

STATE AUTHORITY IN LAND CONTROL: CONSTITUTIONAL ANALYSIS OF THE IMPLEMENTATION OF ARTICLE 33 PARAGRAPH 3 OF THE 1945 CONSTITUTION

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Abstract

This study seeks to explore comprehensively the application of Article 33 paragraph (3) of the 1945 Constitution, which governs the state's authority over land ownership, through philosophical, historical, and sociological lenses. Philosophically, the notion of state control over the earth, air, and natural resources underscores the role of the state as the supreme steward entrusted with managing these assets for the collective welfare of its citizens, rather than as a private proprietor. This principle reflects the ideals of social justice that were abolished in the values of Pancasila. Historically, the transformation from the colonial concept of *domein verklaring* to the UUPA system illustrates a shift in the paradigm of land management in order to affirm the nation's rights to natural resources. Sociologically, the state is present as a regulator to guarantee fair land distribution and the protection of community rights, including customary rights, amidst the dynamics of economic growth and urbanization. The constitutional mandate contained in Article 33 paragraph (3) of the 1945 Constitution affirms that every land governance policy should prioritize the prosperity of the people by ensuring harmony between private rights and collective interests, while simultaneously preventing the concentration of ownership and potential land-related disputes.

Keywords: State Authority, Land Control, Article 33 of the 1945 Constitution

INTRODUCTION

The study entitled “A Constitutional Examination of Article 33 Paragraph (3) of the 1945 Constitution” is structured upon a comprehensive philosophical, historical, and sociological framework. The state’s mandate to regulate and supervise land affairs in Indonesia originates from the core principles enshrined in Article 33 paragraph (3) of the 1945 Constitution. This article underscores that the land, air, and all natural resources fall under the stewardship of the state, whose primary duty is to ensure their use promotes the people’s prosperity. In this context, the state acts not as a private owner, but as the ultimate guardian entrusted with managing these resources for the common good. The foundation of this thinking stems from the values of Pancasila, particularly the fifth principle on Social Justice for all Indonesians. Therefore, every land policy must reflect the principles of justice, equal access, and land use for the common good (Rejekiningsih, 2016).

The principle of the state as manager, not owner, also contains an ethical dimension, emphasizing that natural resources are not merely commodities, but rather a legacy that must be managed wisely for present and future generations. The state is obligated to carry out this management mandate by prioritizing the principles of mutual cooperation, nationalism, and solidarity. In the philosophy of agrarian law, land not only has economic value but also has a social function where land use is directed towards the general welfare and the protection of community rights to land.

The history of land ownership in Indonesia is heavily influenced by the experience of colonialism, where land was collected solely for the economic interests of the colonizers through the concept of *domein verklaring*. Following Indonesia’s independence, Article 33 paragraph (3) of the 1945 Constitution emerged as a pivotal cornerstone in reforming the nation’s framework for natural resource governance. The provision underscores state sovereignty over the wealth contained within the archipelago, representing the collective entitlement of the Indonesian people. In alignment with this constitutional mandate, the enactment of Law No. 5 of 1960 on the Basic Agrarian Law (UUPA) institutionalized the state’s role as a governing body vested with authority to regulate, administer, and utilize land, air, and space for the attainment of social justice and the people’s prosperity.

The trajectory of land governance under state authority in Indonesia has experienced significant transformations across political eras from the Old Order and the New Order to the Reform period. Each governmental phase has reflected a distinct interpretation and application of the state’s mandate to regulate and exercise control over land resources. During the Reformation era, the emphasis was on justice and equity, including through agrarian reform policies, land redistribution, and conflict resolution, all of which removed constitutional mandates.

The concept of state land control continues to evolve, accommodating societal demands and changing times. The Constitutional Court holds a pivotal function in interpreting and supervising the exercise of state authority over land, ensuring that its implementation remains consistent with the constitutional spirit and fundamental principles embodied in Article 33 of the 1945 Constitution.

Sociologically, state land control in Indonesia is highly complex and closely linked to aspects of community life. Land is the primary source of livelihood, a factor of production, and a place for the people to live. Therefore, the state is required to act as a regulator to ensure equitable land distribution, prevent the concentration of land rights in the hands of certain groups, and regulate abandoned land that is not being optimally utilized.

The social function of land rights in society is realized through various land reform programs, land consolidation, community empowerment, and land acquisition for public purposes. However, along with changing values due to modernization and urbanization, various problems have emerged, such as agrarian conflicts, land grabbing, and greedy behavior in land ownership. The constitutional mandate for land tenure management by the state aims to prevent conflict and ensure the protection and safeguarding of every citizen’s land rights.

In the context of Indonesia’s culturally and economically heterogeneous society, state land management must simultaneously accommodate the rights of indigenous peoples, local communities, and the public interest. The state is obliged to consider individual interests without neglecting social welfare and to encourage public participation in land policymaking.

The legal basis is crucial for the state’s authority to investigate land ownership, as it serves as the basis for constitutional and agrarian law in implementing land management in Indonesia. The following is a comprehensive elaboration of the legal basis.

Article 33 paragraph (3) of the 1945 Constitution embodies the fundamental principle that “the land, waters, and natural resources therein shall be under the control of the state and utilized for the greatest benefit of the people.” This constitutional mandate serves as the supreme legal foundation legitimizing the state’s role in regulating, managing, and overseeing land use across Indonesia. The authority granted to the state is inherently public in character, exercised to safeguard collective

welfare and to ensure that every citizen's right to access and benefit from natural resources is realized equitably and sustainably.

Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). As a juridical manifestation of Article 33 paragraph (3) of the 1945 Constitution, the Basic Agrarian Law (UUPA) stipulates in Article 2 paragraph (1) that "the earth, water, space, and all natural resources within them are placed under the state's authority as an organ of power representing the people." This provision entrusts the state with the duty to regulate, administer, and supervise the use of agrarian resources to ensure their management promotes public welfare and upholds the principle of social justice: Sustainable spatial planning and land use; Determination and regulation of rights to land, airspace and outer space; and Management of legal relations between rights holders and objects of agrarian rights.

Sectoral Implementing and Legislative Regulations

UUPA, the government has enacted several implementing regulations, including Government Regulation No. 18 of 2021 on Land Rights and Ministerial Regulation No. 16 of 2022 on the Delegation of Authority for Land Rights Determination. These legal instruments provide technical guidance on land administration, allocation of land rights, management mechanisms, and the protection of community interests, while also serving to prevent the concentration of land ownership as outlined in Articles 7, 10, and 17 of the UUPA.

Constitutional Court Decision

In several judicial reviews concerning agrarian reform and land protection, the Constitutional Court has reaffirmed the constitutional meaning of the state's right to control as rooted in Article 33 paragraph (3) of the 1945 Constitution and elaborated in the Basic Agrarian Law (UUPA). This interpretation functions as a constitutional bridge that harmonizes the distribution of authority between the state, private entities, and the public. In this capacity, the Court acts as a constitutional guardian, ensuring legal coherence and safeguarding the public interest whenever inconsistencies or overlaps occur between the UUPA and other sectoral laws related to natural resource governance.

A study in Cakranegara District, West Nusa Tenggara, regarding land acquisition for the construction of public roads demonstrates the practice of the state as the holder of the highest land rights. In its implementation, the government must limit its authority through certain procedures such as consultation with residents, providing adequate compensation (which can be in the form of money, replacement land, or resettlement), and a transparent location determination and inventory process. eprints.unram

This case confirms that the state does indeed control the land (as a consequence of Article 33 paragraph 3 of the 1945 Constitution and its derivative, Article 2 of the Basic Agrarian Law), but must limit itself to not acting arbitrarily, but rather guarantee justice, adequate compensation, and legal protection for affected communities.

Principles of International Law and Human Rights. State control of land is also subject to the principle of protecting human rights, particularly the internationally recognized economic, social, and cultural rights of communities. Land governance must safeguard the interests of vulnerable groups and indigenous peoples, and ensure access to justice in obtaining land rights.

The foundation of this study highlights the importance of a constitutional examination of state authority over land ownership to ensure that the implementation of Article 33 paragraph (3) of the 1945 Constitution genuinely upholds social justice, strengthens national cohesion, and promotes the welfare of all Indonesian citizens. A comprehensive understanding of the philosophical, historical, and sociological foundations is a crucial foundation for examining the implementation and future challenges of state land management.

RESEARCH METHOD

The most appropriate legal research method for research related to state authority in land control and constitutional analysis in the implementation of Article 33 paragraph 3 of the 1945 Constitution is the normative legal research method with constitutional approaches. This method focuses on the study of legal principles, legislation, jurisprudence, legal doctrine, and court decisions related to state authority over land. Research is conducted through literature review, document review, and legal text analysis, making it highly relevant to examining the meaning and implementation of constitutional norms, including Article 33 paragraph 3 of the 1945 Constitution and the UUPA. To strengthen the analysis, research can utilize:

- 1) Statute Approach: examines legal products and regulations related to land control by the state.

- 2) Historical approach: analyzing the background to the birth of regulations and the dynamics of the history of agrarian law.
- 3) Contextual approach: understanding the concept of the State's Right to Control with reference to legal theories and the welfare state paradigm.
- 4) Case approach: analysis of jurisprudence and court decisions, especially the Constitutional Court.

RESULTS AND DISCUSSION

The theory of the RIGHT TO CONTROL FROM THE STATE (abbreviated as HMN) states that state control does not mean the state is the individual "owner" of land, but rather as a public body that is given authority by the people to regulate, manage and determine the use of land for **the prosperity** of the people.

- 1) Iman Soetiknjo: The state acts as a ruling body on behalf of the people for service and regulation, not as an absolute owner.
- 2) Maria SW Soemardjono: The state accepts the delegation of authority from the people and is obliged to be accountable for land policies to the community.
- 3) Legal Foundation: Article 2 of the Basic Agrarian Law (UUPA) defines the state as a governing institution endowed with authority.

The legal doctrine of *Hak Menguasai Negara* (HMN), or the state's right of control, conveys that the Constitution entrusts the government with the responsibility to regulate, manage, and supervise the utilization of land, air, and natural resources. This mandate, rooted in Article 33 paragraph (3) of the 1945 Constitution, emphasizes that such control must ultimately serve the collective welfare and prosperity of the people. Nevertheless, such authority should not be interpreted as private ownership (*eigenaar* or *complete domain*) as practiced under the colonial *domein verklaring* system; rather, the state acts as a sovereign trustee, managing these resources on behalf of and for the benefit of its citizens.

In practice, this right is realized in the form of the state:

1. Determine the designation, use and maintenance of land.
2. Establishing legal relationships between individuals or legal entities and land.
3. Carry out supervision of the granting and use of land rights (Triyono, 2015).

State authority according to HMN theory is usually implemented by institutions such as the Ministry of ATR/BPN in land affairs, or forestry and mining authorities for other natural resource sectors (STPN, 2022).

1. Constitutional and National Legal Basis: The concept of *Hak Menguasai Negara* (HMN), or the state's right of control, represents a constitutional interpretation of Article 33 paragraph (3) of the 1945 Constitution and forms the legal foundation for the Basic Agrarian Law (UUPA), which later guided the formulation of Indonesia's natural resource management regulations.
2. The Goal of People's Welfare: With HMN, all state policies and actions in land control must be focused on maximizing the prosperity of the people, preventing monopolies or control of strategic assets by a handful of parties.
3. Agrarian Reform and Social Control Instruments: HMN gives the state authority to maintain access and distribution of agrarian resources so that they are not unequal and can take action against injustice in land ownership.
4. Maintaining National Sovereignty and Interests: In the context of globalization and rapid foreign investment, HMN protects national resources so that their use does not harm the nation as a whole.

In short, this theory is relevant to the concept of public law which emphasizes that land, air and natural resources are tools for equality, welfare and social justice managed by the state with the principle of trust from the people.

The Constitution places the people as the true owners of resources the state is the manager, not the absolute owner. The state, which holds the people's mandate and is prohibited from managing land for its own interests, must be directed toward the public welfare (Constitutional Court Decision on Electricity, 2004).

1. The concept of the public trust doctrine: the state is the "guardian" of the people's collective interests, so that policies must side with the public (see the Constitutional Court's decision regarding the interpretation of Article 33 of the 1945 Constitution).
2. According to JJ Rousseau, the state is merely the implementer of social agreements power comes from the people, limiting state action in land affairs (Notonagoro, 1984).

The theory of popular oversight is rooted in the idea that the primary source of state power is the people themselves, not the king or any other party. In the context of agrarian and land management

in Indonesia, this theory implies that all state authority to regulate, manage, and supervise land is essentially a mandate granted by the people, not absolute state ownership (Mawuntu, 2012).

Public Trust Doctrine (PTD) This principle represents a concept of public law in which the state functions as a trustee acting on behalf of its citizens. The government bears the responsibility to safeguard, regulate, and administer natural resources particularly land so that their utilization contributes to the people's welfare, ensures equitable access, alleviates poverty, and supports community empowerment. The constitutional foundation for this mandate is articulated in Article 33 paragraph (3) of the 1945 Constitution, which declares that "the land, water, and natural resources contained therein are controlled by the state and shall be utilized for the greatest benefit of the people."

1. **The State as a Trust, Not an Owner:** The state does not position itself as a private land owner, but rather as a responsible manager to the people, ensuring its benefits and equitable distribution. This practice serves as the basis for the requirement that agrarian policies, such as agrarian reform and land redistribution, must involve and consider the interests of the people at large.
2. **Possible Oligarchy or Monopoly Interests** In the history of Indonesian agrarian law, the PTD functioned as a deterrent against monopolistic practices or land control by a handful of groups. The rejection of the colonial concept of *domein verklaring* was implemented by eliminating the state's claim to absolute ownership of people's or customary land this demonstrated respect for people's sovereignty and the rights of indigenous communities.
3. **Legal Basis for Public Control and Social Justice** This theory is relevant as a reminder that every state policy, whether regulatory or managerial, must be evaluated from the perspective of public interest and general welfare as the primary benchmark. If state management of land, mines, or forests results in land grabbing or environmental damage, it means the state has failed in its role as a public guardian.
4. **Constitutional Mandate and Agrarian Reform Agenda** In accordance with the mandate of reform and MPR Decree IX/2001, the state is required to re-enforce the PTD mandate and people's sovereignty in the agrarian sector, particularly resolving agrarian conflicts and unequal land ownership structures. Implementing public trust requires the state to act transparently, accountably, and inclusively (WALHI, 2024).

The theory of popular oversight and the doctrine of public trust are highly relevant in preventing the state from acting in an authoritarian manner or solely favoring the interests of those in power, corporations, or foreign interests. The state remains obligated to recognize the people as the true owners of resources, while the state itself (the state) is merely a manager who must formulate policies democratically, fairly, and transparently, in accordance with the mandate of the constitution.

Theory of State Management and Supervision

The state obtains permission to:

- 1) Ensure fair distribution, responsible use, and long-term care of land for public benefit.
- 2) Establishing legal relationships between citizens and legal entities and land objects.
- 3) Carry out supervision so that the implementation of rules and policies truly favors the interests of the people (Jaimansyah, 2020).

Article 2 paragraph (2) of the UUPA represents the legal embodiment of how Article 33 paragraph (3) of the 1945 Constitution is interpreted and applied in practice (UUPA, 1960).

Theory of the Social Function of Land

Every right or authority over land, including that held by the state, has a social function. This means that state land control must prioritize social justice, equitable distribution of benefits, and community access to land based on the principles of utility and justice.

Theory of the Legal State (Rechtsstaat)

Every state action, including those regarding land ownership and management, must be based on law. The state does not have the authority to act arbitrarily but is obliged to follow established procedures and uphold the principles of proportionality and the supremacy of national agrarian law.

According to Article 33 paragraph (3) of the 1945 Constitution, the state's authority over land is constitutionally defined as a mandate to regulate, manage, and oversee land use for the collective welfare of the people. This authority does not indicate state ownership in a private sense, but emphasizes the state's role as a trustee that exercises the people's mandate through the legal instruments of the Basic Agrarian Law (UUPA) and the principle of state control rights (HMN).
Research Results and Discussion on the Formulation of the Problem

1. The State as a Public Body, Not a Private One

Research has found that HMN is a concept that positions the state as the ultimate permit holder in agrarian policy, not as an individual owner, but as the bearer of the people's mandate in accordance with the principles of popular understanding and *public trust*. The state acts publicly, subject to the principle of popular sovereignty, not the interests of the state itself or any particular group (STPN, 2022).

2. Implementation of HMN and Protection of People's Rights

State authority is public law, encompassing regulations regarding the allocation, use, and utilization of land, with the primary goal of maximizing the welfare of the people. This principle serves as the basis for formulating policies on land ownership, land acquisition, and the management of customary and individual rights, to prevent monopolistic practices or diversion of interests that only benefit certain groups.

3. Reconciliation of HMN with Customary Rights and Individual Rights

The research also confirms that HMN as regulated in the UUPA and Article 33 paragraph (3) of the 1945 Constitution does not conflict with the customary (*ulayat*) rights system, which is also recognized in national agrarian law. The state here only plays a role as a "traffic regulator" of land relations, not taking over ownership of customary/community land.

4. Limitations of State Authority

In implementing HMN, the state is obliged to pay attention to the rights of individuals and the rights of legitimate legal entities as well as the customary rights of indigenous communities, so that there are no arbitrary state actions or those that give rise to new injustices and must always be legally and socially accountable.

5. Implementation Context

In various policies, such as land acquisition for public interest, agrarian reform, or protection of customary land, the state continues to prioritize the principles of people's prosperity and social justice as the main barometer in each of its policies (Pieter, 2023).

A comparative perspective can be taken by comparing the concept of "state control rights" in Article 33 paragraph 3 of the 1945 Constitution with: (1) eminent domain in the United States, and (2) the public ownership regime of land in China (PRC).

Outline of the comparison: Indonesia: The state "controls" land, water, and natural resources for the greatest prosperity of the people; the state's control rights are public authority (regulation, administration, management, supervision) delegated through the Basic Agrarian Law and sectoral regulations. United States: The state does not automatically "control" all land, but it does have eminent domain authority, namely, taking private land for "public use" with the condition of "just compensation" under the Fifth Amendment to the Constitution.

State authority over land ownership is a constitutional mandate that can only be implemented democratically, transparently, and accountably, based on the principles of public oversight and public trust. The implementation of the National Land Law (HMN) must be subject to the goals of public welfare, protection of indigenous peoples' rights, and oversight to ensure that land ownership is not controlled by a small group, which could harm the public interest.

CONCLUSION

The conclusion of the results and discussion regarding the theory of the State's Right to Control (HMN) and people's sovereignty emphasizes that state control over land in Article 33 paragraph (3) of the 1945 Constitution does not form the state as an individual / absolute owner of the land, but rather as a public body that has a mandate from the people to regulate, manage and Determine land use for the common good. The state is tasked with regulating legal relations with the earth, air, and natural resources, overseeing and ensuring equitable access to and distribution of resources, while respecting the individual rights and legal rights of indigenous communities.

The existence of the National Land Law (HMN), which includes the UUPA and other implementing regulations, serves as a legal instrument that prevents monopolies and directs agrarian policies in accordance with the principles of social justice and public welfare. The state acts as a manager or guardian, in accordance with the concept of the public trust doctrine. Therefore, every land policy must be in the public interest and evaluated in terms of utility, fairness, and the constitutional protection of community rights (NPC China, 1982).

In practice, the implementation of HMN takes the form of state efforts to regulate the allocation, use, and maintenance of land, and to limit state actions to ensure they are democratic, transparent, and accountable, and do not conflict with customary rights systems or the social functions of land. Thus, state control over land is a constitutional mandate that can only be exercised for the prosperity of the people and social justice, not for the benefit of the government or a select group.

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