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Urban Agrarian Reform: Opportunities and Challenges for Land Rights Among Low-Income Communities

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Abstract

Agrarian reform has typically focused on the redistribution of land in rural areas, specifically targeting farmers and agricultural tracts of land. This study explores the potential for agrarian reform in urban settings and the challenges facing low-income individuals in acquiring land rights essential to adequate housing. Using statutory and theoretical perspectives demonstrates that ample opportunities still exist for urban agrarian reform to take hold via the expropriation of state-owned land and land whose rights have lapsed. Public land that has not been dedicated as a waqf or even recognised as government property and historic land rights where the building rights expired and without any application to extend those rights present empirical reform opportunities. Despite these opportunities, urban land rights remain a contested space. Many poor people live on untitled land because such a thing is considered disputed by public authorities. Conflicts arise from the physical duration of inhabitants' occupation, which is in severe contrast to claims found with entities holding either outdated or inadequate property documentation. The official bodies, particularly the Land Office, are hesitant to issue land certificates due to these conflicts. The uniqueness of this research lies in its focus on urban land reform and its implications for the poor, thus highlighting a gap in existing literature that focuses largely on rural settings. This important research study depends on the emerging need for appropriate and certain housing options in cities. The importance of this study to the discipline is that it fosters the application of national land law principles, namely equity, legal certainty, and practicality, to disputes over urban land, providing a framework for a fairer distribution of land rights.

INTRODUCTION

The right to a decent living environment is clearly stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, also stated in Law Number 1 of 2011 concerning Housing and Residential Areas. This right is also in line with the achievement of one of the SDGs (Sustainable Development Goals)--SDG 11--namely the development of inclusive, safe, resilient and sustainable cities and settlements (Daniel, 2015; Jaramillo, 2020). In particular, Goal 11 of the Sustainable Development Goals seeks to ensure all people have access to sufficient, safe, and affordable housing by the year 2030 and to address issues characterised by slum environments (Smets & van Lindert, 2016; Soederberg, 2017). The proportion of the urban population that lives in slums, informal settlements, or inadequate housing is an indicator to track progress toward achieving this goal (Tunas & Peresthu, 2010; Zain et al., 2018). The emergence of unauthorised settlements is influenced by questions of land distribution and urban planning and complexities in land tenure and property rights (Ridlo, 2020; Suparlan, 1995).

In a legal sense, land ownership represents a formal relationship between the person and the land they manage (Puspitawati, et al., 2023). That relationship is legally determined in the form of acknowledged rights to land, in which an owner can enjoy their rights regarding land use and its protection from possible invasion from the outside. By contrast, land ownership in the absence of formality of rights is deemed illegal or simply a physical occupation. The house built on that land is consequently defined as a squatter settlement (Kumorotomo et al., 1995; Noverina, 2017; Ridlo, 2020; Scambary, 2023).

The increase in slums and illegal settlements is considerable in Indonesia. For instance, in Central Java, the soil area of slums increased from 7,300.17 hectares in 2019 to 8,912.33 hectares in 2020. As stated by Kementerian PUPR (2020), it is such conditions that need to be reduced through agrarian reform, as mentioned in the Presidential Regulation Number 62 of 2023 about the Acceleration of Agrarian Reform (hereinafter referred to as PP 62/2023). In a strict sense, it is intended not only to decrease the scale of slums and illegal settlements but also to solve land tenure and ownership problems to support justice and matters aimed at enhancing environmental quality. It can be implemented by allocating residential land to low-income communities, implementing measures to reorganise urban slums with consolidated land, and allocating land for environmental management and public waste facilities. These comprise endeavours towards improving living conditions and ensuring urban sustainability.

In the wider context, Indonesia's urban agrarian reform has received less attention than that of rural Indonesia. Indeed, agrarian reform movements have traditionally targeted changes in the pattern of land ownership within the context of rural areas, specifically peasants and agricultural land, and are better known as land reform. Such an approach can be seen in Government Regulation in Lieu of Law Number 56 of 1960 on the Determination of Agricultural Land Area (hereinafter referred to as Perpu 56/1960).

Nevertheless, urban areas require farming reforms to handle significant problems. There is a serious gap between the quantum of land allocated to poorer classes for residential purposes and the quantum held by builders for speculative purposes in urban areas. Many urban settlements live on land with expired or unrecognised land titles, along with '*a legal gray area and de facto ownerships*'. Quite often, such zones are homes for poor people who face not only insecure tenure but also inadequate housing (Durand-Lasserve, 2006; Reerink, 2011; Uwayezu & Vries, 2018).

Furthermore, agrarian reform in urban areas is relatively less of a concern than in rural areas. Agrarian reform has conventionally been associated with the change in the rural land structure alone, particularly as far as farmers and agricultural lands are concerned, as defined under Government Regulation instead of Law Number 56 of 1960 concerning Determination of Land Area for Agricultural Purposes (hereinafter referred to as Perpu 56/1960). However, agrarian reform is equally relevant in urban areas. Urban areas encounter obstacles stemming from an unequal distribution of land, wherein low-income neighbourhoods contend against land earmarked for real estate development (Luthfi, 2021). Numerous metropolitan regions are situated on land characterised by lapsed or unacknowledged land rights, leading to legal ambiguities and informal ownership. Inhabitants of these locales are frequently low-income individuals who struggle due to precarious land tenure and substandard living circumstances (Suhadi, 2017).

In other contexts, urban agrarian reform, in particular relating to land rights of the economically poor, can be interrogated based on religious values that include aspects such as justice and equity, stewardship, care for the environment, community, and solidarity (Hariyanto, Idamatussilmi, et al., 2024). In countries such as the United States, Pakistan, and India, religious institutions have spoken out in the public domain against agrarian policies, especially on issues related to justice and equity (King, 1985; Moliner & Singh, 2024; Ondetti, 2010; Scott, 1977).

Religious values significantly influence the formulation of urban agrarian reform, especially in fostering just land rights for economically disadvantaged communities. Numerous religious traditions highlight ideals of justice and equity that correspond with the objectives of contemporary agrarian reform. For example, the Christian notion of Jubilee supports cyclical land redistribution as a means to address inequality (Harbin, 2011; Whelan, 2017), encapsulating the aspiration for equitable land allocation. Islamic doctrines of *Zakat*, which is a practice of giving to the needy and prohibiting the exploitation of poor people, equally support fair distribution of resources and good land management principles crucial in addressing land rights in low-income communities (Dewi & Saputra, 2020; Suhaimi & Ab Rahman, 2019).

Beyond justice, religious values also emphasise stewardship and environmental care, which are crucial for sustainable urban agriculture. Buddhism's focus on interconnectedness and non-harm (*Ahimsa*) promotes practices that respect people and the environment (Batchelor & Brown, 1994). Hindu principles like Ahimsa and respect for nature (*Prakriti*) further advocate for ecological sustainability, aligning with urban agrarian reforms that prioritise environmental harmony (Van Horn, 2006).

Notwithstanding these affirmative principles, obstacles, including institutional opposition and varied religious viewpoints regarding land utilisation can complicate the enactment of such reforms (Gombrich, 2006). Furthermore, logistical and financial limitations may impede the practical execution of reform initiatives informed by religious tenets (De Schutter, 2009).

Beyond justice, religious values also stress stewardship and care for the environment, which are critical components of sustainable urban agriculture. While particularly centred on the interconnectedness of all things and the ethic of no harm (*Ahimsa*), Buddhism also fosters practices honouring human and environmental concerns (Batchelor & Brown, 1994). Hindu principles of Ahimsa and respect for nature (*Prakriti*) further support ecological sustainability and align with urban agrarian reforms focused on environmental harmony (Van Horn, 2006). However, Its application is complicated by obstacles such as institutional resistance and varied religious understandings of land use despite supportive values. Logistical and economic realities may hinder any reformist impulse at a practical level (De Schutter, 2009; Gombrich, 2006).

Different models of agrarian urban reform also have been the subject of diverse adoptions by many countries, reflecting variant political and economic philosophies. This socialist model sees the state controlling land distribution and use, whereby the government manages and redistributes land to achieve social equity and correct market failures. This approach often includes centralised planning and aims to prioritise public welfare over private profit, as seen in countries with strong state intervention in land management (Borras et al., 2007). In contrast, the liberal model focuses on leveraging market mechanisms and private property rights. It emphasises utilising vacant and abandoned lands to address housing shortages and stimulate economic activity, relying on private sector investment and market-driven solutions to improve urban infrastructure (Cohen & Koehn, 1977).

The grassroots or agrarian reform from the model herein represented in a bottom-up approach, where community movements demand the right to land and struggle for equitable land distribution, puts particular emphasis on community entities and grassroots activism with respect to land tenure issues as a means to achieve an improvement in livelihood conditions. It focuses on participation processes and local solutions that may contribute to policy changes and land security for disadvantaged groups (Brophy & Vey, 2022; Powelson & Stock, 1990). Many urban areas in Indonesia are being settled by low-income communities who have utilised these lands for housing for more than 20 years, yet without formal legal ownership (Sumarto et al., 2002). Unofficial state land ownership creates significant financial losses on a number of fronts. Property tax revenue losses can be huge; for example, if unofficial land in urban areas is valued at $1 billion with a tax rate of 0.5%, the annual revenue loss could reach approximately $5 million (G. C. Lin & Ho, 2005). Legal and administrative costs from land disputes can also reach quite high, up to $50 million annually. Additionally, illegal logging has cost Indonesia around $1.7 billion per year (Global Forest Watch, 2019).

Moreover, land disputes in infrastructure development have plenty of inefficiencies that may as well add up to 10-20% to project costs. That could mean extra $1 to 2 billion costs for a $10 billion project (Asian Development Bank, 2020). This is the second loss from economic disruptions of reduced foreign direct investment in land tenure insecurity, which can amount to $3 billion annually in case FDI falls by 10% (United Nations Conference on Trade and Development (UNCTAD), 2023). Corruption in land management could affect as much as 5% of GDP, estimated at several billion dollars annually (Transparency International, 2023). Addressing these issues through formal land management is crucial. This situation raises important questions: What types of urban lands could be eligible for agrarian reform? And why have long-term occupants not been granted legal rights to these lands?

This was further supported by the fact that many scholars, including Andriyastuti & Absori (2013), Neilson (2016), Luthfi (2021), Widodo (2017), White et al., (2023), among others, had conducted their research on Indonesia's urban agrarian reform. The studies on manifold facets of agrarian reform in urban areas involve laws and related regulations that deal with the different ways of granting land rights and community-initiated reforms. Their works make a substantial contribution to the field by analysing not only the opportunities but also the obstacles linked to the implementation of urban agrarian reform in Indonesia. With in-depth analyses of agrarian policies and conceptual frameworks, these studies enhance our understanding of how urban agrarian reform can be applied effectively in an Indonesian context.

Research on urban agrarian reforms underlines some critical dimensions related to land tenure and management. In this regard, Resti & Wulansari (2022) discuss the role of the Agrarian Reform Task Force (*Gugus Tugas Reforma Agraria*, or GTRA) in the implementation of agrarian reform villages and the coordination of land allocation. Martini et al., (2019) analysing how agrarian reform treats the desires of societies in land disputes, and Taufiq et al. (2023) have noted some of the problems associated with proof of land ownership under this PTSL system. Handayani et al. (2022) analyse the political dimensions of resolving land tenure conflicts during Jokowi's presidency, and Maheswari (2021) examines legal disputes over land rights involving the Cirebon Kasepuhan Palace. Sinaga, (2020) addresses spatial planning and community involvement in regional development. Urban agrarian reform, by formalising land rights for long-term occupants, aligns with the principle of state land tenure to maximise public welfare. GTRA, in this case, has a very critical role to play in coordinating the TORA allocation and recommending state land designations. It goes without saying that using the mandate of the GTRA will certainly enhance access to legal land and improve housing security within low-income communities.

METHOD

This study employs a qualitative approach to examine urban lands with the potential for agrarian reform and the challenges faced by low-income communities in acquiring land rights. It utilises statutory and conceptual approaches (Al-Fatih, 2023;

McCrudden, 2007). The statutory approach involves analysing primary legal materials such as the Constitution, relevant laws, and regulations (Cross, 2008) to identify the legal framework supporting state control over land for public welfare, including for low-income communities. Key legal materials include the Basic Agrarian Law, Government Regulations on Land Registration, Management Rights, Flats, and Land Registration Units, as well as regulations from the Minister of Agrarian and Spatial Planning/Head of the National Land Agency regarding land rights and management, and relevant Presidential Regulations on Agrarian Reform and its acceleration. The conceptual approach explores the relationship between state land status, land rights, and the process of acquiring land rights.

RESULTS AND DISCUSSION

Agrarian Reform Policies and Regulations

Agrarian reform in Indonesia has been a long process. It started with the commitment to this reform since the beginning of the nation's declaration of independence, specifically with the establishment of a committee to create a new agrarian law to replace the colonial era legislation. This new legislation is Law Number 5 of 1960, known as Basic Agrarian Law or UUPA (Rachman & Setiawan, 2015). UUPA also established the political basis of agrarian national law to improve public welfare as mandated in Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Sastroadmodjo et al., 2019). The political principles at the root of the law regard land within the unitary state of the Republic of Indonesia as a gift from God to the nation, and hence, under ultimate state control to ensure use is made of it in the interest of the greatest number. Besides, the stipulation of Law Number 17 of 2007 about the National Long-Term Development Plan 2005-2025 stipulates that agrarian reform should be regulated for social justice and public welfare.

Agrarian reform in Indonesia has undergone three eras of government: the Old Order, the New Order, and the Reformation Order, each of which has maintained a different legal harmony in agrarian reform. If seen from a consistency perspective, the sequence is as follows: the Old Order, the New Order, and the Reformation Order (*see Table 1*). This assessment is based on the alignment of legal products with principles of justice, transparency, public interest orientation, and legal protection (Sutadi et al., 2018).

Table 1. Land Reform Policy in Indonesia

Old Order era (1945-1965)	New Order era (1966-1999)	Reformation era (2000-2019)
Law of the Republic of Indonesia Number 1 of 1958 Concerning the Elimination of Private Lands	Law of the Republic of Indonesia Number 15 of 1997 Concerning Transmigration	Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 Concerning Agrarian

Old Order era (1945-1965)	New Order era (1966-1999)	Reformation era (2000-2019)
		Reform and Management of Natural Resources
Law of the Republic of Indonesia Number 2 of 1960 Concerning Profit Sharing Agreements	Regulation of the Minister of Home Affairs Number 15 of 1974 Concerning Guidelines for Follow-up on the Implementation of Land Reform	Presidential Decree Number 34 of 2003 Concerning National Policy in the Land Sector
Law Number 5 of 1960 concerning the Basic Regulations of Agrarian	Regulation of the Head of the National Land Agency Number 3 of 1991 Concerning the Regulation of Independent Control of Land Objects of Land Reform	Government Regulation of the Republic of Indonesia Number 11 of 2010 Concerning the Control and Utilization of Abandoned Land
Law Number 56 Prp of 1960 concerning Determination of Agricultural Land Area		Presidential Regulation of the Republic of Indonesia Number 88 of 2017 Concerning Settlement of Land Control in Forest Areas
Government Regulation of the Republic of Indonesia Number 224 of 1961 Concerning the Implementation of Land Distribution and Provision of Compensation		

Source: (Sutadi et al., 2018)

The supporting legislation during the Old Order period is Law concerning the Abolition of Particulate Land (Law Number 1/1958), Law concerning Profit Sharing Agreements (Law Number 2/1960), Basic Agrarian Law (Law Number 5/1960), Law concerning Agricultural Land Restrictions (Law Number 56 Prp/1960), and Government Regulation concerning Land Distribution and Compensation (PP Number 224/1961) (Ramadhani, et al., 2021).

During the era of the Order of Reform, some of those basic regulations are the Agrarian and Natural Resources Reform Decree issued by People's Consultative Assembly (TAP MPR Number IX/MPR/2001), Presidential Decree concerning National Policy in the Land Sector (Presidential Decree Number 34/2003),

Government Regulation concerning the Control and Utilisation of Abandoned Land (PP Number 11/2010), Presidential Regulation concerning the Settlement of Land Tenure in Forest Areas (Presidential Decree Number 88/2017), Presidential Regulation on Agrarian Reform (Presidential Decree Number 86/2018), and Presidential Regulation on the Acceleration of Agrarian Reform (Presidential Decree Number 62/2023).

The New Order period brought the Minister of Home Affairs Regulation of Follow-up Guidelines on Land Reform. These regulations involve managing various related aspects, including those on lands in the forest area, lands in the non-forest area, and lands as the result of agrarian conflict settlement. One thing that is going to be forwarded in the 2020-2024 National Medium-Term Development Plan is the agrarian reform policy, which will particularly address the alleviation of poverty. This plan includes targets for redistributing land plots, aiming to increase from 553,140 hectares in 2020 to 3,946,860 hectares by 2024 and legalising land from 0 hectares in 2020 to 4,500,000 hectares by 2024. Although significant progress has been made in agrarian reform policy, effective implementation remains a challenge, reflecting broader political issues and the need for genuine reform (Bachriadi & Wiradi, 2011; Utomo, 2020b, 2020a)

In addition, agrarian reform in urban areas has not yet been regulated. However, it could refer to relevant provisions for agrarian reform regulations under Presidential Regulation Number 62 of 2023 concerning the Acceleration of Agrarian Reform Implementation. This stipulates that by this Regulation, Presidential Regulation Number 68 of 2018 regarding Agrarian Reform was revoked. Agrarian reform in the urban area shall be organised and conducted by the President through the Minister and provided under Article 4, Article 14 paragraph 1 letter a, and Article 18 of the Presidential Regulation concerning the Acceleration of Agrarian Reform. Agrarian reform land objects come from non-forest areas and are the result of the resolution of agrarian conflicts.

Land of agrarian reform objects (*Tanah Objek Reforma Agraria,* TORA) are divided into a few categories from non-forest areas: an aliquot part of land whose rights to use, the rights to use the building and construction works, or other rights to land have already expired. If those rights have not been renewed or applied for renewal within two years following the date of their expiration, such land is considered TORA. This latter case normally leads to a situation wherein the land is left unused or uncared for, thereby bringing inefficiencies and lost opportunities in terms of productivity. Repurposing such land for agrarian reform is the purpose of the regulation in addressing concerns brought about by underutilisation and abandoned land to its effective usage (Salim & Utami, 2020).

Another category is the abandoned land to the state. Those abandoned state lands that have not been put to any use are reserved to agrarian reform in the service of the interest of the community and the state. The problem with abandoned state lands is that they tend to be unproductive and contribute to the general underutilisation of resources. Agrarian reform is taking that land through regulation and using it for

purposes for which it was put to waste, maximising its value for community and state uses (Nurlinda, 2018; Rasja et al., 2022; Widodo, 2017).

TORA also includes land resulting from the resolution of agrarian conflicts. This category addresses the issue of historical disputes over land ownership or use, which can lead to inefficiencies and injustices. Allocating land that has been resolved through agrarian conflict resolution to agrarian reform helps rectify past injustices and ensure fair distribution. This process is intended to integrate the outcomes of conflict resolution into productive land use, thereby addressing and resolving long-standing land disputes (Neilson, 2016; Nulhaqim, 2020; Rejekiningsih et al., 2019).

Furthermore, TORA encompasses state land that has been controlled by local communities. This includes land that meets specific criteria for strengthening community land rights recognising the practical use and control exercised by these communities. The challenge being addressed here is the lack of formal recognition and support for community land rights. By formalising and reinforcing these rights through agrarian reform, the regulation aims to enhance the security and legitimacy of community land claims and management (Setya et al., 2023; Suyanto & Khulsum, 2022).

Additionally, TORA derived from resolving agrarian conflicts includes disputes that occur within non-forest areas. This broadening of scope highlights the need to address land conflicts in various contexts, not just within forested regions. The regulation provides a comprehensive approach to resolving land issues, ensuring equitable distribution and effective use of land across diverse areas (Dhiaulhaq & McCarthy, 2020; Junarto, 2024).

In comparison with other Southeast Asian countries, Thailand's agrarian reform policies have significantly evolved over the decades to tackle land distribution and rural poverty. The Land Reform Act of 1975 marked a crucial step in this process by establishing the Land Reform Committee and the Land Reform Department. This act aimed to redistribute land to those lacking sufficient agricultural holdings and formalise land ownership to prevent excessive concentration in the hands of a few. It provided a legal framework for land redistribution and improved land tenure security, laying the groundwork for future reforms (S. Lin & Esposito, 1976; Ramsay, 1982; Thirasirikul, 2019).

Subsequently, the National Land Policy Plan of 1997 introduced a more comprehensive approach to land management and agricultural development. This plan sought to address the limitations of earlier reforms by enhancing land tenure security and integrating land management with broader economic and social policies. It emphasised the need for accurate land registration and mapping to support effective land use planning, aiming to create a more sustainable and efficient land management system aligned with national development goals (Thinphanga & Friend, 2024; Un & So, 2011).

The Community Land Title Act of 2008 further advanced these efforts by addressing land rights issues faced by rural communities on state lands. This act allowed these communities to secure formal land titles for areas they had long occupied

and cultivated, thereby providing legal recognition and enhancing their security. By formalising land rights, the act aimed to stabilise communities and promote sustainable land management practices (Robinson et al., 2021; Wittayapak & Baird, 2018).

The most recent initiative, the Land Development Plan of 2017, was designed to align land use policies with Thailand's broader objectives, including economic growth and environmental sustainability. This plan focused on improving land use efficiency, boosting agricultural productivity, and integrating land management with national strategies (Sangawongse et al., 2021; Tontisirin & Anantsuksomsri, 2021). Despite these advancements, challenges such as bureaucratic inefficiency, corruption, and resistance from vested interests have impeded the full implementation of these reforms, leaving many rural communities with insecure land tenure and inadequate formal land titles.

In Vietnam, agrarian reform has undergone significant changes since the reunification of North and South Vietnam in 1975. The Land Law of 1988 was a critical milestone, shifting from collective land ownership to individual land use rights. This law allowed individuals and households to lease and transfer land, marking a transition towards a market-oriented agricultural sector (Land Law, 1988). The Land Law of 1993 built on this foundation by formalising land use certificates and aiming to reduce land disputes. It sought to address land concentration issues and improve equitable distribution (Land Law, 1993). These early reforms laid the groundwork for further adjustments in the land management system (Iyer, 2003; Vien, 2011).

The Land Law of 2003 and the Land Law of 2013 introduced additional refinements. The 2003 law focused on enhancing land tenure security and transparency in land transactions, addressing environmental concerns related to land use (Land Law, 2003). The 2013 law continued this trajectory by improving land management practices and supporting agricultural land consolidation. It also aimed to better manage urban land and incorporate sustainable land use measures (Land Law, 2013). Despite these advancements, challenges such as bureaucratic inefficiency and issues with land tenure security persist, affecting rural communities and investment in agriculture (Dang & Hung, 2023; Nguyen, 2022).

Land Potential for Agrarian Reform Objects in Urban Areas

In accordance with Article 1, Number 5 of the Presidential Decree on the Acceleration of Agrarian Reform, Land Object of Agrarian Reform (*Tanah Objek Reforma Agraria*, TORA) refers to land controlled by the state or land that has been possessed, managed, or utilised by the community, intended for redistribution or legalisation. This definition encompasses two primary activities: land redistribution and land legalisation (Neilson, 2016; Utrecht, 1969).

Land redistribution involves government initiatives aimed at distributing or granting land rights derived from TORA to agrarian reform beneficiaries, which include individuals, community groups with collective ownership rights, customary law communities, and legal entities. This process is accompanied by the issuance of land rights certificates (Doly, 2017; Shenia et al., 2024).

Land legalisation pertains to the initial land registration and data maintenance activities within the framework of agrarian reform. This process aims to formally record land rights and issue certificates as evidence of ownership. Consequently, both land redistribution and land legalisation focus on formalising land rights, either originating from state-controlled land or land previously managed by the community (Masriani, 2022; McCarthy, 2022; Utomo, 2020a).

According to Article 4, Paragraph (1) of the Basic Agrarian Law (UUPA), land rights are defined as rights to the surface of the earth that may be granted to individuals, either individually or collectively with others, including legal entities. Article 4, Paragraph (2) of the UUPA further stipulates that land rights entitle the holder to utilise the land, as well as the earth, water, and space on it, solely for purposes directly related to the land's use, within the constraints set by the UUPA and other relevant legal regulations.

These provisions underscore that land rights encompass both authorities and obligations. Specifically, the holder of land rights is expected to balance the rights and authority conferred with corresponding obligations. This principle aligns with Article 6 of the UUPA, which asserts that all land rights must fulfil a social function. This social function requires landholders to consider not only their individual interests but also the broader communal interests.

In the framework of land rights, three critical elements are identified: the land (*object*), the right holder (*subject*), and the relationship between the subject and the object (which encompasses the authority associated with the rights). In the context of land registration, as outlined in Government Regulation Number 24 of 1997, these elements are represented through two categories of data: physical data and juridical data.

Physical data, which pertains to the certainty of the land, is established through cadastral technical activities. Juridical data, which pertains to the subject and the rights associated with it, is determined through juridical technical activities, supplemented by administrative technical activities (Kurniati & Mordekhai, 2021; Wahyuni et al., 2023). In addition, the authority granted to land rights holders is not absolute but is subject to various limitations. These restrictions include external constraints, such as obligations not to harm or interfere with others and compliance with governmental regulations, including spatial planning and land use restrictions. Additionally, there are internal restrictions inherent to each type of land right, tailored to the specific characteristics and conditions of the land in question (Hariyanto, Azizah, et al., 2024; Peluso & Vandergeest, 2001).

Under the Basic Agrarian Law (UUPA), land rights are classified based on their duration. Ownership Rights, for instance, are granted indefinitely and can be transferred across generations. Conversely, other types of land rights, including Building Rights, Business Rights, and Use Rights, are granted for a specified term. Among these, Building Use Rights *(Hak Guna Bangunan*, HGB) are especially common in urban areas, where land is frequently used for offices, industrial facilities, housing, and settlements. According to Article 16, Paragraph (1), Letter c of the UUPA, HGB

permits holders to construct and own buildings on land that they do not own (Sari, 2020; Suartining & Djaja, 2023).

The validity period for HGB, as stipulated in Article 35, Paragraph (1) of the UUPA, is up to 30 years. This period may be extended upon request by the right holder, considering the needs and circumstances of the buildings, for an additional maximum of 20 years, as provided in Article 35, Paragraph (2) of the UUPA. Furthermore, under Article 37, Paragraph (1) of Government Regulation Number 18/2021, the Building Rights can be renewed for another maximum period of 30 years.

According to the relevant laws and regulations, the principal HGB enables individuals or entities to erect and own buildings on land they do not own. As specified in Article 44, Letters a and b of Government Regulation Number 18/2021, HGB holders are entitled to construct, utilise, and possess buildings on the land in accordance with its designated use. This entitlement is complemented by specific obligations for HGB holders, as outlined in Article 30, Letter b of Government Regulation Number 40/1996 and Article 42, Letter a of Government Regulation Number 18/2021.

In addition to these entitlements, HGB holders are required to fulfil several obligations. They must ensure the proper maintenance of both the land and the buildings situated on it, as well as uphold environmental sustainability. This includes maintaining soil fertility, preventing land degradation, and supporting overall environmental health, as stipulated in Article 30, Letter c of Government Regulation Number 40/1996 and Article 42, Letter b of Government Regulation Number 18/2021.

In the context of Building Use Rights (*Hak Guna Bangunan*, HGB), the phrase "*land that is not one's own*" encompasses state land, land with Management Rights, and land with Property Rights. As stipulated in Article 21 of Government Regulation Number 40/1996, in conjunction with Article 36 of Government Regulation Number 18/2021, HGB can be granted under these conditions (Santoso, 2017).

For state land, Building Rights are conferred through a decision issued by the Minister of Agrarian and Spatial Planning or the Head of the National Land Agency or by an appointed official. When it comes to land with Management Rights, HGB is granted based on a decision by the Minister of Agrarian and Spatial Planning or the Head of the National Land Agency, following a proposal from the Management Rights holder. In the case of land with Property Rights, Building Rights are established through a grant by the property owner, formalised by a deed issued by the Land Deed Making Officer, as detailed in Articles 22 and 24 of Government Regulation Number 40/1996, in conjunction with Government Regulation Number 18/2021.

Building Use Rights (*Hak Guna Bangunan*, HGB) is a land right with a finite duration, initially set at a maximum of 30 years. This term can be extended for up to 20 years, as per the Basic Agrarian Law (UUPA), and may be renewed for an additional maximum period of 30 years under Government Regulation Number 40/1996. The distinction between the extension and renewal of rights is important. An extension involves prolonging the validity period of the existing right without altering the original

conditions. In contrast, the renewal of rights entails regranting the same rights to the current holder after the original term or extension period has expired ((Santoso, 2011; Yulianto, 2019).

For HGB rights to be extended or renewed, a formal application must be submitted. This process does not occur automatically. The application must be reviewed and approved by the appropriate authorities, and a decree will be issued once the application meets all specified conditions. According to Article 40, Paragraph (1) of Government Regulation Number 18/2021, the conditions for the extension or renewal of HGB include:

1. The land must be actively cultivated and used in accordance with its designated purpose.
2. The conditions for granting the right must be fully met by the right holder.
3. The right holder must still qualify as a legitimate holder of the right.
4. The land must align with the spatial plan and not be designated or planned for public interest use.

Applications for the extension and/or renewal of Building Use Rights (*Hak Guna Bangunan*, HGB) must be submitted in a timely manner to ensure proper processing. According to Article 27, Paragraph (1) of Government Regulation Number 40/1996, applications for extension must be submitted to the Land Office no later than two years before the HGB period expires. This provision has been updated by Article 41, Paragraph (1) of Government Regulation Number 18/2021, which allows for extension applications to be submitted after the land has been used in accordance with its designated purpose or no later than the expiration of the HGB period.

For the renewal of HGB, the application must be submitted no later than two years after the expiration of the HGB period, as specified in Article 41, Paragraph (2) of Government Regulation Number 18/2021. These regulations are designed to ensure legal certainty for the public and facilitate the Land Office's ability to perform its primary duties and functions effectively in the land sector (Puspitoningrum, 2018; Triningsih & Aditya, 2019).

When Building Use Rights (*Hak Guna Bangunan*, HGB) expire, they are legally terminated. According to Article 40, Letter a of the Basic Agrarian Law (UUPA), and supported by Government Regulation Number 40/1996 and Government Regulation Number 18/2021, the expiration of the HGB term results in its official deletion. This termination means that the legal relationship between the right holder and the land ceases, effectively nullifying the HGB rights.

Once HGB is deleted, the land reverts to its original status as before the rights were granted. Specifically, if the HGB was on state land, the land reverts back to state ownership. If the HGB was on land with Management Rights, the land returns to its status under Management Rights. Similarly, if the HGB was on land with Property Rights, the land reverts to Property Rights. This process is articulated in Article 36, Paragraph (1) of Government Regulation Number 40/1996 and Article 47, Paragraph (1) of Government Regulation Number 18/2021. Moreover, Presidential Regulation Number 62 of 2003 concerning the Acceleration of Agrarian Reform further clarifies

the implications of HGB expiration. Article 15, Paragraph (1) specifies that if an application for extension or renewal of HGB rights is not submitted within two years following the expiration of the rights, the extension or renewal cannot be granted. Consequently, the land will automatically revert to state ownership.

When Building Use Rights (*Hak Guna Bangunan*, HGB) on state land are abolished, the land reverts to its original status as state land. This transformation signifies that land previously held under HGB, which was attached to a specific land right, becomes directly controlled by the state. For such former HGB state land, the authority to manage its use, utilisation, and ownership is vested in the Minister of Agrarian and Spatial Planning (ATR/KPBN), as outlined in Articles 47, Paragraphs (1) and (2) of Government Regulation Number 18/2021.

Once reclassified as state land, it can be allocated by the government to individuals or legal entities that meet the necessary requirements for land rights. Additionally, if the former HGB state land is not applied for extension or new rights within one year after the rights have expired, it is subject to agrarian reform. This provision is specified in Article 7, Paragraph (1), Letter a of Presidential Regulation Number 86 of 2018. The authority to grant new land rights and designate the land as an object of agrarian reform rests with the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (BPN) or other appointed officials.

When Building Use Rights (*Hak Guna Bangunan*, HGB) are abolished, the legal relationship between the right holder and the land ceases to exist. According to Government Regulation Number 40/1996, holders of abolished HGB are required to return the land, which was granted under Building Rights, to the state and to submit the cancelled HGB certificate to the Head of the Land Office (Article 30 of GR 40/1996). If the HGB was on state land and no application for extension or renewal has been made, the former HGB holder must dismantle any buildings and remove all objects from the land, ensuring that the land is returned to the state in a vacant state no later than one year after the HGB's expiration (Article 37, Paragraph (1) of GR 40/1996). The costs associated with the demolition of buildings and removal of objects are borne by the former HGB holder (Article 37, Paragraph (3) of GR 40/1996), even if the demolition is conducted by the government (Article 37, Paragraph (4) of GR 40/1996).

However, if the buildings and objects on the land are still needed, the former right holder is entitled to compensation. The form and amount of this compensation are governed by applicable laws and regulations. Compensation is only provided if the land has been used in accordance with the purpose for which the rights were granted and if the buildings and objects remain necessary. These regulations have been revised and simplified in Government Regulation Number 18/2021. According to Article 42, Letter f of GR 18/2021, former HGB holders are now obligated to return the land, previously granted under HGB, to the state, holders of Management Rights (*Hak Pengelolaan Tanah*, HPL), or Property Rights holders after the Building Use Rights are abolished (Santoso, 2012; Rahmi, 2010; Devita, 2021).

When Building Use Rights (*Hak Guna Bangunan*, HGB) are abolished, the former right holders may be given priority for regranting, subject to certain conditions. According to Article 37, Paragraph (4) of Government Regulation Number 18/2021, the Minister of Agrarian and Spatial Planning (ATR/BPN) may prioritise former HGB holders for new land rights if the land is still cultivated and used in accordance with the nature, purpose, and circumstances of the original grant. This provision indicates that priority for regranting HGB is conditional. It is available only if the former HGB holder has actively cultivated and utilised the land, which includes erecting and maintaining buildings on it. If the former HGB holder has not used or utilised the land in line with the intended purpose of the original grant, such priority cannot be granted because failure to properly use or cultivate the land can be interpreted as abandonment of the right, as supported by Jurisprudence of the Supreme Court of the Republic of Indonesia Number 295/K/Sip/1973 dated December 9, 1975 (Sabila et al., 2023; Wijaya, 2022). Thus, the conditional nature of this priority ensures that land rights are allocated to those who have adhered to the intended use and management requirements of the land.

Obstacles to the Acquisition of Land Rights by Urban Low-Income Communities

The previous description has highlighted a significant issue in urban areas: many low-income individuals physically occupy and use land for housing, yet these lands are not formally registered under their names. This land often includes state land—both land directly controlled by the state and former state land, such as HGB land with expired rights that have not been extended or renewed by the previous holders.

Despite the substantial potential for land ownership among low-income individuals, many still lack formal land rights. Acquiring land rights involves a legal process where individuals submit a right application to the government. This application can pertain to various types of land, including state land, land with existing rights, or land within national forest areas. Based on this application, the government has the authority to grant land rights through an official determination (Deininger et al., 2010; Ramadhani, 2021; Wulansari et al., 2019).

Article 1, Number 11 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 18 of 2021 concerning Procedures for the Determination of Management Rights and Land Rights defines the granting of land rights as a governmental determination that allocates a land right on state land or on land with Management Rights. This regulation outlines the administrative requirements and procedures for such determinations.

According to Article 13, Paragraph (1) of Permen ATR/KBPN 18/2021, before applying for land rights, applicants must first obtain and control the land in question, as required by applicable laws and regulations. This must be evidenced by both physical and juridical data. Physical data includes information on the location, boundaries, and area of land parcels, as well as details about any existing buildings. Juridical data

encompasses the legal status of the land, including its rights holders, the rights of other parties, and any encumbrances.

Low-income communities often face significant challenges in meeting these requirements. For land directly controlled by the state, these challenges are compounded by competing claims from other parties who assert control over the same land. Low-income individuals may have controlled and used the land for residential purposes for over 20 years, establishing a basis for physical control (Abdillah & Manaf, 2022; Gold & Zuckerman, 2014; Satoto, 2023). However, other parties might present competing claims supported by Land Appointment Letters (*Surat Penunjukan Tanah*, SPT) issued by various agencies despite lacking proof of physical control or adherence to tax reporting requirements.

Legally, a tax return does not serve as proof of ownership of land rights. According to Article 32, Paragraph (1) of Government Regulation Number 24 of 1997, the Certificate of Land Rights (*Sertifikat Hak Atas Tanah*) is the official document that provides proof of land ownership, encompassing both physical and juridical data. This certificate is considered a robust legal instrument confirming ownership, whereas a tax return only serves as evidence of land use or occupation, not as proof of land rights.

The existence of disputes over land tenure reflects the complexity of resolving such issues. Long-term physical possession of land does not automatically confer ownership but can be used as a basis for applying for land rights. Article 24, Paragraph (2) of Government Regulation Number 24 of 1997 stipulates that proof of land rights can be based on continuous physical control of the land for 20 years or more by the applicant or their predecessors. This regulation outlines two key conditions that must be met for physical control to be used as a basis for proving rights: (1) the control must be exercised in good faith and openly, supported by credible testimony, and (2) the control must not be disputed by the local customary law community, village/sub-district authorities, or other parties. Good faith and openness are demonstrated through the payment of land and building taxes.

In the further context, land tenure disputes indicate a lack of legal certainty regarding the rightful owner of the land (Aulia & Holish, 2023; Salam et al., 2024). As a result, the Land Office has categorised such land as Cluster 2 in land registration, preventing the issuance of a certificate. Disputed control of state land that has not been registered, if resolved, could potentially become an object of agrarian reform. However, resolving these disputes is complex, primarily due to the involvement of multiple government agencies with jurisdiction over land issues.

Three key agencies are involved in resolving land disputes: the Land Office, the City Government, and the Court. The Land Office addresses these issues under the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020, which outlines procedures for handling and settling land cases. The City Government, empowered by Law Number 23 of 2014 concerning Regional Government, also plays a role, particularly in disputes related to arable land on state land. The Court has jurisdiction over land disputes initiated by parties seeking judicial resolution.

Out-of-court dispute resolution requires effective cross-sector synergy and coordination among these agencies. Challenges arise because each agency operates based on its own mandates, principles, and functions, potentially prolonging the resolution process and contributing to ongoing legal uncertainty for low-income communities. For low-income individuals seeking land rights in urban areas, particularly for land formerly held under Building Use Rights (HGB), several regulatory challenges can create legal uncertainty. The diversity in regulations governing former HGB land complicates the acquisition process for these communities.

Firstly, Article 54 of the Ministerial Regulation of ATR/KBPN Number 18 of 2021 provides a pathway for individuals to apply for Property Rights on former HGB state land. This regulation stipulates that, provided the applicant meets all required terms and conditions, they can apply to the Government for land rights to the state land they currently control. Secondly, Presidential Regulation Number 62 of 2023 enables the redistribution of former HGB state land, including non-forest areas, through land redistribution programs. This regulation allows low-income communities to become beneficiaries of agrarian reform and receive land rights from the Government for state land designated as an agrarian reform object (Rofii, 2019; Rubiati et al., 2015; Sariwati & Anggriawan, 2022).

Thirdly, Presidential Regulation Number 64 of 2021 facilitates land distribution to low-income individuals from the assets of the Land Bank Agency. This includes state land formerly under land rights. Additionally, this regulation mandates the Land Bank Agency to ensure the availability of land for agrarian reform initiatives (Permadi, 2023; Roestamy, 2022; Susantio & Beatrice, 2024). The variety of regulations can potentially lead to confusion and legal uncertainty regarding the process of acquiring land rights for low-income communities. Each regulation provides different mechanisms and criteria for land allocation, which requires careful navigation to ensure that eligible individuals can effectively access their entitlements.

In addition, the acquisition of land rights by low-income individuals in urban areas encounters a significant challenge due to the complexities and contradictions in law enforcement faced by the Land Office (Bakker & Reerink, 2015; Srinivas, 2014). On one hand, Building Use Rights (HGB) that have expired, and for which neither extension nor renewal has been requested, legally revert to state land. This status change is a prerequisite for designating the land as an object of agrarian reform. The authority to grant land rights and determine land as an agrarian reform object rests with the Minister of Agrarian and Spatial Planning/Head of the National Land Agency (BPN) or other designated officials. However, before such land can be designated for agrarian reform, its status must be officially confirmed as state land.

On the other hand, former HGB holders may be entitled to priority rights to reapply for HGB under specific conditions, such as the continued cultivation and proper use of the land according to the original terms of the grant. In cases where HGB has expired and no extension or renewal has been pursued, the former right holder may not have exercised physical control over the land, and it may instead be

under the control of another party. This situation creates a dilemma for the Land Office. The cautious approach taken by the authorities to ensure legal accuracy and proper adherence to procedures can result in delays in affirming the land's status as state land and, subsequently, as an object of agrarian reform. This delay impacts the timely provision of land rights to low-income communities, who may otherwise benefit from these land reform measures.

CONCLUSION

This study confirmed and concluded that many low-income individuals in urban areas occupy land without formal legal status and are limited to physical control of these properties. This land often includes state land or former HGB land. Indonesian agrarian laws and regulations provide pathways for low-income individuals to acquire land rights through applications and land redistribution as part of agrarian reform. However, the process faces several obstacles, many of which are shaped by governmental policies. Aligned with the principle of state land control for the greatest benefit of the public, the government should prioritise assisting those in genuine need of land. Legal mechanisms should be leveraged to support these individuals. Conversely, those who hold land rights but fail to properly utilise or seek extension of their rights, contrary to the land's intended social function, should be held accountable. Their actions undermine the principles of justice and the intended benefits of land rights, which prioritise equitable access and social function.

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