



Implications of Business Certainty for Plantation Companies on Land Release Policies

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ABSTRACT

This study analyzes the policy on the partial release of plantation land through the plasma partnership scheme and the Agrarian Reform Object Land (TORA) program from the perspective of legal certainty and the protection of business actors' rights. The issue arises when the obligation to release land is imposed without a clear compensation mechanism, while companies have lawfully obtained Cultivation Rights (HGU) and invested long-term capital based on the granted land area and duration. This research employs a normative juridical method with statutory and conceptual approaches. The findings indicate that land release through plasma schemes and TORA does not explicitly regulate fair compensation, thereby potentially creating legal uncertainty and disrupting the investment climate. Normatively, any reduction or acquisition of land rights for public purposes should be carried out through land procurement or revocation mechanisms that require just and adequate compensation. The study concludes that it is necessary to reformulate land release policies based on proportionality and constitutional balance principles to ensure that agrarian reform remains aligned with Pancasila values while safeguarding justice and sustainable investment in the plantation sector.

Keyword: Release, Land, Corporation, Plantation, Pancasila

ABSTRAK

Penelitian ini menganalisis kebijakan pelepasan sebagian lahan perusahaan perkebunan melalui skema kemitraan plasma dan program Tanah Objek Reforma Agraria (TORA) dari perspektif kepastian hukum dan perlindungan hak pelaku usaha. Permasalahan muncul ketika kewajiban pelepasan lahan diberlakukan tanpa mekanisme kompensasi yang tegas, sementara perusahaan memperoleh Hak Guna Usaha (HGU) secara sah dan telah menanamkan modal jangka panjang. Penelitian ini menggunakan metode yuridis normatif dengan pendekatan perundang-undangan dan konseptual. Hasil penelitian menunjukkan bahwa pelepasan lahan melalui plasma dan TORA belum secara eksplisit mengatur pemberian ganti kerugian, sehingga berpotensi menimbulkan ketidakpastian hukum dan mengganggu iklim investasi. Padahal, pengurangan atau pengambilalihan hak atas tanah untuk kepentingan umum seharusnya dilakukan melalui mekanisme pengadaan tanah atau pencabutan hak yang mensyaratkan kompensasi yang adil dan layak. Penelitian ini menegaskan perlunya perumusan ulang kebijakan pelepasan lahan berbasis prinsip proporsionalitas dan keseimbangan konstitusional agar reforma agraria tetap sejalan dengan nilai Pancasila serta menjamin keadilan dan keberlanjutan usaha di sektor perkebunan.

Keyword: Pelepasan, Tanah, Korporasi, Perkebunan, Pancasila



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1. Introduction

The constitutional basis for natural resource management in Indonesia is mandated by the provisions of Article 33 paragraph (3) of the 1945 Constitution. The state is granted the authority to utilize and control

the earth, water, and natural resources for the greatest possible prosperity of the people. This constitutional mandate encourages the Government to issue regulations that can directly bring welfare to the people. The state's authority in managing natural resources indicates that the state possesses public authority, not private ownership rights over land. Boedi Harsono argues that the Right of State Control is based on the doctrine of public trusteeship, meaning that the state acts as a public trustee mandated to serve the public interest.¹

In the field of land affairs, Law No. 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as the UUPA) serves as the primary legal basis regulating land management and utilization. The UUPA was designed as a legal instrument to regulate land control and utilization in a fair and sustainable manner. Agrarian governance through the UUPA is intended to prevent the emergence of new land-related problems in Indonesia. However, the state's authority to control agrarian resources is not interpreted as absolute ownership rights. In this context, there is public authority that must be exercised within the framework of legal certainty and protection of land rights that have been legally granted.²

In practice, the implementation of state authority in the agrarian sector often creates tensions between public interests and the protection of land rights owned by legal subjects, including business actors. The land equalization agenda through agrarian reform programs and land redistribution policies represents the state's commitment to achieving social justice. However, these policies cannot be separated from the complexity of legal relations, particularly when the land that becomes the object of policy has been lawfully controlled based on rights granted by the state. In this context, the principle of social justice in Pancasila must be interpreted as a balance between public interest and legal certainty for land rights holders.³

In supporting the national economy, corporations, particularly plantation companies, play a strategic role as business actors as well as holders of land rights in the form of Right to Cultivate (Hak Guna Usaha/HGU). Through this right, companies carry out production, distribution, and employment creation activities by utilizing land granted by the state through lawful legal procedures. The granting of HGU serves as the legal basis for land control as well as the foundation for long-term investment planning involving large capital and sustainable business projections. Within the framework of a rule-of-law state, the existence of corporations as managers of agrarian resources requires legal certainty so that business activities can run stably and provide certainty for economic planning. Such legal certainty is also a prerequisite for creating a healthy investment climate and ensuring the sustainability of national economic development.

On the other hand, the control and utilization of land by corporations cannot be separated from the social function of land and responsibility toward society and the environment. In the Indonesian agrarian legal system, corporate land control remains limited by the principle of balance between economic interests and public interests, as reflected in the values of Pancasila and the provisions of statutory regulations.

Therefore, plantation companies are required not only to pursue economic profits but also to carry out social responsibilities through improving the welfare of surrounding communities, protecting the environment, and participating in national agrarian development programs. Such balance becomes the key to ensuring that corporate land management remains aligned with the goals of just and sustainable national development.⁴

The role of corporations in creating public welfare affirms that companies are obliged to provide benefits to society and the surrounding environment while simultaneously pursuing profit. A similar provision is regulated in Law No. 25 of 2007 concerning Investment (hereinafter referred to as the Investment Law), which emphasizes the role of investors in supporting national economic growth through the sustainable utilization of resources. The involvement of companies, both state-owned enterprises (SOEs) and private entities, serves as an important instrument in achieving national welfare.⁵ The Investment Law positions investment as an instrument of sustainable national development, including the utilization of agrarian resources. However, in practice, these social obligations have the potential to create tensions when confronted with the legal certainty of land rights needed to ensure business sustainability.

More explicitly in the plantation sector, the obligation to provide at least 20% of the total cultivated land area by plantation companies is regulated in Law No. 39 of 2014 concerning Plantations (Plantation Law) as part of the community plantation development and plasma partnership scheme. This policy serves as an

¹ Bakri, Muhammad. *Hak menguasai tanah oleh negara: paradigma baru untuk reforma agraria*. Universitas Brawijaya Press, 2011, hlm. 78

² Fifi k Wiryani, Febriansyah Ramadhan, *KEADILAN AGRARIA: Relasi Konstitusi, Hak Menguasai Negara, Dan Konflik Struktural* (Setara Press Penerbit Buku Hukum PT Cita Intrans Selaras (Citila), 2025), hlm. 44

³ Agus Hiplunudin, *POLITIK AGRARIA Suatu Bahasan Penguasaan Tanah; Petani Vs Negara Dan Neoliberalisme* (GUEPEDIA, 2019), hlm. 21.

⁴ Yagus Suyadi, *Badan Bank Tanah Politik Hukum Pembentukan Dan Kewenangan Khusus (Sui Generis) Dalam Mengelola Tanah Negara* (Deepublish, 2025), hlm. 54

⁵ Lihat konsideran Undang Undang No. 25 Tahun 2007 tentang Penanaman Modal

instrument for implementing agrarian reform aimed at promoting the equal distribution of land control and utilization. However, from the perspective of business management and investment certainty, this obligation has the potential to create legal problems. Companies generally obtain land rights through lawful procedures based on the UUPA, including the granting of HGU for a certain period with the fulfillment of various financial and administrative obligations to the state. In this context, the implementation of obligations to release part of the land without clear compensation mechanisms or adjustments to investment planning has the potential to reduce legal certainty over the rights that have been obtained. This condition creates a dilemma between the implementation of the social function of land and the protection of business certainty, which ultimately may affect the stability of the investment climate in the plantation sector.

The policy requiring the release of a portion of plantation land can, on one hand, be understood as a state instrument to achieve equal distribution of land ownership and to implement the social function of land rights. However, from a business law perspective, this policy raises questions regarding legal certainty and the protection of the rights of business actors who have legally obtained land rights. The absence of clear regulation regarding compensation mechanisms or investment adjustments related to land release has the potential to create an imbalance between the objectives of distributive justice and the principle of legal certainty. This conflict demonstrates the need to examine more deeply how land release policies can be positioned within the framework of the national agrarian legal system based on Pancasila values, so that harmonization between land redistribution and the sustainability of the business climate can be achieved.⁶

2. Research Methods

The research method used in this study is normative juridical legal research, which is research that examines legal norms as the main object of study.⁷ The approaches used include the statutory approach (statute approach) and the conceptual approach (conceptual approach). The statutory approach is carried out by examining various laws and regulations related to land control and the release of land rights, particularly in the plantation sector. Meanwhile, the conceptual approach is used to analyze the principles of legal certainty, the social function of land rights, and investment protection within the national legal system.

The legal materials used consist of primary legal materials in the form of laws and regulations, secondary legal materials in the form of books, journals, and relevant research results, as well as tertiary legal materials in the form of legal dictionaries and encyclopedias. All legal materials are analyzed qualitatively using deductive reasoning methods to build systematic legal arguments in answering issues concerning legal certainty in corporate land release policies, both for private companies

3. Result & Discussion

3.1 Philosophical Foundation and the Role of Corporations in Land Management

The state's authority to control the earth, water, and natural resources as regulated in Article 33 paragraph (3) of the 1945 Constitution cannot be interpreted as the state's right of ownership over these resources. The Right of State Control is understood as public authority which includes policy formulation (beleid), regulation (regelendaad), administration (bestuurdaad), management (beheersdaad), and supervision (toezichthoudendaad). Every state policy related to land control by corporations must be placed within the framework of the state's regulatory and management functions.⁸

The view of Mohammad Hatta regarding the state's right to control is that the state does not need to act as an entrepreneur or *ondernemer*. Rather, state power is more appropriately understood as the authority to formulate policies and regulate the course of the economy in order to prevent exploitation by capital owners against weaker groups. Such thinking, in the effort to realize the objectives of the state, reflects the concept of a national economy that is implemented through government policies.⁹ The utilization of land for the prosperity of the people has a strong philosophical foundation through the UUPA. Article 4 paragraph (1) of the UUPA stipulates that, based on the state's right to control as referred to in Article 2, various types of rights over the surface of the earth, referred to as land, may be granted to and owned by individuals, either individually or jointly with other individuals as well as legal entities. In its explanation, it is further emphasized that land

⁶ Intan Handayani, dkk. "John Rawls: Filsafat Hukum," *Nusantara: Jurnal Pendidikan, Seni, Sains dan Sosial Humaniora* (2025) 3:1, 1-15, no. September (2023), hlm. 10.

⁷ Muhammad Iqbal et al., "Metodologi Penelitian Hukum (Panduan Teoritis Dan Praktis)," *CV Sangpena Media* (2025), hlm. 54

⁸ Jundiani Jundiani, "Aktualisasi Antinomi Nilai-Nilai Filosofis Pasal 33 UUD 1945," *De Jure: Jurnal Hukum dan Syar'iah* 7, no. 2 (2015), hlm. 156.

⁹ Syaiful Bahari, *Hak Menguasai Negara Dalam Politik Hukum Agraria Di Indonesia* (Yayasan Pustaka Obor Indonesia, 2025), hlm. 42

refers to the surface of the earth. The UUPA explanation comprehensively describes that only the surface of the earth, namely land, can be subject to rights by a person. Land rights are regarded as having a social function as affirmed in Article 6 of the UUPA. This framework includes the authority to:¹⁰

- 1) Regulate and administer;
- 2) Determine and regulate legal relationships; and
- 3) Determine and regulate legal relations between individuals and legal acts concerning the earth, water, and airspace.

Corporations in this context become strategic partners of the state in driving the economy through natural resource management, investment, and job creation. This role places corporations as development actors subject to the principle of social function as regulated in the national agrarian legal system. However, positioning corporations as development instruments does not automatically eliminate rights that have been lawfully obtained. Therefore, every social obligation imposed must remain within the limits of legal certainty.¹¹

Corporations engaged in land utilization, particularly in the plantation sector, generally hold Right to Cultivate (Hak Guna Usaha/HGU) as regulated under the UUPA. HGU is granted for a maximum period of 25 years and can be extended or renewed in accordance with the provisions of Article 29 of the UUPA. Through this right, HGU holders obtain the authority to cultivate and take the produce from the land under their control within a certain period while fulfilling obligations to the state. The long-term character and certainty of the validity period of HGU make it the main basis for corporate investment planning and business projections. On this basis, every policy that has an impact on reducing land area or land control during the validity period of HGU must be considered from the perspective of legal certainty and protection of rights that have been lawfully granted.¹²

The utilization of land by plantation companies, including State-Owned Enterprises (SOEs), requires a balance between business interests and the social function of land rights. Holders of the Right to Cultivate (HGU) are obliged to fulfill legal obligations such as paying financial obligations to the state, maintaining environmental sustainability, and respecting the rights of customary law communities. Failure to fulfill these obligations may lead to revocation of rights as regulated under Article 34 of the UUPA. However, revocation of rights due to violation of obligations is legally different from policies requiring the release of part of the land as an instrument of equal distribution. This distinction is important to analyze in order to determine the limits of state authority in restricting or reducing land rights that have been lawfully granted to corporations.¹³

3.1.2 Obligation of Land Release in Plantation Companies

The contribution of plantation companies in carrying out the constitutional mandate is realized through land release and allocation policies oriented toward the implementation of the social function of land. As an extension of the state's right to control, corporate land control is subject to the principles of agrarian equity and justice. In this framework, applicable policies can be classified into two models, namely: (1) land release for the facilitation of community plantations, and (2) land release under the Agrarian Reform Object Land (Tanah Objek Reformasi Agraria/TORA) scheme.

First, there is an obligation to provide at least 20% (twenty percent) of the total area of the Right to Cultivate (Hak Guna Usaha/HGU) at the time of rights extension or renewal. This obligation is regulated under Article 82 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 18 of 2021. In this case, there is an obligation to facilitate community plantation development in the form of partnerships carried out during the extension or renewal of HGU. This context demonstrates the strategic position of the state in using its right of control as an instrument to involve corporations in land redistribution strategies.

These provisions are further reinforced by Article 58 paragraph (3) of the Forestry Law, which requires plantation companies to facilitate the development of community plantations within a maximum period of 3 (three) years after the Right to Cultivate is granted. Such facilitation may be carried out through partnership schemes, credit arrangements, profit-sharing, or other financing schemes. Violations of the obligation to

¹⁰ Ni Luh Ariningsih Sari, "Konsep Hak Menguasai Negara Terhadap Tanah Dalam Hukum Tanah (Uupa) Dan Konstitusi," *Jurnal Ganec Swara* 15, no. 1 (2021), hlm. 53

¹¹ Adrian Sutedi, *Buku Pintar Hukum Perseroan Terbatas* (Raih Asa Sukses, 2015), hlm. 21

¹² Rahadiyan Veda Mahardika et al., *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan: Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha* (UM Jember Press, 2022), hlm. 9

¹³ Rachman, Miftahur, Mulia Akbar Santoso, and Raja Desril. "Kajian Terhadap Eksistensi dan Penguatan Badan Bank Tanah dalam Undang-Undang Cipta Kerja serta Implikasinya Terhadap Hukum Pertanahan di Indonesia." *Innovative: Journal Of Social Science Research* 4.3 (2024), hlm. 5689

release land for smallholder plantations may be subject to criminal sanctions in the form of: 1) fines; 2) temporary suspension; and 3) revocation of plantation business permits.¹⁴

Second, plantation companies are also obliged to contribute to land release for use as Agrarian Reform Object Land (TORA). Article 6 of Presidential Regulation No. 62 of 2023 concerning the Acceleration of Agrarian Reform (hereinafter referred to as Perpres 62/2023) stipulates that plantation companies holding approval for forest area release must allocate 20% (twenty percent) of the total approved forest area release for plantation activities that can be cultivated to provide TORA from forest areas. In this context, companies that apply for HGU management originating from forest area release are obligated to allocate land for community use with the aim of land redistribution. In addition, the Government also has the right to allocate unproductive land owned by companies to become TORA¹⁵ objects, which will then be distributed to the community. This provision reflects the implementation of the state's right to control resources to prevent concentration of land ownership by corporations and to encourage the equalization of the national agrarian structure.

This provision is in line with Article 165 of Minister of Agrarian Affairs Regulation No. 18 of 2021, which regulates that holders of the Right to Cultivate (HGU) who carry out revisions to the Spatial Plan (RTR) must surrender at least 20% (twenty percent) of the land area affected by the change of designation to the state. This obligation has redistributive consequences for the structure of land control. In the context of SOEs (State-Owned Enterprises), this provision creates more complex implications, because HGU land is recorded as part of separated state assets and becomes company assets. Therefore, the transfer of part of such land must be aligned with asset management and write-off mechanisms in accordance with the legal regime of state finance, which potentially creates tension between the principle of SOE asset optimization and the social function obligation of land.¹⁶

Various obligations for land release and allocation imposed on plantation companies show that land control by corporations in Indonesia was never intended to be absolute rights. Through agrarian legal instruments, the state emphasizes that every land right always contains a social dimension that must be realized in the form of partnerships, redistribution, and agrarian reform. However, in practice, the implementation of these obligations often confronts business logic and asset optimization considerations, especially when involving SOEs as both corporate entities and extensions of the state. The main challenge for national economic law development is how to balance business certainty and agrarian justice, so that the social function of land is aligned with instruments of equitable distribution and public welfare.¹⁷

3.1.3. Policy Implications of Land Release on Business Certainty

Overall, plantation companies operating under the plasma partnership obligation scheme or TORA redistribution scheme face new dynamics in business planning and sustainability. In the first model, companies are required to facilitate community plantation development through plasma partnership schemes. In the second model, companies may be required to surrender part of their HGU land area due to spatial planning policy changes that designate it as TORA object land. Both models create implications for legal certainty and business certainty, particularly regarding investment projections, production planning, and the economic value of land that has been calculated from the time rights were initially granted.

In business management practice, plantation companies holding HGU face risks when the state imposes obligations to allocate or surrender part of their land without clear mechanisms to protect business interests. Although plasma and TORA obligations are essentially limitations on rights that have been burdened with a social function from the beginning, any reduction or transfer of land rights that significantly affects the economic value of the land must still consider the principles of legal certainty and justice. Within the land law regime, land acquisition for public interest is generally carried out through land acquisition mechanisms that guarantee deliberation and the provision of fair and reasonable compensation. Meanwhile, revocation of land

¹⁴ M Nazir Salim and Westi Utami, *Reforma Agraria, Menyelesaikan Mandat Konstitusi: Kebijakan Reforma Agraria Dan Perdebatan Tanah Objek Reforma Agraria* (STPN Press, 2020), hlm. 644.

¹⁵ Ketentuan Pasal 7 ayat (1) huruf b dan c Peraturan Presiden No. 86 Tahun 2018 tentang Reforma Agraria menyebutkan objek TORA antara lain: a) tanah yang diperoleh dari kewajiban pemegang HGU untuk menyerahkan paling sedikit 20% (dua puluh persen) dari luas bidang tanah HGU yang berubah menjadi HGB karena perubahan peruntukan rencana tata ruang; b) tanah yang diperoleh dari kewajiban menyediakan paling sedikit 20% (dua puluh persen) dari luas Tanah Negara yang diberikan kepada pemegang HGU dalam proses pemberian, perpanjangan atau pembaruan haknya.

¹⁶ Bornok Maria Irene Nababan, "Tanggung Jawab Direksi Dalam Pelepasan Asset Tidak Bergerak Pada Badan Usaha Milik Negara (BUMN)" (Universitas Sumatera Utara, 2011), hlm. 52

¹⁷ Muchammad Chanif Chamdani et al., "Tanah Dan Ruang Untuk Keadilan Dan Kemakmuran Rakyat" (STPN Press dan PPPM, 2019), hlm. 12.

rights is an extraordinary measure that can only be carried out in urgent situations for public interest and must be implemented through a Presidential Decree in accordance with statutory regulations, with an obligation to provide proportional compensation.¹⁸

Related to the property rights theory, it is emphasized that ownership of land or other assets provides the owner with full authority to control, use, enjoy the benefits, and transfer such rights. However, these rights remain limited by the public interest and applicable legal norms. In this context, the state may regulate, manage, and even acquire property rights for public purposes, provided that fair procedures and adequate compensation are ensured. This theory reflects a balance between the recognition of individual rights and social responsibility, positioning property ownership as a means to achieve collective welfare rather than merely an unlimited private right.¹⁹

The compensation or indemnification mechanism that can ensure justice for corporations should refer to Law No. 20 of 1961 concerning the Revocation of Land Rights and Other Objects on It. In this regard, government policies in utilizing land, both through land acquisition for public purposes and revocation of rights, must be accompanied by fair compensation. Therefore, the implementation of the two land release models, particularly the TORA allocation scheme, should be carried out using a mechanism that prioritizes the principle of balance.

The provisions of Article 165 of the Minister of Agrarian Affairs and Spatial Planning Regulation No. 18 of 2021 concerning plasma schemes and Article 6 of Presidential Regulation No. 62 of 2023 concerning TORA redistribution do not explicitly regulate compensation mechanisms as described above. Consequently, existing land regulations in Indonesia have not fully succeeded in balancing public interests with the interests of business actors, including corporations.

The government's intervention policy concerning Cultivation Rights (HGU) must consider the principle of legal certainty that arises from the moment the right is granted. Companies that have from the outset made investments, prepared business plans, and calculated the duration and extent of HGU as the basis of their business operations are entitled to protection over the stability of their land control in accordance with the applicable legal framework at the time the right was granted. Although land rights are constitutionally protected, their implementation remains subject to the principle of social function and public interest. Therefore, any allocation of land for public purposes must be carried out through fair legal mechanisms accompanied by the provision of adequate compensation. Land acquisition cannot be conducted unilaterally or arbitrarily, since the state's authority to control land and natural resources as regulated under Article 33 paragraph (3) of the 1945 Constitution does not constitute absolute ownership rights, but rather public authority to regulate and manage resources for the greatest prosperity of the people in a proportionate and just manner.

Indonesia, as a country based on Pancasila, seeks to maintain a balance between individual interests and collective interests in every public policy, including land regulation. This principle differs from the principles of socialist countries, which place all ownership under full state control. This concept also differs from systems that either place ownership entirely under state dominance or fully surrender land control to market mechanisms. Within the framework of Pancasila, land rights are recognized and protected, but at the same time are burdened with a social function for the common prosperity. Therefore, every policy involving the acquisition or limitation of land rights must be carried out through deliberative mechanisms, guarantee legal certainty, and be accompanied by fair and transparent compensation as a manifestation of social justice.²⁰

Thus, the implementation of land release obligations under the plasma scheme and the designation of TORA as regulated in Presidential Regulation No. 62 of 2023 and Minister of Agrarian Affairs Regulation No. 18 of 2021 must be interpreted as public policies that must adhere to the principles of balance, legal certainty, and proportionality alongside compliance with public policy objectives.

The principle of proportionality requires that restrictions on HGU (Right to Cultivate) must have a legitimate purpose, be carried out through appropriate means, and not impose excessive burdens on rights holders. If such policies are not accompanied by clear compensation mechanisms and adequate participation,

¹⁸ Luh Nyoman Diah Sri Prabandari, I Wayan Arthanaya, and Luh Putu Suryani, "Pemberian Ganti Rugi Terhadap Pengadaan Tanah Oleh Pemerintah Untuk Kepentingan Umum," *Jurnal Analogi Hukum* 3, no. 1 (2021), hlm. 5

¹⁹ Huta Disyon and Kevin Bhaskara Sibarani, "Keadilan Sebagai Tujuan Hukum Dari Hak Menguasai Negara Dalam Skema Holding BUMN," *Pancasila: Jurnal Keindonesiaan* 3, no. 2 (2023), hlm. 140

²⁰ J B H Watung, "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dan Kompensasi Dalam Pengadaan Tanah Untuk Pembangunan," *Lex Administratum*, no. 1 (2024), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/57821%0Ahttps://ejournal.unsrat.ac.id/index.php/administratum/article/download/57821/47507>, hlm. 31

they may potentially be inconsistent with the principle of social justice that serves as the ideological foundation of their formation.

Therefore, harmonization between the agrarian reform agenda and the protection of legal certainty for HGU holders is a key prerequisite so that agrarian development does not instead create new uncertainties and imbalances in the national land legal system. Without balance between land redistribution interests and the constitutional protection of business actors' rights, the investment climate will be disrupted and investor confidence in legal certainty in Indonesia may weaken. In this context, the state cannot simply exercise its authority in an absolute manner in determining land release policies. Current land release policies through TORA and plasma programs may be perceived as reflecting characteristics of a socialist-style state, which contradicts the Pancasila ideology. Land release policies must continue to make Pancasila the state's philosophical foundation so that both public needs and private needs of society can be fulfilled fairly.

Land release policies by plantation companies require a constitutional balance-based regulatory model in implementing agrarian reform for holders of the Right to Cultivate (HGU). This model rests on three main pillars that mutually reinforce each other legally. *First*, the constitutional pillar, which affirms that land rights are property rights that receive legal protection but are limited by the social function of land and the constitutional mandate of Article 33 paragraph (3) of the 1945 Constitution, which places state control over agrarian resources as an instrument for the greatest prosperity of the people. From this perspective, legal restrictions on HGU can be justified as long as they are carried out for legitimate and constitutional purposes.

Second, the procedural pillar, namely that every form of reduction or limitation of the effective area of HGU, whether through plasma partnership schemes or the designation of Agrarian Reform Object Land (TORA) as regulated in Presidential Regulation No. 62 of 2023 and Minister of Agrarian Affairs Regulation No. 18 of 2021, must adhere to the principles of legal certainty, procedural justice, and proportionality in limiting rights. Within the legal framework of rights acquisition, these principles are aligned with the land acquisition regime that requires the provision of fair and appropriate compensation. *Third*, the economic balance pillar, which emphasizes the need for compensation policy design that is not only financial in nature but may also take the form of HGU term adjustments, fiscal incentives, or other forms of economic compensation that maintain business sustainability without reducing the objectives of agrarian redistribution. This approach is consistent with the welfare state principle that is oriented toward economic stability and national investment sustainability.

Through this framework, agrarian reform is not positioned as a unilateral redistributive policy, but rather as an instrument of economic legal development that places distributive justice, legal certainty, and economic sustainability in a balanced position. Thus, the agenda of equalizing land ownership can still be implemented without creating legal uncertainty for HGU holders or risks that could disrupt long-term investment stability and state financial stability.

4. Conclusion

The main problem in the policy of releasing part of HGU land lies in the yet unachieved proportional balance between the goal of equal land distribution and the protection of rights and business certainty for business actors. Since the early stages of investment, companies have built business planning based on the size and duration of the HGU granted by the state. Therefore, every land release policy must be aligned with the principle of legal certainty and accompanied by fair compensation mechanisms, so that the implementation of agrarian reform can continue without neglecting rights that have been legitimized by the state.

The implementation of TORA and plantation plasma schemes without compensation is contrary to the principle of legitimate expectation. In this context, investors place trust or expectations in corporations with the belief that profits will be generated. However, if policies do not reflect balance, it is believed that investment value in Indonesia will decrease. In this regard, the state must be present in providing legal certainty within the business climate of companies. The land release policy model for plantation companies needs to be reformulated so that it is in line with Pancasila, which balances individual interests and public interests, while maintaining a fair and sustainable investment climate in the plantation sector. Without proportional regulatory arrangement, such policies may reduce the economic benefits of companies while creating legal uncertainty that could weaken the national investment climate.

The allocation of corporate land as TORA and plasma objects must be based on the principle of proportionality that prioritizes justice. It is expected that land release policies toward corporations must balance land distribution targets with fair opportunities for corporations to continue their business activities.

References

Chamdani, Muchammad Chanif, Sandi Halim, Wasyilatul Jannah, Deiny Setyawan, Salsabila Siliwangi

- Surtiwa, Abinowo Abinowo, Hidayatur Rohman, Ervin Sapto Nugroho, Ari Wibowo, and Isni Indriyana. "Tanah Dan Ruang Untuk Keadilan Dan Kemakmuran Rakyat." STPN Press dan PPPM, 2019.
- Disyon, Huta, and Kevin Bhaskara Sibarani. "Keadilan Sebagai Tujuan Hukum Dari Hak Menguasai Negara Dalam Skema Holding BUMN." *Pancasila: Jurnal Keindonesiaan* 3, no. 2 (2023): 134–148.
- Hiplunudin, Agus. *POLITIK AGRARIA Suatu Bahasan Penguasaan Tanah; Petani Vs Negara Dan Neoliberalisme*. GUEPEDIA, 2019.
- IntanHandayani;SaliraNitiSyara;SarassatiGarnita;LaikaFisailillah. "JOHNRAWLS:FILSAFAT HUKUM." *Nusantara:JurnalPendidikan,Seni,SainsdanSosialHumaniora(2025)3:1,1-15*, no. September (2023): 1–17.
- Iqbal, Muhammad, Zaki Ulya Radhali, Andi Rachmad, Hanri Aldino, and Muhammad Iqbal Asnawi. "Metodologi Penelitian Hukum (Panduan Teoritis Dan Praktis)." *CV Sangpena Media* (2025).
- Jundiani, Jundiani. "Aktualisasi Antinomi Nilai-Nilai Filosofis Pasal 33 UUD 1945." *De Jure: Jurnal Hukum dan Syar'iah* 7, no. 2 (2015): 156–169.
- k Wiryani, Fifi, M Si SH, and S H Febriansyah Ramadhan. *KEADILAN AGRARIA: Relasi Konstitusi, Hak Menguasai Negara, Dan Konflik Struktural*. Setara Press Penerbit Buku Hukum PT Cita Intrans Selaras (Citila), 2025.
- Nababan, Bornok Maria Irene. "Tanggung Jawab Direksi Dalam Pelepasan Asset Tidak Bergerak Pada Badan Usaha Milik Negara (BUMN)." Universitas Sumatera Utara, 2011.
- Prabandari, Luh Nyoman Diah Sri, I Wayan Arthanaya, and Luh Putu Suryani. "Pemberian Ganti Rugi Terhadap Pengadaan Tanah Oleh Pemerintah Untuk Kepentingan Umum." *Jurnal Analogi Hukum* 3, no. 1 (2021): 1–5.
- Rahadiyan Veda Mahardika, S H, S H Bhim Prakoso, Sp N MM, and S H Iswi Hariyani. *Kedudukan Subyek Hukum Ditinjau Dari Hak Keperdataan: Refleksi: Terjadinya Tumpang Tindih Lahan Hak Guna Usaha*. UM Jember Press, 2022.
- Rachman, Miftahur, Mulia Akbar Santoso, and Raja Desril. "Kajian Terhadap Eksistensi dan Penguatan Badan Bank Tanah dalam Undang-Undang Cipta Kerja serta Implikasinya Terhadap Hukum Pertanahan di Indonesia." *Innovative: Journal Of Social Science Research* 4.3 (2024): 5686-5699.
- Salim, M Nazir, and Westi Utami. *Reforma Agraria, Menyelesaikan Mandat Konstitusi: Kebijakan Reforma Agraria Dan Perdebatan Tanah Objek Reforma Agraria*. STPN Press, 2020.
- Sari, Ni Luh Ariningsih. "Konsep Hak Menguasai Negara Terhadap Tanah Dalam Hukum Tanah (Uupa) Dan Konstitusi." *Jurnal Ganec Swara* 15, no. 1 (2021).
- Sutedi, Adrian. *Buku Pintar Hukum Perseroan Terbatas*. Raih Asa Sukses, 2015.
- Suyadi, Yagus. *Badan Bank Tanah Politik Hukum Pembentukan Dan Kewenangan Khusus (Sui Generis) Dalam Mengelola Tanah Negara*. Deepublish, 2025.
- Syaiful Bahari, S H. *Hak Menguasai Negara Dalam Politik Hukum Agraria Di Indonesia*. Yayasan Pustaka Obor Indonesia, 2025.
- Watung, J B H. "Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dan Kompensasi Dalam Pengadaan Tanah Untuk Pembangunan." *Lex Administratum*, no. 1 (2024). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/57821%0Ahttps://ejournal.unsrat.ac.id/index.php/administratum/article/download/57821/47507>.