed by people. The understanding of the sanctity of these lands contributes to a religious culture surrounding them. Inherent in this understanding is the recognition that land, forests, and all earthly elements are not solely physical entities but integral parts inseparable from human existence.⁵⁸

⁵⁴ Johan's Kadir Putra dan Maulidia Rani, 'Harmonisasi Regulasi Pembatasan Luas Tanah Pertanian Bagi Petani Dalam Program Land Reform', *Jurnal de Jure*, 13.56 (2021), 39-58 <https://doi.org/10.36277/jurnaldejure.v13i2.546>.

⁵⁵ Astri Rahmadina, Fuad Nashori, and Sonny Andrianto, 'The Mediating Effect of Self-Esteem on Emerging Adults' Materialism and Anxiety', *Psikohumaniora: Jurnal Penelitian Psikologi*, 5.1 (2020), 1 <https://doi.org/10.21580/pjpp.v5i1.5484>.

⁵⁶ Wahyu Setyaningsih, 'Land Conflicts in Lampung in 2011-2012', *Islah: Journal of Islamic Literature and History*, 3.1 (2022), 79-96 <https://doi.org/10.18326/islah.v3i1.79-96>.

⁵⁷ Ramadani and Harianto.

⁵⁸ for the *Merena* Customary Law community in Central Sulawesi, forests are our food, water is our blood, and rocks are our bones. Local indigenous peoples will impose strict customary sanctions to anyone who destroys the forest as their place of life. See Jamalludin Jamaluddin and others, 'Kearifan Masyarakat Lokal dalam Pengelolaan Hutan di Hutan Adat Marena Desa Pekalobean Kecamatan

Every land that is considered sacred or holy, then the human applying has some strict rules and norms inside of it. Not every human may so freely enter the sacred and sanctified land. If someone is permitted to enter it, then they must observe and apply the strict norms when they doing any activities there. Some activities that can be performed there are for example religious rituals and not common daily activities. Some prohibitions must be observed when doing some activities there, and also there are religious punishments for anyone who disobeys the rules.⁵⁹

Land law arises from the combination of communal or customary law and beliefs like the Almighty God to which communal relations are attributed. This is because archipelago lands are essentially communal rights as a form of the concept of state power. Municipal land certification is a concept that has also been adopted in Southeast Asia. In the concept of land law, the religious element is indicated by the assertion that state power over land is contained in Article 33 of the Indonesian 1945 Constitution, which states that the earth, water, and space, including the riches of nature, are said to be sacred nature. Indonesian people. Managed by the state for the benefit of the people.⁶⁰

Land that has been designated as sacred or sanctified lands have a higher cultural position than others. Land that does not get a sanctity title is generally used as a location for common activities: markets, settlements, offices, and others. The religious culture of this land also give birth to major wars, such as the Crusades. Each party involved in the Crusades had a sacred claim to the land of Jerusalem. Each of them felt entitled to control the holy land as God's gift to them. This series of wars was first encouraged by Pope Urban II as an attempt to seize the holy city of Jerusalem.⁶¹

Changes in human culture tend to see land as an economic object. This factor increases and escalates conflicts. Lands that have economic value for their energy sources, are now a source of disputes and wars. Disputes over the Natuna islands, the North Natuna Sea (South China Sea),⁶² and many other places on earth cannot be separated from human perspective on land and natural resources. Land, which is considered a gift from God and a source of human happiness, is at the same time a source of destruction due to conflicts and competition for resources.⁶³

Land, a fundamental production factor utilized for diverse activities like agriculture, plantations, and varying scale industrial development, intersects with human culture, encompassing profound religious and magical connotations. Laden with diverse cultural identities and religious symbolism, land assumes a significance so potent that it necessitates its placement within the intersection of legal culture and theology. Seen as a manifestation of dialogue between humans and revered spirits, the land embodies a magical cultural essence.

Anggeraja Kabupaten Enrekang', *Forest Services (FORCES) Journal*, 01.01 (2023), 43-56. <https://doi.org/https://doi.org/10.2429/fces01>

⁵⁹ Astriani and others.

⁶⁰ Irene Eka Sihombing, 'Land Ownership Based on National Land Law in Indonesia', *NOTARILL: Jurnal Kenotariatan*, 3.1 (2018), 65 <https://doi.org/10.22225/jn.3.1.683.65-74>.

⁶¹ Irma Sari Pulungan, Ahmad Ruslan, and Desvian Bandarsyah, 'Perang Salib: Pertikaian Yang Melibatkan Dua Agama Antar Kaum Kristen Dengan Kaum Muslimin', *Realita: Jurnal Penelitian Dan Kebudayaan Islam*, 20.1 (2022), 88-102 <https://doi.org/10.30762/realita.v20i1.106>.

⁶² Muhar Junef, 'Sengketa Wilayah Maritim di Laut Tiongkok Selatan', *Jurnal Penelitian Hukum De Jure*, 18.2 (2018), 219 <https://doi.org/10.30641/dejure.2018.v18.219-240>.

⁶³ Land conflicts can be caused by several factors, including: conflicts of interest, structural conflicts, value conflicts, relationship conflicts, and data conflicts. See Maharani Nurdin, 'Akar Konflik Pertanahan di Indonesia', *Jurnal Hukum Positum*, 3.2 (2018), 126 <https://doi.org/10.35706/positum.v3i2.2897>.

Consequently, customary norms dictate land management through a supernatural lens, employing village regulations (*awig-awig*) to enforce customary law and its corresponding penalties. Additionally, customary land serves as a conduit for villagers' religious observance and worship towards God.⁶⁴

Ownership of land and property becomes complex when these religious ideas conflict with the ideas of legal normativity. Laws in European culture which come from the Roman era no longer accept land and property recognition on the basis of *ipso facto* concept. Ownership must be based on the approval of state officials. Ownership based on *ipso facto* is considered able to cause confusion in land administration. The state carries out the process of land registration as a form of legitimacy of power over people and land. Land ownership must go through a process of recognition by the state after which registered in the state registry. Now the state is present as the ruler of land as a concrete form of its sovereignty.

General welfare is a state goal based on Pancasila and the State Constitution which is embodied in development in various sectors - political, economic, social, cultural, defense, and security. The main component of the general welfare is development in the land sector which is aimed at building public facilities. Infrastructure drives economic growth in national and regional development to play an essential role in improving the quality of life and community welfare.⁶⁵

The state sovereignty subordinates every power within the state, including communal land ownership by local communities and/or customary law communities. Land under the concept of *ipso facto* which is generally adopted by native peoples or indigenous peoples is faced with the concept of *ipso jure* ownership.⁶⁶ Land under the *ipso jure* concept does not see the intensity of closeness, but on the state's recognition of the subject of landowners. Land under the concept of *ipso jure* blends with the liberal philosophy and it increasingly provides no place for communal ownership.

Andi Bustamin Daeng Kunu argues that the government is obliged to protect and provide legal certainty to customary lands in the form of legislation through the constitution and laws, so that they will not be undermined by interests acting on behalf of the public, where land that has been turned into an object to be exploited has an economic value and has less the religious value. Customary rights are the largest area in Indonesia's land area. Ownership of land which has religious meaning as a gift from God is now faced with a new understanding of *ipso jure* - by law - that as a capital goods, land is used to obtain material benefits determined by issuance of certificates of land rights.⁶⁷

The concept of *ipso facto* land ownership still exists everywhere. Private ownership of individual land still occurs, and often creates disputes in the struggle for agrarian resource. The *ipso facto* concept of land cannot be absolutely declared no longer valid. This concept is incorporated in Article 24 of Government Regulation No. 24 of 1997 on Land Registration which stipulates that private ownership of a plot of land for more than 20 years can obtain

⁶⁴ A.A. Mas Adi Trinaya Dewi, 'Peranan Awig-Awig dalam Memberdayakan Lembaga Perkreditan Desa Pakraman Selat Desa Belega Kecamatan Blahbatuh', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9.1 (2021), 135-42 <https://doi.org/https://doi.org/10.23887/jpku.v9i1.31437>.

⁶⁵ Wiryani and Najih.

⁶⁶ Mukmin Zakie, 'Konflik Agraria Yang Tak Pernah Reda', *Jurnal Ilmiah Hukum Legality*, 24.1 (2017), 40 <https://doi.org/10.22219/jihl.v24i1.4256>.

⁶⁷ Bakri Fatuhrahman, Muh and Rahmat Hidayatullah, 'Perlindungan Hukum Hak-Hak Masyarakat Adat Eksplorasi Pertambangan di Kabupaten Tanatoraja', *Officium Notarium ISSN*;, 3.1 (2023), 77-85 <https://doi.org/https://doi.org/10.20885/JON.vol3.iss1.art9>. See Arina Novizas Shebubakar. P.41 see Rembrandt.

rights recognition from the state. Submission of land ownership rights can be proven through physical control of the land. The land registration process through the blockchain system creates reliable and transparent land management - in the form of storing digital land certificates for guaranteed security - both due to fraud and natural disasters.⁶⁸

The landowner establishes land ownership by undertaking specific actions on the land to establish identity. Article 24 of Government Regulation (PP) No. 24 of 1997 on Land Registration points to limited recognition of ipso facto land ownership, which remains prevalent in Indonesia. Individual and non-communal land ownership, such as customary lands not duly registered as per statutory provisions, persists. Unregistered land ownership, approached from a legal-dogmatic standpoint, does not always represent an absolute violation. Land ownership sans registration or via the *balik nama* process (transfer of title/rights) has been significantly influenced by the concept of ipso facto land possession. This notion aligns with John Locke's Labor Theory, asserting that a person who actively engages with an object, in this context land, holds the right to that object cultivated through their labor as a form of rightful appreciation for their efforts.

4. Conclusion

The relationship between humans and land transcends mere economic worth, delving deeper into a religious connection with God. As God's appointed stewards tasked with nurturing the Earth, humans are bestowed land ownership as a reward for their management efforts. Ownership rights over land are often determined by the intensity of human interaction with and control over the land, validated through customary law and land registration, where prolonged community control can lead to claims for ownership rights. Additionally, within legal culture, land holds religious significance, not solely as a physical entity but as an inseparable part of human existence, signifying magical and enduring meanings across various cultures. While some cultures perceive land as integral to human life, embodying birth, life, and burial, legal ownership concepts contrastingly entail state recognition of ownership based on documented evidence and intentions, emphasizing a juridical approach to validate and uphold ownership rights.

5. Acknowledgments

We express our gratitude to Al-Azhar University Indonesia for their support in the creation of this article. Special thanks go to Sutrisno for his invaluable role as an English proofreader in this article.

References

- Aarce Tehupiory, 'Kepemilikan Dan Pengolahan Tanah Dalam Perspektif Hukum Tanah Adat', *Journal Manager APHA*, 2.2 (2018), 45-64 <https://doi.org/10.46816/jjal.v2i2.32>
- Abbas, Ria Renita, Endriatmo Soetarto, Nurmala K Pandjaitan, and Arif Satria, 'Land Grabbing in Telukjambe Barat, Karawang, West Java and Its Teoretical Hook to David Harvey's and SMP Tjondronegoro's Works', *Sodality: Jurnal Sosiologi Pedesaan*, 9.3 (2021)

⁶⁸ Muhammad Irfan Khalid and others, 'Blockchain-Based Land Registration System: A Conceptual Framework', *Applied Bionics and Biomechanics*, (2022) <https://doi.org/10.1155/2022/3859629>.

- <https://doi.org/10.22500/9202135107>
- Abubakar, Lastuti, and Tri Handayani, 'The Urgency of Strengthening Appraisal Regulations to Realize a Legal Protection for Appraiser', *Jurnal Media Hukum*, 26.2 (2019), 131-45 <https://doi.org/10.18196/jmh.20190129>
- Aini, Nafi'ah, 'Relasi Antara Peran Manusia Sebagai Khalifah Dengan Kerusakan Alam Perspektif Al-Qur'an', *At-Tibyan*, 3.1 (2020), 32-54 <https://doi.org/10.30631/atb.v3i1.18>
- Ananta, Dicky Dwi, 'Politik Oligarki Dan Perampasan Tanah Di Indonesia: Kasus Perampasan Tanah Di Kabupaten Karawang Tahun 2014', *Jurnal Politik*, 2.1 (2017), 101 <https://doi.org/10.7454/jp.v2i1.83>
- Arba, Arba, and Israfil Israfil, 'Hubungan Hukum Antara Manusia Dengan Tanah, Air Dan Lingkungan Alam Menurut Konsepsi Hukum Islam Dan Hukum Agraria Nasional (UUPA)', *Jurnal Risalah Kenotariatan*, 2.1 (2021) <https://doi.org/10.29303/risalahkenotariatan.v2i1.23>
- Ardani, Mira Novana, 'Langkah Kementerian ATR/BPN Menghadapi Disrupsi Digital: Dalam Telaah Filsafat Hukum', *Gema Keadilan*, 9.1 (2022), 19-35 <https://doi.org/10.14710/gk.2022.14551>
- Arina Novizas Shebubakar, Marie Remfan Raniah, 'Hukum Tanah Adat/Ulayat', *Jurnal Magister Ilmu Hukum (Hukum Dan Kesejahteraan)*, 4.1 (2019), 14 <http://dx.doi.org/10.36722/jmih.v4i1.758>
- Arofah, Elmina, Nasrullah Nazsir, and Pipin Hanapiah, 'Strategi Pemecahan Masalah Konflik Sosial Akibat Pembangunan Waduk Jatigede', *Jurnal Ilmu Pemerintahan*, 1.2 (2015), 301-21 <https://doi.org/https://doi.org/10.24198/cosmogov.v1i2.11840>
- Astriani, Nadia, Ida Nurlinda, Amiruddin A.Dajaan Imami, and Chay Asdak, 'Pengelolaan Sumber Daya Air Berdasarkan Kearifan Tradisional: Perspektif Hukum Lingkungan', *Arena Hukum*, 13.02 (2020), 197-217 <https://doi.org/10.21776/ub.arenahukum.2020.01302.1>
- Aulawi, Muhamad Haris, Yordan Gunawan, M. Hanaan Alfarizi, and Manuel Campos Lago, 'Governing Indonesia's Plan to Halt Bauxite Ore Exports: Is Indonesia Ready to Fight Lawsuit at the WTO?', *BESTUUR*, 11.1 (August) (2023), 26 <https://doi.org/10.20961/bestuur.v11i1.69178>
- Dewi, A.A. Mas Adi Trinaya, 'Peranan Awig-Awig Dalam Memberdayakan Lembaga Perkreditan Desa Pakraman Selat Desa Belega Kecamatan Blahbatuh', *Jurnal Pendidikan Kewarganegaraan Undiksha*, 9.1 (2021), 135-42 <https://doi.org/10.23887/jpku.v9i1.31437>
- Ernis, Yul, 'Perlindungan Hukum Atas Tanah Adat Kalimantan Tengah', *Jurnal Penelitian Hukum De Jure*, 19.4 (2019), 435-54 <https://doi.org/10.30641/dejure.2019.v19.435-454>
- Eva, Putu, Ditayani Antari, I Putu Wahyu, Yudha Negara, Ida Ayu, and Devina Aishwarya, 'Mekanisme Penyelesaian Sengketa Sertifikat Hak Atas Tanah Ganda Oleh Kantor ATR / BPN Kabupaten Manggarai Barat', *Journal of Law, Society, and Islamic Civilization*, 11.1 (2023), 13-24 <https://doi.org/10.20961/jolsic.v11i1.66947>
- Fatuhrahman, Muh, Bakri, and Rahmat Hidayatullah, 'Perlindungan Hukum Hak-Hak Masyarakat Adat Eksplorasi Pertambangan Di Kabupaten Tanatoraja', *Officium Notarium ISSN:*, 3.1 (2023), 77-85 <https://doi.org/10.20885/ION.vol3.iss1.art9>
- Ginting, Darwin, 'A Comparison of the Ideal Agrarian Reform Law to Be Implemented in Indonesia', *Jurnal Wawasan Yuridika*, 6.2 (2022), 197-214

- <https://doi.org/10.25072/jwy.v6i2.544>
- Gunawan, Yordan, 'Arbitration Award of ICSID on the Investment Disputes of Churchill Mining PLC v. Republic of Indonesia', *Hasanuddin Law Review*, 3.1 (2017), 14 <https://doi.org/10.20956/halrev.v3i1.948>
- Gunawan, Yordan, and Mohammad Hazyar Arumbinang, 'The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 288-307 <https://doi.org/10.53955/jhcls.v3i2.116>
- Hidayat, Muhammad Arif, and Akhmad Noor, 'Pengaruh Pertumbuhan Ekonomi Terhadap Alih Fungsi Lahan Di Kota Samarinda', *Inovasi*, 16.2 (2020), 10 <https://doi.org/10.30872/jinv.v16i2>
- Irma Sari Pulungan, Ahmad Ruslan, and Desvian Bandarsyah, 'Perang Salib: Pertikaian Yang Melibatkan Dua Agama Antar Kaum Kristen Dengan Kaum Muslimin', *Realita: Jurnal Penelitian Dan Kebudayaan Islam*, 20.1 (2022), 88-102 <https://doi.org/10.30762/realita.v20i1.106>
- Jamalludin Jamaluddin, Hajawa Hajawa, Hasanuddin Hasanuddin, M. Daud, Naufal Naufal, and Nirwana Nirwana, 'Kearifan Masyarakat Lokal Dalam Pengelolaan Hutan Di Hutan Adat Marena Desa Pekalobean Kecamatan Anggeraja Kabupaten Enrekang', *Forest Services (Forces) Journal*, 01.01 (2023), 43-56 <https://doi.org/https://doi.org/10.2429/fces01>
- Junef, Muhar, 'Sengketa Wilayah Maritim Di Laut Tiongkok Selatan', *Jurnal Penelitian Hukum De Jure*, 18.2 (2018), 219 <https://doi.org/10.30641/dejure.2018.v18.219-240>
- Jurkevics, Anna, 'Land Grabbing and the Perplexities of Territorial Sovereignty', *Political Theory*, 50.1 (2022), 32-58 <https://doi.org/10.1177/00905917211008591>
- Khalid, Muhammad Irfan, Jawaid Iqbal, Ahmad Alturki, Saddam Hussain, Amerah Alabrah, and Syed Sajid Ullah, 'Blockchain-Based Land Registration System: A Conceptual Framework', *Applied Bionics and Biomechanics*, 2022 (2022) <https://doi.org/10.1155/2022/3859629>
- Kusmayanti, Hazar, and Sandi Yusta Hawari, 'Praktik Eksekusi Riil Tanah Milik Masyarakat Adat Sunda Wiwitan', *Sasi*, 26.3 (2020), 341 <https://doi.org/10.47268/sasi.v26i3.285>
- Listyaningrum, Rachma, 'Upaya Penyelesaian Sengketa Hak Atas Tanah Di Kawasan Wonorejo Kabupaten Blora', *Jurnal Multidisiplin Indonesia*, 1.3 (2022), 979-84 <https://doi.org/10.58344/jmi.v1i3.93>
- Lopulalan, Joseph Eliza, 'Jati Diri Orang Asli Papua Dalam Pusaran Otonomi Khusus Di Provinsi Papua Barat', *SOCIA: Jurnal Ilmu-Ilmu Sosial*, 15.1 (2018), 37-49 <https://doi.org/10.21831/socia.v15i1.20801>
- Machmud, Aris, Basuki Rekso Wibowo, Gunawan Widjaja, Cita Citrawinda Nurhadi, 'Land Pawning in the Archipelago: A Study of Legal Anthropology', *Baltic Journal of Law & Politics*, 15.1 (2022), 199-218 <https://doi.org/10.2478/bjlp-2022-000>
- Malaka, Zuman, 'Kepemilikan Tanah Dalam Konsep Hukum Positif Indonesia, Hukum Adat Dan Hukum Islam', *Al-Qānūn, Jurnal Pemikiran Dan Pembaharuan Hukum Islam*, 21.1 (2018), 101-19 <https://doi.org/10.15642/alqanun.2018.21.1.101-124>
- Mohammad Muhibbin, 'Perspektif Hukum Islam Tentang Konsep Penguasaan Tanah', *Al Risalah*, 17.1 (2017), 61-74 <https://doi.org/10.30631/al-risalah.v17i01.25>

- Monica Puspita Agus Triana, Dian Aries Mujiburohman, Asih Retno Dewi, and Harvini Wulansari, 'Dinamika Pengaturan Dan Penyelesaian Sengketa Pemilikan Tanah Bekas Hak Barat Di Kabupaten Pekalongan', *Jurnal Ilmu Hukum*, 10.1 (2021), 79 <https://doi.org/10.30652/jih.v10i1.7985>
- Niken Widya Intan Permatasari, H.R. Adianto Mardijono, 'Status Hak Kebendaan Terhadap Tencent Selaku Pemegang Hak Milik Kebebasan Yang Mutlak Atas Game Pubg Mobile Dalam Hukum Perdata', *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance*, 3.1 (2023), 724-34 <https://doi.org/10.53363/bureau.v3i1.212>
- Nurdin, Maharani, 'Akar Konflik Pertanahan Di Indonesia', *Jurnal Hukum Positum*, 3.2 (2018), 126 <https://doi.org/10.35706/positum.v3i2.2897>
- Olsthoorn, Johan, 'Between Starvation and Spoilage: Conceptual Foundations of Locke's Theory of Original Appropriation', *Archiv Für Geschichte Der Philosophie*, June.16 (2022), 1-30 <https://doi.org/10.1515/agph-2021-0121>
- Pancarani, Irischa Aulia, and Ridha Wahyuni, 'Perlindungan Hak Kepemilikan Tanah Masyarakat Desa Pakel: Penelusuran Legal Standing Akta 1929 Dalam Sengketa Tanah Dengan PT. Bumi Sari', *Tunas Agraria*, 6.2 (2023), 110-24 <https://doi.org/10.31292/jta.v6i2.225>
- Rahmadina, Astri, Fuad Nashori, and Sonny Andrianto, 'The Mediating Effect of Self-Esteem on Emerging Adults' Materialism and Anxiety', *Psikohumaniora: Jurnal Penelitian Psikologi*, 5.1 (2020), 1 <https://doi.org/10.21580/pjpp.v5i1.5484>
- Ramadani, Frizky Eka, and Sugeng Harianto, 'Konflik Sosial Perebutan Lahan Perkebunan', *Journal Paradigma*, 11.1 (2020), 1-34 <https://ejournal.unesa.ac.id/index.php/paradigma/article/view/51013>
- Rani, Johan's Kadir Putra dan Maulidia, 'Harmonisasi Regulasi Pembatasan Luas Tanah Pertanian Bagi Petani Dalam Program Land Reform', *Jurnal de Jure*, 13.56 (2021), 39-58 <https://doi.org/10.36277/jurnaldejure.v13i2.546>
- Rembrandt, 'Kedudukan Hak Ulayat Dalam Status Kawasan Lindung Di Sumatera Barat', *Bina Hukum Lingkungan*, 1.2 (2017), 249-63 <https://doi.org/10.24970/jbhl.v1n2.19>
- Rojek, Chris, 'John Locke, Private Property and the Birth of Achieved Celebrity', *City Research Online*, 16.4 (2022), 548-62 <https://doi.org/10.1177/17499755211051835>
- Sagala, Elviana, and Ade Parlaungan Nasution, 'Pendaftaran Tanah Tentang Hak Milik Ditinjau Dari Nilai Ekonomi', *Jurnal Ilmiah Advokasi*, 7.1 (2019), 52-63 <https://doi.org/10.36987/jiad.v7i1.245>
- Salam, Safrin, 'Penguasaan Fisik Tanah Sebagai Alat Bukti Kepemilikan Tanah Ulayat Di Pengadilan', *Jurnal Crepido*, 5.1 (2023), 1-14 <https://doi.org/10.14710/crepido.5.1.1-14>
- Setyaningsih, Wahyu, 'Land Conflicts in Lampung in 2011-2012', *Islah: Journal of Islamic Literature and History*, 3.1 (2022), 79-96 <https://doi.org/10.18326/islah.v3i1.79-96>
- Sihombing, Irene Eka, 'Land Ownership Based on National Land Law in Indonesia', *NOTARIIL: Jurnal Kenotariatan*, 3.1 (2018), 65 <https://doi.org/10.22225/jn.3.1.683.65-74>
- Spiegelman, Sam, and Gregory C Sisk, 'Cedar Point: Lockean Property and the Search for a Lost Liberalism', *Cato Institute*, 2072 (2021), 165-90
- Suharyono, Suharyono, Khalisah Hayatuddin, and Muhamad Sadi Is, 'Perlindungan Hukum Hak Asasi Manusia Dalam Memperoleh Hak Atas Tanah Di Indonesia', *Jurnal HAM*, 13.1 (2022), 15 <https://doi.org/10.30641/ham.2022.13.15-28>

- Sulaiman, King Faisal, 'Polemik Fungsi Sosial Tanah Dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 Dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012', *Jurnal Konstitusi*, 18.1 (2021), 091-111 <https://doi.org/10.31078/jk1815>
- Sulastriyono, Sulastriyono, 'Juridical and Philosophical Aspects of Joint Land (Gandhok/Gamblok) Ownership System: Adat Land Law Perspective', *Jurnal Media Hukum*, 26.1 (2019), 23-33 <https://doi.org/10.18196/jmh.20190120>
- Sumanto, Listyowati, 'Kepemilikan Rumah Tempat Tinggal Atau Hunian Oleh Orang Asing Yang Berdomisili Di Indonesia', *Jurnal Legislasi Indonesia*, 14.4 (2017), 455-62 <https://doi.org/doi.org/10.54629/jli.v14i4>
- Suwitra, I Made, 'Eksistensi Tanah Adat Dan Masalahnya Terhadap Penguatan Desa Adat Di Bali', *WICAKSANA: Jurnal Lingkungan Dan Pembangunan*, 4.1 (2020), 31-44 <https://doi.org/10.22225/wicaksana.4.1.1816.31-44>
- Tan, David, 'Assessing Indonesia's Environmental Laws Pertaining to the Abatement of Marine Plastic Pollution: A Euphemism?', *Jurnal Media Hukum*, 29.1 (2022), 1-33 <https://doi.org/10.18196/jmh.v29i1.13414>
- Tarigan, Tetty Marlina, Pagar Hasibuan, and Zulham, 'Grand Sultan Sebagai Bukti Kepemilikan Tanah Di Kota Medan (Perspektif Hukum Nasional Dan Hukum Islam)', *Istinbath*, 21.1 (2022), 1-26 <https://doi.org/10.20414/ijhi.v21i1.484>
- Vanderpuye, Inez Naaki, Samuel Antwi Darkwah, and Iva Živělová, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana', *Journal of Agricultural Science*, 12.5 (2020), 57 <https://doi.org/10.5539/jas.v12n5p57>
- — —, 'The System of Land Ownership and Its Effect on Agricultural Production: The Case of Ghana', *Journal of Agricultural Science*, 12.5 (2020), 57 <https://doi.org/10.5539/jas.v12n5p57>
- Virgonia, Vanessa, Kevin Girsang, Marina All Bright br. Hombing, Asyraf Nabil Lantong, and Wandha E.F. Heristianora, 'Hak Menguasai Dari Desa Atas Tanah, Hak-Hak Individual Atas Tanah, Konversi Hak Atas Tanah Swapraja', *Jurnal Hukum Lex Generalis*, 1.6 (2020), 66-77 <https://doi.org/10.56370/jhlg.v1i6.256>
- Wibisono, Gunawan, and Yeni Widowaty, 'Urgensi Perlindungan Lahan Pertanian Pangan Terhadap Alih Fungsi Lahan Di Daerah Istimewa Yogyakarta', *Krtha Bhayangkara*, 17.1 (2023), 93-106 <https://doi.org/10.31599/krtha.v17i1.1962>
- Wibowo, Shelin Nabila, Yani Pujiwati, Betty Rubiati, 'Kepastian Hukum Ganti Kerugian Pengadaan Tanah Bagi Pembangunan Jalan Tol Cisumdawu', *Ilmu Hukum Kenotariatan*, 4 (2021), 197 <https://doi.org/10.23920/acta.v4i2.480>
- Wiryani, Fifik, and Mokhammad Najih, 'The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia', *Sriwijaya Law Review*, 5.2 (2021), 175-91 <https://doi.org/10.28946/slrev.Vol5.Iss2.1073.pp175-191>
- Zakie, Mukmin, 'Konflik Agraria Yang Tak Pernah Reda', *Jurnal Ilmiah Hukum Legality*, 24.1 (2017), 40 <https://doi.org/10.22219/jihl.v24i1.4256>