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The Role of the Government Regarding Land Rights of Residents Affected by Abrasion

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This study aims to see that from the abrasion disaster, many residents have lost their land rights. In this case, the government must protect the rights of residents affected by the abrasion disaster.

The research method used is an empirical juridical approach to the method of legislation.

Novelty of the research is that the loss of land rights of residents affected by abrasion can be done through land registration so that their land rights can be protected by the government. Land registration is carried out to protect the rights of citizens with land registration the government can follow up the process of protecting land rights.

The result of the research the government has tried to protect their rights by providing aid funds to its citizens, but there has been no announcement for citizens in the registration of land affected by abrasion.

Conclusion in Land Regulation No. 24 of 1997, the legal status is considered invalid because it is not in line with the physical data or legal data that is used as strong evidence and the Jembrana Regency Government has made efforts to prevent the occurrence of abrasion disasters by banning beach sand mining and the manufacture of concrete to break sea waves.

Keywords : Abrasion; Land Rights; Government Role

Abstrak

Tujuan Penelitian ini untuk Melihat dari bencana abrasi tersebut, banyak warga yang kehilangan hak atas tanahnya, dalam hal ini pemerintah harus melindungi hak warga yang terkena dampak bencana abrasi tersebut.

Metode Penelitian yang digunakan adalah pendekatan yuridis empiris terhadap metode legislasi.

Kebaruan Penelitian hilangnya hak atas tanah yang dimiliki warga terdampak abrasi dapat dilakukan pendaftaran tanah dengan tujuan agar hak atas tanah mereka dapat dilindungi oleh pemerintah. Pendaftaran tanah dilakukan untuk melindungi hak-hak warganya dengan pendaftaran tanah pemerintah dapat menindaklanjuti proses perlindungan hak atas tanah.

Hasil Penelitian pemerintah telah berupaya melindungi hak-haknya dengan memberikan dana bantuan kepada warganya, namun belum ada pengumuman bagi warga dalam pendaftaran tanah yang terkena abrasi.

Kesimpulan dalam Peraturan Pertanahan No. 24 tahun 1997 status hukumnya dianggap tidak sah karena tidak sejalan dengan data fisik seacra atau data hukum yang dijadikan bukti kuat dan Pemkab Jembrana telah melakukan upaya pencegahan terjadinya bencana abrasi dengan melarang penambangan pasir pantai dan pembuatan beton pemecah gelombang air laut.

Kata Kunci : Abrasi; Hak Atas Tanah; Peran Pemerintah

1. PENDAHULUAN

Natural disasters are disasters caused by events or series of events caused by nature, including earthquakes, tsunamis, volcanic eruptions, floods, droughts, cyclones, and landslides.¹ Coastal areas have a very high potential for environmental damage. This includes the problems of environmental pollution, habitat destruction, excessive exploitation of natural resources, especially beach erosion.² In addition, there are changes in use from protected areas to development areas, and other natural disaster risks.³ Abrasion can be said to be the erosion of land or rock caused by water or caused by high winds and sea waves which have the potential to damage buildings or land along the coastline.⁴ Triatmodjo in Fadhilah Maharani has an opinion that defines erosion or abrasion as a phenomenon that can threaten coastal conditions. Looking at the definition above opens our eyes to the threat of abrasion caused by sea water, which results in losses and endangers the lives of people living in coastal areas, especially those who have rights to land or buildings on the coast. The occurrence of abrasion, which has a negative impact, should have legal regulations governing it. Seeing that the country of Indonesia consists of thousands of islands, it is highly possible that abrasion can occur at any time. From the explanation above, it can be said that this abrasion causes significant loss of land owned by residents, which is one of the losses suffered by residents.

In this case, there are actually regulations governing this, as stated in Article 33 paragraph (3) of the 1945 Constitution, which reads, "*Bumi, air, dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat*" (The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people).⁵ This is the real reason why the state has the authority to regulate the benefits of the earth while it is used for the prosperity of the Indonesian people. This does not mean that citizens cannot have land rights, but the state has rules regarding land regulations by looking at the field, land issues are very complex, therefore the state should make more specific land regulations. The Indonesian state actually already has more detailed rules regarding land regulations which are listed in Law Number 5 of 1960 concerning Basic Agrarian Principles, which can be referred to as the Basic Agrarian Law. In Article 2 paragraph (1) of the Basic Agrarian Law, it is emphasized that actually related to water, land and also space, the wealth owned by nature becomes the wealth of the state, which the state directly controls for the purpose of the people's prosperity. This is reaffirmed in Article 2 of the Basic Agrarian Law regarding state

¹ "Undang - Undang Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana," Pub. L. No. 24 (2007).

² HR Pranoto, Warsito Atmodjo, and Nugroho Denny, "Studi Sedimentasi Pada Bangunan Groin Di Perairan Timbulsuko, Kabupaten Demak," *Jurnal Oseanografi* 5, no. 1 (2016): 86–95.

³ Fadhilah Maharani Fajrin, Boedi Hendarto, and MR Muskananfolo, "Karakteristik Abrasi Dan Pengaruhnya Terhadap Masyarakat Di Pesisir Semarang Barat" 5, no. 2 (2016): 43–50, <https://doi.org/https://doi.org/10.14710/marj.v5i2.11645>.

⁴ *Ibid.*, 45.

⁵ "Undang - Undang Dasar Tahun 1945," 1945.

control with the following authorities: 1) Providing regulations and establishing the designation, use, and availability of and carrying out maintenance on the aforementioned water, land, and airspace; 2) Establishing rules that have legal relations and also determining the persons who have relations with water, land, and airspace; 3) Establishing rules of legal relations and the determination of persons and legal sanctions that have relations with water, land, and airspace. The rule in article 2 above gives the understanding of making the state a people's organization that has control to regulate land or agrarian issues. Regarding the problem of changing the benefits of coastal areas, it will certainly have an effect on the control of land in coastal areas. A reduction in land is very possible due to natural processes, land that is lost naturally or moves due to shifting places.⁶

The occurrence of abrasion does not have a positive impact on residents living by the beach, but it certainly has a negative impact. Not only residents but the environment can also be harmed by abrasion.⁷ This is also felt by the residents of Banjar Pebuahan towards the impact of this abrasion, not only the residents but also the surrounding environment also experiencing the impact of this abrasion. There are several impacts of this abrasion on the residents of Pebuahan village who have ownership or usage rights. They have experienced soil erosion caused by seawater, suffered losses and had an impact on the economy. It has also been a loss for residents because Pebuahan village is famous for its seaside stalls.⁸ The government needs to consider legal protection through existing regulations.

The massive impact of the abrasion that occurred in Banjar Pebuahan, Jembrana Regency, has been monitored. Starting in 2019 until now, the damage to residents' houses caused by sea waves has reached dozens of houses, and not only residents' houses but also businesses in the form of restaurants with floor seats that are a tourist attraction in Banjar Pebuahan have also been damaged.⁹ This has an impact on residents, many of whom feel afraid at night for residents who have houses close to the beach if the sea waves increase, resulting in the loss of property in the form of houses being carried away by the sea waves. The residents of Banjar Pebuahan have reason not to move because they no longer have any other land to live on, so they hope that the government will play a role in helping them in the effort to acquire land for public use or to relocate residents affected by abrasion. Not only houses but also a monument commemorating the struggle for independence are also at risk of being lost. The monument, known as the Pebuahan Monument of Struggle, is a historical marker commemorating the naval battle that marked the first landing of Makardi's

⁶ Asyer Andawari, "Revitalisasi Hak Atas Tanah Yang Hilang Akibat Abrasi Menurut Undang - Undang Nomor 5 Tahun 1960," *Lex Administratum* 5, no. 2 (2017): 13–19.

⁷ Abdul Choliq, Awaludin Pimay, and Ahmad Anas, "Pemberdayaan Pesantren Untuk Penanggulangan Abrasi Di Pantai Demak Dan Jepara," *Dimas: Jurnal Pemikiran Agama Untuk Pemberdayaan* 15, no. November (2015): 1–31, <https://doi.org/https://doi.org/10.21580/dms.2015.152.746>.

⁸ Dwi Susiati and Sri Setiadji, "STATUS HUKUM HAK MILIK ATAS TANAH YANG TERKENA ABRASI," *Mimbar Keadilan* 13, no. 1 (January 24, 2020): 96–107, <https://doi.org/10.30996/mk.v13i1.3082>.

⁹ Kadafi. "Abrasi di Pesisir Pebuahan Jembrana Bali Rusak 70 Rumah" *CNN Indonesia*. 02 November 2022: 1.

troops on April 4, 1946.¹⁰ The residents of Banjar Pebuahan have made efforts to stop the soil erosion that has occurred, but this is still not enough. The residents have been piling up stone material to stop the soil erosion, with all the materials needed being contributed by the local residents. The government has turned a blind eye to the prevention of the abrasion that has occurred in Banjar Pebuahan, with no regulations in place for land acquisition for the residents affected by this abrasion.

This study complements the research conducted by Reza Nur Amin, et al. in 2022 entitled Legal Status of Land Rights Affected by Natural Disasters. The results of the study state that the legal status of land rights affected by abrasion is destroyed because the land to which the land rights are attached is also destroyed. The state cannot provide legal protection for destroyed land. Based on the Basic Agrarian Law regarding the cancellation of land rights, one of the causes is the destruction of land. Therefore, the loss of land due to natural factors, such as abrasion, cannot be held accountable to the state, unless the government is proven to have not made proper preventive efforts.¹¹ The difference between this article and the above research is that the government does not turn a blind eye to the loss of land caused by nature. The government should protect the rights of its citizens who are affected by abrasion, which results in the community losing their land rights. Looking at the natural disasters that have occurred, there has been no follow-up by the Jembrana district government towards the community affected by the abrasion disaster in Jembrana district.

2. METHOD

This type of research is called empirical juridical research, which is research in which data is obtained from the community through an interview process. Then, the researcher uses secondary data in the form of legal materials to strengthen the interview data. Research is essentially a stage of searching for truth repeatedly in order to answer questions that arise regarding the object of research. The research uses a legislative approach, which is based on a study of the laws and regulations related to the legal problem under study. This approach also examines events that occur in the field, so it can be concluded that legal protection is carried out directly in the field. The data collection method is the most strategic step in research, because the main purpose of research is to obtain data. In this writing, the researcher collected data using two methods, namely field research, namely primary data obtained directly from interviews with sources, and literature research.

Data analysis from the results of the research conducted is the pinnacle of legal academic research, so the analyzed data must be sufficient and verifiable.¹² The descriptive

¹⁰ Ridwan, M. "Duh! Tugu Perjuangan di Pantai Pebuahan Banyubiru Jembrana Terancam Hanyut dan Lenyap Karena Gerusan Abrasi". *Radar Bali.id*, 16 Juli 2023: 1.

¹¹ Reza Nur Amrin et al., "Status Hukum Hak Atas Tanah Yang Terkena Bencana Alam," *Tunas Agraria* 5, no. 1 (2022): 65–76, <https://doi.org/10.31292/jta.v5i1.168>.

¹² Zuchri Abdussamad, *Metode Penelitian Kuantitatif Dan Kualitatif: Teori Dan Praktik*, 1st ed. (Makassar: CV. Syakir Media Press, 2021).

method is used in this study. This method was chosen because the researcher wants to examine legal issues, facts or phenomena that occur in society, so as to provide an overview of the existing situation. In addition, after the data has been obtained, the researcher will analyze it using qualitative methods. Qualitative methods are a way of analyzing research results by first identifying data or legal materials. After that, the data as a whole will be analyzed and systematized qualitatively, that is, the researcher will describe in his own words all the facts obtained from the data to make a classification that is in accordance with the problems discussed in this study.¹³

3. DISCUSSION

3.1. Legal Status of Land Rights Affected by Abrasion

In accordance with Government Regulation of 2021 Number 1 Article 66, land that has lost its original form due to natural phenomena and can no longer be recognized, so that it can no longer be utilized, exploited, and cultivated according to necessity, is declared destroyed.¹⁴ One of the phenomena of natural disasters that can cause damage to the land is abrasion, which is the process of beach erosion due to the destructive power of waves and ocean currents. This is caused by changes in the natural balance in coastal areas, both by natural factors and human activities. Coastal areas are vulnerable to natural damage, such as habitat destruction, pollution, over-exploitation of natural resources, conversion of protected areas into places for something else, natural disasters or land erosion on the beach. The change in the shoreline, including soil abrasion, is one of the consequences of this phenomenon. In the event of abrasion, the soil is damaged due to being submerged in seawater, so that ownership can return to the government.

Protection against the law can be said to be in two parts, namely preventive legal protection which aims to prevent disputes from arising before problems arise, or repressive legal protection which aims to resolve legal disputes after problems have arisen. Therefore, the role played by the government in seeking to prevent abrasion is important to note. For example, in the case of abrasion in Brebes, the government has made a number of preventive efforts, such as banning beach sand mining, building concrete breakers, replanting mangroves, and preserving coral reefs.¹⁵ Therefore, the Government cannot be entirely blamed because it has carried out preventive measures during natural disasters to avoid damage. However, the legal protection of the state cannot provide land conversion for the loss of land rights because the land has been damaged. This is in line with Article 27 letter b of the Basic Agrarian Law Principles which states that land damage constitutes the

¹³ Fawwaz Abyan and Handarini Rohana, *Metode Penelitian Hukum (Normatif Dan Empiris*, 1st ed. (Bandung: Widina Media Utama, 2023).

¹⁴ "Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Hal Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah" (2021).

¹⁵ Risti Rahmawati and DSH Marpaung, "Perlindungan Hukum Atas Status Kepemilikan Dan Penguasaan Tanah Timbul Di Desa Muarabaru Kabupaten Karawang," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 10 (2023): 500–511, <https://doi.org/https://doi.org/10.5281/zenodo.7988229>.

loss of land rights. This decision emphasizes the absence of legal protection for lost land due to natural disasters.¹⁶ Article 27 of the Basic Agrarian Law Principles regulates that eroded land will return to the state or be destroyed, but does not specifically state that land rights certificates can be destroyed by abrasion. Thus, the state is not obliged to provide protection to citizens who lose their land rights due to beach abrasion.

Article 27 of the Basic Agrarian Law regulates that eroded land will return to the state or be destroyed, but does not specifically mention that the land title deed can be destroyed due to abrasion. The cancellation of property rights in Article 27 of the Basic Agrarian Law can be interpreted as follows: a) The loss of property rights by revocation, the main reason being that the revocation occurs, in accordance with the provisions of Basic Agrarian Law No. 18, the right to land can be canceled by making appropriate compensation for the public interest, this includes the interests of a nation and state carried out together with the people; b) Loss of rights to property with transfer is carried out sincerely in accordance with the Presidential Decree concerning Land Procurement for Development Implementation for Public Interest of 1993 Number 55, which is further carried out by the Decree of the Minister of Agriculture of 1994 Number 1, stipulations are made consciously in the interest of the state, in this case carried out by the government; c) Neglect of rights to property due to neglect, Government Regulation concerning the Regulation and Utilization of Abandoned Land 1998 Number 36, Abandoned land is land that is not properly allocated and maintained, along with land that has not been used in accordance with statutory provisions. conditions, nature, or purpose of granting rights; d) Loss of rights to property due to control or transfer to a legal entity with no right to land, status to ownership rights to land. Stated in paragraph 1 of article 21 of the Basic Agrarian Law which regulates that only Indonesian citizens have the right to and in obtaining ownership rights to land; e) Loss of rights to property due to the destruction of land. This is regulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency number 3 of 2024 concerning amendments to Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency number 17 of 2021 concerning procedures for determining destroyed land, article 4 states that land is indicated as destroyed land based on a) The results of monitoring and evaluation activities or, b) information from central government agencies, local government, the community or other parties and must be accompanied by a location map and initial data on the land area indicated as destroyed land. The initial data as intended is made in the form of a registered land inventory list that is indicated as destroyed land containing at least: a) name of the holder of the Management Rights and/or Land Rights; b) type and number of rights; c) number of the measurement letter; d) Land Area Identification Number; e) village/sub-district and sub-district where the land is located; f) land area; g) land utilization; and h) registration records or other records.

Law number 24 of 2007 concerning disaster management is stated in Article 5 which

¹⁶ SS Nugroho, Muhammad Tohari, and Mudji Rahardjo, *Hukum Agraria Indonesia* (Solo: Pustaka Iltizam, 2017).

regulates that the government and local governments must be responsible for implementing the organizers in overcoming disasters.¹⁷ Therefore, if the government has taken preventive measures, it cannot be said that it has broken the law or is not responsible. However, the government is not obliged to take responsibility for the loss of land caused by natural phenomena. Although Law No. 24 of 2007 provides for protection through preventive measures, there is no proof that these measures have been successful against soil loss due to abrasion, which cannot be charged to the state, unless it can be proven that the government has not taken adequate preventive measures. If the community is of the opinion that preventive measures are inadequate, they can file a lawsuit or class action through the district court available in the local area.¹⁸ Land rights that are destroyed due to abrasion cannot be transferred because their status is erased. This happens because the Basic Agrarian Law regulates that ownership rights to land are canceled if the land is destroyed, the status of destroyed land is canceled, including ownership and management rights, the land book or certificate of ownership is no longer legally valid, the government is obliged to guarantee and protect the rights to land affected by abrasion and the government can provide compensation to landowners who do not carry out reconstruction or reclamation. The determination of destroyed land is announced by the head of the National Land Agency office. The announcement aims to give priority to holders of Management Rights and/or Land Rights to carry out reconstruction or reclamation. The release of rights as contained in Law No. 2 of 2012 concerning land acquisition is identical to the cancellation of land rights. Land rights have a very important position in land acquisition for public purposes. The status of authority over the land that is the object of land acquisition must be clear before the land acquisition process is carried out because this issue will affect the stages of inventory and identification of control over the land acquisition object and compensation that will later be given to the entitled party.¹⁹

Land registration is based on land registration data, including a copy of the decree of the official who has the authority over the termination or loss of the applicable rights, and the act of relinquishing the rights of the rights holder. If these documents are not submitted to the head of the land registration office, registration is carried out in accordance with land laws and relevant land laws. Foreign legal entities domiciled in Indonesia must comply with land ownership regulations. To anticipate various possibilities related to land ownership identity, the government regulates and controls the holding of rights through land registration. The Government Regulation on Land Registration is inseparable from the Basic Agrarian Law which forms the basis for the establishment of the PPT. With guarantees of

¹⁷ Undang - Undang Nomor 24 Tahun 2007 Tentang Penanggulangan Bencana.

¹⁸ Christopher Kendrick Adam, Joe Arifiando Walpa, and Vina Octavia, "Pertanggungjawaban Pemerintah Republik Indonesia Terhadap Hilangnya Hak Atas Tanah Milik Warga Masyarakat Yang Terkena Abrasi Di Wilayah Kabupaten Brebes Jawa Tengah," *Cepalo* 4, no. 2 (2020): 129–42, <https://doi.org/10.25041/cepalo.v4no2.1943>.

¹⁹ Muhammad Yamin et al., "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* /7 (2022): 50–67, <https://doi.org/http://dx.doi.org/10.26623/jic.v7i1.4390>.

land ownership, not only stated in the certificate, but also in the articles governing agriculture. However, because this is a basic provision that only contains guidelines and instructions, the implementation of Land Registration is regulated in more detail in the Land Legislation Regulation Number 24 of 1997. Land registration is the organization of physical and legal data regarding land in an orderly and continuous manner through collection, processing and recording. The physical data includes clarity about the location, boundaries, and area of the land and registered houses, including information about the buildings on it,²⁰ while in legal data is the clarity of the legal status of the land towards the registered apartment unit. Based on Government Regulation No. 24 of 1997 paragraph 1 in Article 32, the certificate becomes a legal means of proof that is used as a tool for strong evidence regarding physical and legal data if the data corresponds to the information stated in the relevant survey or book.²¹

Every citizen has the right and obligation to register his land. The government's active participation in land registration is proof of strong ownership of the land, because the owner's name is recorded in the land and title deed registration, then a title deed certificate is issued. Thus, the land title has gone through a legal process and has long-term legal implications. With this, the results of the registration of the land are made into a document containing physical data and legal data on the land that can be used as reference information in various transactions in the future. The legal certainty expected from the implementation of land registration covers two main aspects, namely the object and the object of land law. The legal certainty of ownership rights depends on the condition of the land, namely the location, boundaries, length, and width of the land. And legal certainty in this case relates to the identity of the land owner. Land registration must include the transfer, release and encumbrance of rights to land that must be registered under Article 23 of the Basic Agrarian Law, but until now the Jembrana Regency National Land Agency (BPN) has not received reports from residents of Jembrana Regency who have lost their land to abrasion.²²

As for the condition of the land affected by abrasion, to the south is a right to use, to the north is a right to own that is affected by abrasion, all are rights to use, but all are no longer certified because the community needs funds to go to sea or open a business.²³ If the 1997 Land Regulation Number 24 is followed, then the legal status becomes invalid also because it is no longer in line with physical data or legal data which is a tool for legal evidence. In this case, it shows that the regulation above has not provided legal protection for the certificate holder because the land is damaged due to abrasion, meaning that there are no clear legal regulations regarding land due to abrasion. If the abrasion of the land can

²⁰ Ahmand Zaki dan Diyan Yusri, "Hukum Agraria Indonesia," in *Pustaka Iltizam*, vol. 7, 2020, 809–20.

²¹ "Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah," Pub. L. No. 24 (1997).

²² Wawancara dengan Bapak Kiki Permana seksi penata pertanahan di kantor BPN 21 April tahun 2024

²³ Wawancara dengan Bapak Khanzan Kepala Banjar Pebuahan di kediaman beliau 23 April tahun 2024

still be determined from the placement and boundaries of the land, then the existence of the land can still be ascertained through the certificate. However, if the land is damaged, the owner can only register the termination of ownership rights to the abrasioned land. The registration of termination of ownership rights to the land is carried out by the Land Office, which then cancels the certificate of ownership rights that are related or makes a record in the book to the land with the measurement report. Both the UUPA and the Land Regulation Number 24 of 1997 state that ownership rights to land that has been subject to abrasion are considered invalid. The community is obliged to register their land to restore its legal status and legal certainty through a certificate of ownership.

3.2. The Role of the Government in Protecting Land Rights Caused by Abrasion

In essence, land registration is intended to provide legal certainty over land tenure and as legal evidence of owned and occupied land.²⁴ As in Article 19 paragraph (1) of the Basic Agrarian Law, in order to guarantee legal certainty, the government organizes land registration throughout the territory of the Republic of Indonesia as stipulated by Government Regulation. Thus, the certificate of land title is used as a valid proof both physically and juridically. This proof is said to be valid and legally recognized, as well as having more legal force than other written evidence. It is emphasized again in Article 31 paragraph (3) of Government Regulation No. 24 of 1997 that certificates are only given to parties whose names are listed in the relevant land book as right holders or other parties authorized by them. Thus, the state has endeavored to protect land rights for owners of land objects under their control.²⁵

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The state, in its efforts to realize the prosperity of the people, has several ways to achieve this goal, one of which is through the construction of supporting facilities and infrastructure. According to the 1945 Constitution, the state hereby has the right to regain control of what has been handed over to the people. This does not mean that the state acts arbitrarily, but rather that it must have a clear objective and follow an implementation mechanism whose determination must be in accordance with the regulations in the legislation. To support the prosperity of the people, the state also regulates land as the center of human activity.

Law Number 5 of 1960 concerning Agrarian Principles regulates all aspects related to land issues. Article 2 of the Law further elaborates on the rules related to paragraph 3 as

²⁴ Gunawan Djajaputra, Endang Pandamdari, and Endyk M. Asror, "Analisis Hak Atas Tanah Dalam Sengketa Kepemilikan Tanah Beserta Penyelesaiannya," *Synotic Law: Jurnal Ilmu Hukum* 1, no. 1 (2022): 45–56, <https://doi.org/10.56110/sl.v1i1.4>.

²⁵ Iwan Permadi, "Potensi Sengketa Hak Atas Tanah Di Indonesia," *Justisi* 9, no. 2 (2023): 201–16, <https://doi.org/10.33506/jurnaljustisi.v9i2.2345>.

stated in Article 33 of the 1945 Constitution. Article 18 of the UUPA explains that for the public interest, including the interests of the nation and state, as well as the public interest, a person's right to land can be revoked by providing proper compensation and according to the procedures regulated by law. On this basis, the government has the legal right to take actions aimed at the greatest prosperity of the people. Law Number 2 of 2012 concerning Land Acquisition for Public Interest is the core of the mandate of the Land Acquisition Act in its regulation of the withdrawal of rights to land returned to the state. It is hoped that this law will provide a solid foundation for the government as a way of facilitating the implementation of development for the public interest. Before this law was enacted by the government as the basis for land acquisition, there had been a history of regulations governing the smooth running of land acquisition activities. From independence to the present day, the Land Acquisition Act (UUPA) has been the basis for land acquisition for public purposes. Each law has evolved as part of a legal policy that has changed over time. Initially, Law Number 20 of 1961 regulated the termination of land rights and objects on it. This law is regulated in Article 18 of the Land Acquisition Act, which regulates the formation of laws to terminate land ownership. This law applies when land is needed for public purposes and there is no other land that can be used.

Through the process of identifying critical land, including assessing the condition of the land and its environment. The government should carry out research and studies to decide whether an area can be classified as critical land. The consequences of natural disasters that can be considered in this category are, in other words, abrasion, which has a severe impact on soil erosion and continuous environmental damage. Listed in the Regulation of the Minister of Agrarian and Spatial Planning/National Land Agency concerning Procedures for the Determination of Wiped Out Land in 2021 Number 17, the Government provides guidelines and recommendations for the Wiped Out Land Investigation Team to identify wiped out land. In accordance with Article 8 of the Decree of the Minister of Asia Pacific / BNN Number 17 of 2021 "Regarding the Procedures for Identifying Damaged Land", the Damaged Land Investigation Team in identifying and inventorying damaged land is obliged to collect data and inform related to:²⁶ a) Types of rights; b) Written proof to the landowner with a certificate, another land certificate, or funds; c) Land control; d) Land ownership; e) Utilization of the land; f) Current condition of the land; g) Land area if identified as critical land; h) Boundaries of the land.

The aim of the project is to protect the community, the environment and provide certainty for land management. Identifying critical areas is an important first step in managing the social consequences of critical areas in the context of public interest development. After the identification process is complete, the government will determine the status of the critical area. This decision was revealed by the Head of the Land Office with a decision issued by the Head of the Land Office in accordance with the provisions of Article

²⁶ "Peraturan Menteri Agraria Dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 17 Tahun 2021 Tentang Tata Cara Penetapan Tanah Musnah," Pub. L. No. 17 (2021).

16 (4) of the Minister of ATR / BPN Decree No. 17 of 2021 concerning Procedures for Determining Degraded Persons. The purpose of this decision is to provide clarity and legal certainty regarding the situation where the soil is experiencing the effects of abrasion. The decree by the Head of the Land Office is used as a basis for the management of degraded land, including information about the condition of the land that is declared degraded, the identification criteria used, and the management actions to be taken.

In the decision-making process, the Head of the Land Agency makes an assessment based on the results of research along with the results of a survey conducted by the Investigation Team as Destroyed Land. This assessment aims to collect data and obtain information relating to the condition of the land and also the environment. So, the results of this assessment can be used as a basis for the Head of the Land Agency to make an objective decision based on facts according to the conditions. If the land is said to be destroyed, the determination is only part of the land, with this it can be said that the Right to Management and/or the Right to Land can be canceled for the part of the land that is declared destroyed. It is hoped that through this arrangement, there will be a social impact on the community due to land damage that can be handled specifically and have partiality to the community experiencing the consequences. In considering the social impact on the community due to land damage, the rights of the community must be taken into account.²⁷ The government and related parties are responsible for ensuring that the affected community receives fair and proper compensation. To overcome the socioeconomic impact of land damage, grant funds are distributed to those who are entitled to receive them. Based on the Presidential Regulation concerning Management of Social Effects of Land Damaged due to Development for Public Interest Number 52 Article 1 Paragraph 8, grant funds provide financial support to communities that experience socioeconomic losses due to land that is declared destroyed. The purpose of providing assistance is to restore the daily life and economic conditions of the affected community. Holders of registered and unregistered land rights in the context of development for public purposes by the Central Government, Regional Government, or other parties, Number 52 of 2022, for land classified as destroyed land, is regulated by Presidential Regulation Number 52 of 2022. The determination of the amount of the compassionate assistance fund is explained in Article 13 of Presidential Regulation No. 52 of 2022. The article explains how to calculate the amount of compassionate assistance funds. The calculation of the amount of compassionate assistance funds based on Presidential Regulation No. 52 of 2022 states that the amount is calculated from the Land Area x (multiplied by) 25% (twenty-five percent) of the NJOP (tax object sales value).²⁸ The land area referred to in the calculation is the area of land identified as

²⁷ Muhammad Yusrizal, "KEPENTINGAN UMUM," *DE LEGA LATA: Jurnal Ilmu Hukum* 2, no. 1 (2017): 113–38, <https://doi.org/https://doi.org/10.30596/dll.v2i1.1143>.

²⁸ SPP Wibawa, Priyo Prasetyo, and Sudibyanung, "Kelayakan Nilai Ganti Kerugian Tanah Musnah Sebagai Penanganan Dampak Sosial Pada Pengadaan Tanah," *Widiya Bhumi* 3, no. 2 (2023), <https://doi.org/https://doi.org/10.31292/wb.v3i2.63>.

destroyed land and will be used for development in the public interest.²⁹ Based on Presidential Regulation of 2023 Number 27 concerning Amendments to Presidential Regulation of 2022 Number 52, the calculation of the amount of spiritual assistance funds for the team formed by submission to the Minister and Governor or Regent / Mayor within a period of seven days from receipt of proof of calculation.³⁰ It is an unfortunate step when the addition of a category of development for public purposes with an "industrialization" nuance is not followed by an expansion of the criteria for determining and compensating land rights to become the object of land acquisition. There are no significant changes to the provisions for compensation stipulated in Law Number 2 of 2012 with Government Regulation Number 19 of 2021, so there are concerns that there will be arbitrariness in public procurement in the future. The criteria specified in the two regulations are stated as fair and proper compensation, but they still do not accommodate the interests of the life and livelihood of the owner of the land acquisition object after relocation.³¹ as recommended by the Asian Development Bank through the Handbook on Resettlement: A Guide to Good Practice, which provides criteria for providing compensation for affected victims that encourages related parties not to act arbitrarily.³² These criteria include guaranteeing the restoration of life after the land acquisition process has been carried out, which includes providing assistance for the construction of settlements, as well as the provision of public services, facilities and infrastructure development for resettlement sites, and plans for income restoration for groups (communities). In addition, the Governor or Regent/Mayor must issue a decree within seven days of receiving the recommendation. Payments to persons deemed entitled shall be made within a maximum period of two days, starting from the official determination of the damaged land. Spiritual assistance funds are provided in rupiah through banking transactions. The provision of spiritual assistance funds to residents affected by abrasion in Banjar Pebuahan has been implemented, but the funds are considered insufficient for residents affected by abrasion in Banjar Pebuahan.

In Law Number 2 of 2012, the steps that must be taken before the land is returned to the state for public use must be in accordance with established procedures. These procedures include: a) Planning, Planning is the first step that the government must take before carrying out state land procurement in accordance with applicable laws and regulations. Planning is the basis for government activities when it wants to carry out land acquisition for development purposes, b) Preparation, preparation of land acquisition after

²⁹ Zela Ony Zulfida and Edi Pranoto, "Perlindungan Hukum Terhadap Pemilik Hak" 6, no. 02 (2024): 188–99, <https://doi.org/https://doi.org/10.36441/supremasi.v6i2.2073>.

³⁰ "Peraturan Presiden Nomor 27 Tahun 2023 Perubahan Atas Peraturan Presiden Nomor 52 Tahun 2022 Tentang Penanganan Dampak Sosial Kemasyarakatan Atas Tanah Yang Diidentifikasi Sebagai Tanah Musnah Dalam Rangka Pembangunan Untuk Kepentingan Umum," Pub. L. No. 27 (2023).

³¹ Shelin Nabila Wibowo, Yani Pujiwati, and Betty Rubiati, "Kepastian Hukum Ganti Kerugian Pengadaan Tanah Bagi Pembangunan Jalan Tol Cismudawu," *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 4, no. 2 SE-Articles (June 30, 2021): 191–209, <https://doi.org/10.23920/acta.v4i2.480>.

³² Asian Development Bank, *Handbook on Resettlement: A Guide to Good Practice* (Manila: Asian Development Bank, 1998).

the submission of a land acquisition plan in collaboration with the provincial government. The Land Acquisition Guidelines regulated in Law Number 2 of 2012 are also clarified in Government Regulation Number 19 of 2021, which has provided systematic and detailed procedures in the implementation of land acquisition for houses affected by abrasion in Banjar Pebuahan, Negara Regency. However, problems arise when land acquisition is not as easy as identifying land in general. The land that is the object of land acquisition in Banjar Pebuahan is difficult to inventory and control for identification, and the people of Banjar Pebuahan do not have certificates. The people of Banjar Pebuahan prefer to move house because the land they own has changed and been lost due to abrasion. The regulated guidelines should be adjusted to the local conditions of the land acquisition object. These adjustments should be made carefully and should not harm the party entitled to the land. These adjustments are expected to be a link between the land acquisition regulations and the ultimate goal of improving community welfare. All benefits derived from the land, water, and air in Indonesia are the right of Indonesian citizens who have legal rights to those rights.

The status of land rights is also an object that needs to be examined in more detail, as evidenced by the People's Government certificate. After actual testing, it then refers to the facts on the ground that the place is still in use and the suitability of the land boundaries. Land that has been subject to abrasion is an unpredictable natural phenomenon, but the expansion of the abrasion zone can be avoided by using methods studied by various sciences and government regulations. Law Number 5 of 1960 does not recognize the cancellation of land ownership rights due to natural disasters. Unless the land is destroyed, there are still possible ways to deal with it.³³ If further examined regarding legal protection, it can be divided into two types, namely preventive legal protection and repressive legal protection. Preventive legal protection is used to prevent disputes over an issue, while repressive legal protection is aimed at resolving disputes after the issue arises.³⁴ As for the subject of this writing, the government must also have a legal protection mechanism that is preventive in nature and not a repressive legal protection mechanism. The government is obliged to take preventive measures to prevent abrasion. It is not that the government does not want to provide repressive protection, but the Basic Agrarian Law is not regulated in relation to the mechanism of repressive legal protection. The cause of repressive abrasion is the loss of land rights felt by the community that is not caused by human or government negligence, caused by natural tragedies that cannot be controlled by humans. If the area experiences abrasion or other natural disasters, the rights of the community to the lost land are removed in accordance with the principles of rights to lost land as regulated in the Basic Agrarian Law, as stated in Article 34 and also Articles 27 and 40. Regarding the state's

³³ Bagus Rahmanda, "Perlindungan Hukum Bagi Pengusaha Pemilik Tanah Akibat Musnahnya Tanah Oleh Bencana Alam Dan Kaitannya Dengan Pihak Ketiga Jurnal Gema Keadilan Jurnal Gema Keadilan," *Jurnal Gema Keadilan* 6, no. 1 (2019): 63–74, <https://doi.org/https://doi.org/10.14710/gk.2019.5119>.

³⁴ I Gede Prapta Jaya, I Made Arya Utama, and I Ketut Westra, "Kekuatan Hukum Sertifikat Hak Tanggungan Dalam Hal Musnahnya Obyek Hak Tanggungan Karena Bencana Alam," *Acta Comitatus* 02, no. 2017 (2017): 278, <https://doi.org/https://doi.org/10.24843/AC.2017.v02.i02.p12>.

responsibility, the state cannot be held accountable unless it has been proven to have allowed or failed to take measures to prevent abrasion. The state is subject to the legal provisions stipulated in the Basic Agrarian Law.

In accordance with Article 4 paragraph (3) of Presidential Regulation Number 52 of 2022 concerning Management of Social Impacts on Land Designated as Derelict for Development in the Public Interest, persons entitled to intellectual support must meet the following conditions: a) The holder of rights to land who does not yet have priority rights in redeveloping or reclaiming his land because it can be used for development in the public interest; b) If the person concerned is a natural person, he must have an identity card or certificate of legal residence legalized by the sub-district or issued by an agency with local authority; c) If the party concerned is a legal entity, it must have a legal entity deed that is valid with the ministry that carries out government affairs in a particular field of law and human rights; and d) Have proof of control, ownership, utilization, and/or benefit, whether for registered or unregistered land. In providing assistance, it is aimed at providing social assistance to residents affected by critical land. In addition, the Presidential Regulation concerning the formation of an integrated team to handle the social impact on communities related to critical land in 2022 Number 52 also contains regulations in the team formed to coordinate and carry out the task of handling social consequences, including the provision of social assistance. The team formed must involve every relevant party, including the local government and the affected community. The calculation of spiritual assistance funds is assessed by an assessment team in accordance with Indonesian state assessment standards. After obtaining a copy of the Social Impact Management planning document and report, the Damaged Land Investigation team must include a survey map and include candidates from agencies that need land, for assessment or public assessment to calculate the amount of spiritual assistance funds. The total area of land indicated on the survey map and registered candidates is determined against the party who has the right or control by having proof of control, ownership, use, and/or utilization of the land, whether indirectly registered or not on the list.

If the government has carried out efforts to prevent abrasion, so that the government does not have to be asked for authority because it has done its best. However, if the people can file a class action lawsuit against the government if it can be proven that the government does not care or does not make efforts to prevent abrasion. According to paragraph 4 of the Preamble to the 1945 Constitution, the government has an obligation to protect the human rights of every person, including property rights, so that it is the public obligation of the government to protect the property rights of the community. In terms of legal protection, it will always be related to the function of the law. The function of the law is intended to be protective, but it must also be implemented in the form of a law that contains certain conditions and can be implemented in such a way that a person's life can proceed as

expected.³⁵ The legal functions that the government intends to implement in relation to legal protection are regulated in the Basic Agrarian Law. The Basic Agrarian Law is the legal basis for the implementation of protection under the law intended for the community, which must be applied consistently. However, the formulation of the conditions stipulated in the Basic Agrarian Law can also regulate protection against preventive law and does not regulate the implementation of protection against repressive law. Thus, it can be seen that the actual purpose of the law has been implemented in accordance with the applicable principles of law and has fulfilled the conditions stipulated in the Basic Agrarian Law. Even though the Regional Government wants to formulate laws and regulations that have rules regarding repressive legal protection, this cannot be done because according to the hierarchy of laws and regulations, there are no laws and regulations at the regional level that can contradict higher laws and regulations, namely the Basic Agrarian Law.

All laws and regulations as well as regional government decisions must comply with the Basic Agrarian Law. If there is a desire to change the protective regulations that have a preventive nature and add to the legal protection that has a repressive nature, then a revision or amendment to the Basic Agrarian Law must be made first. After the revision or amendment is implemented, the Regional Government can enact laws and regulations governing repressive legal protection. On the basis of this protection, the Regional Government only has the right to implement preventive legal protection against this. To prevent the loss of community land due to abrasion, the Jembrana Regency Government has carried out a number of preventive measures, including: a) Stopping beach sand mining in every coastal area of Jembrana Regency. The use of beach sand mining has benefits for making coastal areas resilient and resistant to the arrival of waves. This was also conveyed by the Head of Pebuahan Village: sand is no longer mined from the beach, here there is abrasion due to rising sea water. This is also reinforced by Jembrana Regency Regional Regulation Number 1 of 2023 concerning the Jembrana Regency Spatial Plan;³⁶ b) The construction of a concrete half-wave structure to separate and reduce the strength of waves hitting the coastline. Concrete, one of the buildings made by humans, is often used to reduce the impact of strong sea waves. The Jembrana Regency Government has not only taken advantage of natural facilities to overcome this problem, but also artificial facilities such as concrete production, but not all of them have been implemented. One of them is in Pebuahan Village, which is affected by abrasion. The efforts that have been made in handling this abrasion with the presence of a breakwater must be budgeted annually to continue the action of extending the breakwater on the coast. This was also conveyed by the Head of Pebuahan Village, a map of the location of the breakwater construction in the sea has been made. Since May, they have started to procure the necessary materials. Construction is likely

³⁵ Dadi Arja Kusuma, Rodliyah Rodliyah, and Sahnun Sahnun, "Sertifikat Hak Milik Atas Tanah Sebagai Alat Bukti Hak Yang Kuat," *Jurnal IUS Kajian Hukum Dan Keadilan* 5, no. 2 (2017): 310–21, <https://doi.org/10.29303/ius.v5i2.465>.

³⁶ Wawancara dengan Bapak Kiki Permana seksi penata pertanahan di kantor BPN 21 April tahun 2024

to begin in August.³⁷

The steps in taking the above precautions are a form of the local government's social responsibility to its citizens whose lives may be disrupted by abrasion disasters. Responding to the removal of land rights of communities in various areas of Jembrana Regency, in accordance with the provisions of the Basic Agrarian Law in Article 27, it is said that land rights are indirectly lost and the Jembrana Regency Government does not have to provide any compensation. If the government adopts policies that do not have a clear regulatory framework, it will undoubtedly be dangerous for local governments, especially in terms of bearing responsibility for what has been done. There is only one way out, to make changes to the rules that are higher in position, namely the statutory regulations stipulated in the Basic Agrarian Law, based on the Basic Agrarian Law, which provides a legal basis for ending land issues, especially those related to regulations on legal protection of damaged land. Thus, it can be said that the function of the law has been carried out in accordance with the applicable rules and has covered the circumstances already regulated by the Basic Agrarian Law. Although the local government wants to produce regulations that provide repressive legal protection, this cannot be done because according to the hierarchy of legislation, there are no local regulations that can contradict the content of higher regulations, namely the Basic Agrarian Law. All regulations and policies made by local governments must comply with the Basic Agrarian Law. If there is a desire to change the protective rules that have a preventive nature and add the purpose of legal protection that has a repressive nature, the Basic Agrarian Law must be revised or changed first. Only after the revision or change has been made can the local government make provisions that can provide repressive legal protection.

The preventive measures that have been taken are a form of the local government's social responsibility to its citizens whose lives are threatened by the devastating natural disasters due to the lack of land rights for people living in various areas in Jembrana Regency. This is in accordance with the provisions of Article 27 of the Basic Agrarian Law, whereby land rights can be automatically considered lost and the Jembrana Regency Government does not have to provide compensation. If the government implements provisions that do not yet have a definite legal basis, it can certainly be said to be detrimental to the local government, especially if it is held accountable for its actions. One of the solutions is to change the laws that are far above the regulations, namely the regulations contained in the Basic Agrarian Law, because the Basic Agrarian Law is the umbrella in the law related to the implementation of legal protection for land issues, especially land that has already been damaged. The government needs to regulate coastal zoning. The legal aspect shows the seriousness of the local government in ensuring preventive legal protection so that beach abrasion does not become evidence. Once the legal framework has been established, consistency in its implementation needs to be improved so that it can be carried

³⁷ Wawancara dengan Bapak Khanzan Kepala Banjar Pebuahan di kediaman beliau 23 April tahun 2024

out effectively and efficiently.

4. CONCLUSION

Based on the description that the researcher conveyed about the role of the government in protecting the property rights of Banjar Pebuahan residents of Banyubiru Village due to abrasion, it can be concluded that regarding the status of land that has been subjected to abrasion, in Land Regulation Number 24 of 1997, the legal status is considered invalid because it is not in line with physical data or legal data that is used as strong evidence. This is supported by the Agrarian Law. Article 27 letter b states that ownership rights are lost if the land owned is destroyed. It can be said that land affected by abrasion is considered lost, so that the condition no longer exists. From the above provision, it can be ascertained that if there is an abrasion disaster on a plot of land that results in the destruction of the land, the person's ownership rights to the land affected by abrasion are erased or lost. The title deed of the land that has been subject to abrasion is considered invalid. The community is obliged to register their land to restore its legal status and legal certainty through a certificate of ownership. The assistance provided is intended to help the residents recover their livelihoods, as the economic conditions of the affected community are insufficient to sustain the lives of the residents of Banjar Pebuahan. However, the Jembrana Regency Government has prohibited the removal of beach sand from all beaches and has also made a concrete wave breaker to reduce the strength of the waves hitting the Jembrana Regency coastline, and has also carried out site identification for land acquisition preparations, but has not found a bright spot in the process. Thus, in carrying out land acquisition, this becomes an obstacle, because it is necessary to gather more valid evidence. The status of land rights is also an object that needs to be considered in more detail, as evidenced by a certificate from the village.

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