

**JURIDICAL REVIEW OF LAND STATUS SETTLEMENT  
AFFECTED BY THE NATURAL DISASTER LIQUEFACTION IN BALAROA  
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***Abstract***

*On September 28, 2018, Palu City experienced a liquefaction disaster, a shift in land and a change in geographical shape had a negative impact on the community. Land liquefaction due to natural disasters that occurred in 2018, there are several circumstances that can cause problems with the status of land rights, for that guarantees of certainty and effective legal protection by the government will provide a strong legal basis. The type of research used by the author in compiling this research is empirical juridical research. Empirical juridical research, which is meant in other words, is a type of sociological legal research and can be referred to as field research. The Basic Agrarian Law as contained in the provisions of Article 33 paragraph (3) of the 1945 Constitution, namely: "Earth, water and natural resources contained therein are controlled by the State". Article 6 of Law No. 24 of 2007 reads, disaster risk*

*reduction and the integration of disaster risk reduction with development programs and community protection from disasters. The right to ownership of land affected by the liquefaction disaster in Balaroa Sub-District is based on article 2 of the Basic Agrarian Law and public interests or social functions, then the status of land rights affected by the liquefaction has been completely removed with the provision that the affected community has received compensation such as land acquisition and provision of permanent housing in accordance with article 18 of the Basic Agrarian Law and article 32 paragraph b of Law No. 24 of 2007, on the other hand for people who refuse to receive compensation, still has power over the land but can no longer be occupied to build a dwelling or it can be said that the rights to the land are partially revoked because the land has been marked with a red zone.*

**Keywords:** *Balaroa Sub-District; Land Liquefaction Status*

## INTRODUCTION

As an agricultural country or an archipelago, the Indonesian nation has a significant position in implementing life and human life.

The Unitary State of the Republic of Indonesia is fully responsible for protecting the entire Indonesian nation to protect life and livelihood, including protection against disasters and their civil rights, in the context of realizing public welfare based on Pancasila as mandated in the Constitution of the Republic of Indonesia. 1945. On the other hand, for the State and development, the land is also the primary capital for implementing state life in the integrity of the Unitary State of the Republic of Indonesia and for realizing the greatest prosperity of the people. Therefore, in such a position, the control, ownership, use, and utilization of land are guaranteed legal protection from the Government.

The land is one of the natural resources that can be utilized by all Indonesian people where this natural resource is essentially a supporter of people's prosperity. As stated in the provisions of the 1945 Constitution Article 33 Paragraph (3), it is noted that "Earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." In Basic Agrarian Law Number 5 of 1960 Article 21 paragraph (1), it is stated that property rights are hereditary, most substantial, and most fundamental rights that people on land can own. To implement the provisions for granting ownership rights to state land, it is necessary to regulate the law.

On September 28, 2018, Palu City experienced a liquefaction disaster or a shift in the land, and changes in geographical shape harmed the community. Soil liquefaction is a soil behavior that feels a sudden change from a solid state to a liq-

uefied state or has properties such as heavy liquid.

This technical definition of liquefaction is a state of "soil liquefaction" occurring when the adequate pressure of the soil is reduced to essentially zero, which corresponds to a loss of shear strength. This can be triggered by monotonic loading (e.g., a single sudden change in pressure, including increasing load on an embankment or sudden loss of sub-support) or cyclical (e.g., repeated changes in pressure conditions including crashing waves or earthquake vibrations). Earth).

There are 2 (two) circumstances that will cause problems and the settlement of land ownership rights. First, guarantee of certainty or adequate protection of land ownership rights. Second, the principle of land registration and other statutory regulations will directly or indirectly affect land officials or employees to protect land ownership rights related to registration and adjudication of providing legal certainty to individuals on land ownership of victims of natural disasters. liquefaction. Formulation of the problem :

1. How is the settlement of land ownership status affected by the liquefaction of Palu City, especially Balaroa Sub-District?
2. How are legal protection and le-

gal certainty for land ownership affected by the natural liquefaction disaster of Palu City, especially Balaroa Sub-District?

## ANALYSIS AND DISCUSSION

### Settlement of Land Ownership Status Affected by Liquefaction Natural Disasters, Balaroa Sub-District

Disasters are events or series of events that threaten and disrupt people's lives and livelihoods caused by natural and/or non-natural factors as well as human factors, resulting in human casualties, environmental damage, property losses, and psychological impacts.<sup>1</sup>

The author's research location is in Balaroa Sub-District, one of the areas affected by a relatively severe natural disaster in Palu City. The tragedies that occur in Balaroa Sub-District are natural disasters in the form of earthquakes and landslides, to be more precise, liquefaction.

Liquefaction can occur when saturated or partially saturated soil substantially loses strength and stiffness due to an earthquake or sudden shock, accompanied by a change in solid material to become a liquid. In the incident in Palu City, the ground suddenly sank into a solution of

<sup>1</sup> Aldi Ariansyah, "BNPB," Default title, accessed January 30, 2022, <https://www.bnpb.go.id/definisi-bencana>.

water and then shifted as if it was walking on its own. Based on data obtained by victims of the liquefaction disaster in Palu, 2,256 people died, 1,309 people were missing, 4,612 people were injured (Head of the BNPB Information and Public Relations Data Center, Sutopo Purwo Nugroho, [tirto.id](http://tirto.id)).<sup>2</sup>

Concerning the liquefaction disaster that occurred in Balaroa Sub-District, the problems that emerged after the natural liquefaction disaster in Balaroa Sub-District was the ownership status of land rights affected by the liquefaction and damaged or loss of land title certificates, accompanied by the destruction of land boundaries that caused it is difficult for victims of the natural liquefaction disaster, Balaroa Sub-District, to obtain legal certainty guarantees and adequate legal protection for land ownership rights. Several residents of Balaroa Sub-district gave an opinion that the owners of the liquefied land in Balaroa Sub-district still claim that the affected land is still their property, and the issue of compensation in the form of permanent occupancy does not rule out the possibility that the land title rights will

not be revoked entirely or partially.

Land rights are rights that can be defended against everyone. This means that everyone must recognize, respect, and heed the property rights because the property rights are part of the material rights called absolute rights/absolute rights.<sup>3</sup>

Basic Agrarian Law No. 5 of 1960 Article 20 paragraph (1) states that property rights are hereditary, the strongest and fullest rights that people can have on land, with all land rights having social functions. The social process here is that the rights to the ground should benefit others, especially themselves. However, it is further explained in paragraph (2) that such property rights can be transferred and can be transferred. So, to implement all the provisions based on the social function of granting ownership rights to land or relinquishing land rights, the State needs to stipulate in regulation or legislation.

The status of land rights is an absolute right that authorizes the owner to use and/or take advantage of these rights. Still, it must be remembered that the land rights can be transferred or revoked by the State based on the public interest, especially in

<sup>2</sup> David Manoel Mangunpraja and Aniek Prihatiningsih, "Soil Improvement Analysis As A Form Of Liquefaction Disaster Mitigation That Can Be Applicable To The Community In Palu," *JMTS: Jurnal Mitra Teknik Sipil* 2, no. 4 (December 10, 2019): 95, <https://doi.org/10.24912/jmts.v2i4.6167>.

<sup>3</sup> Lia Nur Aini et al., "Legal Protection of Civil Rights of Citizens on Land in Forest Areas Based on Decree of the Minister of Forestry of the Republic of Indonesia No. Sk. 463/Menhut-II/2013 in Batam City," *USU Law Journal* 2, no. 3 (2014): pp. 99–114.

the interest of public safety in the event of a natural disaster for taking no risks. The State represented by the Government in regulating the land sector, especially in terms of legal traffic, should become a benchmark for the community to comply with decisions from the Government aimed at solving problems with the status of land rights affected by the post-disaster.

It has been fully described in Law no. 5 of 1960 in article 18 becomes the basis for enforcing land rights, the public interest must take precedence over personal interests by providing appropriate compensation, and according to the method regulated by law, the content is in the form of legal certainty to fulfill the concept of justice and other factors, which affects legal protection efforts for land rights holders.<sup>4</sup>

It is known that the liquefaction disaster that befell Balaroa Sub-District is the liquefaction of land that moves from its original ground and is still very risky to be reoccupied. Still, on the other hand, residents of Balaroa Sub-District question the status of the certificate of land rights. Land problems are problems that significantly impact the owners of disaster vic-

tims. Basic Agrarian Law No. 5 of 1960 Article 27 reaffirms that property rights are abolished because:

- a. The land falls to the State:
  1. Due to the revocation of rights based on Article 18 of the Basic Agrarian Law;
  2. Due to voluntary surrender by the owner;
  3. For being neglected;
  4. Because of Article 21 paragraph (3) and Article 26 paragraph (2) Basic Agrarian Law.

b. The land is destroyed.

Destroyed land has changed from its original form due to natural events that can no longer be identified. It can no longer function, be used, and appropriately utilized (Article 1 paragraph (2) of Law No. 48 of 2007. Article 5 paragraph (1) further explained that landowners whose land has been destroyed, both registered and unregistered, obtain replacement land or compensation through the implementation of rehabilitation and reconstruction determined by the regional Government or the Rehabilitation and Reconstruction Agency.<sup>5</sup>

Affected land rights that occur due to liquefaction natural disasters get com-

<sup>4</sup> Aryat Sapeni, "Legal Protection Of Revocation Of Land Rights For Development In The Public Interest" (bachelor, Tadulako University, 2019), <http://repository.untad.ac.id/247/>.

<sup>5</sup> Lestari Victoria Sinaga MH SH, Traditional Law In General Perspective (CV Literasi Nusantara Abadi, 2021), 35.

compensation and are a form of the Government's systematic obligation based on law and legal protection. Revocation of land rights for the public interest, mainly to prevent unwanted risks, considering Article 6 of the Basic Agrarian Law, which states that "All land rights have a social function" however, should be carried out following the provisions of Article 36 paragraphs 1 and 2 of the Human Rights Law: "(1 ). Everyone has the right to own property, either alone or together with others, to develop himself, his family, nation, and society in a way that does not violate the law. No one may be deprived of his property arbitrarily against the law.

The explanation of the law or some opinions from the scholars above provide the understanding that Land affected by the disaster that has been lost or still exists but is categorized as land prone to catastrophe can no longer be occupied but with the provision that the rights to land affected by the liquefaction disaster will be replaced. For the revocation of land ownership rights. The issue of liquefaction land rights involves the Government and also the people of Balaroa Sub-District, who are stakeholders in the liquefaction disaster problem of Palu City, especially Balaroa Maka Sub-District, to implement all provisions based on the social function of

granting ownership rights to land or relinquishing land rights. , the State needs to regulate in regulation or legislation.

The Government has determined that disaster risk areas in affected areas in Central Sulawesi province will be divided into four disaster-prone zones. Each site has a spatial use direction that adapts to the characteristics of potential disaster risks, namely, forbidden zones, restricted zones, conditional zones, and development zones. Balaroa Sub-District is included in the prohibited zone here. Governor Regulation No. 10 of 2019 mentions that spatial directions are not permitted for redevelopment and new development for restricted zones. It is recommended that residential units in this zone be relocated and prioritize space to function protected areas, green open spaces, and monuments.

The Ministry of Public Works and Public Housing stated that people who were victims of the earthquake, tsunami, and liquefaction in Palu City, Central Sulawesi, had begun to occupy permanent housing, which had been completed. The Head of the Work Unit of the Central Sulawesi Regional Settlement Infrastructure, Aksa Mardani, in a written statement received by VOA, Saturday (9/1/2021), explained that based on temporary data from the Palu City Government, the need for

permanent housing development by The Ministry of PUPR in Palu City in 2020 is 5,758 units. One thousand nine hundred sixty-eight branches spread across Duyu, Tondo Satu, and Balaroa Sub-Districts of the newly built. In 2021, the construction of another 1,925 units will be continued.

The problem of land rights is indeed not easy to solve; therefore, the decisions made by the Government by ratifying the Governor's Regulation Number 10 of 2019 are regulations that regulate problem handling activities for disaster-affected communities by looking at the Regional Spatial Plan or the fulfillment of rights. Community rights.

Miftardi, SH as the defense legal analysis staff of KANWIL/BPN Central Sulawesi, believes that the problem of resolving land ownership rights affected by the liquefaction of Palu City, especially Balaroa, is that the ownership rights to the affected land remain the property of the disaster victims and do not lose control over the land. However, the certificate for the land is no longer given, considering that there will be another disaster categorized as a disaster-prone zone in the future.

### **Legal Protection and Legal Certainty for Disaster Affected Communities in Balaroa Sub-District**

### ***The legal basis for legal protection for victims of the liquefaction disaster in Palu City, especially Balaroa Sub-District***

The theory about legal protection and legal certainty that will be discussed is looking at the perception of post-disaster problem solving with rights and obligations following laws and regulations and clarifying the implementation of the rules that have been ratified.

Everything related to the rights and obligations of the Government over the community will later provide or fulfill legal protection and legal certainty to the community.

The legal basis is the theory that underlies legal protection for activities in elements that will describe the provisions for implementing the Constitution and Pancasila as the basis for a government decision or legal guardian for disaster victims affected in Balaroa Sub-District. For this reason, legal protection will be carried out following statutory procedures if there is an underlying or underlying basis for making the right decisions and social justice.

The principle of legal protection for the Indonesian people recognizes and protects human dignity based on Pancasila

and the focus of a constitutional state.<sup>6</sup>

The provisions in the Basic Agrarian Law itself provide a robust legal basis for the Government to take land rights owned by the community as regulated in Article 18, namely: "for the public interest, including the interests of the nation and state, as well as the common interests of the people, land rights can be revoked, by providing appropriate compensation according to the method regulated by law." Governor Regulation No. 10 of 2019 also prohibits rebuilding in areas that have been categorized as red zones but are given relocation and new permanent housing. Law No. 24 of 2007 states that the State has the authority to carry out disaster management,

As the regulation stated above, there is a legal basis that will underlie the State in revoking property rights to land affected by the liquefaction disaster; furthermore, it is said that the land is not directly withdrawn of its rights, but legal protection will protect its property rights by providing compensation that is worthy of his land rights.

### 1. Legal certainty

Gustav Radbruch initially intro-

<sup>6</sup> Nurhilma Lestari, "Status Of Land Rights Post Liquefaction Disaster And Spatial Plan For The City Of Palu," *Journal of Law and Notary Law* 5, no. 1 (February 7, 2021): p.35, <https://doi.org/10.33474/hukeno.v5i1.110109>.

duced the principle of legal certainty in his book entitled "einführung in die rechtswissenschaften." Radbruch wrote that in the law, there are 3 (three) fundamental values, namely:<sup>7</sup>(1) Justice (Gerechtigkeit); (2) Benefit (Zweckmassigkeit); and (3) Legal Certainty (Rechtssicherheit).

Gustaf Radbruch, in the concept of "Baku Priority Teachings," suggests that there are three basic ideas of law or three goals of the law, namely justice, benefit, and legal certainty. Justice is the main thing of the three things, but it does not mean that the other two elements can be ignored immediately. A good law is a law that can synergize these three elements for the welfare and prosperity of the community. According to Radbruch, "legal certainty is defined as the conditions under which the law can function as a regulation that must be obeyed."<sup>8</sup>

Regarding legal certainty regarding land, Article 19 of the Basic Agrarian Law reads, "To ensure legal confidence by the Government, land registration is carried out in all regions. Land registration is given the right to every Indonesian citizen to play an active role in obtaining solid legal certainty to control land parcels.

The desired legal certainty in the

<sup>7</sup> Dwidja Priyatno and M. Rendi Aridhayandi, "Book Review (Book Review) Satjipto Rahardjo, *Legal Studies*, Bandung: PT. Citra Aditya, 2014," *Legal Journal of the Justitia Pulpit* 2, no. 2 (June 7, 2018): p. 19, <https://doi.org/10.35194/jhmj.v2i2.36>.

<sup>8</sup> Theo Huijbers, "Philosophy of Law in Historical Paths," *University of Indonesia Library (Kanisius, 1982)*, pp. 162, <https://lib.ui.ac.id>.



implementation of land registration is aimed at two targets, namely regarding the subject of land rights which means legal certainty for a person as the holder of land rights. While the goal of legal certainty regarding the object of land rights is the condition of the land, such as the location of the land, the boundaries of the land, the length and width of the land controlled by the holder of the land rights.

Regarding certificates in terms of guaranteeing legal certainty regarding handling liquefaction natural disaster problems, the certificate here aims to facilitate the Government in terms of data collection within the Government's responsibility to provide legal protection. However, with the natural liquefaction disaster in the past, several residents of Balaroa Sub-District have lost the certificate of ownership rights. In essence, when making land certificates, a copy of the certificate will be kept by the Provincial National Defense Agency, as explained by the Defense Law analysis staff of the Central Sulawesi KANWIL/BPN, Mr. Miftardi, SH, the certificate was lost due to the impact of the disaster, has a copy at the BPN office but the legality of the certificate has not been allowed,

As for the problem of shifting stakes or land boundaries due to the natural liq-

uefaction disaster, each land affected by the liquefaction disaster that has moved from its previous form can still be determined, and the mapping of the land that changes shape from the previous one due to liquefaction will follow the distance of the land according to the certificate reissued by the Government, according to Mr. Miftardi, SH, as the legal analysis staff of the Central Sulawesi KANWIL/BPN, explained that copies of the certificates of property rights for victims of the liquefaction natural disaster are still available in the government archives.

The purpose of including this reference on legal certainty is how the Government's management in solving land problems affected by liquefaction in Balaroa Sub-District can provide legal certainty so that the fulfillment of rights and obligations is achieved after the issuance of regulations from Pergub No. 10 of 2019. Although the legal certainty regarding this liquefaction land is a certificate, the certificate has been lost; as for another legal certainty to achieve the element of fulfilling the land right, a new certificate is made in the relocation of the new dwelling.

## CONCLUSION

Settlement of rights to land owner-

ship affected by the liquefaction disaster in Balaroa Sub-District is based on Article 2 of the Basic Agrarian Law and public interests and social functions, the status of land rights affected by liquefaction has indirectly been completely removed provided that the affected community has received compensation such as land acquisition and provision of permanent occupancy according to article 18 of the Basic Agrarian Law and 32 paragraph b of Law no. 24 of 2007, on the other hand, for people who refuse to receive compensation, they still have power over their land but can no longer be occupied to build housing, or it can be said that their land rights are partially revoked because the ground has been marked with a red zone.

Based on a legal basis in the form of Basic Agrarian Law No. 5 of 1960, Law no. 24 of 2007, the 1945 Constitution or Pancasila, and regulations in the state of Governor Regulation No. 10 of 2019, then the revocation of land rights affected by the liquefaction of Palu City, especially Balaroa Sub-District has fulfilled the elements of state implementation in dealing with post-disaster problems by providing compensation in the form of relocation as well as new housing. Accompanied by the provision of a new certificate that includes legal certainty and is a form of legal pro-

tection following the procedures in implementing the law carried out by the State.

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