

Reconsidering Priority Rights in the Reacquisition of Land Rules in Indonesia: A Legal Analysis Post-Termination of Right to Cultivate, Right to Build, and Right to Use

Oemar Moechthar^{1*}, Agus Sekarmadji², Yogi Hidayat³, Ghansham Anand⁴

^{1,2,4} Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

³ Faculty of Law, Universitas Islam Bandung, Kota Bandung, Indonesia

*Corresponding Author: oemar.m@fh.unair.ac.id

Received: June 13, 2025; Reviewed: August 3, 2025; Accepted: December 8, 2025

Abstract: Land is a fundamental resource for fulfilling social and economic needs. In Indonesia, the expiration of limited land rights, namely the Right to Cultivate, Right to Build, and Right to Use, raises complex legal issues concerning both the legal status of the land and the position of former right holders. Government Regulation No. 18 of 2021 introduces the concept of “priority rights,” granting former holders the opportunity to reapply for rights over the same land. However, the regulation fails to stipulate a clear time limit or legal duration for exercising such priority. This regulatory gap has generated legal ambiguity, inconsistent interpretation, and recurring land disputes, thereby weakening legal certainty in Indonesian land governance. This study aims to analyze the normative foundation, legal implications, and temporal scope of priority rights in the context of post-expiration land tenure. The research employs a doctrinal legal method using statutory, conceptual, and case approaches. Legal materials are obtained through library research and analyzed using grammatical, systematic, and teleological interpretation to assess the validity, coherence, and effectiveness of the existing regulatory framework governing priority rights. The findings indicate that the absence of a definitive legal time frame for exercising priority rights creates a *rechtsvacuum* (legal vacuum), which not only undermines legal certainty but also exacerbates conflicts over land that has reverted to state control. Although the land formally returns to the state upon the expiration of the original rights, former holders retain a form of civil legal interest derived from their previous lawful tenure, which serves as a valid basis for prioritization.

Keywords: Land Rights, Priority Rights, Expiration of Tenure, Legal Certainty.

INTRODUCTION

In Indonesia, several categories of land rights are subject to a fixed term. Upon expiration of such rights, the legal relationship between the individual or legal entity as the legal subject and the land as the legal object terminates. Nevertheless, Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration stipulates that former right holders who do not immediately extend or renew their rights may be granted a priority right to reapply for the land rights. However, the regulation remains unclear regarding the specific duration or timeframe within which this “priority right” can be exercised after terminating the previous land right, creating legal uncertainty in its application.

In Government Regulation Number 18 of 2021, there is no explicit time limit governing how long former holders of Building Use Rights, Cultivation Rights, or Rights of Use may exercise their “priority rights” to reapply for the same plot of land once their rights have expired, and, on the one hand, this normative arrangement is intended to provide a degree of legal protection and continuity for prior legal and economic relations established over the land. However, the absence of a clear temporal boundary has the potential to generate serious practical and structural problems, as it produces legal uncertainty both for the State and for third parties (Setiabudi et al, 2025) who may have legitimate interests in the land, creates opportunities for speculative practices and land hoarding by former rights holders, and ultimately constrains the State’s capacity to reallocate and utilize land for public purposes, agrarian reform, or broader social needs. Moreover, although the land has legally reverted to direct State control, the indefinite recognition of priority rights allows former holders to maintain *de facto* claims over the land, thereby blurring the distinction between extinguished private rights and renewed State authority (Miptahuddin, 2024; Mohamad & Djaja, 2025; Siswanto, 2024). This unresolved ambiguity may become a catalyst for new agrarian conflicts, as competing claims arise without a clear legal hierarchy grounded in time-based limitation. Consequently, the normative construction of “no time limit” within the framework of priority rights risks undermining the core principles of Indonesian agrarian law, particularly the social function of land, the ideals of social justice, and the imperative of orderly land administration, by allowing residual private entitlements to persist beyond their reasonable and legitimate duration.

For example, in Decision No. 148/Pdt.P/2015/PN.Kds, the Court ruled that the applicant, as an heir, retained a priority right to apply for land rights over a parcel of state land previously subject to Right to Build Certificate No. 64, which had expired in 2003. A similar issue arose in the Supreme Court Decision No. 1157K/Pdt/2016, where the Court adjudicated parcels of land formerly under Building Use Rights No. 375/Maloku and No. 71/Maloku. In that case, the original owner passed away in 1985, and the heirs chose not to divide the estate immediately. When the building use rights expired in 2001, the heirs did not apply for an extension or renewal. The panel of judges held that the inheritance rights of the heirs had not been extinguished, despite the 28-year lapse from the inheritance’s opening, because the land rights’ expiration did not nullify the heirs’ entitlement to claim the estate.

A comparable situation was observed in Supreme Court Decision No. 1771K/Pdt/2019, where the Court held that the disputed land, formerly subject to an expired Building Use Rights certificate, remained part of an undivided inheritance among the heirs. In empirical practice within society, land rights holders often remain indifferent to the legal status of the land they occupy. Frequently, without the awareness of the right holders, the

legal tenure over the land has expired for many years without any extension or renewal being undertaken. This phenomenon reflects a persistent issue in land administration, where the failure to promptly extend or renew land rights commonly serves as a primary trigger for conflicts and disputes within the community, particularly in land affairs (Thomas et al, 2022).

In Government Regulation Number 18 of 2021, no explicit time limit is prescribed for the exercise of “priority rights” by former holders of Building Use Rights, Cultivation Rights, or Rights of Use after the expiry of their legal tenure, and while such a normative framework is arguably designed to provide a degree of continuity and legal protection for previously established interests in land, the absence of a clear temporal boundary generates significant legal and practical uncertainty. This ambiguity not only blurs the conceptual distinction between land that has reverted to direct State control and land that remains subject to residual private claims, but also opens space for speculative behavior, land hoarding, and overlapping assertions of entitlement, thereby weakening the State’s authority to reallocate land in accordance with the social function of land and the objectives of agrarian reform.

The problem becomes more complex when read in conjunction with Government Regulation Number 19 of 2021, as amended by Government Regulation Number 39 of 2023 on Land Acquisition for Development in the Public Interest, which stipulates that compensation shall be granted to “eligible parties” (*pihak yang berhak*). Under Article 18 in conjunction with Article 24 of these regulations, such parties include individuals or legal entities that control or occupy State land in good faith, including former rights holders whose certificates have expired, provided that they continue to physically occupy and utilize the land and are able to demonstrate such good-faith control with valid evidence. This legal configuration raises a critical normative dilemma: whether a party whose legal right to the land has formally expired, and who has failed to apply for an extension or renewal, can still legitimately be categorized as an “eligible party” for compensation. Consequently, the current regulatory framework risks producing inconsistent interpretations and unequal treatment in land acquisition processes, as it remains unclear whether compensation should be prioritized for former rights holders based on their prior legal connection, for current good-faith occupants, or for other parties who acquire rights through lawful administrative mechanisms. In this sense, the undefined temporal scope of priority rights, combined with an expansive definition of “eligible parties,” threatens to undermine legal certainty, procedural fairness, and the substantive goal of equitable land distribution in the context of development for the public interest.

The historical development of land affairs in Indonesia reflects the recognition of *priority rights*, as outlined in Presidential Decree No. 32 of 1979 concerning the General Policy on the Granting of New Land Rights over Land Originating from the Conversion of

Western Rights, in conjunction with Minister of Home Affairs Regulation No. 3 of 1979 on Provisions Regarding Applications and the Granting of New Rights over Land Originating from the Conversion of Western Rights (Sembiring 2018). These regulations explicitly affirm that former holders of *Hak Guna Usaha* (Right of Cultivation), *Hak Guna Bangunan* (Right of Building), and *Hak Pakai* (Right of Use), as well as local communities who have occupied or cultivated such land, are granted priority in obtaining new land rights. However, the regulations do not specify a time limit or duration for the validity of such priority rights.

Previous studies related to this research have been conducted by Noor, Prasetyo, Nugraha, and Navarro (Noor et al. 2025), focusing on the legal status of land title certificates when the right holders abandon their land, allowing the community to occupy it for decades. Using a normative juridical approach, their study emphasized that certificates serve as strong evidence, but they are not absolute, as their validity depends on the accuracy of physical-legal data and the right holders' compliance with the social function of land.

Furthermore, research by Widiyono and Khan (Widiyono & Khan 2023) highlighted the aspect of legal certainty in land rights acquisition in Indonesia, examining various regulations such as the Basic Agrarian Law (UUPA), Law No. 2 of 2012 on Land Acquisition, Government Regulation No. 24 of 1997, Government Regulation No. 18 of 2021, and Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation. The study primarily focused on how these regulations provide legal certainty in the process of acquiring land rights, both through land acquisition for public purposes and acquisition by the private sector. The findings indicate progress in achieving more efficient and transparent procedures, while also stressing the need for regulatory harmonization and stronger governance to reduce conflicts, overlapping claims, and uncertainty regarding land status.

The regulatory framework governing *priority rights* remains ambiguous due to the absence of clear and comprehensive legal provisions. This legal uncertainty gives rise to several critical issues: (1) a legal vacuum (*rechtsvacuum*); (2) the emergence of multiple and conflicting interpretations regarding the concept of priority rights; (3) the lack of legal certainty for former holders of rights over state land; (4) stagnation in land administration processes, where administrative errors may be misclassified as acts of corruption; and (5) the obstruction of state administrative instruments in formulating and executing land-related policies and decisions (Mujiburohman 2016). These challenges underscore the urgent need for regulatory clarity to ensure administrative efficiency and legal protection.

The central legal issue addressed in this article concerns the uncertainty regarding the duration and legal enforceability of priority rights granted to former holders of limited land rights (Right to Build, Right to Cultivate, and Right to Use) after the expiration of those rights, with the legal question: *how long does the right of priority remain valid for former right*

holders to reclaim their land after the expiration of their tenure under Indonesian agrarian law?. The results of this study are expected to contribute to improving existing laws and regulations.

METHODS

This study employs doctrinal legal research (Hadjon & Djatmiati, 2005; Hutchinson, 2018) to analyse the legal status of former land rights holders and the concept of priority rights following the expiration of the Right to Build, Right to Cultivate, and Right of Use under Indonesian land law. The research utilises three main approaches: a statutory approach, a conceptual approach, and a case approach.

The statutory approach focuses on examining the normative framework governing the expiration of land rights and the possibility of re-acquisition, particularly the Basic Agrarian Law (Law No. 5 of 1960) and its implementing regulations, including Government Regulation No. 18 of 2021, Government Regulation No. 19 of 2021, and Government Regulation No. 39 of 2023. These regulations are analysed to assess the legal implications of the absence of an explicit time limit for exercising priority rights and its consequences for legal certainty and state control over land.

The conceptual approach explores central legal doctrines and principles relevant to the study (Marzuki, 2019, 2021), including the concept of priority rights, the legal status of former rights holders, state control over land (*hak menguasai oleh negara*), the principle of legal certainty, and the social function of land. These concepts are used as analytical tools to evaluate whether the current regulatory framework adequately balances individual interests and the broader public interest.

The case approach examines relevant court decisions concerning expired land rights and claims of priority or continued control over land that has reverted to the State. The cases analysed include Supreme Court Decision No. 1994 K/Pdt/2020, Semarang District Court Decision No. 462/Pdt.G/2015/PN Smg, Supreme Court Decision No. 2557 K/Pdt/2016, Supreme Court Decision No.109 PK/Pdt/2022, Kudus District Court Decision No.148/Pdt/P/2015/PN Kds, and Supreme Court Decision No. 603 K/Pdt/2013. These decisions provide empirical insights into how courts interpret and apply legal norms relating to the expiration of land rights, the recognition of former rights holders, and the protection of good-faith control over state land.

Legal materials were collected through library research (Ibrahim, 2013; Marzuki, 2022), consisting of primary legal materials (legislation and court decisions), secondary legal materials (books and journal articles), and tertiary legal materials (legal dictionaries and encyclopedias). These materials were analysed using grammatical, systematic, and teleological interpretation to assess the coherence, consistency, and effectiveness of the existing legal framework in ensuring legal certainty and fairness in post-expiration land rights arrangements.

RESULTS AND DISCUSSION

The Concept, Legal Basis and Practice of Priority Rights in the Agrarian Legal System

Land is a divine endowment granted by God Almighty to humankind, forming an inseparable part of human life due to the profound and enduring relationship between humans and land. It is central to human existence, as much of human activity and livelihood is dependent upon it. Land is regarded not only as a vital and permanent asset but also as a resource that can be preserved for future generations. Beyond serving as a residence for most people, land functions as a fundamental source of sustenance and economic survival (Nadya and Hernawan 2024). Land also serves as a fundamental factor in producing goods and services. Its utilization as a means of production includes agricultural purposes, taking advantage of soil fertility, mining activities, and exploiting natural resources. Indirectly, land is the physical space where all economic activities occur. The more intensively land is utilized, the faster the economic cycle operates, thereby contributing to the overall growth of economic activities (Arnowo & Handayani, 2016).

Land rights refer to the entitlements granted to legal entities or natural persons over the earth's surface. In contrast, the right to use land encompasses the authority conferred by the state upon Indonesian legal entities or individuals to explore, research, and utilize land resources for economic purposes. These rights enable the extraction of economic and other benefits, ultimately contributing—directly or indirectly—to improving public welfare.

The land occupies a central and strategic position in human life. It is indispensable for developing infrastructure and public facilities, including roads, markets, buildings, and residential areas, as well as for defense and security purposes. In principle, human existence is inseparable from land (Rahmanto, 2014). This aligns with Bernhard Limbong's (Limbong 2012) view who asserted that land is vital for human life, as much of human livelihood depends on land.

In the Indonesian legal system, each land rights category possesses distinct characteristics and legal attributes. Unfortunately, public awareness regarding land rights types and legal status remains limited (Mahayani & Sudiarta, 2023). Many purchase land rights without fully understanding the nature of their acquired rights. There is a widespread misconception that acquiring any land right automatically equates to ownership in the form of freehold title (*Hak Milik*). Both theory and practice, land rights in Indonesia are diverse. While freehold title is superior due to its perpetual nature, other types of rights, such as the Right of Cultivation, Right of Building, and Right of Use, are subject to a fixed term. Once these time-limited rights expire, the legal consequence is terminating the land right, and the land reverts to state control (Putra, 2013). Consequently, to maintain the continuity of land tenure, former right holders must apply for an extension or renewal of their rights before the expiry date.

In this context, the concept of *priority rights* (*hak prioritas*) emerges, which grants former right holders preferential status to reclaim their rights upon expiration. A person is

considered a former right holder when the term of their land right has expired, causing the land to revert to state control while retaining the option to reapply based on preferential entitlement (Feddyawan & Sukresno, 2023).

The word 'Prioritas' comes from English, *priority*. If examined further, the word *priority* comes from the word *prior*, which can be interpreted as *earlier* or *more important* or *formally existing or happening before something else or a particular time*. Priority is critical and must be dealt with before other things (McIntosh, 2015). Gifis (2016) stated that *priority* is a "preference, the condition of coming before or of coming first. In a bankruptcy proceeding, the right to be paid before other creditors out of the bankrupt party's assets. The term may also signify such a right in connection with a prior lien (first or superior lien, entitled to satisfaction before others), prior mortgage, etc." The principle of priority is indeed not apparent in agrarian or land law. However, this principle is often found in civil law, primarily regulating property and also in property guarantee institutions such as pawns, mortgages, fiduciary guarantees, and land mortgages. The priority principle is a provision to be prioritized over other factors or subjects.

In the context of land law, *priority rights* (hak prioritas) refer to a legal entitlement that grants preferential status or priority to an individual or entity in the order of recipients for acquiring land rights. Conversely, *civil rights* (hak keperdataan) carry a stronger legal position than priority rights, as they govern the private legal relationship between the right holder and the land (Kamilah et al, 2024). Notably, even after a land right has expired, the underlying civil relationship may persist, necessitating the resolution of such private rights before priority rights can be exercised in determining the order of entitlement to land rights (Mujiburohman, 2016). Nevertheless, the position of priority rights remains significant, as it ensures that the former right holder is prioritized in reallocating land rights. This is particularly relevant in cases where cultivation rights or building use rights have expired, but civil entitlements to the land remain vested in the former right holder. In Indonesian land law practice, priority rights are formally recognized. The exercise of priority rights enables a person to either acquire or lose rights over land, and it may also result in the revocation of another party's land rights due to the preferential legal position held by the individual with priority entitlement (Thomas et al, 2022).

Sarjita's research (Sarjita et al, 2015) Explains that *priority rights* over land refer to rights held by individuals (*natuurlijke recht*) or legal entities (*rechtspersoon*) granting preferential entitlement to utilize or benefit from a particular parcel of land over others. This concept is known as *hak terdahulu* (preference right or *voorkeursrecht*) in customary law. The regulation of priority rights over land can be found both in customary land law and in various national agrarian laws and regulations, including Law No. 1 of 1958, Law No. 86 of 1958, Government Regulation No. 8 of 1953, Presidential Decree No. 32 of 1979 in conjunction with Minister of Home Affairs Regulation No. 3 of 1979, and Circular Letter of the Minister of Agrarian Affairs/Head of the National Land Agency No. 410-1293 dated May 9, 1996. In practice, when land disputes are brought before the District Court, priority

rights are acknowledged by the judiciary and often serve as a legal consideration in adjudicating and resolving such cases.

Referring to the provisions of Government Regulation No. 18 of 2021, once the term for the granting, extension, or renewal of time-limited land rights expires, the land reverts to being directly controlled by the state or classified as *Hak Pengelolaan* (HPL/management rights). Furthermore, Articles 22(3), 37(4), and 52(5) of the same regulation consistently stipulate that the reassignment of the use, benefit, and ownership of such state-controlled land falls under the authority of the Minister. The regulation also provides that priority may be granted to former holders of the previous land rights (Right of Cultivation, Right of Building, and Right of Use) based on the following considerations: (a) the land is still being properly utilized and maintained by its nature, condition, and original intended purpose; (b) the former right holder has complied with the requirements of the previous land right; (c) the former right holder continues to meet the legal qualifications to hold such rights; (d) the land remains compatible with the prevailing spatial plan; (e) the land is not being used or planned for public interest purposes; (f) considerations relating to natural resources and environmental protection; and (g) the condition of the land and surrounding communities.

In land administration practice, former land rights holders are generally granted a *priority right* to apply for new rights over state land previously under their control. This form of possession is recognized as physical control, which carries a legal responsibility to act as a “steward of state land” during the interim period before the land is officially reallocated to rightful or interested parties. Such recognition underscores the principle that former right holders are entrusted with maintaining the land’s integrity by legal and administrative expectations (Sitorus, 2016b). If it has become state land, anyone can apply to obtain land rights by fulfilling the requirements set by laws and regulations (Khoirunnisa et al, 2024). This is because agrarian resources collectively belong to all Indonesian people to maximize their prosperity. If a legal subject needs land, they can apply for expired land rights.

Priority rights over land entitle specific individuals or legal entities to be prioritized or granted precedence based on a predetermined order of recipients in recognizing, granting, or determining land rights (Mujiburohman, 2018). This differs from *private legal rights* (*hak keperdataan*), which hold a stronger and more binding status than priority rights, as they concern the legal relationship between a right holder and the land itself. Even after the formal expiration of the land rights, the private legal relationship is considered to persist. Accordingly, any settlement of private legal rights must precede the exercise of priority rights in determining the rightful recipient of land rights based on the established order of priority.

This provision implicitly reflects the government’s recognition of *de facto* physical possession, which, over time and absent any disputes or objections from the public, along with the settlement of all interests of former right holders, may gradually evolve into a *jus*

possessionis (the right to continue possessing something). This possession may eventually be acknowledged as *jus possidendi* (the right to own or hold property) if uninterrupted over a considerable period. From this point, the physical possessor prioritizes applying for formal land rights. Should this priority right be exercised, the physical control may legally be converted into recognized land ownership (*de jure* land rights) through the formal land registration system (Feddyawan & Sukresno 2023).

Research conducted by Sihombing and Pandamdari (Sihombing & Pandamdari, 2021) similarly notes that such priority rights, although not explicitly regulated under statutory law, have existed in practice, particularly following the enactment of Law No. 5 of 1960 on Basic Agrarian Principles (*UUPA*), promulgated on September 24, 1960. The law mandated that all former Western and customary land rights be converted within 20 years from the enactment date. If such conversion were not carried out, the affected land would revert to state control as state land. However, state control in this context did not equate to outright ownership by the state; instead, the government prioritized local communities that had long occupied or possessed such lands. These communities could apply for formal land rights over their inhabited lands. This principle was reaffirmed in Presidential Decree No. 32 of 1979 on the Guidelines for the Granting of New Rights Over Former Western Land Rights, which stipulated that eligible former right holders who continued to manage or utilize the land/buildings themselves would be granted new rights over their land unless it was required for public interest development projects.

In the context of land reclamation, similar arrangements explicitly state that reclaimed land is categorized as land directly controlled by the state, while the party undertaking the reclamation is given priority to apply for land rights over the reclaimed area (Santoso 2015). This is stipulated in the Circular of the Head of the National Land Agency No. 410-1293, dated May 9, 1996, and No. 440-3725, dated November 9, 1996, concerning Procedures for the Provision of Non-Agricultural Land Through Coastal Reclamation.

Further developments regarding the concept of priority rights, albeit implicitly, can be found in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 1339/SK-HK.02/X/2022 concerning the General Granting of Land Rights. Broadly, it provides that former holders of expired Right of Building or Right of Use, who are unable to extend their rights and whose land was historically and currently used for residential purposes with a maximum land area of 600 m², may be granted ownership rights over such land. This provision aligns with the principle in Presidential Decree No. 32 of 1979, in which the state grants priority to former right holders to reapply for land rights over land they previously controlled, provided that all applicable requirements are met.

Development of Priority Rights in Court Decisions

One of the principal objectives of Indonesia's Basic Agrarian Law (*Undang-Undang Pokok Agraria*, UUPA) is to provide legal certainty concerning land rights held by the

people. This objective is explicitly stated in the *considerans* section of the UUPA. In its implementation, this cannot be separated from the principle of the state's control over agrarian resources, as enshrined in Article 33 paragraph (3) of the Indonesian Constitution and further reaffirmed in Article 2 paragraph (2) of the UUPA, whose interpretation has been expanded by the Constitutional Court's Decision No. 001-021-022/PUU-I/2003.

Utrecht (Astuti & Daud 2023) interprets legal certainty as encompassing two essential elements. *First*, legal certainty involves general rules enabling individuals to understand what actions are permitted or prohibited. *Second*, it provides legal security for individuals against the arbitrary exercise of governmental authority, as general rules allow individuals to know what obligations the state may impose upon them or what actions the state may lawfully take against them. Meanwhile, Gustav Radbruch (Boboy, Santoso, and Irawati 2020) identifies four fundamental aspects related to the meaning of legal certainty: (1) law must be positive, meaning it must be codified in legislation; (2) law must be grounded in factual reality; (3) facts must be articulated clearly to prevent ambiguity in interpretation and to facilitate practical implementation; and (4) positive law should not be easily altered.

Legal certainty serves as a foundational principle in the legal system, ensuring clarity, predictability, and stability in regulating the rights and obligations of legal subjects (Amry et al, 2025). It presumes the existence of legal relationships between legal subjects and the objects protected by law, which give rise to corresponding rights and obligations. These rights and obligations must be protected by law to guarantee that each legal subject can safely exercise their legal actions (Khaerulnisa & Amandah, 2024). In essence, land rights constitute a legal relationship between the rights holder and the land, where such a relationship is afforded legal protection. In the context of land rights, legal certainty is crucial for determining the rights and obligations of land rights holders, especially after the expiry of the rights' validity period.

The theory of legal certainty, as developed by Utrecht and Gustav Radbruch, provides a crucial foundation for the explicit regulation of priority rights within Indonesian agrarian law. Utrecht emphasizes that legal certainty requires clear, consistent, and predictable norms that enable individuals and institutions to foresee the legal consequences of their actions and to rely on the stability of the legal order. This requirement becomes particularly relevant when land rights such as the Right of Cultivation, Right of Building, and Right of Use expire, as the land automatically reverts to the direct control of the state. Despite this reversion, Government Regulation No. 18 of 2021 introduces the concept of priority rights, granting former right holders a legal preference to reapply for and potentially reclaim their former rights over land that has returned to state control. However, when examined through Radbruch's concept of legal certainty, a significant normative gap becomes evident. Although the regulation implicitly acknowledges the existence of such priority rights, it fails to clearly define their duration, scope, and procedural mechanism. This lack of explicit codification and clarity, contrary to Radbruch's requirements that law be positive and unambiguous, renders the implementation of

priority rights dependent on subjective interpretation, administrative discretion, and inconsistent judicial reasoning, as reflected in various court decisions. Consequently, this ambiguity undermines legal predictability and opens the door to disputes, overlapping claims, and potentially arbitrary state action. Therefore, from the perspective of legal certainty theory, the explicit regulation of priority rights, particularly the establishment of a concrete timeframe and clear legal consequences, constitutes not merely a technical regulatory need but a normative necessity to ensure stability, fairness, and effectiveness in Indonesia's land administration system. In a Constitutional Court Decision Number 001-021-022/PUU-I/2003, the concept of "the right to control by the state" encompasses five dimensions: the authority to formulate policy (*beleid*), regulate (*regelendaad*), administer (*bestuurdaad*), manage (*beheerdaad*), and supervise (*toezichthoudendaad*) for the most significant benefit of the people. This interpretation of "controlled by the state," as stipulated in Article 33 of the 1945 Constitution, implies a broader and higher concept than ownership under private law. The state's role is understood as that of the highest governing authority (as affirmed in judicial review decisions concerning Law No. 20/2003, Law No. 22/2001, and Law No. 7/2004) (Jaya, Suganda, and Fautanu 2020). In a democratic constitutional state, the relationship between the state and its citizens is inherently horizontal and equal rather than vertical or hierarchical. As Bung Hatta once emphasized, this relationship resembles that between members of an organization and its leadership—not between rulers and subjects. This horizontal nature reflects the democratic principle that the same foundational legal order binds the state and its people. The only element that stands above both is the Constitution, which serves as the *supreme law of the land* and functions as a social contract. This contract establishes reciprocal constitutional rights and obligations between the state and its citizens, positioning them as equal parties before the law. Since Indonesia's independence, and more clearly after the constitutional amendments—particularly those in Chapter XA on Human Rights and Chapter XV on National Economy and Social Welfare—this legal structure affirms that any violation of constitutional rights may be subject to judicial review. Such adjudication ensures the accountability of state actions and provides a legal remedy for citizens whose rights have been infringed (Triningsih 2016). Through these five dimensions of legal authority, the state may grant land rights—such as ownership rights, cultivation rights, building rights, and use rights—to both public and private legal subjects, as regulated under Articles 4 and 16 of the *UUPA*. Furthermore, the state retains the authority to revoke such rights in the public interest. These land rights are categorized into permanent rights, such as *ownership right*, and temporary rights with defined durations, such as right to cultivate, right to build, and right to use.

The state holds the authority to grant new land rights to individuals applying for state land. Priority is generally given to individuals or communities who have long occupied and settled on the land—particularly in areas that have become residential settlements. These individuals may apply for land rights over former *eigendom verponding* lands or other lands

that meet the criteria established by prevailing laws and regulations. The process involves submitting a land rights application, followed by land surveying, issuance of a Land Tenure Approval Letter (*SKPH*) by the local Land Office, Regional BPN Office, and National Land Agency (BPN RI), payment of the Land and Building Rights Acquisition Duty (*BPHTB*), registration of land rights, and the issuance of land certificates. Applicants must also fulfill their tax obligations to the state, as the land in question is categorized as state land. Therefore, applications must be submitted to the local Land Office corresponding to the location and size of the land in question (Sihombing and Pandamdari 2021). Oloan Sitorus (Sitorus, Wulandari, and Khaeruman 2021) argues that granting land rights to fulfill the needs of communities that have long inhabited and utilized the land is a governmental action that possesses adequate legal justification. This is particularly relevant as these communities have occupied and used such spaces for extended periods, in some cases over generations.

The concept of *priority rights* in land affairs was not formally recognized in agrarian legislation prior to 2021. However, this right has emerged in practice, especially in determining priority rights over land whose tenure has expired (Hakim, Pujiwati, and Rubiati 2018). Determining priority rights over land with expired rights can be examined through three aspects. The first is the subject of the right. Parties entitled to submit an application for priority rights in reclaiming land are those listed as the right holders in the land certificate (Feddyawan & Sukresno 2023). If the former rights holder has passed away, their heirs are entitled to file such a claim. If no heirs exist, the land automatically reverts to direct state control. In this regard, the order of priority is as follows: the priority is granted to the former rights holder, the second to their heirs, and the third to the State of Indonesia (Thomas et al. 2022). *Second*, the evidentiary aspect. The applicant for priority rights must be able to prove their legal entitlement to the land. Sumarno (Sumarno and Pandamdari 2024) explains that a priority right (*prioriterecht*) indicates a legal subject's proprietary interest or control relationship over land, which forms the basis for their acquisition of land rights. *Third*, the land use aspect. The land for which rights are being requested must be used for the purpose for which the rights were originally granted. Therefore, before applying, the applicant must physically occupy and utilize the land in question, which must be substantiated through legal documentation and physical evidence.

Meanwhile, research by Tjahjo Arianto (Arianto et al, 2015) states that priority rights in land affairs refer to the preferential entitlement granted to individuals or legal entities for land use, management, and ownership. *First*, in terms of utilization, priority is given to those who can use land effectively. Proximity between the land and the user's residence is essential for agricultural land, as it ensures better management. Legal entities that can prove effective and sustainable land use are eligible for the Right of Cultivation and may be prioritized for renewal. Conversely, parties who mismanage or abandon the land may lose such rights. *Second*, regarding legal recognition, priority rights may evolve into ownership rights. This recognition can follow two paths: acknowledgment as customary land (*tanah*

adat)— which can be registered as an ownership right—or state land, in which case the party only holds the right to apply for tenure, subject to spatial planning regulations. The priority right may be revoked if the land is abandoned or needed for a public interest.

In several court decisions, *priority rights* have frequently emerged as a judicial finding in resolving land disputes. As well established, court decisions constitute one of Indonesia's recognized sources of law. The following section will present a selection of court rulings and examine the judges' legal reasoning in acknowledging and applying the concept of priority rights to cases involving expired land rights.

In Supreme Court Decision No.1994K/PDT/2020, the plaintiff filed a tort claim against PT Maspion for failing to return the disputed land object after the expiration of the agreed term. The plaintiff also sought compensation for losses incurred by Article 1365 of the Indonesian Civil Code (*Burgerlijk Wetboek*), which establishes liability for unlawful acts that cause harm to others. Once a land use agreement has expired, the land must be returned to the rightful owner, and any legal relationship (including priority rights) ceases unless a formal request for extension is submitted. Priority rights may be granted only when such a request is made, and there are no competing claims with stronger legal standing. In this case, the claim to priority rights by PT Maspion was rejected, as the Surabaya Municipal Government, as the legal holder of HPL, opted not to extend the building-use rights due to public interest considerations. Furthermore, based on Government Regulation instead of Law No. 51 of 1960 on the Prohibition of Land Use Without Legal Authorization, land use without permission constitutes an unlawful act. The land in question, located at Jalan Pemuda No. 17, Surabaya, is earmarked for public open space development, underscoring the government's authority under the doctrine of state control right to prioritize public welfare over private claims (Kamilah et al, 2024).

In the decision of the Semarang District Court, case number 462/Pdt.G/2015/PN Smg, it was stated that in this case, PT. Perusahaan Pembangunan dan Perkebunan Karangayu, the former holder of Right to Build Title No. 283, as the plaintiff, filed a lawsuit against Santoso Sutanto, the new holder of Right to Build Title No. 426 issued over the land previously held under Right to Build No. 283. The plaintiff filed a tort claim because, as the former holder of Right to Build No.283, it was entitled to priority in applying for the extension of the disputed land title. However, when the plaintiff intended to apply for an extension, a new certificate was already issued in the defendant's name. The plaintiff argued that this act constituted an unlawful act and that the certificate issued in the defendant's name was legally defective and held no binding legal force. The panel of judges held that granting priority rights to former holders to apply for a new right over the land was based on Article 2 of Presidential Decree No. 32 of 1979, which stipulates that a former holder only acquires a priority right after applying for the new title. This priority right would persist until the land office issued an explicit rejection. Conversely, if the former holder did not apply for an extension, it would be deemed that they had relinquished their priority right. This case proceeded to the Supreme Court at the cassation level, registered

under Decision No. 2557 K/Pdt/2016. The Supreme Court judges considered that since the Right to Build Title No. 283 had expired in 1986, the land reverted to being under the direct control of the state. Furthermore, the former holder's priority right would only exist if they applied after the expiration of their previous right. If no application were made, the priority right would not remain indefinitely attached to the former holder.

In Supreme Court Decision No. 109 PK/Pdt/2022, a legal dispute arose over state land formerly under *eigendom* rights, which had been occupied for decades by residents of Dago Elos, Bandung. The heirs of the former *eigendom* holder submitted a request for land rights recognition. Despite prolonged resident occupation, the Supreme Court granted priority rights to the claimant in the judicial review decision. The Court considered the claimant's ability to provide valid documentary evidence a key requirement for obtaining land rights over the disputed property (Khoirunnisa et al. 2024).

Another case can be found in District Court Decision Number 148/Pdt/P/2015/PN.Kds, in which Eviyani Kristanty, as the petitioner, had occupied state land formerly held under Right to Build Title No. 46 in Ngangguk Village, Kota Sub-District, Kudus Regency since 1976. The certificate was registered in the name of Sri Ongkoyani, who passed away in 1980 and whose right expired in 2003. In its ruling, the Court granted the petition and declared that the petitioner was entitled to a priority right, considering that the petitioner had consistently fulfilled her obligations to pay land taxes and no disputes or encumbrances on the land existed. The authority to issue a new land right was subsequently transferred to the state, represented by the National Land Agency.

A similar legal reasoning was adopted in Supreme Court Decision Number 603K/Pdt/2013 concerning the Right to Build Title No. 1887 located in Kebon Kelapa Sub-District. After the land right's term expiration, the land was unlawfully occupied by other parties, who later applied for rights to the land, resulting in the issuance of Right to Build Titles No. 2503 and No. 2566. In this ruling, the Supreme Court held that since the former holder of Right to Build No. 1887 did not apply for an extension when the right expired in 1980, the land reverted to being directly controlled by the state. Accordingly, the priority right was granted to those who physically occupied and used the disputed land at the time of application.

Referring to several court decisions, the core issue in land disputes often lies in the legal basis used by parties claiming to have *priority rights* over others in accessing or controlling a particular land plot. This perceived right to be prioritized—often asserted by those with long-term occupation or control—frequently becomes the source of prolonged land conflicts, both judicial and extrajudicial. The lack of clarity in the concept, legal framework, and procedural mechanisms governing priority rights—particularly concerning land occupation and possession—has led to multiple interpretations.

The following table presents legal developments through court decisions, both cases that are within the absolute authority of the district court and the state administrative court,

and these cases are at the first level, appeal level, cassation level, or judicial review related to priority rights.

Table 1. Existence and *Ratio Decidendi* of Judges Regarding Priority Rights

Strengthening the Existence of Priority Rights		Weakening the Existence of Priority Rights	
Decision Number	<i>Ratio Decidendi</i>	Decision Number	<i>Ratio Decidendi</i>
Court Decision No. 148/Pdt/P/2015/ PN. Kds	The applicant has priority rights because he always fulfills his/her obligation to pay taxes, has never had any disputes, and is not being used as collateral for debt.	Supreme Court Decision No. 603K/Pdt/2013	Land rights that have expired will become state land. The priority scale is who occupies the disputed object.
Supreme Court Decision No. 109 PK/Pdt/2022	Applicants who are heirs receive priority rights over other residents who occupy the land without legal basis because the applicant can show valid evidence as a condition for obtaining land rights.	Supreme Court Decision No. 2557K/Pdt/2016.	Building Use Right certificate No. 283 expired in 1986, so the right to the land was canceled, and it became directly controlled land. The priority right of the ex-holder of the previous right only exists if the person concerned also applies the expiry of his right. If the ex-right holder does not apply for the right, then the priority right does not always attach to the person concerned.
Supreme Court Decision No. 1157K/Pdt/2016	Land with former building use rights whose term has expired 28 years ago, then the heirs' inheritance rights are not lost due to the expiration of the inheritance rights period.	Supreme Court Decision No. 1994K/ PDT/2020	PT. Maspion's priority rights claim was rejected because the City Government, as the legal holder of the management rights, chose not to extend the building use rights due to public interest considerations.
Supreme Court Decision No. 1771K/Pdt/2019,	The panel of judges determined that the object of the dispute, which was land with a building use rights certificate whose term had expired,	Court Decision No. 617/Pdt.Plw/2012/ PN. Sby	The plaintiff obtained priority rights in terms of the conversion of former state land to Building Use Rights. However, as long as the land object is still in the status of being confiscated, the priority

Strengthening the Existence of Priority Rights		Weakening the Existence of Priority Rights	
Decision Number	<i>Ratio Decidendi</i>	Decision Number	<i>Ratio Decidendi</i>
	was joint inheritance property that had not been divided among the heirs.		rights cannot be exercised. The entitled party must seek other legal remedies to regain the rights to the land because, based on the court decision, the priority rights have been given to the plaintiff; only the priority rights cannot be enforced because they are constrained by the rules in the formal law contained in the HIR.
Jombang District Court Decision No. 05/Pdt.G/2006/ PN. Jmb; High Court Decision No. 60/Pdt/2007/ PT. Sby	In the first instance, appeal and cassation judges stated that the plaintiff had priority rights to the placement and extension of the building use rights certificate No. 8 on the land of Jalan Merdeka No. 19 Jombang. Issuing the Right to Use Certificate No. 40/Desa Candimulyo (the disputed land <i>a quo</i>) without permission from the plaintiff was an unlawful act.	State Administrative Court Decision No. 49/G/2019/ PTUN-JKT	Residents have priority rights to land, which priority rights in practice are only known as Rights to Use, Rights to Build, and Rights to Cultivate, which have expired and are given to the previous rights holders. The land <i>a quo</i> comes from <i>eigendom verponding</i> No. 1684 in the name of the Dutch East Indies Government, not Rights to Use, Rights to Build, and Rights to Cultivate, which have expired, but land used for the interests of state administration. In addition, the rights to land <i>eigendom verponding</i> No. 1684 can only be given to the government by the provisions of Government Regulation No. 8 of 1953.
Court Ruling No. 336/Pdt.P/2013/ PN.Jr	Priority rights are given to those who have occupied a settlement on the land of former Western rights. Based on the case above, the applicant occupies the land of <i>Eigendom Verponding</i> on which a		

Strengthening the Existence of Priority Rights		Weakening the Existence of Priority Rights	
Decision Number	<i>Ratio Decidendi</i>	Decision Number	<i>Ratio Decidendi</i>
	settlement has been established. Therefore, the applicant is entitled to obtain priority rights.		

Source: Processed from the Directory of Decisions of the Supreme Court of the Republic of Indonesia

Although the previous section has described each relevant case in detail, a deeper examination of their *ratio decidendi* reveals a crucial pattern in how Indonesian courts conceptualize “priority rights” after the expiration of land tenure. In several decisions, judges explicitly rejected priority right claims even when former right holders could prove continuous physical possession of the land. The main rationale underpinning such rejection was the strict formalistic interpretation of land rights under Indonesian agrarian law, in which the expiration of Right of Cultivation, Right of Building, and Right of Use was deemed to automatically extinguish the legal relationship between the subject and the object of the right (*rechtsverhouding*) (Abdi & Setiawan, 2025). In this view, physical occupation alone was considered insufficient to revive or preserve a preferential legal status without a timely application for extension or renewal (Bank 2021; Ritawati et al, 2018). Judges in these cases placed greater weight on legal certainty as embodied in formal registration and statutory time limits, rather than on social or factual control over the land. Consequently, priority rights were interpreted not as an inherent or automatic entitlement, but merely as a conditional administrative privilege that must be exercised within a reasonable and legally justifiable time frame.

Conversely, in cases where courts recognized the continued relevance of priority rights, the *ratio decidendi* was grounded in equity-based considerations, good faith possession, and the principle of social function of land. Judges acknowledged that the expiration of formal land rights does not necessarily eliminate the civil relationship originating from inheritance, long-term occupation, or historical possession, particularly when the state had failed to assert its control in a clear and consistent manner. These decisions demonstrate a more flexible interpretation of priority rights, treating them as a legal bridge between expired tenure and renewed rights, in order to prevent unjust enrichment, displacement, or the arbitrary transfer of land to third parties.

When synthesized, these divergent judicial approaches strongly support the argument that the absence of a clearly defined time limit for exercising priority rights is a core source of legal uncertainty. The inconsistency in judicial reasoning reflects the broader gap within Government Regulation No. 18 of 2021, which recognizes priority rights in principle but fails to define their temporal validity. As a result, some courts rely on rigid

positivism, while others resort to equitable reasoning to fill the normative vacuum. This fragmentation not only produces unequal legal outcomes but also weakens the predictability of land administration. Therefore, the case law, when analysed through its *ratio decidendi*, does not weaken but rather reinforces the urgency of explicitly regulating a concrete time frame for priority rights. Establishing such a limit would harmonize judicial interpretation, enhance legal certainty, and prevent both abuse and prolonged legal ambiguity in state land management.

Priority rights are rights held by former holders of land rights, granting them preferential treatment to reclaim their rights over the same land after the expiration of those rights. In this context, an individual is referred to as a former holder of a Right to Build whose tenure has ended, rendering the land state-controlled. Nonetheless, the position of priority rights ensures that the former holder is favored for reallocation of the land, based on the notion that although the land right has expired, a civil legal relationship over the land persists for the former holder (Hakim et al, 2018).

However, certain legal scholars contest the recognition of priority rights as an enforceable legal entitlement. According to this view, once the term of a land right with a fixed duration expires, the land status automatically reverts to state land (Sitorus, 2016a). From the perspective of natural law theory, it is generally argued that the state cannot hold land in absolute private ownership (*eigendom*), but rather exercises control over land for public interest purposes. This contrasts with the views of Ulpianus and Vegting, who maintained that the state, by a special legal relationship, could hold land ownership (albeit nominally), with the understanding that such ownership is exercised for the public good (*res publica*). The legal relationship concerning the land may thus take the form of either ownership or control (Fitri, 2018). In administrative practice, however, land administration agencies in Indonesia have consistently recognized a form of *priority right* or what is sometimes referred to within the bureaucracy as a civil right (*hak keperdataan*) for the former land rights holder. This practice persists despite a definitive legal provision governing the matter.

For this reason, it is essential to formulate an unambiguous legal provision to eliminate interpretive uncertainty regarding the concept of priority rights in land law. Achieving this would align with Nurhasan Ismail's (Ismail 2012) assertion that a prismatic agrarian legal policy – which places justice and utility above legal certainty – can serve as Indonesia's foundational principle for land law reform. A proposed amendment to address this issue is outlined in the following table.

Table 2. Proposed Changes to Legal Norms Regarding Priority Rights in the Provisions of Government Regulation Number 18 of 2021

Initial Provisions Article 22 paragraph (3); Article 37 paragraph (4); Article 52 paragraph (5); Government Regulation Number 18 of 2021	Proposed Amendments to Provisions of Government Regulation Number 18 of 2021
<p>Land directly controlled by the state as referred to in paragraph (2), the restructuring of use, utilization, and ownership becomes the authority of the Minister, and priority can be given to former rights holders by taking into account:</p> <ol style="list-style-type: none"> The land is still being cultivated and appropriately utilized by the conditions, nature, and purpose of granting rights; The rights holder properly fulfills the requirements for granting rights; The rights holder still meets the requirements as a rights holder; The land is still by the spatial plan; Not used and/or planned for the public interest; Natural resources and the environment; and Condition of the land and surrounding community 	<p>Land directly controlled by the state as referred to in paragraph (2), the restructuring of use, utilization, and ownership become the authority of the Minister and may be given priority to the former rights holder no later than 1 (one) year from the end, taking into account:</p> <ol style="list-style-type: none"> The land is still being cultivated and appropriately utilized by the conditions, nature, and purpose of granting the rights; The rights holder adequately fulfills the requirements for granting the rights; The rights holder still meets the requirements as a rights holder; The land is still by the spatial plan; Not used and/or planned for the public interest; Natural resources and the environment; and Condition of the land and surrounding community

Determining one year to exercise the priority right after the expiration of land rights (such as the Right of Cultivation, Right to Build, and Right of Use) is normatively justifiable within Indonesia's agrarian legal system. This is grounded on several considerations: *First*, the Basic Agrarian Law (UUPA), along with its derivative regulations, implicitly provides a one-year timeframe for various legal acts related to land rights by their holders. This period has been historically regarded as adequate for rights holders to take the necessary legal steps concerning their land. *Second*, from the perspective of legal certainty, a defined period prevents legal uncertainty and potential disputes over land ownership and usage status. It limits the open-ended claim over ex-rights holders, ensuring land administration operates efficiently and transparently. *Third*, in terms of justice and utility (*keadilan dan kemanfaatan*) — principles that should be prioritized over strict formal certainty according to Nurhasan Ismail's concept of prismatic land law politics — the one-year strikes a fair balance. It allows the former rights holder sufficient time to assess their intentions while also considering the public interest by eventually clearing legal ambiguity over state-controlled lands.

From the perspective of former rights holders, the introduction of a one-year limitation provides clear legal certainty for former rights holders regarding the timeframe available to reapply for land rights. It eliminates ambiguity about how long their preferential claim remains valid and encourages prompt legal action. This defined period promotes greater legal awareness and administrative discipline, as former holders are incentivised to prepare the required documentation and comply with procedural standards in a timely manner. In addition, it strengthens the principle of legitimate expectation by creating a predictable legal environment in which former rights holders can make rational decisions concerning future land use, investment, and economic planning. Despite its benefits, a strict one-year limitation may disproportionately affect vulnerable groups, including small-scale farmers, indigenous communities, and economically disadvantaged individuals, who often face limited access to legal information, financial resources, and bureaucratic assistance. In practice, complex administrative requirements, overlapping land claims, and slow institutional procedures can prevent even good-faith applicants from submitting a timely application. As a result, the one-year limitation may unintentionally function as an exclusionary barrier, accelerating the loss of access to land for those who lack institutional capacity, rather than those who lack legitimate entitlement.

Meanwhile, from the perspective of land administration and the State, for land administration authorities, the one-year limitation enhances efficiency, transparency, and legal order. It prevents the emergence of prolonged legal uncertainty over former land rights areas and allows the State to rapidly clarify land status, update land registers, and redistribute or reallocate land in accordance with spatial planning and public interest objectives. This mechanism reinforces the social function of land and strengthens the State's constitutional mandate to control and utilise land, water, and natural resources for the greatest benefit of the people. However, the implementation of a one-year limitation may also pose significant challenges for land administration bodies, particularly in regions with high volumes of expired rights. A sudden increase in applications within a short period may overwhelm institutional capacity, resulting in processing delays, administrative errors, and inconsistent decisions. Moreover, in the absence of strict oversight, the limitation period may be manipulated by powerful actors or used selectively to marginalise rightful claimants whose applications are hindered by procedural obstacles beyond their control, thereby undermining the principles of fairness and legal protection.

Given this, it is recommended that clear, explicit statutory provisions be established to regulate the priority proper mechanism, including (a) defining the status and scope of priority rights for former land rights holders, (b) setting a definitive one-year period from the expiration of land rights for exercising such priority; (c) determining the administrative procedures and evidentiary requirements for claiming priority rights; (d) regulating the consequences of failing to exercise such rights within the stipulated period. Such provisions would prevent multi-interpretation within society and administrative practice. It would

reinforce a legal framework that aligns with the broader aims of Indonesia's agrarian reform policy: ensuring legal certainty, justice, and utility in land tenure arrangements.

This regulatory reform would also accommodate existing judicial practices, as evidenced by several court decisions where judges have acknowledged the concept of priority rights based on administrative and customary practices despite its absence in explicit statutory provisions before enacting Government Regulation Number 18 of 2021. Consequently, the government needs to incorporate these provisions into the national land law framework, providing a consistent, just, and effective legal basis for both the government and land rights holders.

CONCLUSIONS

Priority rights refer to the preferential claim granted to former land rights holders, allowing them to be prioritized in reapplying for rights to the same land after the expiration of the initial tenure, such as the Right to Cultivate, Right to Build, and Right to Use. Although the land formally reverts to state control upon the expiration of these rights, the former holders often retain a form of civil entitlement based on their prior lawful tenure, continuous use, compliance with regulations, and good faith. This condition creates a normative basis for prioritisation, which has gradually developed through administrative practices, ministerial regulations, and judicial considerations, even though it is not explicitly formulated in the Basic Agrarian Law (UUPA).

Government Regulation No. 18 of 2021 reinforces this doctrine by opening space for former rights holders to be prioritised in reapplying for land rights. However, a significant weakness lies in the absence of a clear temporal limitation for exercising such priority rights. This legal vacuum not only risks transforming temporary rights into quasi-permanent control, but also undermines legal certainty, invites competing claims, and potentially contradicts the social function of land. Therefore, this study argues that priority rights should be explicitly limited to a two- to five-year period following the expiration of the original right, as a proportional and reasonable transitional mechanism that preserves state authority while protecting legitimate expectations.

Implementing priority rights must receive greater attention from the government and relevant stakeholders. Strengthening administrative coordination, harmonising regulations, and reinforcing the principle of legal certainty are necessary to ensure that the entitlements of former rights holders are not neglected. At the same time, such protection must remain aligned with spatial planning, public interest, and sustainable land use. Ultimately, a clearer and more balanced regulation of priority rights contributes to improved social welfare and fulfils the constitutional mandate of the 1945 Constitution of the Republic of Indonesia, which stipulates that land, water, and natural resources shall be controlled by the State and utilised for the greatest benefit of the people.

ACKNOWLEDGEMENTS

The author team would like to thank the management of the *Jurnal Bhumi* for their willingness to conduct a review, provide constructive criticism for the perfection of this manuscript, and be able to publish this journal article so that it can be read by the general public.

REFERENCES

- Abdi, F, & Setiawan, I.K.O. (2025). "Acquisition of Ownership of Land upon Expiry of Building Use Rights." *International Journal Of Humanities Education and Social Sciences (IJHESS)* 5(2). doi:10.55227/ijhess.v5i2.1839.
- Amry, A.P, Yuhelson, & Hutomo, P. (2025). "Kepastian Hukum Hak Guna Bangunan Yang Telah Berakhir Terkait Dengan Sengketa Pewarisan." *Journal of Innovation Research and Knowledge* 4(10):7921–30.
- Arianto, T., Budhiawan, H., & Andari, D.W.T. (2015). *Kajian Hukum Tentang Keberadaan Hak Prioritas Dalam Penyelesaian Masalah Pertanahan*. Yogyakarta.
- Arnowo, H, & Handayani, D.T. (2016). "Kebijakan Pertanahan Pada Era Masyarakat Ekonomi Asean (MEA)." *BHUMI: Jurnal Agraria Dan Pertanahan* 2(2):227. doi:10.31292/jb.v2i2.73.
- Astuti, B, and Daud, M.R. (2023). "Kepastian Hukum Pengaturan Transportasi Online." *Al-Qisth Law Review* 6(2):205. doi:10.24853/al-qisth.6.2.205-244.
- Asian Development Bank. (2021). *Innovative Infrastructure Financing Through Value Capture in Indonesia*. Metro Manila: Asian Development Bank.
- Boboy, J.T.B, Santoso, B & Irawati, I. (2020). "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G.Pruitt Dan Jeffrey Z.Rubin." *NOTARIUS* 13(2):803–18. doi:10.14710/nts.v13i2.31168.
- Feddyawan, D.A & Sukresno. (2023). "Perlindungan Hukum Bekas Pemegang Hak Terhadap Tanah Bekas Hak Guna Usaha Atau Hak Guna Bangunan Yang Telah Berakhir Haknya." *Journal of Social Science Research* 3(5):5044–53.
- Fitri, R. (2018). "Hukum Agraria Bidang Pertanahan Setelah Otonomi Daerah." *Kanun Jurnal Ilmu Hukum* 20(3).
- Gifis, S.H. (2016). *Dictionary of Legal Terms: Definition and Explanations for Non-Lawyers*. Hauppauge: Barron's Educational Series.
- Gloria T, Anna S. W, and Sarah D.L.R. (2022). "Penggunaan Hak Prioritas Terhadap Pemegang Hak Guna Bangunan Yang Berakhir Jangka Waktunya." *Lex Privatum* 10(4):1–11.
- Hadjon, P.M., and Djatmiati, T.S. (2005). *Argumentasi Hukum*. Yogyakarta: Gadjah Mada University Press.
- Hakim, R. I, Pujiwati, Y, & Rubiati, B. (2018). "Hak Prioritas Dalam Perolehan Tanah Hak Guna Bangunan Yang Habis Jangka Waktunya Ditinjau Dari Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria Dan Keputusan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 6 Tahun." *Acta Diurnal* 1(2):114–28.
- Hutchinson, T. (2018). "Doctrinal Research: Researching the Jury." Pp. 8–39 in *Research methods in law*, edited by D. Watkins and M. Burton. United Kingdom: Routledge.
- Ibrahim, J. (2013). *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayu Publishing.

- Ismail, N. (2012). "Arah Politik Hukum Pertanahan Dan Perlindungan Kepemilikan Tanah Masyarakat." *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1(1):33. doi:10.33331/rechtsvinding.v1i1.105.
- Jaya, A.S, & Fautanu, I. (2020). "Analisa Hukum Pelepasan Hak Keperdataan Tanah Hak Milik Menjadi Hak Guna Bangunan Bagi Badan Usaha Melalui Pembebasan Serta Implikasinya Terhadap Daya Tarik Investasi." *Jurnal Penelitian Hukum Legalitas* 14(2):57–64.
- Kamilah, N., Pulungan, M. & Koeswarni, E. (2024). "Penggunaan Hak Prioritas Untuk Mendapatkan Hak Guna Bangunan Di Atas Tanah Hak Pengelolaan (Analisis Putusan Mahkamah Agung Nomor 1994K/PDT/2020)." *Indonesian Notary* 6(2). doi:10.21143/notary.vol6.no1.135.
- Khaerulnisa, & Amandah, D. (2024). "Hak Prioritas Atas Pewarisan Hak Guna Bangunan Yang Telah Berakhir." *JICN: Jurnal Intelek Dan Cendekiawan Nusantara* 1(3):4904–10.
- Khoirunnisa, I., Putri, B.S. & Nikmah, N.L. (2024). "Hak Prioritas Terhadap Perolehan Tanah Bekas Hak Eigendom." *Unes Law Review* 6(5):12102–9. doi:https://doi.org/10.31933/unesrev.v6i4.
- Limbong, B. (2012). *Konflik Pertanahan*. Jakarta: Margaretha Pustaka.
- Mahayani, Ari, I.A & Sudiarta, I.K. (2023). "Perubahan Status Hak Tanah Dari Hak Guna Bangunan Menjadi Hak Milik." *Jurnal Kertha Negara* 11(2):184–92.
- Marzuki, P.M. (2019). *Penelitian Hukum*. Revision. Jakarta: Kencana.
- Marzuki, P.M. (2021). "The Functions of Principle as the Basis of Court Decision in Hard Cases." *Yuridika* 36(2):383. doi:10.20473/ydk.v36i2.26497.
- Marzuki, P.M. (2022). "The Essence of Legal Research Is to Resolve Legal Problems." *Yuridika* 37(1):37–58. doi:10.20473/ydk.v37i1.34597.
- McIntosh, C. (2015). *Cambridge Advanced Learner's Dictionary*. Cambridge: Cambridge University Press.
- Miptahuddin, C. (2024). "The Problem of Ownership of Land Rights Is Reviewed Based on the Law and Government Regulation." *Advances in Social Humanities Research* 2(5):784–803.
- Mohamad, A.R, & Djaja.B. (2025). "Effectiveness of Legal Protection for Land Rights Certificate Holders Against Unlawful Third-Party Claims." *Awang Long Law Review* 7(2):402–9.
- Mujiburohman, D.A. (2016). "Problematika Pengaturan Tanah Negara Bekas Hak Yang Telah Berakhir." *BHUMI: Jurnal Agraria Dan Pertanahan* 2(2):151–64. doi:https://doi.org/10.31292/jb.v2i2.67.
- Mujiburohman, D.A. (2018). "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)." *BHUMI: Jurnal Agraria Dan Pertanahan* 4(1). doi:10.31292/jb.v4i1.217.
- Nadya, Alifa, and Deddy Hernawan. 2024. "Analisis Yuridis Penguasaan Tanah Terlantar Ex Hak Guna Usaha Oleh Masyarakat Desa Kasomalang." *LITIGASI* 25(1):124–42. doi:10.23969/litigasi.v25i1.12862.
- Noor, A., Prasetyo, A., Nugraha, R.R. & Navarro, C.M. (2025). "Legal Status of Land Rights Certificates Due to Neglect by Rights Holders and Decades of Occupation: A Normative Legal Study." *Pena Justisia* 23(2):8314–31.
- Putra, F.M.K. (2013). "Tanggung Gugat Debitor Terhadap Hilangnya Hak Atas Tanah Dalam Obyek Jaminan Hak Tanggungan." *Jurnal Yuridika* 28(2).
- Rahmanto, D. (2014). "Penyelesaian Konflik Dan Sengketa Sertifikat Kepemilikan Hak Atas

- Tanah." *Adil Jurnal Hukum* 5(1).
- Ritawati, O.M, & Fatimah. (2018). "The Rights of Compensation to Community for Land Used for Mining Business According to Law Number 2 Year 2012 Regarding Land Procurement for Development and Public Interests." Pp. 276–78 in *International Conference on Energy and Mining Law (ICEML 2018)*, edited by J. Southalan, R. Heffron, Rachmad Safa'at, I. N. Nurjaya, and I. D. Qurbani. Amsterdam-Paris-Beijing: Atlantis Press.
- Santoso, U. (2015). "Perolehan Hak Atas Tanah Yang Berasal Dari Reklamasi Pantai." *Mimbar Hukum* 27(2):214–25.
- Sarjita, Y., & Sukayadi. (2015). *Eksistensi Hak Prioritas Dalam Rangka Perolehan Hak Atas Tanah (Studi Di Kantor Pertanahan Kota Semarang)*. Yogyakarta.
- Sembiring, J. (2018). *Pengertian, Pengaturan Dan Permasalahan Tanah Negara*. Jakarta: Kencana.
- Setiabudi, A., Sudarwanto, A.S., & Candrakirana, R. (2025). "Legal Certainty over Land Boundaries: A Field Study of Re-Measurement Practices at BPN Yogyakarta City and Sleman." *Greenation International Journal of Law and Social Sciences* 3(2):424–30. doi:<https://doi.org/10.38035/gijlss.v3i2>.
- Sihombing, F. P. & Pandamdari, E. (2021). "Permohonan Hak Guna Bangunan Atas Tanah Negara Bekas Eigendom Verponding Di Kantor Pertanahan Kota Jakarta Barat." *Jurnal Hukum Adigama* 4(2):358–82.
- Siswanto, C.T. (2024). "Legal Effects of Land Abandonment in the Perspective of Justice Theory." *Widya Pranata Hukum* 6(1):44–57.
- Sitorus, O. (2016a). "Penataan Hubungan Hukum Dalam Penguasaan, Pemilikan, Penggunaan, Dan Pemanfaatan Sumber Daya Agraria: Studi Awal Terhadap Konsep Hak Atas Tanah Dan Ijin Usaha Pertambangan." *BHUMI: Jurnal Agraria Dan Pertanahan* 2(1).
- Sitorus, O. (2016b). "Penataan Hubungan Hukum Dalam Penguasaan, Pemilikan, Penggunaan, Dan Pemanfaatan Sumber Daya Agraria (Studi Awal Terhadap Konsep Hak Atas Tanah Dan Ijin Usaha Pertambangan)." *BHUMI: Jurnal Agraria Dan Pertanahan* 2(1):1. doi:10.31292/jb.v2i1.29.
- Sitorus, O, Wulandari, M & Khaeruman, E. (2021). "Ketidakefektifan Pengaturan Penguasaan Tanah Di Wilayah Pesisir Dan Pulau-Pulau Kecil." *BHUMI: Jurnal Agraria Dan Pertanahan* 7(1):68–78. doi:10.31292/bhumi.v7i1.475.
- Sumarno, C., & Pandamdari, E. (2024). "Urgensi Pelindungan Hak Prioritas (Prioriteitrechts) Atas Aset Tanah Bumn Yang Diperoleh Dari Undang-Undang Nasionalisasi Yang dikuasai Oleh Pihak Ketiga Secara Melawan Hukum." *Jurnal De Lege Ferenda Trisakti* 109–29. doi:10.25105/ferenda.v2i2.21521.
- Triningsih, A. (2016). "Politik Hukum Pengujian Peraturan Perundang-Undangan Dalam Penyelenggaraan Negara." *Jurnal Konstitusi* 13(1):130–31.
- Widiyono, T, and Khan, M.Z.K., (2023). "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law." *Law Reform* 19(1):128–47.