

LAND JUSTICE AND AGRARIAN POLICY: REGISTRATION, CUSTOMARY RIGHTS AND THE LIMITS OF REDISTRIBUTION

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Info Articles	Abstract
Article History Received : 08-13-2026 Revised : 09-18-2026 Published : 10-01-2026 Keywords: <i>Agrarian reform; Customary land; Ihyā' al-mawāt; Land justice; Registration.</i> Kata Kunci: <i>Ihyā' al-mawāt; Keadilan agraria; Pendaftaran tanah; Reforma agraria; Tanah adat.</i>	Abstract Indonesian agrarian policy combines an explicitly redistributive founding statute with an administrative programme oriented towards certification, and the two are not the same thing: issuing titles over land already held does not alter its distribution. This study aims to distinguish formalisation from redistribution as policy instruments, to analyse the treatment of customary land rights after the constitutional recognition of customary forest, and to formulate criteria for an agrarian policy capable of addressing structural inequality. The research applies normative juridical research with statutory, conceptual, case and comparative approaches, supported by a reading of the classical Islamic law of land revival, protected zones and the prohibition of holding land idle, drawing on Indonesian agrarian, forestry and spatial legislation, constitutional decisions, and comparative land reform literature. The findings show that certification strengthens tenure security for existing holders while leaving concentration untouched and may accelerate transfer away from smallholders, that recognition of customary land remains conditional on prior regional regulation which communities cannot themselves enact, and that the land bank institution shifts the redistributive question to an administrative body without a statutory beneficiary standard. The study recommends a statutory ceiling enforcement mechanism, self-executing customary recognition, and beneficiary criteria binding on the land bank. Abstrak Kebijakan agraria Indonesia memadukan undang-undang pokok yang secara tegas bersifat redistributif dengan program administratif yang berorientasi sertifikasi, dan keduanya bukanlah hal yang sama: menerbitkan sertifikat atas tanah yang sudah dikuasai tidak mengubah pola penguasaannya. Penelitian ini bertujuan membedakan formalisasi dan redistribusi sebagai instrumen kebijakan, menganalisis perlakuan terhadap hak atas tanah adat setelah pengakuan konstitusional atas hutan adat, serta merumuskan kriteria kebijakan agraria yang mampu menjawab ketimpangan struktural. Penelitian menggunakan metode yuridis normatif dengan pendekatan perundang-

	undangan, konseptual, kasus dan perbandingan, ditopang pembacaan atas hukum Islam klasik tentang <i>iḥyā' al-mawāt</i> , <i>ḥimā</i> , dan larangan menelantarkan tanah. Hasil penelitian menunjukkan bahwa sertifikasi memperkuat kepastian bagi pemegang yang sudah ada tanpa menyentuh konsentrasi penguasaan dan bahkan dapat mempercepat pengalihan tanah dari petani kecil, bahwa pengakuan tanah adat tetap bergantung pada peraturan daerah yang tidak dapat dibentuk sendiri oleh masyarakat adat, dan bahwa bank tanah memindahkan persoalan redistribusi kepada badan administratif tanpa standar penerima manfaat dalam undang-undang. Penelitian merekomendasikan mekanisme penegakan batas maksimum, pengakuan adat yang bersifat self-executing, dan kriteria penerima manfaat yang mengikat bank tanah.
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I. INTRODUCTION

Land is the oldest subject of distributive justice, and Indonesian law has addressed it with unusual normative ambition. The Basic Agrarian Law of 1960 subordinated all land rights to a social function, imposed maximum and minimum holdings, prohibited absentee ownership of agricultural land and established the redistribution of excess holdings as a legal programme rather than an aspiration.¹ The constitutional foundation is equally explicit in placing land and natural resources under state control for the greatest prosperity of the people.²

Contemporary policy, however, is dominated by a different instrument. Systematic complete land registration has issued tens of millions of certificates, and the programme is routinely described as agrarian reform. The description conflates two distinct operations. Registration records and secures existing holdings; redistribution alters who holds what. A programme that certifies a smallholder's half hectare and a plantation company's several thousand with equal efficiency has improved legal certainty for both and changed the distribution of neither.

The ideal condition would combine the two, using registration as the informational infrastructure for a redistributive programme that enforces ceilings, reclaims neglected land and allocates it to landless cultivators. The actual condition separates them. Ceiling provisions remain formally in force and substantially unenforced; the mechanism for reclaiming neglected land operates on a scale disproportionate to the extent of idle concessions; and the agrarian reform programme's land supply has depended principally on the release of forest area rather than on the redistribution of concentrated private holdings.³

¹ Law Number 5 of 1960 concerning Basic Agrarian Provisions, Articles 6, 7, 10 and 17.

² Constitution of the Republic of Indonesia 1945, Article 33(3).

³ Presidential Regulation Number 62 of 2023 concerning the Acceleration of the Implementation of Agrarian Reform.

Customary land presents a parallel structure of formal recognition and conditional realisation. The Constitutional Court's ruling that customary forest is not state forest was a decision of major doctrinal significance, removing the basis on which community territory had been treated as state domain.⁴ Its realisation, however, depends on prior recognition of the customary law community through regional regulation, an instrument that the community itself cannot enact and whose adoption depends on the political disposition of the regional government and legislature.

Three literatures bear on this. Land titling scholarship, developed critically in response to the formalisation thesis, has documented that titling raises tenure security but does not by itself produce the credit access or investment predicted, and may accelerate distress sales where smallholders face liquidity shocks.⁵ Legal pluralism scholarship has analysed the interaction of customary and state tenure in Indonesia. Islamic legal scholarship has examined land through revival of dead land, protected zones and the prohibition of idle holding, generally without engaging agrarian policy design.

The gap addressed here is the absence of an analysis that treats the formalisation and redistribution distinction as the organising question, connects it to the conditionality of customary recognition, and brings classical Islamic land doctrine to bear as operative policy reasoning. The article asks: what does certification actually accomplish distributively; why has customary recognition remained conditional; and what criteria would make agrarian policy genuinely redistributive?

II. RESEARCH METHODS

The research is normative juridical, applying statutory, conceptual, case and comparative approaches.⁶ The statutory approach examines the Basic Agrarian Law, the land redistribution legislation, the forestry and plantation statutes, the job creation legislation establishing the land bank, and the agrarian reform regulation. The conceptual approach reconstructs the social function of property, the distinction between formalisation and redistribution, and the Islamic doctrines of land revival, protected zones and the forfeiture of neglected holdings. The case approach analyses constitutional reasoning on customary forest and on state control. The comparative approach considers the Philippines, Brazil and South Africa as jurisdictions with constitutionally mandated land reform programmes of differing designs.

⁴ Constitutional Court of the Republic of Indonesia, Decision Number 35/PUU-X/2012 concerning the review of Law Number 41 of 1999 on Forestry.

⁵ Jean-Philippe Platteau, "The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment," *Development and Change* 27, no. 1 (1996): 29–86.

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, rev. ed. (Jakarta: Kencana, 2017), 55–60.

Primary materials comprise legislation, regulations and judicial decisions, together with classical Islamic legal sources on land. Secondary materials consist of peer-reviewed scholarship and institutional reports from the last fifteen years. Analysis proceeds by qualitative content analysis, comparative tabulation and normative evaluation against constitutional and *maqāṣid* criteria. Published aggregate land data are used descriptively; the study does not conduct original spatial or survey analysis.

III. RESULTS AND DISCUSSION

A. Certification Is Not Redistribution

The first finding concerns what titling accomplishes. Registration reduces the cost of proving a right, lowers the incidence of boundary disputes and improves the state's informational position. These are genuine goods, and the scale of the Indonesian programme is a real administrative achievement. But the operation is conservative by construction: it records the distribution it finds.

Two consequences follow. First, where holdings are already concentrated, certification entrenches the concentration by rendering it legally unassailable, which raises the political and fiscal cost of any subsequent redistribution. Second, titling can itself accelerate transfer away from smallholders, because a registered parcel is a marketable and mortgageable asset, and a household facing a health or harvest shock may liquidate it. The comparative literature on titling records this pattern with sufficient regularity that it must be anticipated rather than discovered.

The policy implication is not to abandon registration but to stop describing it as reform. Titling is the informational precondition for redistribution and its substitute only in rhetoric. Where ceiling provisions exist, comprehensive registration should make their enforcement straightforward, since the identification of holdings above the maximum becomes a database query rather than an investigation. That this has not occurred indicates that the constraint on enforcement is political rather than informational.

B. Conditional Recognition of Customary Rights

The second finding concerns the structure of customary recognition. The constitutional decision removing customary forest from the category of state forest established the right; the procedure for realising it makes the right dependent on an act of the regional legislature recognising the community. A right whose exercise requires a discretionary act by another party is, in practical terms, a claim rather than a right.

The design is defended on the ground that the existence of a customary law community is a factual question requiring determination. The objection is not to determination but to its locus and form. Determination by regional regulation places the question in a political forum where the applicant community is typically the least

powerful participant, and where the interests opposing recognition, usually concession holders, are organised and resourced. A judicial or independent administrative determination, with defined criteria and a right of appeal, would answer the factual question without subordinating the right to local political configuration.

The land bank institution introduces a further layer. Established through the job creation legislation, it acquires, manages and distributes land, with a portion designated for social purposes.⁷ The difficulty is that the beneficiary standard is set administratively rather than by statute, which means the redistributive share depends on the policy of the body rather than on a legal entitlement that a landless cultivator could assert. Institutionalising redistribution without a statutory beneficiary criterion reproduces the discretionary structure that has characterised agrarian policy since 1960.

C. Islamic Land Doctrine as Policy Reasoning

The third finding is doctrinal. Classical Islamic law on land developed around productive use rather than around abstract title. Revival of dead land confers entitlement on the person who brings unused land into cultivation, a rule attributed to prophetic authority and elaborated across the schools.⁸ Its corollary is equally significant: juristic doctrine and caliphal practice recognised that land granted but left uncultivated for a defined period could be reclaimed, the reported practice of the second caliph with respect to unused grants being the standard reference.⁹

Two further elements complete the framework. The protected zone withdrew specified areas from private appropriation for communal benefit, which supplies a doctrinal foundation for both conservation areas and communal tenure that is not reducible to individual ownership. And the prohibition of harm constrains the use of property in ways that affect neighbours and the wider community, which functions as the classical analogue of the social function doctrine that Indonesian agrarian law adopted from a different lineage.¹⁰

Read as policy reasoning, this doctrinal complex supports three propositions directly relevant to Indonesian debate. Entitlement is justified by productive use, not by registration alone. Land held idle is subject to reclamation, which is the doctrinal counterpart of the neglected land provisions that Indonesian law contains but rarely applies. And communal tenure is a recognised form of holding rather than an anomaly to be converted into individual title. A government defending ceiling

⁷ Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, provisions on the land bank agency; Government Regulation Number 64 of 2021 concerning the Land Bank Agency.

⁸ Abū Dāwūd al-Sijistānī, *Sunan Abī Dāwūd*, ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd (Beirut: al-Maktaba al-‘Aṣriyya, n.d.), 3:178, no. 3073.

⁹ Abū Yūsuf Ya‘qūb b. Ibrāhīm, *Kitāb al-Kharāj* (Beirut: Dār al-Ma‘rifa, 1979), 64–67.

¹⁰ Aḥmad b. Muḥammad al-Zarqā, *Sharḥ al-Qawā‘id al-Fiqhiyya*, 2nd ed. (Damascus: Dār al-Qalam, 1989), 165–170.

enforcement, the reclamation of idle concessions and the recognition of communal land therefore has indigenous doctrinal grounds available to it.

D. Comparative Land Reform Designs

Table 1. Comparative Designs of Redistributive Land Policy

Jurisdiction	Principal mechanism	Trigger for redistribution	Recurrent obstacle
Indonesia	Certification programme with agrarian reform land supply from forest release	Administrative designation of reform objects	Ceilings unenforced; beneficiary standard administrative
Philippines	Statutory comprehensive programme with compulsory acquisition	Statutory retention limits per landowner	Protracted acquisition and exemption litigation
Brazil	Expropriation of land failing the social function requirement	Constitutional social function test applied judicially	Compensation cost and slow judicial process
South Africa	Restitution and redistribution with constitutional mandate	Historical dispossession claims and state acquisition	Fiscal constraint and post-transfer support gaps

Source: Processed from primary legal materials and comparative literature, 2026.

The comparison identifies the decisive variable as the trigger. Where redistribution is triggered by a legal test applied to a holding, whether a retention ceiling or a social function standard, the programme proceeds even against political resistance, though slowly and at litigation cost. Where it is triggered by administrative designation of eligible land, the programme's scale becomes a function of executive priority. Indonesia has the legal tests already in its founding statute and operates through the administrative trigger, which explains the gap between its normative ambition and its measured outcomes.

E. Criteria for a Redistributive Agrarian Policy

Five criteria follow. First, enforce the ceilings that exist: the registration database should be used to identify holdings exceeding statutory maxima, with a defined procedure for acquisition and compensation, since ceilings unenforced for six decades are a standing demonstration that the law does not bind the powerful. Second, activate the neglected land mechanism against idle concessions with published criteria and timelines, which has both statutory and classical doctrinal support. Third, make customary recognition self-executing on the satisfaction of defined criteria determined by an independent body with judicial appeal, removing the dependence on regional political will. Fourth, establish statutory beneficiary criteria binding on the land bank, with a minimum redistributive share and published allocation decisions. Fifth, provide post-transfer support, since comparative experience shows that transfers without credit, extension and market access frequently reverse through distress sale.

IV. CONCLUSION

Indonesian agrarian policy has substituted formalisation for redistribution. Certification secures existing holdings and entrenches existing concentration, and may accelerate transfer away from smallholders facing liquidity shocks. The statutory instruments of redistribution, ceilings, absentee prohibitions and the reclamation of neglected land, remain in force and largely unused, which indicates a political rather than a legal constraint.

Recognition of customary land follows the same pattern of formal right and conditional realisation, because the constitutional removal of customary forest from state forest was made operationally dependent on regional regulation that communities cannot enact. The land bank institutionalises redistribution without a statutory beneficiary standard, leaving the redistributive share to administrative discretion.

Classical Islamic land doctrine supports a different orientation, grounding entitlement in productive use, authorising reclamation of land held idle, and recognising communal tenure as a legitimate form of holding. The study recommends enforcing statutory ceilings using the registration database, activating the neglected land mechanism against idle concessions, making customary recognition self-executing on defined criteria with judicial appeal, binding the land bank to statutory beneficiary criteria, and providing post-transfer support. Further research should quantify the proportion of certified land held above statutory ceilings, which would convert an argument about political will into a measurable enforcement gap.

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