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RECONSTRUCTING THE RIGHT OF ACCESS TO LANDLOCKED PROPERTY WITHIN THE INDONESIAN LAND LAW SYSTEM

NOVI ARIYANTI[1], DJUMARDIN[2], GATOT DWI HENDRO WIBOWO[3] and WIDODO DWI PUTRO[4]

[1,2,3,4] Faculty of Law, Social Science and Political Science, University of Mataram, Indonesia.
Email: [1]noviariyanti.office@gmail.com

Abstract

This research employs a normative-sociological legal research method. It aims to formulate a reconstruction of the law of servitude as an implementation of the social function principle of land rights concerning landlocked parcels within the Indonesian land law system. Data were collected through statutory, conceptual, comparative, and case approaches. The study finds that the legal reconstruction of servitude for landlocked land parcels should transform access rights into a limited real right attached to the land itself, thereby ensuring legal certainty and enforceability against third parties. Such a transformation requires explicit regulation of landlocked land and access rights within the framework of national land law, supported by judicial guidelines to ensure the consistent and equitable application of the social function principle of land rights. This study recommends strengthening the land law system through an integrated approach. At the principled level, Article 6 of the Basic Agrarian Law No. 5 of 1960 should be reconstructed to expressly prohibit the elimination of access to public roads. At the preventive-administrative level, regulations should be enacted to protect access to public roads and to provide for the registration of rights of way within the land administration system, thereby preventing the creation of landlocked parcels. Meanwhile, at the repressive level, the Supreme Court should issue a Supreme Court Circular Letter providing guidelines for the adjudication of disputes concerning landlocked land and rights of way in order to ensure uniformity of judicial decisions and legal certainty.

Keywords: Landlocked Property, Right of Access, Servitude Rights, Indonesian Land Law, Social Function of Land Rights.

INTRODUCTION

Man and land are two inseparable entities, intricately bound to the daily life of society. In human existence, land holds paramount significance due to its dual functions as both a social asset and a capital asset. As a social asset within Indonesian society, land serves as a binding mechanism for social cohesion in living and livelihood; conversely, as a capital asset, land constitutes a pivotal capital factor in national development.[1]

Philosophically, the existence of the principle of the social function of land rights serves as the fundamental cornerstone for maximizing the utility of land for the greatest prosperity of the people within a welfare state.[2] As enshrined in the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945), Indonesia has explicitly asserted itself as a nation adhering to the *welfare state* system, which aims not merely to protect its citizens but also to actualize prosperity for all its people.

The fundamental question arises: why is the principle of social function indispensable? It is required because, beyond serving as a foundation, it acts as a conduit to achieve the objective

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of equitable and just prosperity. Consequently, while individual land tenure via private land rights is permissible, such rights concurrently inherently embody a collective element. This implies that land held by an individual does not solely function for the benefit of its owner, but also for the entire Indonesian nation.

As a consequence, in utilizing the respective land, the interests of the right-holder must not serve as the sole guiding parameter; rather, the interests of the community must continuously be borne in mind and accounted for. The introduction of this concept does not imply imposing further restrictions or diminishing individual freedom in determining the allocation and use of one's land. On the contrary, the objective of the Basic Agrarian Law (UUPA) is precisely to reinforce the position of the individual in relation to other members of society.[3]

This principle of the social function of land rights remains immutable and serves as the underlying rationale for the genesis of legal regulations, constituting the *ratio legis* of agrarian law. In the General Elucidation of the UUPA, it is stated that Article 6 of the UUPA forms the fourth bedrock of the National Land Law. The social function is not a mere component bestowed upon land; rather, it is an essential and animating element inherent to the right itself. As Koesnoe posits, "the value of the social function is actually inherent in land rights.[4] Echoing this view, Boedi Harsono asserts that this social function is original and intrinsically fundamental, existing since the inception of individual rights because every individual right is born or derived from communal rights.[5]

Theoretically and historically, the regulation concerning the right of way for mutual benefit is rooted in Western civil law concepts. According to Prof. Subekti, "*Servituut* or *erfdienstbaarheid* is an easement placed upon a dominant tenement for the utility of another adjacent servient tenement. For instance, the owner of tenement A must permit residents of tenement B to traverse tenement A at any time, or wastewater from tenement B must be drained through tenement A."[6]

If extrapolated to the realm of property law (civil law), Subekti's view classifies the right of *servituut* as a property right of enjoyment (*usufructuary right*), meaning that a landowner cannot utilize their land absolutely without regard for the interests of other parties. This aligns with the substance of Article 674 of the Indonesian Civil Code (KUH Perdata), which dictates that a *servituut* right or praedial servitude constitutes a burden imposed on a parcel of land owned by an individual for the benefit of land belonging to another, and this right remains attached even if the land transfers ownership.[7]

Juridically, the right of way or the right to gain access over a plot of land owned by another party was historically regulated under the civil law framework of praedial servitude. This was governed under Book II of the *Burgerlijk Wetboek* or the Indonesian Civil Code (KUHPerdata) from Article 674 to Article 710 concerning praedial servitudes (*Hak Servituut* or *erfdienstbaarheid*). A praedial servitude is a burden imposed upon a parcel of land belonging to one person for the use and benefit of a tenement belonging to another owner. Neither the burden nor the benefit of the servitude may be detachedly connected to a specific individual person.

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However, the provisions regarding praedial servitudes have been declared repealed since the enactment of Act Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), State Gazette (LN) 1960/No. 104, Supplement to State Gazette (TLN) No. 2043.

The enactment of the UUPA repealed the provisions of Book II of the KUHPerdata insofar as they concern earth, water, and the natural resources contained therein, with the exception of provisions regarding *hypotheek* (mortgages), which remained applicable pending the enactment of the law governing Security Rights (*Hak Tanggungan*). This is observable in the by repealing section of the Dictum of the UUPA.[8]

According to Sri Soedewi Masjchoen Sofwan[9], the articles governing the rights and obligations of neighboring landowners as stipulated in Article 625 through Article 672, as well as the articles governing praedial servitudes from Article 674 through Article 710 of the KUHPerdata, are included among the provisions that are no longer enforceable. Although the provisions on praedial servitudes in Book II of the KUHPerdata were repealed, their core essence is still recognized under a different nomenclature within the UUPA[10]. This formal legal shift represents an effort toward the unification of agrarian law in Indonesia to terminate legal dualism.

In its country of origin, the Netherlands, this matter of *Servituut* or *erfdienstbaarheid* continues to be regulated to this day under the New BW (Civil Code of the Netherlands) Book 5 (Rights in Rem), Title 4, Article 60, which prescribes that, "with respect to the said *servituut*, the interested parties must draw up a notarial deed between them, which is subsequently recorded in the public registers".

In contrast to the Netherlands, post-enactment of the UUPA, the regulation of this matter in Indonesia has conversely suffered from an obscurity of norms (*vague norm*). It is undeniable that while provisions concerning praedial servitudes post-UUPA have been laid down, they remain inadequate. Provisions prohibiting the blocking or landlocking of a tenement from public roads are found in Article 13, Article 31, and Article 51 of Government Regulation Number 40 of 1996 concerning the Right to Cultivate (*HGU*), Right to Build (*HGB*), and Right to Use (*HP*), State Gazette of the Republic of Indonesia (LNRI) Year 1996 No. 58, Supplement to State Gazette (TLNRI) No. 3643 (hereinafter referred to as PP 40/1996)[11], which essentially clarifies that the granting of *HGU*, *HGB*, or *HP* must not result in the physical obstruction or landlocking of adjacent lands circumscribed by the granted right.[12]

The obscurity of norms is manifest in the fact that the provisions of Government Regulation of the Republic of Indonesia Number 40 of 1996 and Government Regulation of the Republic of Indonesia Number Number 18 of 2021 mentioned above solely govern *HGU*, *HGB*, *HP*, and Right to Manage (*Hak Pengelolaan*) over land, whereas provisions explicitly prohibiting Right of Ownership (*Hak Milik*) holders from blocking or landlocking a neighboring plot from public roads have yet to be strictly regulated.

Although Article 6 of the UUPA mandates that all land rights possess a social function (including *Hak Milik*), Article 6 of the UUPA and its Elucidation fail to stipulate the technicalities of praedial servitudes in detail. The UUPA, which repealed Book II of the

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KUHPerdata, was enacted more than half a century ago; nonetheless, positive law governing the technical provisions related to praedial servitudes (*servituut*) remains insufficient to date.

As a consequence of this obscurity of norms, judges encounter a juridical dilemma in judicial practice. Even though the rules on praedial servitudes in Book II of the KUHPerdata have been declared defunct, in practice, these *servituut* articles in the KUHPerdata are proven to still be frequently utilized by the public as a legal basis for filing lawsuits, and they continue to serve as the baseline for judges in formulating legal considerations.

This legal application can be observed in various court decisions, such as Sleman District Court Decision No. 44/Pdt.G/2013/PN.Slmn, Central Jakarta District Court Decision No. 191/Pdt.G/2009/PN.Jkt.Pst, Surabaya District Court Decision No. 419/Pdt.G/2014/PN.Sby, South Jakarta District Court Decision No. 738/Pdt.G/2015/PN.Jkt.Sel, Medan High Court Decision No. 288/Pdt-Mdn, Depok District Court Decision No. 133/Pdt.G/2014/PN.Dpk, Karanganyar District Court Decision No. 58/Pdt.G/2013/PN.Kray, Bitung District Court Decision No. 89/Pdt.G/2011/PN.Bitung, Supreme Court Decision No. 38 K/Pdt/2008, and numerous other decisions.

The aforementioned facts demonstrate that although the rules on praedial servitudes in Book II of the KUHPerdata have been declared no longer applicable, they remain operational as a basis for judges in constructing legal reasoning. Praedial servitude under the UUPA may be interpreted insofar as it does not conflict with the spirit of the provisions of the Act[13].

Ssociologically, amidst intensifying development, there is a corresponding consequence of an increasing demand for land to construct road networks connecting to public roads. High-density development and disorganized land layout systems leave some segments of society struggling to secure access to public roads, and it is common to find plots of land completely landlocked among other parcels.

The author has identified various cases of landlocked land rights, including a case in 2018 that became highly publicized involving a resident of Bandung named Mr. Eko Purnomo, a landholder who was entirely deprived of access to a public road[14].

Mr. Eko's house was surrounded by five buildings belonging to his neighbors, causing him to lose all access to his house and the public road. A similar issue transpired in Jombang, East Java, where the family of Siti Khotijah was forced to scale a wall erected by their neighbor just to enter their home.[15] Furthermore, the construction of the Lombok Epicentrum Mall by PT Sriwijaya Propindo Utama in Mataram blocked the access road for the Punia community.[16] Another case occurred in Tanjung Riau, Batam, in April 2019, where residents complained about the relocation/closure of the access road to their residential settlement by the housing developer, PT Kharisma Jaya.[17]

Subsequently, in September 2019 in Jakarta, an individual named Mrs. Lies owned a house situated right in the middle of a luxury apartment complex, namely the Thamrin Exclusive Residence complex in Central Jakarta. Mrs. Lies acutely experienced the hardship of maintaining her ancestral home amidst the luxury apartment complex; the absence of water

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access and severed road access forced her to purchase water and pay parking fees just to enter the elite area.[18]

The most recent case occurred in May 2023 in Karet, South Jakarta, involving a place of worship over a century old, the Amurva Bhumi Vihara (Hok Tek Tjeng Sin Temple). PT Danataru Jaya claimed ownership over the access road leading to the main temple building. Numerous similar cases continue to arise across various regions in Indonesia.

The phenomenon of access road disputes leading to places of worship cannot fundamentally be detached from the broader issue of public necessity for land accessibility. In social life, the existence of a road functions not merely as a conduit for mobility, but also as a primary anchor for economic, social, and religious activities.

Disputes arising from the intensification of individual ownership egos naturally exert a detrimental impact on the societal fabric. A reluctant attitude to share space for road access not only damages neighborly relations but also threatens to paralyze the economic and social mobility of citizens whose land is landlocked. In fact, Article 5 of Act Number 38 of 2004 concerning Roads, State Gazette (LN) 2004/No. 132, Supplement to State Gazette (TLN) No. 4444 explicitly dictates:

1) Roads as part of transportation infrastructure hold an imperative role in the economic, socio-cultural, environmental, political, defense, and security sectors, and are utilized for the greatest prosperity of the people.
2) Roads as distribution infrastructure for goods and services constitute the lifeblood of society, nation, and state.
3) Roads, which constitute a unified road network system, connect and bind the entire territory of the Republic of Indonesia.

In connection therewith, the landlocking of a Right of Ownership (*Hak Milik*) from access to a public road is synonymous with confining human activity across all facets of life and clearly infringes upon Human Rights (*HAM*) guaranteed under the UUD 1945. At this juncture, the obscurity of norms post-enactment of the UUPA ceases to be a mere matter of formal legislation *an sich*; rather, it escalates into a substantive legal dilemma confronting multiple dimensions simultaneously, including:

Philosophical aspects: The lack of regulatory decisiveness for *Hak Milik* holders violates the essence of harmony between individual rights and communal obligations derived from the *welfare state* ideal.

Theoretical aspects**:** The collapse of the *servituut* institution inherited from Western law without adequate substitution by national law has birthed a conceptual vacuum regarding the limitations of property rights. This flaw culminates in a juridical problem where law enforcers, trapped in an interpretive dilemma, are compelled to resurrect defunct articles for the sake of formal justice.

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This chain of implications further generates a destructive sociological reality: when the law fails to act as a compass for the social function of land, ownership egos crystallize into economic commodities that ignite conflicts, confine human living space, and reduce the most fundamental human rights of citizens to accessibility.

Against this backdrop, this doctoral dissertation occupies a crucial and urgent position to reconstruct the theoretical framework of the social function of land rights. This is essential to resolve the obscurity of norms that has persisted for over half a century, to formulate concrete juridical remedies to break the legal deadlock in courts, and to provide equitable, balanced, and harmonious protection of human rights for isolated communities in line with the spirit of the National Agrarian Law.

This ideal objective represents a progressive leap that not only instrumentally fosters legal unification but also fulfills the mandate of the Preamble to the UUD 1945 in actualizing public welfare. This realization rests upon the premise that if no remedial efforts are undertaken, the independence of individual rights and communal interests will perpetually collide destructively, whereas equitable legal certainty can only be attained through the cultivation of a harmonious relationship between the two.

Building on the foregoing issues, it becomes evident that scholarly inquiry has not yet comprehensively examined the legal regulation of servituut as an implementation of the social function principle of land rights in relation to landlocked properties in Indonesia.

At this juncture, the need for more contextual and problem-oriented research becomes both important and relevant, particularly to bridge the demands of legal certainty, utility, and justice in the formulation of such regulation. Accordingly, efforts are required to reconstruct the legal framework of servituut as an implementation of the social function principle of land rights with respect to landlocked properties in Indonesia.

METODE

This study adopted a socio-legal normative research method. Normative socio-legal research focuses on analyzing how normative legal provisions, including codified regulations, statutory laws, and contractual norms, are applied and function in practice within specific legal events occurring in society.[19]. To address the research issues, this study employed the Statutory Approach, Conceptual Approach, Case Approach, Comparative Approach, and Socio-Legal Approach.

The primary and secondary legal materials collected through a statutory approach, involving the examination and comparison of relevant legislation, were systematically inventoried and classified. Subsequently, these legal materials were employed to analyze the research issues, leading to the formulation of conclusions that are aligned with and responsive to the problems addressed in this study.

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RESULTS AND DISCUSSION

Reconstructing the Right of Access to Landlocked Property within the Indonesian Land Law System

The prohibition against enclosing or landlocking another parcel of land can, in fact, be inferred from Article 28(b), Article 43(a), and Article 58(a) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. These provisions prohibit the obstruction of access to other land parcels from public roads, public access routes, and/or waterways. However, such regulations are limited in scope, applying only to Rights of Cultivation (*Hak Guna Usaha*), Rights to Build (*Hak Guna Bangunan*), and Rights of Use (*Hak Pakai*), while ownership rights (*Hak Milik*) remain unregulated in explicit terms.

Furthermore, Article 61(d) of Law Number 6 of 2023 concerning the Enactment of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law stipulates that, "*every person is obliged to provide access to areas designated as public property*." Nevertheless, this provision does not specifically regulate the mechanism for granting rights of way to privately owned landlocked parcels. Likewise, Article 17 of Government Regulation Number 24 of 1997 in conjunction with Articles 19 and 20 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, as most recently amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021, provides a framework for determining land parcel boundaries that may facilitate the arrangement of access roads. However, such provisions remain administrative considerations rather than operational normative obligations.

This situation demonstrates that the Indonesian land law system continues to suffer from a normative legal gap concerning the regulation of access rights to landlocked properties. To date, there is no explicit legal framework governing the nature of rights of way, the procedures for their establishment, compensation mechanisms, registration within the land administration system, or the legal protection afforded to the parties involved. As argued by Satjipto Rahardjo, a legal system that fails to respond to societal needs risks losing its social function as an instrument of social reform and development.[20] Within the context of landlocked land, the absence of comprehensive legal regulation results in dispute resolution mechanisms being largely contingent upon the consensus reached by the parties concerned.

The absence of a specific regulatory framework has also contributed to the escalation of land disputes within society. In practice, it is not uncommon for owners of surrounding parcels encircling a landlocked property to refuse access for passage on the grounds of protecting their property rights. Conversely, owners of landlocked land often lack a clear and definitive legal mechanism through which access to a public road may be secured. As a result, disputes concerning landlocked properties frequently culminate in protracted litigation processes that entail substantial financial costs. As argued by Lawrence M. Friedman, the effectiveness of a legal system is determined not only by its legal substance but also by its legal structure and the prevailing legal culture within society.[21] In the context of landlocked land parcels, the

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inadequacy of legal substance governing rights of access and passage results in the legal structure and legal culture lacking clear guidance for resolving such issues.

The issue of landlocked parcels has become increasingly prevalent in tandem with the growing intensity of land subdivision activities, residential development projects, investment expansion, and spatial planning transformations across various regions. In many instances, landlocked parcels emerge as a direct consequence of land subdivision processes that fail to ensure the provision of adequate road access to each newly created parcel. The existing land administration system has primarily focused on guaranteeing legal certainty regarding the subject and object of land rights; however, it has not yet optimally addressed the interconnectivity of land parcels in terms of accessibility and spatial utilization. As argued by Arie Sukanti Hutagalung, a land registration system should not merely guarantee certainty of rights but should also take into account the social utility derived from land use itself.[22]

On the other hand, Indonesian customary law (*adat law*) has long recognized rights of passage and shared access as integral components of social relations within local communities. Practices such as *gang senggek* among the Betawi community, *palibu* within Minangkabau society, and communal access roads in Balinese customary communities demonstrate that Indonesian society has traditionally embraced concepts of land use that accommodate collective interests. This principle is consistent with Article 5 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria*—UUPA), which stipulates that the agrarian law governing land, water, and airspace is based on customary law insofar as it does not conflict with national and state interests. Nevertheless, these customary legal values have not been fully operationalized within Indonesia's modern national land law system.

Furthermore, the regulation of access rights was historically recognized under Book II of the *Burgerlijk Wetboek* (Civil Code) through the legal institution of *servituut* (easement) or predial servitude. Article 667 of the Civil Code provided that the owner of a landlocked parcel was entitled to demand access to a public road, subject to the payment of reasonable compensation to the owner of the burdened land. However, following the enactment of the UUPA, the provisions of Book II of the Civil Code concerning land, water, and natural resources were repealed. According to Boedi Harsono, since the UUPA came into force, colonial property law institutions such as *servituut*, *erfpacht*, and *opstal* have no longer been recognized within Indonesia's national land law framework.[23]

Based on the foregoing discussion, it is evident that the issue of landlocked land can no longer be adequately addressed solely through conventional contractual arrangements or case-by-case administrative policies. A reconstruction of the legal framework governing access rights to landlocked parcels within the Indonesian land law system is therefore necessary. Such a framework should be capable of integrating the principle of the social function of land rights, legal certainty, social justice, and the needs of contemporary society.

In the Indonesian land law system, ownership rights (*hak milik*) are recognized as hereditary rights and as the strongest and fullest rights over land, as stipulated in Article 20(1) of the Basic Agrarian Law (*Undang-Undang Pokok Agraria* – UUPA). Nevertheless, the characterization

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of ownership rights as the "strongest and fullest" rights should not be construed in absolute terms, as their exercise remains subject to Article 6 of the UUPA, which mandates the social function of land rights. Accordingly, ownership rights may be subject to limitations insofar as such restrictions are imposed proportionally, grounded in law, and directed toward the public interest. The reconstruction of a right of access as a real property right essentially constitutes a legitimate limitation on land rights aimed at ensuring the functional use of otherwise landlocked parcels. In this regard, the reconstruction of a right of way does not represent an arbitrary deprivation of ownership rights; rather, it embodies a concrete manifestation of the social function doctrine governing land rights.

From a normative perspective, the Indonesian land law system has, to some extent, already recognized the principle prohibiting the enclosure or obstruction of access to neighboring land parcels. Article 28(b) of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration provides that holders of Cultivation Rights (*Hak Guna Usaha*) are prohibited from enclosing or blocking other plots of land from public traffic, public access, and/or waterways. Similar provisions are contained in Article 43(a) for holders of Building Use Rights (*Hak Guna Bangunan*) and Article 58(a) for holders of Rights of Use (*Hak Pakai*). These provisions indicate that the national land law framework has implicitly recognized a social obligation not to obstruct access to adjacent land parcels. However, such regulation remains limited in scope, as it does not specifically address ownership rights (*Hak Milik*), nor does it regulate the establishment of rights of way, compensation mechanisms, registration procedures, or the legal consequences arising from violations of such access rights.

These regulatory shortcomings demonstrate that Indonesian land law continues to suffer from a normative gap concerning rights of access to landlocked properties. To date, no legal provision expressly determines who bears the obligation to provide access, how the most appropriate servient land should be identified, what constitutes adequate access, how compensation for the burdened land should be assessed, or how such access rights should be positioned within the national land registration system. Consequently, the resolution of landlocked land disputes in practice remains heavily dependent on agreements between parties, administrative discretion, and case-by-case judicial decisions. In a modern rule-of-law state, however, matters concerning land rights should be governed by clear legal certainty and integrated within the national land administration system.

From a historical perspective, the concept of a right of access was previously recognized under Book II of the *Burgerlijk Wetboek* (BW) through the institution of *servituut* (easement) or servient tenement rights. Article 667 of the BW provided that the owner of a landlocked parcel was entitled to demand access to a public road, subject to the payment of reasonable compensation to the owner of the land through which the access route passed. However, following the enactment of the UUPA, the provisions of Book II of the BW relating to land, water, and natural resources were repealed. As emphasized by Boedi Harsono, with the coming into force of the UUPA, colonial property law institutions such as *servituut*, *erfpacht*, and *opstal* ceased to be recognized within the Indonesian national land law system.[24.]

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Nevertheless, the substance of rights of way and access rights continues to exist and operate within the social practices of Indonesian society. Various customary law systems throughout Indonesia have long recognized the practice of shared pathways, rights of passage, and access routes to agricultural fields, plantations, water sources, and other public facilities. This demonstrates that, from a sociological perspective, Indonesian society does not perceive land as an exclusively individual right entirely insulated from social interests. This principle is further reinforced by Article 5 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria* – UUPA), which stipulates that, "*National agrarian law shall be based upon customary law insofar as it does not conflict with national and state interests*."

Based on the foregoing legal conception, the reconstruction of road access rights as a proprietary right within the national agrarian legal framework is, in essence, consistent with the communal-religious character of Indonesian customary law, which places social relations as an integral component of land utilization. Furthermore, the reconstruction of road access rights as a proprietary right must be connected to the national land registration system. Article 19 of the UUPA mandates the government to administer land registration in order to ensure legal certainty.

Article 1 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration provides that, "*Land registration encompasses the collection, processing, recording, presentation, and maintenance of physical and juridical data concerning parcels of land*." This normative foundation implies that, should road access rights be constructed as a limited proprietary right, their existence ought to be recorded within the national land administration system as part of the juridical data relating to a land parcel. Such registration is essential to ensure that road access rights possess the attribute of publicity, are known to third parties, and enjoy legal certainty, particularly in the event of transfers of land rights.

Within the doctrine of property law, the principle of publicity constitutes one of the fundamental requirements for a proprietary right to be recognized and respected by third parties. Mariam Darus Badrulzaman explains that proprietary rights, by their very nature, require publicity in order to provide legal certainty for other parties who possess an interest in the property concerned.[25]

Based on the foregoing discussion, the reconstruction of the right of access to roads as a property right within the Indonesian land law system constitutes a form of agrarian law reform aimed at integrating the principles of the social function of land rights, legal certainty, protection of individual rights, and the needs of modern society.

This reconstruction is not intended to restore the dominance of colonial property law doctrines; rather, it seeks to establish a national agrarian legal institution capable of addressing the issue of landlocked parcels in a fair, practical, and contextually appropriate manner consistent with the characteristics of the Indonesian land law system. Accordingly, the right of access to roads should be recognized as a limited real right attached to a parcel of land, possessing the characteristics of *erga omnes* and *droit de suite*, and capable of being recorded within the national land registration system in order to ensure legal certainty, social utility, and justice in

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land utilization. The reconstruction effort should begin with a systematic approach by referring to the institution of the relinquishment of land rights. Within the Indonesian land law framework, the relinquishment of rights constitutes one of the legal grounds for the termination of land rights, as stipulated in Article 27(a), Article 34(c), and Article 40(c) of the Basic Agrarian Law (*Undang-Undang Pokok Agraria*), which provide that land rights may be extinguished through voluntary surrender by the rights holder. These provisions demonstrate that national land law recognizes the possibility for rights holders to voluntarily relinquish their rights for particular purposes, including the provision of road access.

In land administration practice, the partial relinquishment of land rights is generally carried out through a deed of relinquishment or a written statement of relinquishment, which serves as the legal basis for amendments to land records. Article 131(3) of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, as most recently amended by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2021, stipulates that amendments to land registration data may be effected on the basis of deeds or documents evidencing changes in rights. In the context of the partial relinquishment of land for road access, such a process is typically accompanied by remeasurement, subdivision of land parcels, boundary adjustments, and the recording of changes in land area within the land administration system.

From a theoretical perspective, the partial relinquishment of rights provides a relatively high degree of legal certainty because it results in the establishment of a road whose existence is permanent and clearly defined both physically and juridically. Through the relinquishment of rights, the legal status of the road parcel becomes more certain, thereby reducing the potential for future disputes. Furthermore, relinquishment facilitates governmental functions in spatial planning, infrastructure development, and land administration management, as the road parcel acquires a clear legal status. In certain circumstances, relinquishment may even be regarded as the ideal solution when the road access is intended for permanent public use and serves the broader interests of the community.

Nevertheless, within Indonesian society, the mechanism of relinquishment frequently encounters various social, psychological, and economic obstacles. Land is not viewed merely as an economic asset; it also possesses social, cultural, and even spiritual dimensions. Maria S.W. Sumardjono argues that the relationship between Indonesian communities and land is inherently multidimensional, as land functions not only as a means of production but is also closely associated with social identity, family continuity, and genealogical ties.[26]

In contrast to the relinquishment of land rights, the resolution of landlocked parcels through a right of access does not, in principle, extinguish the ownership rights over the burdened land. Under this model, the landowner retains full ownership of the property while granting a limited right to the owner of the landlocked parcel to use a specific portion of the land as access to a public road. Accordingly, the legal relationship established is not one of transfer of ownership, but rather the creation of a limited use right over a designated part of the land. In Indonesian practice, this mechanism is more commonly employed because it is considered more flexible and does not result in the permanent loss of ownership rights.

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The right-of-access model bears a close resemblance to the concept of *servituut* in the civil law tradition, namely an encumbrance imposed on one parcel of land for the benefit of another. Article 667 of the Indonesian Civil Code (*Burgerlijk Wetboek*) provides that the owner of a landlocked parcel may demand access to a public road, subject to the obligation to compensate the owner of the land through which such access is granted. However, following the enactment of the Basic Agrarian Law (Law No. 5 of 1960), the provisions of Book II of the *Burgerlijk Wetboek* concerning land, water, and the natural resources contained therein were repealed. Consequently, the concept of *servituut* can no longer be understood as a directly applicable colonial legal institution within the Indonesian legal system. Rather, it serves only as a conceptual reference for understanding legal relationships between adjoining parcels of land.

From the perspective of customary law, the practices of easement rights and shared access routes have long been embedded within Indonesian society. Various indigenous communities recognize communal pathways leading to agricultural fields, plantations, water sources, places of worship, and other communal facilities. Practices such as *gang senggek* in Betawi communities, *palibu* in Minangkabau society, and shared access roads within Balinese customary communities demonstrate that land utilization in Indonesia has traditionally been governed not solely by individual interests but also by consideration for the social interests and collective needs of the surrounding community.[27] Soepomo argued that Indonesian customary law (*adat law*) is characterized by a communitarian-religious nature, whereby social relations and the balance of collective interests constitute essential elements in the control and utilization of land.[28]

Although the right-of-access mechanism is sociologically more compatible with the Indonesian context, its implementation continues to exhibit significant deficiencies in terms of legal certainty. In practice, most access rights are established through informal arrangements or private agreements that are not formally registered within the land administration system. Consequently, in the event of land transfers, changes in ownership, or disputes between parties, the existence and validity of such access rights are frequently challenged. This condition places the owners of landlocked parcels in a legally vulnerable position, as their access rights lack sufficient enforceability against third parties.

Furthermore, the absence of a specific legal framework governing rights of access within Indonesia's national land law system has resulted in the lack of clear standards concerning the criteria for determining landlocked land, the dimensions of adequate access, the form and scope of compensation, registration procedures, and guarantees of legal protection for the parties involved. As a consequence, the resolution of landlocked land issues in practice remains heavily dependent upon private agreements and case-specific judicial decisions. In a modern state governed by the rule of law, however, matters relating to land rights should be regulated within a framework of legal certainty and integrated into a comprehensive national land administration system.

Conceptually, the right-of-access model is also more consistent with the principle of the social function of land rights as stipulated in Article 6 of the Basic Agrarian Law (*Undang-Undang Pokok Agraria*—UUPA), which provides that all rights over land carry a social function. Within

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this framework, landowners continue to enjoy legal protection of their proprietary rights; nevertheless, the exercise of such rights must not result in another parcel of land losing its social and economic utility due to the absence of access to a public road. Accordingly, the right-of-access mechanism constitutes a concrete manifestation of the social function principle of land rights within social relations among members of society.

Based on the foregoing analysis, it can be understood that the resolution of landlocked land through the relinquishment of rights and through the right-of-access mechanism possesses fundamentally different characteristics. The relinquishment of rights offers a high degree of legal certainty, yet results in the permanent loss of ownership rights. Conversely, the right-of-access mechanism provides a more flexible solution and is more compatible with the legal culture and social values of Indonesian society, although it remains relatively weaker in terms of legal certainty.

In this context, the regulation of access rights to landlocked land should commence with the reconstruction of Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Principles (*Undang-Undang Pokok Agraria*), State Gazette of 1960 No. 104, Supplement to the State Gazette No. 2043, by amending the provision to read: *"All rights over land shall have a social function, and their exercise shall not eliminate, obstruct, or impede access to public roads for the benefit of the community."* This amendment should subsequently be followed by the insertion of a new section entitled **"Protection of Access to Public Roads"** within Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Condominium Units, and Land Registration, State Gazette of 2021 No. 28, Supplement to the State Gazette No. 6630. The new title should be positioned after Article 89 and before the section on the Administration of Land Registration (Article 90).

Such placement is justified on both conceptual and systematic grounds. Access to public roads is intrinsically linked to the land registration process, particularly in relation to transfers of land rights, subdivision, separation, consolidation of land parcels, and amendments to land registration data. In land administration practice, these legal actions frequently result in the closure of public access to roads due to the absence of effective control mechanisms at the registration stage. Yet access to public roads constitutes an aspect of the public interest whose continuity must be guaranteed as an embodiment of the social function of land rights as mandated by Article 6 of the UUPA.

The proposed provision under the title **"Protection of Access to Public Roads"** would read as follows:

> *"The transfer of land rights, subdivision, separation, consolidation of land parcels, or amendment of land registration data may only be registered insofar as such actions do not result in the closure of access to public roads and do not diminish the function of public roads for the benefit of the community."*

The proposed formulation reflects a strengthened commitment to the principle of accessibility protection in every legal action relating to the status and registration data of land parcels. Nevertheless, the provision remains general in nature and is primarily oriented toward

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preventing the obstruction of access to public roads. As such, it does not explicitly regulate the legal status, criteria, and mechanisms for resolving situations involving parcels that are already in a landlocked condition. The absence of a comprehensive regulatory framework has the potential to create legal uncertainty, both for holders of land rights who have lost access and for owners whose land is burdened by access-related interests.

Such regulation should therefore incorporate a clear definition of landlocked land in order to prevent multiple interpretations in practice. Furthermore, judicial guidelines are necessary to assist courts in adjudicating disputes concerning landlocked land and rights of access, thereby ensuring greater consistency, predictability, and legal certainty in judicial decision-making.

For the purposes of this study, landlocked land is defined as "a parcel of land that does not possess adequate access to a public road, thereby impairing its effective and optimal utilization in accordance with the principle of the social function of land rights".

This definition is significant because the principal issue associated with landlocked land is not merely the physical absence of a road, but rather the absence of adequate and reasonable access that enables the normal use and enjoyment of the land. Consequently, future regulatory frameworks should take into account the adequacy of access in light of the function and intended use of the land concerned.

In addition to defining landlocked land, national regulations governing rights of access should also establish the criteria under which a parcel of land may be classified as landlocked and therefore entitled to an access right. At a minimum, such criteria should include the following:

1) The parcel of land has no direct access to a public road;
2) Any existing access is inadequate or cannot reasonably be utilized;
3) The landlocked condition is not attributable to the fault or unlawful conduct of the landowner;
4) The requested access route constitutes the most proportionate alternative and causes the least possible burden or detriment to the servient land; and
5) The grant of access takes into account spatial planning considerations, the physical characteristics of the land, and the social interests of the surrounding community.

The establishment of these criteria is essential to prevent the misuse of access rights by parties who already possess reasonable access but seek a more economically advantageous route. Moreover, such criteria are necessary to ensure that the granting of access rights remains balanced with the protection of the rights of owners whose land is subject to the burden of access.

From the perspective of future legal development, rights of access to landlocked land should be conceptualized as a limited real right attached to the land itself, rather than merely as an obligational relationship between individuals. Such a construction is important because it enables the access right to be enforceable against third parties, to run with the land (*droit de suite*), and to receive legal protection within the national land registration system. Accordingly,

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the right of access would not depend upon the personal relationship between neighboring landowners, but would instead constitute a legal relationship between parcels of land. This concept is crucial for ensuring long-term legal certainty, particularly in situations involving the transfer of ownership of either the burdened land or the dominant land benefiting from the access right.

Within the context of such legal relationships, the national legal framework governing rights of access to roads should clearly regulate the respective rights and obligations of the parties involved. The owner of a landlocked parcel, as the holder of a right of access, should fundamentally be entitled to:

1) use the access road in accordance with its designated purpose;
2) obtain legal protection regarding the exercise of the access right;
3) demand respect for the access right that has been granted; and
4) enjoy legal certainty concerning the continuity and sustainability of the access route.

Nevertheless, the holder of the access right should also be subject to the following obligations:

a) to use the access road reasonably and in good faith;
b) not to extend its use beyond the scope agreed upon or legally established;
c) to participate in the maintenance of the access road; and
d) to provide compensation where required by law or by agreement between the parties.

Conversely, the owner of the servient land remains entitled to ownership rights over the affected parcel and is entitled to legal protection against any misuse of the access right. However, the servient landowner is likewise obliged to respect the granted right of access and refrain from any conduct that obstructs or interferes with the exercise of such access. Accordingly, the regulation of rights of access to roads should be constructed upon a principle of balance between the protection of private property rights and the social function of land rights.

The issue of compensation must also be clearly addressed within the national legal formulation concerning rights of access to roads. In practice, compensation frequently constitutes a source of conflict due to the absence of clear standards regarding both the form and amount of compensation for land burdened by an access right. Therefore, future regulatory frameworks should stipulate that the granting of a right of access may, in principle, be accompanied by fair and proportionate compensation to the owner of the burdened land. Such compensation may take various forms, including monetary payment, joint maintenance of the access road, reimbursement for specific losses, or other arrangements agreed upon by the parties. Nonetheless, compensation may be dispensed with under certain circumstances, particularly where the access route has been used continuously over generations, where a familial relationship exists between the parties, or where the use of the access road constitutes an established component of customary community practices.

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In addition to substantive regulation, the national legal framework governing rights of access to roads should also establish mechanisms for the creation of such rights. In this regard, a right of access may arise through:

1) an agreement between the parties;
2) a determination by the competent land authority;
3) a judicial decision; or
4) long-standing and continuous use recognized under customary law and local community practices.

Recognition of these various sources for the establishment of access rights is essential, given the diversity of social practices within Indonesian society, many of which cannot be confined solely to formal contractual relationships. Nevertheless, in order to ensure legal certainty, every established right of access should be required to be recorded within the national land registration system.

From the perspective of land administration, national regulation concerning rights of access to roads should provide a clear legal basis for the registration of such rights in land registers and land certificates. The provisions of Article 19 of the Basic Agrarian Law (UUPA) and Article 1(7) of Government Regulation No. 24 of 1997 have, in fact, already created legal space for the recording of third-party rights and other encumbrances within the juridical data of the land registration system.

Furthermore, the existence of a right of way should be recorded in the land certificate in order to possess publicity effect and be enforceable against third parties. In this manner, any person acquiring rights over a parcel of land will be able to ascertain whether the land is burdened by, or benefits from, a particular right of way.

The regulation of rights of way should also confer clear authority upon the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) with respect to administrative processes and supervision. In this regard, the National Land Agency should be authorized to:

1) verify the existence and condition of landlocked land;
2) determine the most proportionate location for access routes;
3) register rights of way within the national land administration system;
4) supervise the implementation and exercise of rights of way; and
5) prevent the creation of new landlocked parcels during the subdivision of land.

Such authority is essential to ensure that issues concerning landlocked land are not resolved solely through litigation but may also be addressed through administrative mechanisms that are more expeditious and effective. In addition to the National Land Agency, the national regulatory framework should further clarify the roles of Land Deed Officials (PPAT) and Notaries in the establishment of rights of way. PPATs may be vested with authority to execute

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deeds establishing rights of way as the legal basis for their registration within the national land administration system. Meanwhile, Notaries may facilitate the drafting of right-of-way agreements as well as arrangements concerning compensation and the respective rights and obligations of the parties. Consequently, the establishment of rights of way would obtain legal certainty from both civil law and land administration perspectives.

In the context of dispute resolution, the national legal framework governing rights of way should prioritize deliberation and mediation before recourse to litigation. This approach is particularly important because disputes concerning landlocked land generally arise among members of the community who maintain direct social and neighborhood relationships. Accordingly, consensual dispute resolution is more compatible with the legal culture of Indonesian society. Nevertheless, where consensus cannot be achieved, disputes may be resolved through land mediation, administrative decisions, or judicial proceedings.

Moreover, national regulation concerning rights of way should prohibit the creation of new landlocked parcels. In every process involving land subdivision, the granting of land rights, or land reorganization, it must be ensured that each parcel retains access to a public road. Accordingly, future regulatory arrangements should impose an obligation upon land administration officials to reject applications for land subdivision that may result in the creation of new landlocked parcels. Such provisions are crucial as a preventive measure to ensure that problems relating to landlocked land do not continue to proliferate in the future.

From the perspective of legal reform, the formulation of regulations concerning rights of way for landlocked land constitutes an integral component of the development of a more modern, equitable, and socially oriented national agrarian legal system. This reconstruction is not intended to revive the colonial servitude regime as regulated under the Burgerlijk Wetboek (Civil Code), but rather to establish a national legal institution that reflects the characteristics of Indonesian land law, customary legal values, and the needs of contemporary society. Accordingly, the regulation of rights of way would not only provide legal certainty for owners of landlocked land but would also strengthen the balance between the protection of individual property rights, social interests, and the orderly administration of the national land system.

Based on the foregoing discussion, the regulatory framework governing rights of way for landlocked land under Indonesian land law should be directed toward the establishment of a national legal institution that:

1) recognizes rights of way as limited real rights;
2) provides mechanisms for registration within the national land administration system;
3) clearly regulates the requirements, rights, obligations, and compensation associated with such rights;
4) strengthens the roles of the National Land Agency, PPATs, and Notaries;
5) prioritizes dispute resolution through deliberation and consensus; and
6) prevents the creation of new landlocked land.

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Where disputes are brought before the courts, judges should be provided with clear normative guidelines concerning the criteria for determining landlocked land, the standards for adequate access, the forms of compensation available, and the balance between the protection of property rights and the social function of land rights.

In connection with these proposals, Indonesia's future land law system will be capable of providing more equitable, certain, and operational legal protection with respect to landlocked land as part of the implementation of the social function principle of land rights.

The reconstruction of legal norms concerning rights of way is designed through a legislative drafting approach that is consistent with the regulatory characteristics of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), whereby its substantive foundation rests upon the doctrine of the social function of land rights as mandated by Article 6 of the Basic Agrarian Law (UUPA).

Within this juridical framework, the right of way is conceptualized as a form of national servitude (hak pengabdian pekarangan), obligating the owner of the servient estate to provide access for the dominant estate in the interests of the public good and the optimal utilization of land resources.

Furthermore, in order to ensure the principle of publicity and preventive legal certainty and thereby avoid future disputes, such rights of way must be registered as encumbrances on the land register and land title certificate through the competent local land office. At the operational level, implementation is founded upon the principle of deliberation and consensus through village or urban-community consultation forums, which function as mechanisms for conflict resolution based on local wisdom while simultaneously serving as the basis for determining fair compensation prior to formal registration.

The integration of these norms not only provides legal certainty and protection for the parties concerned but also reaffirms the State's commitment to achieving an integrated and dignified form of spatial justice.

The reconstruction underlying this proposed legal framework is built upon three interrelated pillars, namely the preventive, administrative, and repressive pillars.

Under the preventive pillar, conflicts are addressed at their source through cooperation among the Ministry of ATR/BPN, village governments, and notaries. This stage requires deliberation prior to land surveying activities, ensures that access rights are formally recorded before the issuance of land certificates, and establishes rights of way (servitudes) as encumbrances directly attached to land rights within the land administration system.

Correspondingly, the administrative pillar strengthens legal certainty within the National Land Agency by formally recording rights of way in the land register. This mechanism ensures that such rights are binding upon third parties and fully integrated into a transparent electronic juridical database.

Finally, the repressive pillar is reinforced through the role of the Supreme Court and Supreme Court Circular Letters (SEMA). This pillar functions to eliminate inconsistencies in judicial

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decisions, explicitly recognize rights of way as limited real rights, and require all final and binding court judgments to be directly incorporated into the national land administration system, thereby ensuring comprehensive and integrated land data management.

The foregoing proposal may be concretely elaborated as follows:

1) Preventive Administrative Pillar

This approach may be implemented through the reconstruction of legal norms within the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning the Implementing Provisions of Government Regulation Number 24 of 1997 on Land Registration.

Article 19E

(1) In the event that a parcel of land does not have adequate access to a public road (landlocked land), the granting of a right of access shall not extinguish the ownership rights over the burdened parcel; rather, it shall constitute a limited real right attached to the land.

(2) The right of access referred to in paragraph (1) shall be established on the basis of:

a) an agreement between the parties; and/or

b) the outcome of deliberation facilitated by the Village Government/Kelurahan, embodied in an authentic deed executed before a Notary or Land Deed Official (PPAT).

(3) The authentic deed referred to in paragraph (2) shall be registered with the Land Office and recorded as an encumbrance in the juridical data of the burdened parcel, as well as a right attached to the benefiting parcel.

(4) The registration referred to in paragraph (3) shall give rise to the following legal consequences:

a) binding upon the parties;

b) binding upon all third parties; and

c) remaining effective notwithstanding any transfer of rights over the burdened land.

Article 19F

(1) In order to prevent the occurrence of landlocked land, the Village Head/Lurah shall facilitate deliberation between the owner of land intended to be subdivided or registered and the owners of adjacent parcels.

(2) The outcome of such deliberation shall be documented in a Minutes of Functional Land Access Determination, which shall constitute a mandatory document in the land measurement and boundary determination process.

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(3) The Minutes referred to in paragraph (2) shall serve as:

a) the basis for boundary determination by the Land Office;

b) the basis for the preparation of a Notarial or PPAT deed; and

c) an integral part of the land registration documents.

(4) In every process of subdivision, separation, or rearrangement of land parcels, the Land Office shall ensure that each parcel has adequate access to a public road in accordance with the social function of land.

Article 19G

(1) Boundary determination of land parcels as referred to in Article 19 shall also include the determination of functional land access for parcels lacking direct access.

(2) The determination of functional access referred to in paragraph (1) shall take into account:

a) the principle of the social function of land rights;

b) the principles of justice and proportionality;

c) the least burdensome impact upon the servient land; and

d) the sustainability of social relations within the community.

(3) Further provisions concerning functional land access standards shall be regulated through technical guidelines issued by the Head of the National Land Agency.

2) Repressive Pillar

This pillar may be realized through the issuance of a Supreme Court Circular Letter (SEMA) concerning Guidelines for Adjudicating Landlocked Land and Access Rights Cases. The Circular should contain sections on general provisions, conceptual definitions, principles of adjudication, criteria for landlocked land and access rights, obligations relating to judicial decisions and land administration, legal harmonization, and closing provisions.

The proposed structure may be formulated as follows:

I. General Provisions

In order to realize legal certainty, justice, and uniformity in the application of law in handling landlocked land disputes, as well as to prevent disparities in judicial decisions, the Supreme Court of the Republic of Indonesia deems it necessary to provide guidance to all judges in examining, adjudicating, and deciding cases concerning landlocked land and rights of access.

II. Definitions

For the purposes of this Circular Letter, *landlocked land* refers to a parcel of land that lacks adequate access to a public road, thereby preventing its optimal utilization in accordance with the social function of land rights.

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III. Principles of Adjudication

In examining and adjudicating landlocked land disputes, judges shall base their considerations on the following principles:

1. The principle of the social function of land rights as stipulated in the Basic Agrarian Law;
2. The principle that ownership rights over land are not absolute insofar as they do not negate the access rights of others;
3. The balance between the protection of ownership rights and the fulfillment of the socio-economic access needs of the community;
4. Assessment of actual access needs (*actual necessity test*) based on the facts established during trial proceedings; and
5. The prioritization of settlement through deliberation and/or non-litigation mechanisms before a judgment is rendered.

IV. Criteria for Landlocked Land

Land may be classified as landlocked if it satisfies one or more of the following conditions:

1. It lacks direct access to a public road; or
2. It possesses access that is functionally inadequate for its intended use and utilization; and
3. Such condition is not attributable to the fault or unlawful conduct of the owner of the land concerned.

V. Right of Access

1. A right of access constitutes a limited real property right attached to the land and follows the property to which it relates.
2. Such right shall remain valid notwithstanding any transfer of rights over either the burdened land or the benefiting land.
3. In landlocked land disputes, judges shall have the authority to determine:
   a) the location of the access route;
   b) the dimensions of the access route, including its width and length;
   c) the form of fair and proportionate compensation; and
   d) the parties' obligations regarding the maintenance of the access route.

VI. Obligations Relating to Judicial Decisions and Land Administration

(1) Every court decision granting or establishing a right of access shall order:

   a) the registration of the access right with the Land Office;
   b) its inclusion within the juridical data contained in the relevant land certificate; and
   c) recognition of its enforceability against third parties.

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(2) A final and binding court decision concerning a right of access shall be registered as an encumbrance within the national land registration system.

VII. Harmonization of Legal Application

To ensure uniform application of the law, the Supreme Court affirms that:

(1). A right of access shall not be denied solely on the ground that ownership rights over land are absolute;

(2). Judges shall take into consideration both the social function of land and the minimum access needs of landlocked land;

(3). Judges shall not render decisions that:

a) eliminate access without providing a reasonable alternative route; or

b) disregard the fundamental access needs of landlocked land.

VIII. Closing Provision

This Circular Letter shall be observed and implemented accordingly by all courts operating under the jurisdiction of the Supreme Court of the Republic of Indonesia.

CONCLUSION

The reconstruction of servitude law as an implementation of the social function principle of land rights in relation to landlocked parcels should be undertaken by transforming the legal construction of access rights from an obligatory relationship (obligatoir right) into a limited real right attached to the land parcel. This reconstruction is essential to ensure that access rights are enforceable against third parties, run with the land, and obtain legal certainty and protection through the national land registration system. Furthermore, the regulation of access rights should be formulated within a specific legal framework under the national land law system, particularly through amendments to the regulations of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), which should expressly govern landlocked land and rights of access. Such regulations should also provide a clear definition of landlocked land in order to prevent multiple interpretations in practice. In addition, this reconstruction should be accompanied by judicial guidelines for judges in resolving disputes concerning landlocked land, thereby ensuring consistency in the application of the law, reducing disparities in judicial decisions, and guaranteeing that the implementation of the social function principle of land rights is carried out in a coherent and equitable manner.

RECOMMENDATION

Strengthening Indonesia's land law system requires an integrated approach encompassing legal principles, preventive-administrative standards, and repressive measures. At the level of legal principles, Article 6 of Law No. 5 of 1960 on the Basic Regulations on Agrarian Principles should be reconstructed by introducing a norm stating that "the exercise of land rights shall not eliminate or obstruct access to public roads for the public interest." From a preventive-

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administrative perspective, Government Regulation Number 18 of 2021 should incorporate a new section on the "Protection of Public Road Access," providing that the transfer, subdivision, separation, consolidation, or registration amendment of land parcels may only be registered insofar as such actions do not result in the closure of access to public roads. This framework should be complemented by technical regulations requiring the recognition and registration of rights of way as a form of easement attached to land parcels, thereby ensuring publicity and legal certainty for third parties. Amendments to land registration regulations, particularly through Articles 19E–19G, are also necessary to prevent the creation of landlocked parcels from the cadastral surveying and boundary determination stages. From a repressive standpoint, the Supreme Court should issue a Supreme Court Circular Letter on the adjudication of landlocked parcel and right-of-way disputes to reduce judicial inconsistency and enhance legal certainty. Such guidelines should establish clear criteria for determining landlocked parcels and rights of way, principles for case adjudication, and standards for the uniform application of law.

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8) Several regulations repealed by the UUPA include: (a) *Agrarische Wet Stb.* 1870 No. 55 as contained in Article 51 *IS Stb.* 1925 No. 447, (b) Regulations concerning *Domeinverklaring* (general-special), (c) *Koninklijk Besluit* (Royal Decree) dated April 16, 1872 No. 29 (*Stb* 1872 No. 177) and its implementing regulations.

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10) Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, regarding Conversion Provisions. Article 1 paragraph (6) explains that "The rights of *hypotheek*, *servituut*, *vruchtgebruik*, and other rights burdening *eigendom* rights shall continue to burden the *hak milik* (right of ownership) and *hak guna bangunan* (right to build) referred to in paragraphs 1 and 3 of this Article, while said rights shall become a right under this Act." See Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Vol. 1 National Land Law, 9th printing, Revised Edition, akarta: Djambatan, 2003, p. 567.

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11) See: Elucidation of Article 13 of Government Regulation Number 40 of 1996 concerning the Right to Cultivate (HGU), Right to Build (HGB), and Right to Use (HP), which states: "The granting of a Right to Cultivate must not result in the physical obstruction of land enclosed by said Right to Cultivate land. Therefore, the holder of the Right to Cultivate is obliged to provide the necessary access to the holder of the enclosed land rights".

12) This Government Regulation was subsequently amended by Government Regulation (PP) Number 18 of 2021 concerning Right to Manage, Land Rights, Condominium Units, and Land Registration, LN.2021/No.28, TLN No.6630. See: Provisions of Article 28 letter b, Article 43 letter a, and Article 58 letter a, which regulate the prohibition of enclosing or blocking a courtyard or other land parcel from public traffic, public access, and/or waterways.

13) See: Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, regarding Transitory Provisions. Article 58 explains that "As long as the implementing regulations of this Act have not been formed, the regulations, both written and unwritten, concerning earth and water as well as the natural resources contained therein and land rights existing at the entry into force of this Act, shall remain effective as long as they do not conflict with the spirit of the provisions of this Act and shall be interpreted accordingly". Boedi Harsono, *Op. Cit.*, 566.

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