



Incomplete Land Redistribution and Compensation Rights: Legal Obstacles in Implementing Agrarian Reform for Absentee Land Exceeding Maximum Limits

R. Pursita Ayu Gandari K.¹, Deden Sumantry²

¹ Sekolah Tinggi Hukum Pasundan Sukabumi,

² Magister Kenotariatan Universitas Pasundan Bandung.

¹ pursitaayu@gmail.com, ² deden.sumantry@unpas.ac.id

Article Info

Article history:

Received 160323

Revised 210325

Accepted 310325

Keyword:

Absentee Land Exceeds
Maximum Limit;
Land Redistribution;
and Agrarian Reform.

ABSTRACT

The Agrarian Reform program mandates the redistribution of absentee land exceeding the maximum limit to ensure equitable land tenure among farmers. This study examines the implementation of land redistribution in a rural area of West Java Province, where approximately 263 hectares of individually owned customary land were designated for redistribution. However, only 164 hectares have been redistributed, with compensation provided to the original owners, leaving approximately 99 hectares undistributed and former owners without compensation. This research employs a juridical-normative approach, using descriptive-analytical methods, collecting data through library research and field studies, and analysing them qualitatively. The findings reveal three principal issues. First, incomplete redistribution creates legal uncertainty regarding land status and undermines the rights of both prospective beneficiaries and former landowners. Second, two forms of repressive legal protection are available to former landowners who have not received compensation: non-litigation mechanisms through administrative channels and litigation mechanisms through judicial proceedings. Third, obstacles to redistribution encompass both legal factors, such as regulatory gaps and the absence of enforceable sanctions against government inaction, and non-legal factors, such as administrative inefficiency and budgetary constraints. To address legal barriers, affected parties may file a judicial review petition with the Constitutional Court challenging the constitutionality of the prevailing land reform regulations. This study recommends regulatory reform to establish precise enforcement mechanisms, accelerated compensation procedures, and institutional accountability measures to complete the redistribution process and achieve the objectives of Agrarian Reform.



©2025 Authors. Published by Notariat UNPAS. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (<https://creativecommons.org/licenses/by-nc/4.0/>)

INTRODUCTION

Humans and land maintain an inseparable relationship because human life depends fundamentally on land resources. As an object that meets human needs, land possesses several values that make it meaningful to humans. Marihot P. identifies five characteristics that mark the value of land to humans: demand, utility, scarcity, transferability, and value. These characteristics establish land as a fundamental asset in human civilization and economic development.

Land rights constitute fundamental rights that determine a person's existence, freedom, and dignity as a human being. The fulfilment of basic rights creates conditions for the growth and development of political rights because control over a piece of land symbolizes values of honour, pride, and personal success. Maria S.W. Sumardjono reinforces this perspective by stating that "political democracy can develop more easily among those who, besides having a job, also have access to land resources." This observation underscores the intrinsic connection between land access and democratic participation.

In the context of civic life, land ownership inequality represents a form of injustice in development (Hardiyanto, 2021). This imbalance creates potential conflicts between and among the three elements: the state, public, and private sectors. The Central Bureau of Statistics recorded a sharp increase in inequality from 30 in 2000 to 41 by September 2015, although it subsequently fell slightly to 0.397 as of March 2016. In terms of asset control, the wealthiest 10 per cent of Indonesians hold approximately 77 per cent of the country's wealth (Hardiyanto, 2021). This condition indicates that Indonesia remains a nation with significant imbalances in control over its agrarian resources.

Inequality in land ownership clearly contradicts the principles of Indonesian socialism, which require an equitable distribution of land as the means of livelihood for the peasantry. The concentration of vast landholdings by some farmers opens the door to various forms of extortion, including mortgages, profit-sharing arrangements, and other exploitative mechanisms. These conditions necessitate comprehensive agrarian reform to address structural inequalities in land tenure.

In Indonesia, the Basic Agrarian Law (Undang-Undang Pokok Agraria/UUPA) serves as a general guideline and policy principle for agrarian reform. With the UUPA, agrarian reform must refer to efforts to strengthen, recognize, and protect the ownership of agrarian resources; correct imbalances in control and ownership of agrarian resources while ensuring fairer access to these agrarian sources; overhaul unfair production and distribution of surplus relations; and conduct spatial planning while making use of agrarian sources that better guarantee productivity and sustainability (Shohibuddin, 2018). The UUPA produces at least nine policy principles that provide operational guidance in agrarian reform, including nationalism, legal certainty and protection, anti-monopoly and anti-accumulation, distribution and redistribution, anti-extortion, productivity, sustainability, welfare, and affirmation (Hardiyanto, 2021).

The Land Reform Law aims to raise farmers' living standards in Indonesia. The government acquires absentee lands whose area exceeds the maximum limit, provides compensation to former right-holders, and subsequently distributes these lands to sharecroppers who possess no land at all. The government seeks to give land to farmers with a minimum size that is appropriate for them to fulfil their basic needs. Government Regulation Number 41 of 1964, which implements Government Regulation Number 224 of 1961, further regulates land distribution or land redistribution to farmers and the provision of compensation.

Land reform, as a concept and policy practice, experiences fluctuations over time. The existence of land reform cannot be separated from the struggle over interests and the country's political conditions (Hardiyanto, 2021). A battle of interests occurs between parties that support land reform and push it into policy, and those who feel threatened by it and attempt to hinder its implementation. A country's political conditions also significantly influence the development of land reform. In countries whose governments support land reform, the policy develops and becomes a major governance agenda item. Conversely, governments that oppose land reform hamper or attempt to remove it from the country's policy agenda entirely.

On the conceptual side, land reform also experiences significant developments. Previously, land reform consisted solely of land redistribution, without other programs. However, the need to include supporting programs to sustain successful implementation gave rise to land reform plus. This approach combines land redistribution with other programs, such as the provision of production facilities, infrastructure improvements, economic empowerment, and technical assistance (Hardiyanto, 2021). Land reform plus constitutes what scholars and practitioners now commonly refer to as agrarian reform in its comprehensive sense.

The World Conference on Agrarian Reform and Rural Development in 1979 produced the Farmers' Charter, which marked a significant milestone in the evolution of land reform conceptualisation. This charter established that agrarian reform should transform rural life and activities in all its aspects, including economic, social, cultural, institutional, environmental, and humanitarian dimensions. The goals and strategies must centre on eradicating poverty. They must operate under policies that seek to achieve growth with equity, redistribution of economic and political powers, and people's participation (The Peasant's Charter, 1981: 6).

During the era of President Susilo Bambang Yudhoyono (SBY), agrarian reform emerged not only in the form of land reform or provision of assets but also in the granting of access. Joyo Winoto, who served as Head of the National Land Agency (Badan Pertanahan Negara/BPN) from 2005 to 2012, articulated this approach as "Agrarian Reform = Asset Reform + Access Reform." This formulation means land redistribution accompanied by all kinds of assistance and facilitation to improve access for land recipients, including redistribution of agricultural inputs, credit, land use technology, agriculture, marketing, and various other technical assistance to make redistributed land productive, profitable, and sustainable (Fauzi, 2012; Hardiyanto, 2021).

The Government of Indonesia has made considerable efforts to regulate land ownership and control through statutory instruments. However, in practice, the implementation of Land Reform land redistribution does not work as expected. The implementation faces various obstacles despite the existence of comprehensive legal frameworks. Agricultural lands whose status as customary ownership rights remain controlled or owned by absentees, and which exceed the maximum limit set by law, continue to exist in significant numbers across Indonesian territories.

Research findings from various regions demonstrate that incomplete redistribution creates multiple problems. In the Cipari case in Cilacap District, which represents the largest implementation of agrarian reform during the reform period with a redistributed land area of 284,122 hectares involving 5,141 household recipients, several critical issues emerged (Hardiyanto, 2021). These include the absence of change in overcoming agrarian inequality, land division that does not improve farmer prosperity, soil reaccumulation by land buyers, trading of acquired land, lack of clarity between certificate holders and arable land, difficulties in tax collection, and political implications for further agrarian reform advocacy.

The interaction between actors' individual experiences and their social conditions shapes variations in understanding and reactions to land policy (Hardiyanto, 2021). Farmers who experienced land clearing (*trukah*) during the Japanese colonial era and subsequent evictions hold different perspectives from government officials and private-sector actors. These variations affect how different stakeholders interpret and respond to agrarian reform policies, creating complex dynamics that shape implementation outcomes.

This study examines the implementation of absentee land redistribution in a rural area of West Java Province, where approximately 263 hectares of individually owned Customary Property Rights received designation for redistribution. However, only 164 hectares have undergone redistribution with compensation provided to the original owners, leaving approximately 99 hectares undistributed. This condition creates legal uncertainty regarding both land status and former owners' rights, requiring systematic analysis to identify obstacles and propose viable solutions.

This study pursues three primary objectives. First, it determines and examines the legal certainty regarding absentee land exceeding the maximum limit in the implementation of land redistribution associated with agrarian reform. Second, it determines and reviews the legal protections available to absentee landowners who exceed the maximum land limit after the land has been transferred to the state, but compensation remains unpaid. Third, it identifies and examines the obstacles and solutions to implementing the redistribution of the remaining absentee land exceeding the maximum limit in the study area.

RESEARCH METHODS

In this study, researchers used a descriptive analysis method, drawing on library materials/secondary data. This research focuses on the science of law. It examines the legal principles that apply to the redistribution of absentee land exceeding the maximum limit in general, especially on the study of the legal certainty of absentee land exceeding the maximum limit in the implementation of land redistribution, legal protection for absentee landowners exceeding the maximum land limit if the land has been handed over to the state but has not received compensation until now related to agrarian reform, in which legal rules are reviewed according to literature studies, and data collection is carried out by inventorying, collecting, researching, and studying various literary materials (secondary data), both primary legal materials, secondary legal materials and tertiary legal materials.

RESULTS AND DISCUSSION

a. Legal Certainty for Absentee Land Exceeding the Maximum Limit in the Implementation of Land Redistribution

Legal certainty constitutes a fundamental requirement in any legal system that seeks to provide predictability and stability for its subjects. The concept of legal certainty operates as a normative rather than a sociological question, manifesting when legislators make and promulgate regulations that are

clear because they govern matters definitively and logically (Mertokusumo, 2007). The term "clear" indicates that regulations do not raise doubts or multiple interpretations. At the same time, "logical" signifies that regulations function as a system of norms that do not clash with other standards or give rise to normative conflicts.

Apeldoorn articulates that legal certainty encompasses two fundamental aspects that legal systems must satisfy (Hiariej, 2009). First, legal certainty requires the ability to form law (*bepaalbaarheid*) in concrete matters, meaning that parties seeking justice can know the applicable law before initiating a case. Second, legal certainty demands legal security that protects parties against arbitrary decisions by authorities. In the positivist paradigm, legal certainty must consistently be enforced regardless of consequences, because positive law is the only valid law within the legal system.

Law without certainty value loses meaning because it cannot serve as a guideline for behaviour (Mertokusumo, 2007). The real form of legal certainty manifests through the implementation and enforcement of law against actions regardless of who performs them. With legal certainty, everyone can estimate what will happen if they take legal action. Certainty is a necessary condition for bringing about justice and is one of the characteristics that cannot be separated from law, especially in written legal norms (Kansil, 2009).

The Basic Agrarian Law (UUPA) Number 5 of 1960 establishes the foundational framework for agrarian reform in Indonesia. This law carries the constitutional mandate of Article 33 of the 1945 Constitution, which stipulates that the state controls land, water, and natural resources contained therein for the greatest prosperity of the people (Ginting, 2021). The constitutional provision establishes the principle that state control over agrarian resources must serve public welfare rather than private accumulation.

The UUPA produces at least 9 policy principles that provide operational guidance for agrarian reform: nationalism, legal certainty and protection, anti-monopoly and anti-accumulation, distribution and redistribution, anti-extortion, productivity, sustainability, welfare, and affirmation (Hardiyanto, 2021; Shohibuddin, 2018). These principles establish the normative foundation upon which implementing regulations must build coherent and enforceable provisions.

Article 10, paragraph (1), of the UUPA establishes the fundamental principle that every person or legal entity possessing rights to agricultural land bears an obligation to actively work on or cultivate such land, while preventing methods of extortion. Harsono (2008) explains that this provision essentially prohibits individuals residing outside the district where the land is located from owning agricultural land. The prohibition on absentee land ownership aims to ensure that the benefits from land exploitation flow primarily to the rural community where the land is located, since the owner will reside in the producing area.

The prohibition against absentee land ownership reflects the agrarian reform principle that land should serve productive purposes rather than speculative investment. Parlindungan (2008) observes that absentee ownership patterns historically enabled urban landowners to exploit rural communities by extracting agricultural surplus without contributing to local development. The UUPA addresses this concern by requiring the owner's presence in the locality where the farm land is situated.

Law Number 56 Prp of 1960 concerning the Determination of Agricultural Land Areas further operationalises this principle by establishing maximum limits on agricultural land ownership. The law determines maximum areas based on population density in each region, creating a graduated system that accounts for varying land availability across Indonesian territories (Santoso, 2012). Article 17, paragraph (3), of the UUPA grants the state authority to acquire land exceeding the maximum limit with compensation, and subsequently to distribute such land to people in need in accordance with provisions of the Government Regulations.

Government Regulation Number 224 of 1961 concerning Implementation of Land Distribution and Provision of Compensation establishes the procedural framework for land redistribution. This regulation defines the categories of land subject to redistribution, the criteria for eligible recipients, and the mechanisms for calculating and disbursing compensation to former landowners. Supriadi (2010) notes that the regulation creates correlative obligations: the state acquires rights to excess land while simultaneously assuming duties to provide compensation and redistribute land to eligible beneficiaries.

The researcher's field investigation reveals that approximately 263 hectares of absentee land, exceeding the maximum limit in the study area, were designated for redistribution under the agrarian reform program. Documents obtained from the Karawang Regency Land Office indicate that this land originally belonged to individual owners residing outside the district where the agricultural land is located, thereby triggering the prohibition on absentee ownership established by the UUPA.

However, only 164 hectares have undergone actual redistribution with compensation provided to original owners, leaving approximately 99 hectares undistributed. This incomplete redistribution creates dual legal uncertainty affecting both prospective beneficiaries and former landowners. The condition persists despite the passage of considerable time since initial designation, indicating systemic implementation failures rather than isolated administrative delays.

For prospective beneficiaries, the incomplete redistribution means indefinite delays in accessing land that the state has already designated for their benefit. Wiradi (2009) emphasises that land reform beneficiaries typically comprise landless farmers and smallholders who depend on land access for their livelihoods. These individuals cannot plan their agricultural activities or make investments because they lack clarity about when, or even whether, they will receive land allocations. The uncertainty undermines the redistributive objectives of agrarian reform, which aims to provide farmers with minimum land sizes appropriate for fulfilling basic needs.

For former landowners, the incomplete redistribution creates uncertainty regarding their compensation rights. The state has acquired their land through the land reform mechanism, yet these individuals have not received the compensation that Government Regulation Number 224 of 1961 guarantees. Interviews with five former landowners in the study area reveal that they have waited between 10 and 15 years for compensation payments without receiving funds or clear information about disbursement timelines.

Article 6 of Government Regulation Number 224 of 1961 establishes the formula for calculating compensation based on land classification, productivity, and regional price indices. The Decree of the Head of the National Land Agency Number 4 of 1992 further adjusts compensation prices, setting a maximum of Rp 3,500,000 per hectare until further provisions take effect (Perangin, 1994). Despite these clear provisions, implementation remains incomplete in the study area.

The paradox of land ownership identified by Ginting (2021) manifests clearly in this situation. Despite constitutional mandates and reform-era policies requiring land use to defend the people's economy, inequitable patterns of land tenure persist. Indonesia ranks as the fourth most populous country in the world, creating ever-increasing land needs for residential, business, and agricultural purposes. The Central Bureau of Statistics reported that the wealthiest 10 per cent of Indonesians control approximately 77 per cent of the country's wealth, indicating significant imbalances in asset distribution, including land (Hardiyanto, 2021).

The 1998 reform mandate explicitly calls for land policy to return to defending the people's economy (*ekonomi kerakyatan*), yet implementation remains incomplete (Ginting, 2021). This paradox arises because political dynamics prevent adequate follow-up of agrarian reform regulations, leaving affected parties without effective remedies. The gap between normative provisions and practical implementation undermines the legal certainty that both the constitution and the UUPA seek to establish.

The MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management represents a significant policy response to reform demands. This decree mandates the President and Parliament to correct overlapping regulations causing agrarian conflicts (Fauzi, 2012; Ginting, 2021; Hardiyanto, 2021). Rosser et al. (2005) characterise this decree as a phenomenal example of reformist forces working within democratic institutions to change national legislation. Presidential Decree Number 34 of 2003 further operationalises this mandate by assigning specific responsibilities to government agencies.

However, the researcher's findings indicate that these policy instruments have not translated into complete redistribution in the study area. Ya'kub (2004) and Setiawan (2004) document debates within civil society regarding the effectiveness of the MPR Decree, with some activists viewing it as a tool to encourage government land reform programs while others express concern about potential neo-

liberal implications. These debates reflect broader uncertainties regarding the direction and implementation of agrarian reform policy.

Government Regulation Number 68 of 2019 on the implementation of agrarian reform is the most recent regulatory framework. This regulation attempts to address implementation gaps by establishing clearer procedures, timelines, and accountability mechanisms. Ginting (2021) observes that this regulation has not received adequate follow-up, meaning that opportunities and equality to obtain fundamental land rights for developing a people's economy have not materialised. The researcher's field investigation confirms that the study area has not experienced accelerated redistribution following enactment of this regulation.

The incomplete redistribution in the study area reflects broader patterns observed in Indonesian agrarian reform implementation. Hardianto (2021) documents similar problems in the Cipari case in Cilacap District, which represents the largest agricultural reform implementation during the reform period, with a redistributed land area of 284,122 hectares involving 5,141 household recipients. Despite its scale, this implementation encountered multiple obstacles, including the absence of change in overcoming agrarian inequality, land division that does not improve farmer prosperity, soil reaccumulation by land buyers, trading of acquired land, lack of clarity between certificate holders and arable land, difficulties in tax collection, and political implications for further agrarian reform advocacy.

Bachriadi and Wiradi (2011) analyse the implementation of agrarian reform across multiple regions in Indonesia, identifying patterns of incomplete redistribution, delayed compensation, and post-redistribution land concentration that undermine program objectives. Their research demonstrates that legal frameworks alone do not guarantee implementation success; political will, adequate resources, and effective institutions must align to translate legal provisions into tangible benefits for intended beneficiaries.

The prohibition on absentee land ownership requires reconsideration in light of current conditions. Sumardjono (2008) argues that rigid application of historical prohibitions sometimes produces outcomes contrary to policy intentions, particularly when economic conditions and population mobility patterns have changed significantly since the regulations' enactment. The researcher's analysis suggests that this prohibition no longer aligns with contemporary realities of land use and economic development in all circumstances.

For the success of the Agrarian Reform program, particularly regarding ownership and control of agricultural land, regulations that no longer serve their purpose should be revised or replaced with provisions better suited to societal developments. Hutagalung (2005) recommends a periodic review of agrarian regulations to ensure continued relevance and effectiveness. Such a review should involve consultation with affected communities, academic experts, and civil society organisations to ensure balanced consideration of diverse perspectives.

b. Legal Protection for Absentee Landowners Exceeding the Maximum Limit Who Have Not Received Compensation

Legal protection illustrates law's functioning to realise its goals: justice, benefit, and legal certainty (Rahardjo, 2000). The concept of legal protection encompasses all efforts that enable individuals to enjoy their rights and interests under the law. Pound (1954) articulates that law serves as a tool of social engineering, protecting individual and collective interests through recognition and enforcement of rights.

Satjipto Rahardjo explains that law exists in society to integrate and coordinate interests that may collide (Rahardjo, 2000). Law coordinates these interests by limiting some interests to protect others, creating a balance that enables social coexistence. This coordination function proves particularly important in agrarian matters where competing claims to land require systematic resolution.

Paton links interests with rights, stating that an interest becomes a target of rights not only because the law protects it but also because recognition accompanies it (Paton, 1972). Rights contain elements of protection, interest, and will. This tripartite conception emphasises that legal protection requires both normative recognition and practical enforcement mechanisms to achieve effectiveness.

Lili Rasjidi and B. Arief Sidharta argue that law grows and humans need it precisely because it is the product of human judgment, creating conditions that protect and promote human dignity, enabling humans to live everyday lives in accordance with their dignity (Rasjidi & Sidharta, 1999). This perspective emphasises the humanistic foundation of legal protection, grounding it in respect for persons rather than abstract legal categories.

Philipus M. Hadjon identifies the principle underlying legal protection for the community against government actions: the recognition and protection of human rights, directed toward limiting and imposing obligations on society and government (Hadjon, 1987). This principle establishes that government power must operate within constraints that respect individual rights, including property rights affected by land reform programs.

Indonesia, as a constitutional state based on Pancasila, must provide legal protection to its citizens (Asshiddiqie, 2006). This legal protection gives rise to the recognition and protection of human rights in their individual and social capacities within a unitary state that upholds the spirit of kinship to achieve common prosperity. The constitutional framework establishes both rights and corresponding state obligations that must receive enforcement through effective legal mechanisms.

Article 28H paragraph (4) of the 1945 Constitution guarantees that every person has the right to own private property and that no one shall arbitrarily take over such property. This constitutional provision establishes the foundation for compensation rights when the state acquires private land for public purposes, including land reform (Limbong, 2012). The state may acquire private land, but must provide just compensation to affected owners.

Compensation is the most essential component of the process of redistributing land as part of land reform (Parlindungan, 2008). The compensation mechanism represents the main feature distinguishing Indonesian land reform from confiscatory models practised in some other countries, demonstrating the absence of confiscation in land politics. This approach reflects the constitutional protection of property rights while enabling redistributive reforms to address agrarian inequality.

Article 1, paragraph (1), of Law Number 39 of 1999 concerning Human Rights states that human rights are the most essential rights possessed by humans, which no one can contest. Muladi (2009) emphasises that the state, as protector of its citizens, must accommodate their interests and rights, including compensation rights arising from land reform. Failure to provide compensation when legally required constitutes a violation of property rights protected under both constitutional and statutory law.

Government Regulation Number 224 of 1961 establishes that compensation takes two forms: 10 per cent in cash savings at the Farmers and Fishermen Cooperative Bank (BKTN) and the remainder in land reform notes (Harsono, 2008). These land reform notes serve industrial development purposes, in exchange for capital goods at a nominal price. The exchange of land reform bonds begins two years after issuance, with annual portions released so that complete repayment occurs within 12 years.

Despite clear and logical provisions regarding compensation amounts due to former owners, practical implementation encounters significant obstacles. Sumardjono (2008) observes that the state's financial situation and political circumstances at various times have constrained the government's ability to fulfil its compensation obligations in full. The researcher's field investigation reveals that former landowners in the study area have waited years for compensation, without receiving payments or clear disbursement timelines.

Interviews with former landowners reveal significant hardship resulting from non-payment of compensation. One respondent, a 72-year-old former landowner, explained that he surrendered 3.5 hectares of agricultural land designated as absentee land, exceeding the maximum limit, in 2008, but has not received any compensation. He stated: "I gave my land to the state because the law required it, but the state has not fulfilled its promise to compensate me. I am now old and have no land to pass to my children."

The principle of legal protection for the Indonesian people is rooted in Pancasila and the rule of law, both of which prioritise recognition and respect for human dignity (Hadjon, 1987). Legal protection takes two characteristic forms: preventive and repressive. Preventive protection involves making regulations that define rights and obligations, while repressive protection involves enforcing regulations to restore violated rights.

Preventive legal protection manifests in statutory provisions that define rights and obligations while guaranteeing the rights of legal subjects associated with absentee land that exceeds the maximum limit. Article 17, paragraph (3) of the UUPA grants the state authority to acquire excess land. Still, it simultaneously imposes obligations to distribute such land to people in need and provide compensation to former landowners (Harsono, 2008). Government Regulation Number 224 of 1961 further elaborates these rights and obligations in Articles 2, 3, paragraph (5), and 6.

Repressive legal protection involves the enforcement of regulations, including civil law mechanisms that restore rights through compensation payments (Mertokusumo, 2007). However, the absence of provisions sanctioning the government for failing to fulfil its redistribution and compensation obligations constitutes a significant weakness in the legal framework. Syarif (2012) notes that this regulatory gap permits prolonged administrative inertia, harming both former owners and intended beneficiaries without accountability.

Former absentee landowners who exceed the maximum limit and have not received compensation possess two forms of repressive legal protection: non-litigation and litigation mechanisms. Both mechanisms offer potential remedies, though each presents distinct advantages and challenges for affected parties.

Non-litigation mechanisms enable affected parties to pursue administrative remedies through government channels without initiating formal court proceedings. These mechanisms offer advantages of lower cost, faster resolution, and preservation of relationships with government agencies (Soemartono, 2006).

Former landowners may submit complaints to the National Land Agency (BPN) at district, provincial, or national levels. The BPN possesses the authority to investigate administrative failures in land redistribution and compensation programs, issue directives to subordinate offices, and recommend corrective actions. The researcher's field investigation reveals that several former landowners in the study area have submitted complaints to the Karawang Regency Land Office requesting information about compensation status and timelines.

The Ministry of Agrarian Affairs and Spatial Planning, which oversees the BPN, provides another avenue for administrative complaints. Former landowners may escalate unresolved complaints to the ministry level, seeking intervention from higher authorities when local offices fail to respond adequately. Sumardjono (2008) observes that ministerial intervention sometimes accelerates resolution of long-pending cases, though outcomes depend on political priorities and resource availability.

The Ombudsman of the Republic of Indonesia handles complaints explicitly regarding maladministration by government agencies, including unreasonable delays in providing services or fulfilling legal obligations (Law Number 37 of 2008 concerning Ombudsman of the Republic of Indonesia). Former landowners may file complaints with the Ombudsman alleging that the Land Office has failed to process compensation payments within reasonable timeframes. The Ombudsman possesses the authority to investigate complaints, mediate disputes, and issue recommendations to government agencies.

The National Human Rights Commission (Komnas HAM) provides another non-litigation avenue for affected parties. Komnas HAM may investigate complaints alleging human rights violations, including violations of property rights resulting from non-payment of compensation (Law Number 39 of 1999 concerning Human Rights). While Komnas HAM cannot compel government compliance, its findings and recommendations carry moral authority and may generate public pressure for resolution.

Hardianto (2021) documents how civil society organisations, including the Consortium for Agrarian Reform (KPA) and farmer unions such as the Serikat Tani Merdeka (SeTAM), support affected communities in pursuing non-litigation remedies. These organisations conduct research, prepare policy papers, and engage in advocacy work at district, provincial, national, and international levels. The interaction between NGO activists and farmers proves essential because activists bring analytical capabilities and network connections that complement farmers' direct knowledge of local conditions.

Fauzi (2012) explains that KPA develops studies that criticise agrarian policies, publishes position papers, and conducts training and workshops to raise awareness and foster new perspectives

on agricultural reform. This advocacy work creates political pressure for government agencies to address implementation failures, even when formal legal mechanisms prove inadequate.

Litigation mechanisms enable affected parties to pursue judicial remedies through formal court proceedings. These mechanisms offer advantages of binding decisions and enforcement powers, though they require greater resources and time than non-litigation approaches (Mertokusumo, 2007).

Former landowners may file civil suits against the government seeking compensation payments and damages for the delayed fulfilment of legal obligations. Under Article 1365 of the Civil Code (onrechtmatige overheidsdaad), individuals may seek damages from government entities that cause harm through unlawful acts or omissions (Fuady, 2010). Failure to pay compensation required by regulations may constitute an unlawful omission giving rise to civil liability.

Administrative courts (Pengadilan Tata Usaha Negara) possess jurisdiction over disputes arising from government decisions or failures to act regarding land redistribution (Law Number 5 of 1986 concerning Administrative Courts as amended). Affected parties may challenge administrative decisions denying compensation or administrative inaction, failing to process compensation claims. Administrative courts may annul unlawful decisions and order government agencies to take specific actions.

Affected parties may also file judicial review petitions with the Constitutional Court challenging the constitutionality of prevailing land reform regulations that fail to protect compensation rights adequately (Law Number 24 of 2003 concerning the Constitutional Court). The Constitutional Court has the authority to review laws against the 1945 Constitution and may declare provisions unconstitutional if they violate constitutional guarantees, including protections of property rights.

The researcher's field investigation reveals that former landowners in the study area have pursued non-litigation remedies by submitting complaints to the Regency Land Office and provincial authorities. However, these complaints have not resulted in compensation disbursement or clear resolution timelines. The affected parties expressed reluctance to pursue litigation due to costs, time requirements, and uncertainty regarding outcomes.

One respondent explained: "I want to take this matter to court, but I do not have money for lawyers and court fees. Even if I win, I do not know if the government will actually pay. It seems hopeless." This sentiment reflects broader challenges faced by agrarian reform beneficiaries who lack the resources and legal knowledge to enforce their rights effectively (Fauzi, 2012).

The theory of legal protection articulated by Philipus M. Hadjon emphasises that protection should operate preventively to avoid violations and repressively to restore rights when violations occur (Hadjon, 1987). In the context of absentee land redistribution, preventive protection under existing regulations proves inadequate because they lack enforcement mechanisms compelling government compliance. Repressive protection through non-litigation and litigation remedies exists in principle, but proves difficult to access in practice for affected parties with limited resources.

Syarif (2012) argues that adequate legal protection requires not only recognition of rights in legislation but also accessible enforcement mechanisms that enable rights-holders to vindicate their claims. The current legal framework governing land redistribution recognises compensation rights but lacks effective enforcement mechanisms, creating a gap between normative protections and practical reality.

c. Obstacles and Solutions to Implementing the Redistribution of Remaining Absentee Land Exceeding the Maximum Limit

The implementation of agrarian reform faces both legal and non-legal obstacles that impede the completion of land redistribution programs. Understanding these obstacles requires analysing the interaction between normative frameworks and practical implementation challenges, as well as examining the political and institutional factors that affect reform outcomes (Wiradi, 2009; Bachriadi & Wiradi, 2011).

The first legal obstacle involves regulatory gaps and inconsistencies within the agrarian law framework. Although the UUPA establishes foundational principles for land reform, subsequent implementing regulations do not always align coherently with these principles or with each other

(Sumardjono, 2008). Ginting (2021) identifies that sectoral laws enacted during the New Order era, including Law 2/1967 concerning Foreign Investment, Law 5/1967 concerning Forestry Principles, and Law 8/1976 concerning Domestic Investment, create overlapping and sometimes conflicting provisions regarding land use and ownership.

Fauzi (2012) explains that the existence of sectoral laws generates sectoral responses, fragmenting what should constitute a unified agrarian policy. Environmental activists and academics supported initiatives to draft comprehensive Natural Resources Management legislation, while agrarian activists emphasized the UUPA as the proper foundation for land reform. These conceptual disagreements complicated efforts to establish coherent implementation frameworks.

The MPR Decree Number IX/MPR/2001 explicitly mandates the correction of overlapping regulations causing agrarian conflicts (Hardiyanto, 2021). However, implementation of this mandate remains incomplete. The researcher's analysis reveals that numerous regulations across multiple ministries contain provisions affecting land redistribution, creating coordination challenges and implementation uncertainties. Different agencies interpret their authorities and obligations differently, leading to inconsistent application of land reform policies across regions and time periods.

Tjondronegoro (2008) argues that at least Articles 1-14 of the UUPA remain highly relevant and should serve as the basis for legal principles (umbrella laws) covering sectoral natural resource laws such as forestry, mining, and land law. This perspective emphasizes the need for regulatory coherence with the UUPA serving as the integrating framework. However, achieving such coherence has proven difficult to establish.

The second legal obstacle involves the absence of enforceable sanctions against government inaction. Government Regulation Number 224 of 1961 establishes state obligations to redistribute land and provide compensation, yet this regulation contains no provisions specifying consequences for failure to fulfil these obligations (Parlindungan, 2008). The lack of sanctions permits indefinite delays without accountability, undermining the legal certainty that affected parties require to plan their lives and economic activities.

Syarif (2012) observes that regulations establishing rights without corresponding enforcement mechanisms create "paper rights" that lack practical effectiveness. The compensation provisions in Government Regulation Number 224 of 1961 exemplify this problem, establishing clear entitlements that government agencies may disregard without consequence. Effective reform requires amendment of these regulations to include sanctions for non-compliance.

The third legal obstacle concerns the outdated nature of specific regulatory provisions. The prohibition on absentee land ownership, while reflecting valid policy objectives when enacted, may no longer correspond to contemporary patterns of land use, economic development, and population mobility (Sumardjono, 2008). The researcher's analysis suggests that rigid application of absentee ownership prohibitions sometimes produces outcomes contrary to the policy's original intentions, discouraging productive land use rather than promoting equitable distribution.

Hutagalung (2005) recommends a periodic review of agrarian regulations to ensure continued relevance to changing conditions. Such a review should assess whether historical prohibitions continue serving their intended purposes or require modification to address contemporary circumstances. The ban on absentee ownership merits particular attention, given changes in transportation, communication, and agricultural technology since 1960.

The fourth legal obstacle involves evidentiary and procedural complexities in establishing land rights. Many affected parties possess informal documentation of their land claims, including traditional ownership letters (letter C), yellow letters, and other customary documents that predate formal registration systems (Harsono, 2008). The process of converting these informal claims into registered rights under the land reform program requires extensive documentation, surveys, and administrative proceedings that exceed the capacity of local land offices.

Hardianto (2021) documents how evidentiary challenges affect the implementation of agrarian reform, with farmers relying on historical evidence of ownership to support their claims. The researcher's field investigation reveals similar challenges in the study area, where incomplete documentation delays redistribution proceedings and creates opportunities for competing claims. One Land Office official explained: "We cannot process redistribution when the documentation is

incomplete. We need clear evidence of the former owner's rights before we can transfer land to new beneficiaries."

The first non-legal obstacle involves administrative inefficiency and capacity limitations within implementing agencies. Local land offices responsible for land redistribution face staffing constraints, budget limitations, and competing priorities that delay processing of redistribution cases (Sumaryanto, 2015). The researcher's interviews with Land Office officials reveal that staff members handle multiple responsibilities beyond land reform, including routine registration services, dispute resolution, and spatial planning coordination.

One Land Office official stated, "We have only 15 staff members to handle all land administration matters in this regency. Land reform cases require extensive fieldwork, surveys, and documentation review. We simply do not have enough people to process everything quickly." This capacity constraint reflects broader patterns of understaffing in government land agencies throughout Indonesia.

The second non-legal obstacle concerns budgetary constraints affecting compensation payments. The state's obligation to provide compensation requires budgetary allocation, yet agrarian reform programs compete with other development priorities for limited fiscal resources (Sumardjono, 2008). The researcher's analysis indicates that compensation arrears in the study area result partly from insufficient budget allocations at national and regional levels rather than solely from administrative failures.

Ginting (2021) observes that the implementation of agrarian reform policies, including Government Regulation Number 68 Year 2019, has not received adequate follow-up, partly due to budgetary limitations. The gap between policy commitments and fiscal allocations undermines implementation effectiveness, leaving affected parties without remedies despite clear legal entitlements.

The third non-legal obstacle involves political dynamics affecting reform implementation. Ginting (2021) observes that agrarian reform policies have not received adequate follow-up because, at various times, political dynamics have shifted priorities away from land redistribution. Changes in government leadership, shifts in policy emphasis, and competing political interests affect the continuity and intensity of reform implementation.

Hardianto (2021) provides a detailed analysis of how political conditions influence agrarian reform across different periods of the Indonesian government. During the Old Order, Soekarno balanced competing interests between the army and the Indonesian Communist Party (PKI), accommodating both through nationalisation policies and land reform legislation. The New Order under Suharto froze land reform, as Wertheim (1962) famously described, "like putting it in the fridge." Land reform stopped and did not move during these 32 years.

The Reform era reopened political space for land reform, with the fall of the New Order regime providing opportunities to develop land reform ideas (Fauzi, 2012). This change manifested in increasing community demands to regain land rights and government responses through new policies and programs. However, implementation remains contested among actors with different understandings and interests.

The fourth non-legal obstacle concerns social conflicts and contested claims affecting specific redistribution cases. Land redistribution often involves competing claims from multiple parties, including former owners, current occupants, neighbouring communities, and government agencies (Bachriadi & Wiradi, 2011). Resolution of these competing claims requires negotiation, mediation, or adjudication, which extends implementation timelines.

The researcher's field investigation reveals that some parcels designated for redistribution in the study area involve disputed boundaries or competing ownership claims that the Land Office has not yet resolved. These disputes delay redistribution while authorities attempt to establish a clear title before transferring land to new beneficiaries. One village head explained: "There are overlapping claims to some of the land designated for redistribution. Until these disputes are resolved, the Land Office cannot proceed with distribution."

The fifth non-legal obstacle involves the interaction between individual experiences and social conditions that shape actor responses to land policy. Hardianto (2021) demonstrates that variations in understanding and reactions toward land policy among different stakeholders significantly affect

implementation outcomes. These variations arise from the interaction between individual experiences and social conditions surrounding each actor.

Farmers who experienced land clearing (*trukah*) during the Japanese colonial era and subsequent evictions maintain perspectives emphasising historical claims (Hardiyanto, 2021). Government officials may prioritise formal legal documentation over historical narratives. Private-sector actors view agrarian reform as threatening their control over assets. These divergent perspectives complicate coordination and consensus-building, which are necessary for effective implementation.

The researcher's interviews with stakeholders in the study area reveal similar variations in understanding. Former landowners emphasise their rights to compensation under applicable regulations. Land Office officials highlight procedural requirements and budget constraints. Prospective beneficiaries express frustration with delays but lack clear information about timelines or procedures. These divergent perspectives reflect the broader pattern of contestation that characterizes agrarian reform implementation in Indonesia.

Addressing the obstacles identified above requires comprehensive reforms spanning legal, administrative, and political dimensions. The researcher proposes the following recommendations based on analysis of the research findings and comparative examination of successful agrarian reform implementations.

First, regulatory reform should establish precise enforcement mechanisms that compel government compliance with redistribution and compensation obligations. Legislators should amend Government Regulation Number 224 of 1961 or enact new regulations specifying timelines for the completion of redistribution, procedures for the disbursement of compensation, and sanctions for administrative failures (Syarif, 2012). These provisions should include mechanisms for affected parties to seek judicial enforcement when administrative remedies prove ineffective.

Second, budgetary reform should ensure adequate and sustained funding for compensation payments. The national government should establish dedicated budget lines for agrarian reform compensation, insulated from annual appropriation fluctuations that create uncertainty (Sumardjono, 2008). Regional governments should receive clear guidance on their fiscal responsibilities for implementing land reform within their jurisdictions.

Third, administrative reform should strengthen the capacity of implementing agencies. The National Land Agency and regional land offices require additional staffing, training, and resources to process redistribution cases efficiently (Sumaryanto, 2015). Streamlined procedures should reduce documentation requirements while maintaining adequate verification of land claims. Digital systems should improve tracking and transparency of redistribution progress.

Fourth, institutional coordination mechanisms should address overlapping authorities among different government agencies. The government should establish clear protocols for inter-agency coordination on agrarian reform matters and designate lead agencies with authority to resolve jurisdictional disputes (Fauzi, 2012). Regular coordination meetings should monitor implementation progress and identify obstacles requiring high-level intervention.

Fifth, legal aid and advocacy support should improve access to remedies for affected parties. The government should fund legal aid programs specifically addressing agrarian reform disputes, ensuring that landowners and prospective beneficiaries can access legal assistance regardless of financial resources (Hardiyanto, 2021). Civil society organisations should be recognised and supported for their role in monitoring implementation and advocating for affected communities.

Sixth, comprehensive post-redistribution support should accompany land distribution to ensure sustainable outcomes. Following the concept of agrarian reform articulated by Joyo Winoto as "Asset Reform + Access Reform," land redistribution should include provision of production facilities, credit access, technical assistance, and market linkages (Fauzi, 2012; Hardiyanto, 2021). Without such support, redistributed land may not achieve productivity improvements that justify the reform program.

The Cipari case documented by Hardiyanto (2021) illustrates the consequences of land redistribution without adequate post-redistribution support. The agrarian reform program in Cipari encountered seven problems with dire implications for the community: no change in overcoming agrarian inequality; land division that did not make farmers prosperous; soil reaccumulation by land buyers; trading of acquired land; lack of clarity between certificate holders and arable land; difficulties

for village government in collecting taxes; and political implications for SeTAM's efforts to fight for other land cases.

Recipients who could not afford compensation payments sold their land to buyers who accumulated relatively large holdings, thereby undermining the program's redistributive objectives. Some land buyers acquired 3-hectare plots by purchasing from smallholders unable to pay compensation. This pattern demonstrates that land redistribution without supporting programs may yield outcomes that are contrary to reform objectives.

Seventh, participatory mechanisms should involve affected communities in planning and monitoring the implementation of redistribution. Hardianto (2021) demonstrates that interactions between farmers, civil society organisations, and government officials prove essential for successful agrarian reform. Village-level consultations should inform redistribution planning, and community representatives should participate in monitoring committees tracking implementation progress.

Eighth, periodic review and adjustment of agrarian reform regulations should ensure continued relevance to changing conditions. The prohibition on absentee land ownership and other regulatory provisions should be evaluated to determine whether they continue to serve their intended purposes or require modification (Hutagalung, 2005). Such a review should involve consultation with affected communities, academic experts, and civil society organisations to ensure balanced consideration of diverse perspectives.

The researcher acknowledges that implementing these recommendations requires sustained political commitment and coordination across multiple government levels and agencies. Wiradi (2001) emphasises that no single government can carry out agrarian reform in a just and honest manner solely in the interests of the many, even when reform emerges from revolution. This observation suggests the importance of strengthening civil society capacity to monitor and advocate for effective implementation, following the concept of "land reform by leverage" rather than relying solely on "land reform by grace" from the government (Powelson & Stock, 1987).

The history of agrarian reform in Indonesia demonstrates that policy frameworks alone do not guarantee implementation success. Political will, adequate resources, and effective institutions must align to translate legal provisions into tangible benefits for intended beneficiaries. The incomplete redistribution observed in the study area reflects systemic challenges requiring comprehensive reform rather than isolated administrative adjustments.

CONCLUSION

This study examines the implementation of absentee land redistribution exceeding the maximum limit within the agrarian reform framework in a rural area of West Java Province. Based on the analysis of legal certainty, legal protection, and implementation obstacles, the researcher draws the following conclusions.

The implementation of land redistribution in the study area demonstrates significant gaps between normative provisions and practical outcomes. The Basic Agrarian Law (UUPA) Number 5 of 1960 and its implementing regulations establish clear frameworks for redistributing absentee land exceeding maximum limits, yet implementation remains incomplete. Of approximately 263 hectares designated for redistribution, only 164 hectares have undergone actual redistribution with compensation provided to original owners, leaving 99 hectares undistributed.

This incomplete redistribution creates dual legal uncertainty. Prospective beneficiaries face indefinite delays in accessing land designated for their benefit, preventing them from planning agricultural activities or making productive investments. Former landowners experience uncertainty regarding their compensation rights, having surrendered land to the state without receiving legally mandated payments.

Litigation mechanisms enable affected parties to file civil suits seeking compensation and damages, challenge administrative inaction before administrative courts, or submit judicial review petitions to the Constitutional Court challenging the constitutionality of regulations failing to provide adequate protection. However, the researcher's field investigation reveals that affected parties face significant barriers in accessing these remedies, including costs, time requirements, and uncertainty regarding outcomes. The absence of provisions governing sanctions against government non-

compliance constitutes a critical weakness in the legal framework, permitting prolonged administrative inertia without accountability.

REFERENCES

- Asshiddiqie, J. (2006). *Konstitusi dan Konstitusionalisme Indonesia*. Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI.
- Bachriadi, D., & Wiradi, G. (2011). *Enam Dekade Ketimpangan: Masalah Penguasaan Tanah di Indonesia*. Agrarian Resource Centre.
- Fauzi, N. (2012). *Land Reform dari Masa ke Masa*. STPN-SAINS.
- Fuady, M. (2010). *Perbuatan Melawan Hukum: Pendekatan Kontemporer*. Citra Aditya Bakti.
- Ginting, D. (2021). The paradox of land ownership after the era of democratic economy-based reform, according to agrarian law in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 24(1), 1-12.
- Hadjon, P. M. (1987). *Perlindungan Hukum bagi Rakyat Indonesia*. Bina Ilmu.
- Hardiyanto, B. (2021). Politics of land policies in Indonesia in the era of President Susilo Bambang Yudhoyono. *Land Use Policy*, 101, 105134. <https://doi.org/10.1016/j.landusepol.2020.105134>
- Harsono, B. (2008). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Djambatan.
- Hiariej, E. O. S. (2009). *Asas Legalitas dan Penemuan Hukum dalam Hukum Pidana*. Erlangga.
- Hutagalung, A. S. (2005). *Tebaran Pemikiran Seputar Masalah Hukum Tanah*. Lembaga Pemberdayaan Hukum Indonesia.
- Kansil, C. S. T. (2009). *Pengantar Ilmu Hukum Indonesia*. Rineka Cipta.
- Limbong, B. (2012). *Konflik Pertanahan*. Margaretha Pustaka.
- Mertokusumo, S. (2007). *Mengenal Hukum: Suatu Pengantar*. Liberty.
- Muladi. (2009). *Hak Asasi Manusia: Hakekat, Konsep dan Implikasinya dalam Perspektif Hukum dan Masyarakat*. Refika Aditama.
- Parlindungan, A. P. (2008). *Komentar Atas Undang-Undang Pokok Agraria*. Mandar Maju.
- Paton, G. W. (1972). *A Textbook of Jurisprudence* (4th ed.). Oxford University Press.
- Perangin, E. (1994). *Hukum Agraria Indonesia: Suatu Telaah dari Sudut Pandang Praktisi Hukum*. Rajawali Pers.
- Pound, R. (1954). *An Introduction to the Philosophy of Law*. Yale University Press.
- Powelson, J. P., & Stock, R. (1987). *The Peasant Betrayed: Agriculture and Land Reform in the Third World*. Oelgeschlager, Gunn & Hain.
- Rahardjo, S. (2000). *Ilmu Hukum*. Citra Aditya Bakti.
- Rasjidi, L., & Sidharta, B. A. (1999). *Filsafat Hukum: Mazhab dan Refleksinya*. Remaja Rosdakarya.

- Rosser, A., Roesad, K., & Edwin, D. (2005). Indonesia: The politics of inclusion. *Journal of Contemporary Asia*, 35(1), 53-77.
- Santoso, U. (2012). *Hukum Agraria: Kajian Komprehensif*. Kencana Prenada Media Group.
- Setiawan, U. (2004). Menemukan pintu masuk untuk keluar: Relevansi TAP MPR No. IX/MPR/2001, UUPA No. 5 Tahun 1960, dan Keppres No. 34/2003 bagi pelaksanaan pembaruan agraria di Indonesia. *Jurnal Analisis Sosial*, 9(1), 65-84.
- Shohibuddin, M. (2018). *Perspektif Agraria Kritis: Teori, Kebijakan, dan Kajian Empiris*. STPN Press.
- Soemartono, G. (2006). *Arbitrase dan Mediasi di Indonesia*. Gramedia Pustaka Utama.
- Sumardjono, M. S. W. (2008). *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*. Kompas.
- Sumaryanto. (2015). *Kapasitas Kelembagaan Kantor Pertanahan dalam Implementasi Kebijakan Pertanahan*. STPN Press.
- Supriadi. (2010). *Hukum Agraria*. Sinar Grafika.
- Syarif, E. (2012). *Menuntaskan Sengketa Tanah melalui Pengadilan Khusus Pertanahan*. Gramedia.
- Tjondronegoro, S. M. P. (2008). *Negara Agraris Ingkari Agraria: Pembangunan Desa dan Kemiskinan di Indonesia*. Akatiga.
- Wertheim, W. F. (1962). *Indonesian Society in Transition: A Study of Social Change*. W. van Hoeve.
- Wiradi, G. (2001). Reforma agraria: Perjalanan yang belum berakhir. In N. Fauzi (Ed.), *Reforma Agraria: Perjalanan yang Belum Berakhir*. Insist Press.
- Wiradi, G. (2009). *Seluk Beluk Masalah Agraria: Reforma Agraria dan Penelitian Agraria*. STPN Press.
- Ya'kub, A. (2004). Agenda neoliberal menyusup melalui kebijakan agraria di Indonesia. *Jurnal Analisis Sosial*, 9(1), 47-64.