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Synchronization and Normative Limitations of Land Extinction Regulations in the Indonesian Agrarian Law System

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Article

Article History

Received: Nov 4, 2026;
Reviewed: Des 19, 2026;
Des 11, 2026;
Accepted: Jan 24, 2026;
Published: Feb 4, 2026:

DOI:

10.33474/yur.v9i1.24504

Abstrak

Regulasi tentang tanah musnah belum memberikan perlindungan hukum terhadap pemilik tanah, sehingga menimbulkan ketidakpastian hukum. Penelitian ini memiliki tujuan untuk menguraikan mengenai pengaturan hukum dan kelemahan secara normatif mengenai tanah musnah. Penelitian ini menerapkan metode penelitian yakni yuridis normatif berdasarkan pendekatan perundang-undangan dan konseptual. Temuan yang diperoleh dari penelitian yaitu regulasi mengenai tanah musnah secara spesifik dan detail diatur pada Peraturan ATR/BPN Nomor 3 Tahun 2024. Peraturan tersebut mencakup beberapa hal mengenai mekanisme penetapan dan akibat hukum dari tanah musnah, namun peraturan tersebut kurang menunjukkan jaminan atas kepastian serta perlindungan hukum terhadap pemilik tanah, dengan demikian, adanya keterbatasan secara normatif dalam peraturan tanah musnah memerlukan upaya penyempurnaan agar dapat mewujudkan kepastian, keadilan, dan kemanfaatan untuk pemilik tanah yang terkena dampak bencana alam.

Kata Kunci: Hukum Agraria; Kajian Normatif; Tanah Musnah

Abstract

Regulations on lost land have not provided legal protection for landowners, resulting in legal uncertainty. This study aims to describe the legal regulations and normative weaknesses regarding lost land. This study applies a normative juridical research method based on a legislative and conceptual approach. The findings obtained from this study indicate that regulations concerning abandoned land are specifically and detailed in ATR/BPN Regulation Number 3 of 2024. This regulation covers several matters concerning the mechanism for determining abandoned land and the legal consequences thereof. However, the regulation does not sufficiently guarantee certainty and legal protection for landowners. Thus, the normative limitations in the regulation on

destroyed land require improvement in order to achieve certainty, justice, and benefits for landowners affected by natural disasters.

Keywords: Agrarian Law; Normative Study; Destroyed Land

INTRODUCTION

Indonesia is a nation blessed with diverse natural resources, one of which is land, which is closely related to humans in meeting their daily needs.¹ This statement is in line with the reality that Indonesia's geographical location, which lies between three tectonic plates and on the Ring of Fire, provides both advantages and disadvantages. The entire population must be vigilant because this location creates the potential for natural disasters.² Land plays a major role in national development planning and spatial control, leading to the enactment of Law No. 5 of 1960 on Basic Agrarian Principles as a framework for regulating the structuring and use of land, which is part of the certainty of land parcels. If a land parcel is affected by a natural disaster resulting in changes to the land contour, shifts, and lost boundaries, the registration of the land parcel is expected to minimize uncertainty regarding the status of the land.³ Therefore, given the

impact of natural disasters on land, as implicitly mentioned in Law No. 5 of 1960 concerning Basic Agrarian Principles, it is necessary to gain a deeper understanding of land destruction.

There are several previous studies relevant to this topic. First, a study written by Rifadh Adit Syahputra entitled “Analisis Hukum dan Implikasi Sosial Terhadap Status Tanah Musnah Dalam Perspektif Perolehan Tanah Di Indonesia”,⁴ which states that the unclear status of land destruction affects the social sector, so policy reform is needed to be in line with the principles of justice and legal certainty; The second study, written by Bunga Desyana, et al, entitled “Status Hukum Tanah Musnah Berdasarkan Permen ATR/BPN No. 17 Tahun 2021”,⁵ which states that Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of

¹ Dina Catur Ayu Ningtyas, “Hak Atas Tanah Sebagai Dasar Pembuktian Bagi Pemiliknya Dalam Hukum Agraria yang Di Dasari UUPA,” *COURT REVIEW: Jurnal Penelitian Hukum* 3, no. 1 (2023), <https://doi.org/10.69957/cr.v3i01.698>. 31.

² Nanik Prasetyoningsih and Muchammad Ichsan, “Kajian Yuridis atas Ketentuan Darurat Bencana dalam Konstitusi Sebagai Jaminan Hak Asasi Manusia Korban Bencana,” *Jurnal Hukum Ius Quia Iustum* 31, no. 1 (January 2024): 50, <https://doi.org/10.20885/iustum.vol31.iss1.art3>.

³ Farida Tuharea et al., “Sinkronisasi UUPA Terhadap Peraturan Perundang-Undangan di Bidang Penetapan dan Penggunaan Hak Atas Tanah,” *UNES Law Review* 6, no. 3 (2024): 9144, <https://doi.org/10.31933/unesrev.v6i3.1862>.

⁴ Rifadh Adit Syahputra, “Analisis Hukum Dan Implikasi Sosial Terhadap Status Tanah Musnah Dalam Perspektif Perolehan Tanah Di Indonesia,” *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 587, <https://doi.org/10.71282/at-taklim.v2i6.471>.

⁵ Bunga Desyana Pratami et al., “Status Hukum Tanah Musnah Berdasarkan Permen ATR/BPN No. 17 Tahun 2021,” *Jurnal Officium Notarium* 1, no. 2 (August 2021): 227, <https://doi.org/10.20885/JON.vol1.iss2.art2>.

Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land provides certainty regarding tidal flooding disasters in Pekalongan City, which is classified as destroyed land; The three studies written by Zela Ony Zulfida, et al,⁶ entitled “Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Yang Musnah”, which stipulates Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land provides protection to landowners whose land has been destroyed and is intended for public use; The four studies written by Raflinov Quraisy with the titles “Dampak Terhambatnya Pembangunan Jalan Tol Semarang-Demak Akibat Kepemilikan Tanah Musnah Masyarakat”,⁷ which states that landowners are given priority for reconstruction in order to receive

compensation funds, but does not accommodate land acquisition; Fifth, research written by Reza Nur Amrin, et al, entitled “Status Hukum Hak Atas Tanah Yang Terkena Bencana Alam”,⁸ which states that there is a difference in the destruction of land in the event of an earthquake, where the status of the land is not deleted, whereas in the event of erosion, it is declared deleted. Several previous studies above have similarities with this topic, namely analyzing regulations on land destruction and then linking them to the definition, examples of natural disasters, and the mechanism of compensation funds for landowners. However, there are differences with the topic of the problem, as indicated by the regulatory change to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land, which is not related to land acquisition and covers natural disasters in general. Therefore, the amendment should

⁶ Zela Ony Zulfida and Edi Pranoto, “Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Yang Musnah,” *SUPREMASI: Jurnal Hukum* 2024 6, no. 02 (2024): 197, <https://doi.org/10.36441/supremasi.v6i2.2073>.

⁷ Raflinov Quraisy, “Dampak Terhambatnya Pembangunan Jalan Tol Semarang-Demak Akibat Kepemilikan Tanah Musnah Masyarakat: The Impact of Delayed Development of the Semarang-Demak Toll Road Due to the Destruction of Community Land Ownership,” *Jurnal Globalisasi Hukum* 1, no. 2 (September 2024): 232, <https://doi.org/10.25105/gnn4p130>.

⁸ Reza Nur Amrin et al., “Status Hukum Hak Atas Tanah Yang Terkena Bencana Alam,” *Tunas Agraria* 5, no. 1 (February 2022): 74, <https://doi.org/10.31292/jta.v5i1.168>.

evaluate the previous regulation, but there are still ambiguities, so an analysis of the substance of the regulation is needed.

The urgency of this research lies in the fact that Indonesia's geographical location can cause natural disasters, as defined in Law No. 24 of 2007 on Disaster Management.⁹ Natural disasters can certainly cause enormous losses by threatening the lives of residents and causing material damage. Examples include the tsunami in the province of Nanggroe Aceh Darussalam in 2004, the eruption of Mount Merapi between the provinces of Central Java and Yogyakarta in 2010, the eruption of Mount Kelud in East Java Province in 2014, the earthquake that triggered a tsunami in Central Sulawesi Province in 2018, and so on.¹⁰ Post-natural disasters require special attention because the effects are related to the loss of land due to tsunamis, earthquakes, abrasion, and landslides, whereas other disasters such as floods, droughts, and hurricanes are not classified as causing land loss.¹¹ Basically, general regulations regarding land destruction are contained in Article 66 of Government

Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. As such, the many types of natural disasters that occur and the consequences they cause in each region certainly require different approaches, so it can be said that there are gaps of uncertainty and limitations in the regulations.¹²

This study focuses on analyzing the regulation of land destruction and normative weaknesses regarding land destruction according to Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land because it will affect the legal status of land affected by natural disasters. In addition, the determination of destroyed land also affects agrarian arrangements at the national level, because land designated as destroyed land will revoke registered rights, which are then

⁹ Heru Yoga Pamungkas and Hayatul Khairul Rahmat, "Upaya Penyelesaian Sengketa Barang Milik Negara Berupa Aset Tanah Pasca Gempa Lombok 2018 Melalui Pendekatan Persuasif Berbasis Hak Asasi Manusia," *Al-Ihtiram: Multidisciplinary Journal of Counseling and Social Research* 2, no. 1 (2023): 2, <https://doi.org/10.59027/alihtiram.v2i1.255>.

¹⁰ Ardianto Ardianto, Sri Amlinawaty A. Muin, and Muhammad Rinaldy Bima, "Bencana Alam Dalam Perspektif Hukum Tata Negara Darurat," *Journal of Lex Theory (JLT)* 4, no. 1 (2023): 43, <https://doi.org/10.52103/jlt.v4i1.1524>.

¹¹ Nabila Azzahra Fitri Aula, "Aspek Hukum dalam Pemulihan Pasca Bencana: Evaluasi Efektivitas Kebijakan Pemerintah," *LSHP RESEARCH: Jurnal Ilmu Hukum, Humaniora dan Politik* 1, no. 1 (2025): 8, <https://doi.org/10.38035/t0vynq05>.

¹² Inge Ammelia et.al., "Integrasi Materi Kebencanaan Pada Jenjang Sekolah Dasar di Kecamatan Ngargoyoso, Jawa Tengah," *Indonesian Journal of Environment and Disaster* 1, no. 1 (2022): 61, <https://doi.org/10.20961/ijed.v1i1.66>.

administered or recorded as state control or authority.¹³ Therefore, a more in-depth discussion is needed regarding land degradation, covering its definition, effectiveness, and weaknesses.

The method applied in analyzing the main issues is normative juridical, analyzing the concepts, principles, and regulations related to the main issues. The analysis is conducted using primary legal materials, including Law No. 5 of 1960 concerning Basic Agrarian Principles Agrarian Principles, Law No. 12 of 2011 concerning the Formation of Legislation, Law No. 32 of 2009 concerning Environmental Protection and Management, Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land,

as well as secondary legal materials such as books, scientific journals, expert opinions, and research results relevant to the subject matter.¹⁴ In this study, the research approach used was a legislative and conceptual approach with descriptive analysis techniques.¹⁵

This study also aims to analyze and identify the extent to which regulations concerning land destruction caused by natural disasters are covered in Indonesian law, so that any normative limitations or weaknesses relating to the mechanism for determining land destruction can be identified. Thus, the government can strive to improve these normative limitations in order to minimize legal uncertainty in the field and more specifically harmonize the authority of the state with the rights holders of land affected by natural disasters.

RESULT AND DISCUSSION

Synchronization and Regulation of Land Destruction in Indonesia

Land registration can be defined as an administrative process implemented by the government to ensure the fulfillment of legal protection and certainty over land¹⁶ based on

¹³ Bayu Aji Permana et al., "Kekuatan Hukum Pembuktian Sertifikat Elektronik Dalam Perkara Perdata Menurut Peraturan Menteri ATR/KEPALA BPN No 3 Tahun 2023 Tentang Penerbitan Sertifikat Elektronik Dalam Kegiatan Pendaftaran Tanah," *Jurnal Ilmiah AKSES* 2, no. 1 (2024): 70, <https://doi.org/10.36841/akses.v2i1.4453>.

¹⁴ Rodiatun Adawiyah et al., "Analisis Yuridis Tentang Pembuktian Kebenaran Dasar Terhadap Penguasaan Tanah," *Jurnal Darma Agung* 31, no. 3 (June 2023): 105, <https://doi.org/10.46930/ojsuda.v31i3.3349>.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, 15 ed. (Kencana, 2021). 136.

¹⁶ Lisnadia Nur Avivah et.al., "Pentingnya Pendaftaran Tanah Untuk Pertama Kali Dalam Rangka Perlindungan Hukum Kepemilikan Sertifikat Tanah," *Tunas Agraria* 5, no. 3 (2022): 197, <https://doi.org/10.31292/jta.v5i3.186>.

Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles. Once registration is complete, rights to land parcels arise, such as ownership rights, building use rights, and business use rights, with details on the subject, duration, and cause of termination.

Land rights such as ownership rights, cultivation rights, and building rights have the same cause for termination, namely the destruction of the land.¹⁷ The concept of extinct land is not regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles, so it is only implicitly mentioned as one of the factors that can cause land rights to be extinguished.¹⁸ Therefore, it is necessary to understand the further explanation regarding destroyed land as regulated in Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. In addition, specific explanations regarding abandoned land are contained in Article 66 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This article explains the

concept, stages of determining abandoned land, the authority of land rights owners, and the assistance provided in the form of compensation funds. However, some of these matters are not explained in detail, so reference must be made to subsequent regulations.

Specific and detailed regulations on destroyed land are stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land. These amendments serve to clarify and reinforce matters related to destroyed land, such as the concept of destroyed land, which explicitly consists of three aspects: the original form of the land has changed due to natural events, it cannot be identified, and it cannot be reused.¹⁹

The determination of land destruction is not solely determined immediately after a natural disaster, but there is a mechanism in

¹⁷ Tiara Dwi Rahayu, Yani Pujiwati, and Betty Rubiati, "Kepastian Hukum Kepemilikan Hak Atas Tanah Setelah Mengalami Likuifaksi Tanah: Legal Certainty Of Ownership Of Land Rights After Experiencing Land Liquefaction," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 2, no. 2 (April 2023): 255, <https://doi.org/10.23920/litra.v2i2.1315>.

¹⁸ Syaiful Bahri, "Pengembalian Hak Atas Tanah Bersertipikat Hak Guna Bangunan Yang Telah Musnah Karena Abrasi Untuk Kepentingan Pembangunan Oleh Badan Hukum Swasta," *Otentik's: Jurnal Hukum Kenotariatan* 2, no. 1 (March 2021): 49, <https://doi.org/10.35814/otentik.v2i1.2106>.

¹⁹ Tiara Dwi Rahayu dkk., "Kepastian Hukum Kepemilikan Hak Atas Tanah Setelah Mengalami Likuifaksi Tanah," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 2 (2023): 252, <https://doi.org/10.23920/litra.v2i2.1315>.

accordance with Article 3 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land, which begins with the determination of the location to the final stage, namely the issuance of a decision on the determination of destroyed land, which results in the legal consequence of the invalidity of land certificates that have been submitted to the land office.²⁰ The authority responsible for determining and confirming land destruction is the head of the local land office as stipulated in Article 2 paragraph (4) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Land Destruction.

In addition, Articles 11 and 12 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the

National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land in the form of a written and open announcement at the land office within a period of 14 days aims to provide options for land owners to carry out or not carry out reconstruction and reclamation after a natural disaster It should be noted that reconstruction and reclamation are defined as restoring land to its original form and increasing the benefits of land resources affected by natural disasters.

According to Article 13 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land, it is a consequence for land owners who do not carry out reconstruction or reclamation that their land will be designated as destroyed land. Thus, the regulations concerning destroyed land in Indonesia provide detailed

²⁰ Amirsyah Amirsyah dkk., "Perlindungan Hukum Bagi Para Pihak yang Dirugikan Dalam Bidang Pertanahan Akibat Peristiwa Bencana Alam Terkait Bergesernya Batas Tanah," *Jurnal Ilmiah Global Education* 4, no. 1 (2023): 6, <https://doi.org/10.55681/jige.v4i1.515>.

explanations and are in line with previous regulations, so that they can be used as a reference for local land offices in administrative aspects and implementation in the field.

Normative Limitations of Land Extinction Regulations in Indonesia

The issuance of a regulation is intended to ensure certainty, justice, and legal protection for the community, which is in line with the objectives of law as stated by Gustav Radbruch, consisting of certainty, justice, and benefit.²¹ The issuance of laws and regulations is not solely for the purpose of regulating matters or areas related to the development of the country, but also to improve previous regulations.²²

Based on Article 27 of Law Number 5 of 1960 concerning Basic Agrarian Principles, which only mentions the term “destroyed land” without providing an explanation, the implementing regulations concerning destroyed land are specified in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Basically, in this regulation, the discussion of extinct land is contained in several articles that will be explained in relation to the definition and types of extinct land rights.

Based on Article 66 Paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian, emphasis on the phrase “can no longer be identified” needs to be noted because it causes ambiguity in interpretation. This ambiguity is demonstrated by various meanings, such as the absence of ownership documents, unknown ownership, and the loss of land area.

Basically, the concept of land destruction between the stipulation and related implementing regulations does not have the potential to cause conflict and has been proven to be consistent in terms of word choice, for example, changes, identification, functioning, use, and utilization. However, it is necessary to refine the choice of diction or concrete concepts in line with conditions on the ground so as not to cause differences in interpretation between Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021

²¹ Sulasiyah Amini and Suratman, “Pentingnya Pendaftaran Tanah: Perspektif Teori Kepastian Hukum,” *Jurnal Hukum dan Kenotariatan* 6, no. 3 (February 2023): 1335, <https://doi.org/10.33474/hukeno.v6i3.17712>.

²² Putri Maufiroh, Bagus Renata Rachman, and Ety Purnaningrum, “Kajian Hukum terhadap Inkonsistensi Vertikal Peraturan Pemerintah Nomor 18 Tahun 2021,” *Jurnal Education and Development* 9, no. 4 (2021): 193, <https://doi.org/10.37081/ed.v9i4.3101>.

concerning Procedures for Determining Destroyed Land.

Then there are several types of rights that must be voluntarily relinquished due to land destruction, starting from Article 14 paragraph (1) letter g regarding management rights, Article 31 letter h regarding the revocation of land use rights, Article 46 letter h regarding the revocation of building use rights, and Article 61 letter h regarding the revocation of usage rights. Matters not covered in the Government Regulation, such as the determination, mechanism, legal consequences, and other matters related to destroyed land, require more detailed implementing regulations.

Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land is the answer to more specific and detailed discussions so that it is expected to be a form of evaluation of the previous regulation to be

more complex, clear, and firm.²³ However, on the other hand, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration with Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land still has normative limitations in regulating destroyed land.

First, regarding the concept of destroyed land in Article 2 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land, which state:

"Destroyed land as referred to in paragraph (1) includes land that:

- a. has changed from its original form due to natural events;
- b. can no longer be identified; and
- c. cannot be functioned, used, and utilized as it should be."

²³ Ahmad Fahrul Rizal et.al., "Tinjauan Yuridis Terhadap Pendaftaran Tanah Dengan Penerapan Sertifikat Elektronik Berdasarkan Peraturan Menteri ATR/BPN No. 1 Tahun 2021 Tentang Sertifikat Elektronik," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 3 (2025): 2364, <https://doi.org/10.62976/ijjel.v3i3.1278>.

Based on the sentence “has changed from its original form due to natural events”, There may be legal uncertainties. This can be demonstrated by the varying impacts on different areas of land. This is because the surface of the earth varies from region to region, with lowlands, highlands, coastal areas, mountainous areas, and so on.

The diversity of the earth's surface is one of the factors contributing to the occurrence of natural disasters in a region.²⁴ Changes in the land area are permanent changes and temporary changes to the land.²⁵ Permanent changes refer to changes that cause land to disappear, sink, or shift, making it unlikely to be usable again. Meanwhile, temporary changes refer to changes that cause land to become buried, eroded, or affected by water levels, meaning that the land still has a chance of being restored to its original condition. The phrase in the provision indicates legal uncertainty due to multiple interpretations.

In relation to Gustav Radbruch's theory of certainty, one understanding of legal certainty is that facts must be interpreted

clearly and not cause confusion. Furthermore, according to Radbruch, who quotes Richard, laws and regulations that form legal certainty must embody certainty, justice, and benefit for rights holders.²⁶

In reality, natural disasters do not necessarily disrupt or change land conditions. This can be seen in DKI Jakarta, where flooding during the rainy season does not affect land rights.²⁷ Therefore, it can be seen that there are normative limitations regarding indicators or parameters of physical changes in land that fall under the category of destroyed land.

Second, in the realm of legal protection for landowners in relation to compensation for the designation of destroyed land. Based on Article 66 paragraph (4) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration, which states:

“In the event that reconstruction or reclamation as referred to in paragraph (3) is carried out by the Central Government, Regional Government, or other parties, the holder of Management Rights and/or Land Rights shall be provided with financial assistance.”

²⁴ Dewi Kurniawati, “Komunikasi Mitigasi Bencana sebagai Kewaspadaan Masyarakat Menghadapi Bencana,” *JURNAL SIMBOLIKA: Research and Learning in Communication Study* 6, no. 1 (April 2020): 54, <https://doi.org/10.31289/simbollika.v6i1.3494>.

²⁵ Nurul Anam, “Implikasi Hukum Terhadap Kepemilikan Tanah Yang Musnah Akibat Bencana Alam Dalam Perspektif Hukum Perolehan Tanah Di Indonesia,” *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 595, <https://doi.org/10.71282/at-taklim.v2i6.472>.

²⁶ Richard Al Khalik, Rosita Candrakirana, and Diana Lukitasari, *Reformulasi Undang-Undang Jabatan Notaris Dalam Memaksimalkan Peran Pencegahan Tindak Pidana Pencucian Uang*, 8, no. 3 (April 2025): 1326, <https://doi.org/10.26623/julr.v8i3.12355>.

²⁷ Mayfa Dwi Arvi and Ruth Sahanaya Yemima Sibarani, “Analisis Faktor Penyebab Bencana Banjir di Kota-Kota Besar Indonesia: Studi Kasus Analisis Banjir Berbasis Literasi,” *Indonesian Journal of Emerging Trends in Community Empowerment* 3, no. 1 (2025): 3, <https://doi.org/10.71383/ijetce.v3i1.70>.

This indirectly reveals the assistance provided by the government to land rights holders. However, the regulation stipulates that if the reconstruction or reclamation is carried out not by the land rights holder but by the government.

The detailed provisions set forth in Article 15 (8) of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land, which explains:

“In the event that the period referred to in paragraph (1) expires and the holder of the Management Rights and/or Land Rights does not carry out and/or complete reconstruction or reclamation:

- a. the holder of the Management Rights and/or Land Rights shall not be granted financial assistance; and
- b. the Land Area shall be designated as destroyed land”.

Based on these regulations, landowners are indeed given time to carry out reconstruction or reclamation, but in the context of indicated land and land that has been destroyed, it is allocated as part of development for the public interest. This

shows that there is a gap in the clarity or certainty of the regulation on compensation funds.²⁸ This is because compensation funds are given to landowners in the context of reconstruction or reclamation for the purpose of development in the public interest.²⁹

Reconstruction or reclamation carried out with the sole purpose of restoring land to its original function shall still be compensated. Article 15A of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Destroyed Land clearly and specifically stipulates that compensation funds shall be provided to landowners if the land is intended for public use.

This is different from the regulations on environmental protection and management stipulated in Law No. 32 of 2009 concerning Environmental Management and Protection. These regulations stipulate one form of environmental dispute resolution outside the legal realm by providing compensation. This is in accordance with Article 87 paragraph

²⁸ Rifadh Adit Syahputra, “Analisis Hukum Dan Implikasi Sosial Terhadap Status Tanah Musnah Dalam Perspektif Perolehan Tanah Di Indonesia,” *At-Taklim: Jurnal Pendidikan Multidisiplin* 2, no. 6 (2025): 579, <https://doi.org/10.71282/at-taklim.v2i6.471>.

²⁹ Reza Nur Amrin et al., “Status Hukum Hak Atas Tanah Yang Terkena Bencana Alam,” *Tunas Agraria* 5, no. 1 (February 2022): 72, <https://doi.org/10.31292/jta.v5i1.168>

(1), which explains that every business operator who causes losses to other parties is obliged to pay compensation. The connection with environmental regulations is that losses suffered from natural disasters resulting in land destruction and man-made disasters resulting in environmental destruction should be compensated, and the authorities responsible for providing compensation should be determined.

Indirect compensation is part of human rights guaranteed in Article 28 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia, so that the state must guarantee the community's efforts to obtain their rights. Therefore, regulations that specifically address destroyed land must clearly and explicitly state the provision of compensation funds for landowners whose land has been designated as destroyed land, as a form of legal protection.

Third, regarding alignment with Law Number 24 of 2007 concerning Disaster Management. This requires synchronization with other implementing regulations because disaster management is regulated in a specific and detailed manner. This is because the impact of natural disasters is closely related to land conditions. This is the responsibility and authority of the government in terms of disaster management and is in line with Article 5 of Law Number 24 of 2007

concerning Disaster Management. The obligations that must be carried out by the government are contained in Article 6 of Law Number 24 of 2007 concerning Disaster Management, namely the maintenance of official and credible documents on disaster potential and risk. This is related to documents under the control of land rights owners, namely land certificates.³⁰

The impact of natural disasters not only claims lives, but can also cause damage to or even loss of land certificates. If land certificates are lost due to natural disasters, it is very detrimental to victims because they lose concrete and authentic documents related to land ownership. If there is synchronization between disaster management laws and regulations on land destruction, it can provide legal protection for land rights holders. Therefore, synchronization is necessary so that the natural disaster coordination system with the National Land Agency runs smoothly and regulations are responsive to the impact of natural disasters on a particular plot of land.

CONCLUSION

Normatively, regulations on land extinction in Indonesia have been comprehensively regulated, starting from Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land

³⁰ Yulies Tiena Masriani, "Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak," *JURNAL USM LAW REVIEW* 5, no. 2 (October 2022): 543, <https://doi.org/10.26623/julr.v5i2.5777>.

Registration to the implementing regulations under it and as a form of synchronization with the Basic Law No. 50 of 1960 concerning Basic Agrarian Principles and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2024 concerning Amendments to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 concerning Procedures for Determining Land Destruction can be referred to as a response to the complexity of land destruction issues caused by natural disasters. These regulations specifically cover the mechanisms and legal consequences of destroyed land. In addition, clear mechanisms will certainly facilitate the implementation of land administration.

The regulations on land destruction still have weaknesses, such as being too oriented towards mechanisms or administrative aspects, thereby failing to guarantee legal certainty and protection for landowners. Therefore, given the normative limitations of these regulations, efforts are needed to improve them in order to minimize their shortcomings and review them to provide legal certainty and protection for landowners affected by natural disasters.

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