

Underground Management In Agrarian Law Reform In Indonesia

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Abstract

This study aims to analyze the regulation of management and basement use permits in agrarian law reform in Indonesia, examine their conformity with the principles of national agrarian law, and identify the legal consequences arising from their use. The main problem lies in the lack of a comprehensive and integrated regulation regarding the basement as a legal object, thus causing legal uncertainty and potential disputes. The type of research used is normative legal research with an analytical descriptive approach, using secondary data through literature studies and qualitatively analyzed. The results of the study show that the regulation of basements is still oriented to the concept of two-dimensional in agrarian law, so it has not been able to accommodate the development of the use of three-dimensional space. In addition, there is no harmonization with the principles of social function, justice, and legal certainty, as well as the weak fragmented licensing system, causing various legal consequences both civilly, administratively, and environmentally. Therefore, agrarian law reform is needed that recognizes the basement as a separate legal object and builds an integrated licensing system to ensure legal certainty and sustainable development.

Keywords: Basement, Agrarian Law, Legal Certainty, Integrated Licensing, Legal Reform.

A. Introduction

Land is a strategic resource that has important value in human life, both from economic, social, and legal aspects.¹ Constitutionally, land management in Indonesia is based on Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water, and natural resources contained therein are controlled by the state and used to the maximum extent for the prosperity of the people. This principle is the basis for state legitimacy in regulating the distribution and utilization of agrarian resources. The implementation of this principle is realized through Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), which is the main basis for regulating land rights and legal relations in the field of land in Indonesia.²

Along with the increase in population and economic development, the need for land is

¹ Sulistiowati, 'Extension of Parent Company ' s Liability against Third Parties of Subsidiary Company', no. 1 (2011).

² Ikhsan Lubis, Duma Indah Sari Lubis, and Andi Hakim Lubis, 'The Dynamics of Agrarian Law and Urbanization: Management of the Right to Use Basements in Indonesia's Big Cities', no. 2 (2024), pp. 167-87.

increasing, while the land area is fixed. This condition mainly occurs in urban areas that are experiencing rapid urbanization, thus putting pressure on the availability of space. These limitations encourage the emergence of innovations in the use of space, one of which is by utilizing basements as an alternative to development. The use of basements is considered a strategic solution in overcoming land limitations in urban areas.³ In addition, the development of construction technology also allows the use of basements for various functions, such as transportation facilities, shopping centers, parking, and housing. This shows a shift from the use of two-dimensional space to three-dimensional.⁴

Although the use of basements is growing, the land law system in Indonesia has not been fully able to accommodate these changes. The existing legal arrangements are still oriented towards the concept of two dimensions, as reflected in the land registration system which only covers the area, boundaries, and location of the land surface.⁵ The absence of clear regulations regarding the right to the basement has led to various legal problems, such as unclear ownership status, utilization limits, and potential conflicts between land rights holders and other parties who use the basement.⁶ In addition, the absence of a special regulation regulating the right to basement shows that there is a *legal vacuum* that has the potential to hinder development and cause disputes in the future.⁷

Several previous studies have examined the use of basements from juridical and spatial planning aspects. The study generally concludes that the use of basements is an unavoidable necessity in modern development, especially in urban areas. Other research also shows that existing legal arrangements, including the UUPA, have not specifically regulated the right to basement, thus creating legal uncertainty. However, these studies still have limitations because they have not comprehensively examined the integration between agrarian law and the need for three-dimensional space-based development and synchronization with the latest regulations.⁸

Based on these problems, this study aims to analyze the management of basements from the perspective of agrarian law reform in Indonesia, especially related to the legality of development and its legal implications on the land rights system.⁹ This research is expected to make a scientific contribution in the form of developing agrarian law concepts that are more adaptive to the use of three-dimensional space and able to answer the challenges of technological developments and the needs of modern society. In addition, this research also offers *novelty* in the form of an integrative analysis between classical agrarian law and the development of contemporary law in regulating basement. Thus, the identification of problems regarding the legality and management of basements is very important to be carried out, considering the increasingly complex needs of space and development developments in Indonesia. This research is expected to be able to provide a strong basis in formulating research objectives and providing solutions to agrarian law problems that

³ Suwardi and Widyawati Boediningsih, 'Juridical Aspects of the Use of Upper and Lower Space Reviewed from Legislation in Indonesia', 4.3 (2024), pp. 2156–68.

⁴ Ismail Alrip and Kadarudin, 'The Problem of Basement Use from the Juridical Aspect', 5.2 (2021).

⁵ Republic of Indonesia, 'Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration', 1997.

⁶ Y.P. Harris, 'A Juridical Review of the Utilization of Underground Space', 4.1 (2013), pp. 17–34.

⁷ Alrip and Kadarudin, 'The Problem of Basement Use from a Juridical Aspect'.

⁸ Mahendra Tio Arbianzah, 'Legal Study of the Regulation of Basement Utilization', 4.2 (2024).

⁹ Nur Nafa Maulida Atlanta, Bayu Dwi Anggono, and Fendi Setyawan, 'Underground Management in Land Law Reform in Indonesia', 4.12 (2022).

develop in the modern era.

B. Research Methods

This study uses a type of normative legal research that is descriptive-analytical. Normative legal research is used because the object of study focuses on the norms, principles, and legal rules that apply in the legal system. The descriptive approach aims to provide a systematic overview of the existing legal conditions, while the analytical approach is used to examine and evaluate the suitability between legal norms and the development of community needs.

The approaches used in this study are the statute *approach* and the *conceptual approach*. The legislative approach is carried out by examining various regulations that are relevant to the object of research. Meanwhile, a conceptual approach is used to understand legal concepts, theories, and doctrines that develop in the legal literature, so that it can provide a theoretical basis in analyzing the legal problems being studied.

The type of data used in this study is secondary data, which consists of primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data is the main feature of normative legal research sourced from legal literature and documents. Primary legal materials include laws and regulations that have binding power, while secondary legal materials are books, journals, and relevant results of previous research.¹⁰

The data collection technique is carried out through library *research*, which is by collecting and studying various legal sources and literature related to research problems. This method is the main method in normative legal research because it focuses on the analysis of legal documents.¹¹

The data analysis technique in this study is carried out qualitatively, namely by processing and interpreting the data obtained systematically and logically to answer research problems.¹² Qualitative analysis is used to understand the meaning of legal norms and their implications for legal practice. The analysis is carried out by connecting the applicable regulations with developing legal phenomena, especially related to the management of basements in the perspective of agrarian law.¹³

Through this research method, it is hoped that a comprehensive picture of the applicable legal arrangements can be obtained and solutions can be found to the problem of legal voids in the management of basement. Normative legal research serves to provide legal arguments and solutions to legal problems that arise.

C. Results and Discussion

1. Regulation of management permits and the use of basements in Agrarian law reform in Indonesia

The results of the study show that the regulation of permits for the management and use of basements in Indonesia still does not have a complete and comprehensive legal

¹⁰ Sidi Ahyar Wiraguna, 'Normative and Empirical Methods in Legal Research: Exploratory Studies in Indonesia', 3.3 (2024), doi:10.59818/jps.v3i3.1390.

¹¹ Ahmad Rosidi, M Zainuddin, and Ismi Arifiana, 'Methods in Normative and Sociological Law Research (Field Research)', 2.1 (2024), pp. 46–58.

¹² Wiraguna, 'Normative and Empirical Methods in Legal Research: Exploratory Studies in Indonesia'.

¹³ Yulia Audina Sukmawan and Dwi Damayanti, 'Normative and Empirical Legal Research Methods as a Strategy to Strengthen the Perspective of Legal Studies', 4.1 (2025), pp. 114–28.

construction.¹⁴ This is because the national agrarian law system is still oriented towards land control in the second dimension (surface), as formulated in the Basic Agrarian Law (UUPA). As a result, the basement has not been explicitly recognized as a stand-alone legal object, thus creating a normative vacuum in practice.¹⁵

In modern developments, the need for space is no longer limited to the ground level, but has developed towards the use of three-dimensional space.¹⁶ This phenomenon is driven by population growth, urbanization, and limited land in urban areas.¹⁷ Therefore, the use of underground spaces is a strategic alternative in infrastructure development such as underground transportation, shopping centers, public utilities, and underground vertical housing.¹⁸

However, the licensing system that regulates the use of basements is still sectoral and has not been integrated. Permits are spread across various legal instruments such as Building Approvals (PBG), environmental permits, and spatial planning permits.¹⁹ The absence of an integrated licensing system causes overlapping authority between agencies and slows down the development process. This condition shows weak coordination between sectors in the management of basement.

This study also found that recent regulations such as the Job Creation Law do provide opportunities for simplification of licensing through a risk-based approach. However, the regulation has not specifically regulated the mechanism for granting the right to the basement, so it has not been able to respond to substantive legal needs.

When compared to other countries such as Singapore and Japan, the regulation of basements has been explicitly recognized as part of the land law system. These countries have implemented the concept of *vertical land use*, where basements can be given separate rights separate from the ground surface. This shows that Indonesia is still lagging behind in adopting modern legal concepts related to the use of three-dimensional space.

Thus, this study emphasizes that agrarian law reform in Indonesia must lead to the recognition of basements as a separate legal object, accompanied by an integrated and technology-based licensing system. Without these reforms, the use of basements will continue to face legal and administrative obstacles.

2. Harmonization between the regulation of basements with the principles of National Agrarian Law

The results of the study show that the regulation of basements has not been fully aligned with the principles of national agrarian law, especially the principles of land social function, the principle of justice, and the principle of legal certainty.²⁰ In the context of the principle of social function, the use of basements should provide benefits to the wider community, but in practice it is more used for economic and commercial purposes.

¹⁴ Alrip and Kadarudin, 'The Problem of Basement Use from a Juridical Aspect'.

¹⁵ Harris, 'A Juridical Review of the Use of Underground Space'.

¹⁶ Suwardi and Boediningsih, 'Juridical Aspects of the Use of Upper and Underground Space Reviewed from the Legislation in Indonesia'.

¹⁷ Lubis, Lubis, and Lubis, 'The Dynamics of Agrarian Law and Urbanization: Management of Basement Use Rights in Indonesia's Major Cities'.

¹⁸ Alrip and Kadarudin, 'The Problem of Basement Use from a Juridical Aspect'.

¹⁹ Harris, 'A Juridical Review of the Use of Underground Space'.

²⁰ Alrip and Kadarudin, 'The Problem of Basement Use from a Juridical Aspect'.

In addition, the use of basements also has the potential to cause social inequality.²¹ Those with large capital tend to have easier access and use of basement, while small communities do not have the same access. This shows that without fair regulation, the use of basements can widen social gaps.

From the perspective of legal certainty, the unclear regulation of the vertical boundaries of land rights creates legal uncertainty for the parties. In the Indonesian agrarian law system, there is no firm limit on the extent to which land rights apply downwards. This is in contrast to some countries that have set clear vertical boundaries in their land regulations.

This study also highlights that the principle of horizontal separation that has been used in Indonesian land law has not been able to answer the complexity of legal relations in the use of underground spaces. This principle only separates the land from the buildings on it, but it does not clearly regulate the legal relationship to the space underground.

From the perspective of legal reform, it is necessary to harmonize the principles of agrarian law with technological developments and the needs of society. This can be done by developing new concepts such as "space rights" or "three-dimensional rights" that are able to accommodate the use of basements more comprehensively.

In addition, the integration between agrarian law and spatial planning law is also important in order to create sustainable spatial management. The regulation of basements cannot be separated from national spatial planning policies, so synchronization between the two legal systems is needed.

Thus, legal harmonization is not only carried out at the regulatory level, but also at the level of legal principles and philosophies, so as to be able to create an agrarian legal system that is adaptive and responsive to the development of the times.

3. The legal consequences of the use of underground space for building buildings are reviewed from the applicable laws and regulations

The results of the study show that the use of basements for building construction has complex legal consequences, both from civil, administrative, and potential criminal aspects.²² One of the main legal consequences is the unclear status of the right to the basement, which has implications for uncertainty in ownership and control.

This ambiguity has the potential to cause legal disputes between surface landowners and those who use the basement. Disputes can occur because there is no clear boundary regarding vertical rights to land, so each party has a different interpretation of their rights.

In addition, from the administrative aspect, the construction of the basement requires various permits involving many agencies.²³ The disintegration of the licensing system leads to a long process and has the potential to lead to maladministration practices. This also increases the risk of development without a valid permit, which can ultimately lead to legal sanctions.

²¹ Suwardi and Boediningsih, 'Juridical Aspects of the Use of Upper and Underground Space Reviewed from the Legislation in Indonesia'.

²² Suwardi and Boediningsih, 'Juridical Aspects of the Use of Upper and Underground Space Reviewed from the Legislation in Indonesia'.

²³ Muhammad Ali and others, 'Legal Protection in the Utilization of Upper and Lower Spaces Based on the Law on Spatial Planning' <<https://ojs.unud.ac.id/index.php/kerthasemaya/article/view/125727>>.

In the context of environmental law, the construction of basements also has potential impacts on the environment, such as changes in soil structure, disturbance to groundwater, and disaster risk. Therefore, any development must meet strict environmental standards to prevent greater losses.

This study also found that the legal consequences of the use of basements cannot be resolved only through agreements between the parties. This is because the problems that arise are not only private, but also concern the public interest. Therefore, the role of the state is needed in regulating and supervising the use of basement.

When compared to previous research, this study emphasizes that the legal consequences of basement utilization are much more complex and multidimensional. Not only related to the rights and obligations of the parties, but also related to social, economic, and environmental aspects.

Thus, comprehensive and integrated regulations are needed to regulate the use of basements, in order to provide legal certainty, prevent disputes, and ensure the sustainability of development.

D. Conclusions and Recommendations

This study concludes that the legal regulation regarding the management and utilization of basements in the agrarian legal system in Indonesia does not have a comprehensive and integrated framework. This is due to the orientation of agrarian law which still focuses on land tenure in the second dimension, so that it has not been able to accommodate the development of the use of three-dimensional space, especially the basement as an independent legal object.

In addition, the existing arrangements are not fully aligned with the principles of national agrarian law, especially the principles of social function, justice, and legal certainty. This disharmony is reflected in the dominance of commercial interests, potential inequality of access, and the unclear vertical boundaries of land rights that cause legal uncertainty for the parties.

Furthermore, the use of basements has complex and multidimensional legal consequences, including civil, administrative, and environmental aspects. Unclear legal status and unintegrated licensing systems have the potential to trigger disputes, bureaucratic obstacles, and the risk of violations. Thus, the purpose of this study is answered that the management of basements in Indonesia requires a more adaptive, comprehensive, and oriented agrarian law reform that is oriented towards legal certainty.

Based on the findings of the research, agrarian law reform is needed that explicitly recognizes the basement as part of a legal object that can be given its own rights through a three-dimensional approach. This update is important to provide legal certainty and support the increasingly complex development development.

The government needs to develop special regulations that regulate the management and use of underground spaces in an integrated manner, including the regulation of the type of rights, vertical boundaries, and permitting mechanisms. This regulation must also be synergized with spatial planning policies and risk-based licensing in order to create an efficient and non-overlapping system.

In addition, it is necessary to strengthen the principles of justice and social function in the use of basement, so that it is not only oriented to economic interests, but also provides

benefits to the wider community. This can be done through strict supervision and affirmative policies in the distribution of access to space utilization.

In terms of implementation, the government also needs to develop a digital-based licensing system that is integrated between sectors to minimize administrative obstacles and potential for maladministration. On the other hand, there is a need for strict technical and environmental standards to ensure the safety and sustainability of the construction of the basement.

Thus, this recommendation is expected to be the basis for policymakers in formulating regulations that are more responsive to the times, as well as providing optimal legal protection for all parties involved in the use of basements in Indonesia.

Give a clear and concise conclusion. Don't repeat the Abstract or simply outline the results of the research. Provide a clear explanation of possible implementation and/or suggestions related to research findings.

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