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## Problems in Implementing the Principle of Horizontal Separation in Cases of Abandoned Land According to Presidential Regulation (Perpres) Number 62 of 2023 and Efforts to Resolute It

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**Abstract:** The principle of horizontal separation is a fundamental principle in the Indonesian land law system, which states that land rights are separate from rights to objects located above or below it, as stipulated in Law Number 5 of 1960 concerning Agrarian Principles (UUPA). However, the implementation of Presidential Regulation Number 62 of 2023 concerning the Management of Abandoned Land has not fully accommodated this principle. This Presidential Regulation focuses on the repossession of land that is not being utilized according to its intended purpose, but does not explicitly regulate the protection of rights to buildings, plants, or other permanent objects standing on the land. As a result, legal problems arise, including potential conflicts between land rights holders and building owners, unclear objection mechanisms, and a lack of norms regarding civil rights over objects on abandoned land. This research employs a normative legal method, using a statutory regulatory and a conceptual approach. The analysis results reveal a lack of synchronization between the UUPA as the parent law and the latest implementing provisions, which has an impact on legal uncertainty and potential constitutional rights violations. Therefore, regulatory harmonization is necessary through the adoption of implementing regulations that prioritize protection for owners of immovable property, as well as the development of administrative and judicial dispute resolution mechanisms. Cross-institutional collaboration is also crucial to creating a fair and operational legal framework for managing abandoned land

**Keyword:** Horizontal Separation, Abandoned Land, UUPA, Presidential Regulation No. 62 of 2023, Legal Certainty, Civil Rights, Agrarian Reform, domain name, *lex specialis*, arbitration, trademark

### INTRODUCTION

The principle of horizontal separation is a fundamental principle in the Indonesian land law system, as affirmed in Law Number 5 of 1960 concerning the Principles of Agrarian Law (UUPA) (Rahman, 2025). This principle states that land rights do not automatically

encompass rights to objects located above or below the surface of the land (Tanujaya, 2024). In other words, land ownership rights can exist independently without the need for buildings or plants on it, and vice versa (Bakir, 2023). This provision is stipulated in Article 4 in conjunction with Article 16 of the UUPA, which emphasizes the separation between land rights and the objects standing on it. This separation creates a system different from the accessory system adopted in Continental European civil law, where land rights encompass everything standing on it. This distinction becomes important when the state adopts policies concerning land that is not being optimally utilized by the rights holder (Kolopaking, 2021).

The issue of abandoned land has become a strategic issue in national agrarian resource management (Sinjar, 2023). When land that has been granted rights to individuals or legal entities is not utilized in accordance with its intended use and statutory provisions, the state has the authority to take over its management (Parihah, 2022). Presidential Regulation Number 62 of 2023 was enacted as a government effort to address this issue in a more structured and sustainable manner. This regulation outlines procedures for managing abandoned land so that it can be reused for development, agrarian reform, and community welfare (Rahmat Ramadhani, 2025). Problems arise when this policy is implemented without strictly observing the separation between land rights and rights to buildings or other objects on the land. Building owners who do not hold land rights risk losing their rights when the land is declared abandoned (Ramadhan, 2022).

The difference in legal systems between horizontal separation and accessory systems has significant consequences for legal protection for owners of buildings or objects standing on land whose legal status changes to abandoned. In the accessory system, everything attached to the land will go with it if its ownership status changes (Pranata, 2023). In contrast, the horizontal separation system adopted in the Basic Agrarian Law (UUPA) clearly separates land rights from the objects on it, so that when land is declared abandoned, the buildings on it should not be automatically considered state property (Fitrian, 2022). The lack of clarity in regulations regarding the treatment of buildings or objects on abandoned land creates a legal vacuum that has the potential to give rise to new disputes. The repossession of abandoned land without provisions for protecting third parties with interests in the land raises serious questions about legal justice. Recognition of rights to objects on the land should be part of the fair management procedures for abandoned land (Desinta, 2025).

The Basic Agrarian Law itself requires optimal, fair, and sustainable land use. When rights holders fail to fulfill these obligations, the state has the legitimacy to reorganize land ownership and use through revocation or expropriation mechanisms (Sahibu, 2023). Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (BPN) Number 20 of 2021 provides technical guidance on how to identify and manage abandoned land. This regulation requires written warnings, monitoring of utilization, and official determination of abandoned status (Saiful, 2024). However, not all actual conditions in the field align with existing legal norms. Often, land categorized as abandoned still contains active buildings or other infrastructure legally standing on the land with a different legal status. The discrepancy between the status of land rights and the objects on it reinforces the urgency of restructuring legal norms regarding the relationship between abandoned land and the principle of horizontal separation.

Presidential Regulation Number 62 of 2023 was introduced with the strategic objective of addressing land use stagnation and encouraging more effective land redistribution. The purpose of this regulation is to ensure that unproductive land can be returned to the state and transferred to legal entities capable of managing it productively (Nurahmani, 2023). It is also closely related to the agrarian reform agenda, which is part of the national priority program (Sulistyaningsih, 2021). However, the implementation of this regulation poses legal challenges if it is not supported by a comprehensive understanding of ownership structure

under the horizontal separation system. In some cases, land use is not conducted by the land rights holder, but by other parties such as tenants, building use rights holders, or even indigenous communities (Ardani, 2021). This Presidential Regulation does not yet provide a detailed legal position of these parties, especially if they own immovable property such as buildings on land considered abandoned.

The absence of explicit norms in Presidential Regulation No. 62 of 2023 concerning the recognition of rights to objects located on abandoned land creates a gray area in policy implementation. The reclamation of land by the state without considering the ownership status of the building constitutes a principal violation of horizontal separation as stipulated in the Basic Agrarian Law (Basar, 2024). This situation indicates regulatory disharmony that has the potential to harm civil society. Furthermore, the risk of lawsuits and compensation claims increases, especially in cases of land that has been used for business activities, residences, or social facilities. This lack of legal clarity has the potential to undermine trust in the national land administration system. New regulations must guarantee legal certainty and equal protection for all legal entities related to land and objects on it.

The principles of abandoned land management stipulated in Presidential Regulation No. 62 of 2023 should not only focus on optimizing land use but also on protecting civil rights (Prasista, 2022). The criteria for abandoned land objects have been formulated in this Presidential Regulation, including land with ownership rights, land use rights, building use rights, and state land controlled by third parties without rights (Adhiati, 2022). However, the substance of the regulation does not address the ownership of buildings or permanent infrastructure on the land. In fact, in many cases, the status of the land and the status of the building do not fall under the same legal entity. This omission has the potential to lead to overlapping authority between the National Land Agency (BPN), local governments, and other agencies handling state assets. This situation clarifies the urgent need for further technical regulations to ensure that the management of abandoned land does not violate the principle of justice.

The principle of horizontal separation is not only a principle of land law but also reflects respect for individual ownership in a state based on the rule of law. When this principle is ignored in the implementation of abandoned land management, state policy risks violating citizens' constitutional rights (Tista, 2022). Article 28H paragraph (4) of the 1945 Constitution states that everyone has the right to private ownership, and this right may not be taken over arbitrarily (Sulaiman, 2022). Therefore, regulations regarding abandoned land must be consistent with the Constitution and the Basic Agrarian Law (UUPA) to prevent human rights violations. Harmonizing Presidential Regulation No. 62 of 2023 with established legal principles is crucial. The state is obliged to ensure that the management of abandoned land remains within the framework of comprehensive legal protection.

The state does have a mandate to regulate land ownership and use for the public interest, but this mandate must be implemented with due regard for the principles of legality and justice (Iskandar, 2023). Regulating abandoned land without addressing the horizontal dimension of legal relations over objects on the land creates a gap between legal norms and social reality. In practice, building owners or land users often lack formal legal documentation for the land, yet they act in good faith and have used the land productively. Regulations that fail to accommodate this fact will lead to public dissatisfaction and weaken the legitimacy of policies. The state should provide fair resolution mechanisms, such as compensation, recognition of limited rights, or integration into asset legalization programs.

Repurposing abandoned land through state intervention must be carried out with due regard for the various layers of legal interests inherent above and below the land's surface. When buildings or fixed objects on land have specific economic and social value, state action on that land cannot be carried out unilaterally. Recognition of these rights is in line with the

spirit of the Basic Agrarian Law, which places humans as the primary subjects in land ownership and use. Presidential Regulation No. 62 of 2023 has significant potential to support agrarian reform and equitable land redistribution, but must be supported by implementing norms that do not conflict with the basic principles of national land law. Structuring regulations that include specific provisions regarding the status of objects on land will strengthen justice and legal certainty in the implementation of land policies.

## METHOD

This research uses a normative juridical method, a legal research method that relies on an analysis of applicable positive legal norms. This research is not based on empirical data, but rather on secondary legal materials in the form of laws and regulations, doctrines, and relevant legal literature. The main focus of this research is to examine how the principle of horizontal separation is applied in the management of abandoned land according to Presidential Regulation Number 62 of 2023, and how harmonization of norms can be carried out between this regulation and Law Number 5 of 1960 concerning Agrarian Principles (UUPA), as the parent land law in Indonesia. The approach used in this research is a statute approach by examining the provisions of the UUPA, Presidential Regulation No. 62 of 2023, Regulation of the Minister of Agrarian Affairs and Spatial Planning/BPN No. 20 of 2021, and other related implementing regulations. In addition, a conceptual approach is also used, namely an approach that examines the principles, theories, and doctrines of land law, particularly those related to the concept of horizontal separation, civil rights over immovable property, and land control by the state. This process is critical to understanding how a norm should be developed and implemented in a manner consistent with applicable legal principles. Using these two approaches, this study seeks to identify a comprehensive legal solution the legal problems caused by the lack of normative synchronization between basic land law and the new abandoned land management policy.

## RESULT AND DISCUSSION

### **Analysis of the Application of the Horizontal Separation Principle in Cases of Abandoned Land According to Presidential Decree Number 62 of 2023**

The principle of horizontal separation as stipulated in Article 4 paragraph (2) in conjunction with Article 16 paragraph (1) letters c and d of Law Number 5 of 1960 concerning Agrarian Principles (UUPA) states that land rights do not automatically encompass objects located above or below it. Landowners do not automatically become owners of buildings or plants on the land unless there is a specific legal relationship. In the Indonesian legal system, this means that when a plot of land changes hands or is repossessed by the state because it is deemed unused, buildings or other objects on it do not automatically become part of the takeover. This concept aims to provide protection to the owner or control of objects on the land, who may be different from the land rights holder. The legal consequences become particularly significant when the state takes over abandoned land.

Presidential Regulation Number 62 of 2023 concerning the Management of Abandoned Land does not explicitly address the fate of fixed objects such as buildings or installations standing on land designated as abandoned. Article 1, number 1, states that abandoned land is land for which rights have been granted and/or controlled and/or owned, but the obligation to cultivate, use, and/or utilize it has not been fulfilled in accordance with the nature and purpose of the granting of rights and the laws and regulations. Articles 9 and 10 of this Presidential Regulation explain that after the status of abandoned land is determined, the land is designated as state land and can be allocated for specific purposes, such as agrarian reform or strategic investment. However, there are no explicit provisions regarding the treatment of

buildings standing on the land, especially if the buildings belong to third parties who do not hold the land rights.

Ownership conflicts become increasingly complex when the owner of the building or facility standing on the land is not the land rights holder. In many practices in Indonesia, civil relationships exist between landowners and building owners, such as leases, loans, or even without a valid legal basis. When land is declared abandoned and taken over by the state, the legal position of the building owner becomes unclear. Article 16 paragraph (1) letters c and d of the UUPA recognizes building use rights and usage rights, but does not detail the protection of fixed assets when the land is revoked. This lack of clarity creates potential disputes between the state that takes over the land and parties who feel disadvantaged by the loss of buildings or facilities they constructed on the land.

In the practice of managing abandoned land, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 20 of 2021 concerning the Handling and Utilization of Abandoned Land provides technical guidance on the process of identifying and determining abandoned land. Articles 5 and 6 explain the warning process and monitoring of unused land. Article 16 states that after land is designated as abandoned, it will be designated as state land. However, this regulation also does not address the status of buildings or infrastructure that may still be standing and in use on the land. This lack of regulation creates a legal loophole that risks harming third parties who have acted in good faith in developing and utilizing land deemed abandoned.

Presidential Regulation No. Law No. 62 of 2023 introduces abandoned land management as described in Article 12, paragraph (1), namely an agency tasked with the task and authority to plan, manage, and allocate abandoned land that has become state land. This article emphasizes that land management can be delegated to ministries/agencies, regional governments, or specific legal entities. However, in carrying out their duties, managers are not required to examine or respect the rights to immovable property on the land. It raises serious legal issues because the state, through the manager, can seize land and all objects on it without distinguishing ownership status, contradicting the principle of horizontal separation guaranteed by the Basic Agrarian Law.

Article 28H paragraph (4) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to private ownership, and this right may not be taken over arbitrarily. If the state takes over land and buildings that do not belong to the land rights holder without compensation or recognition of rights, such action can be classified as a violation of constitutional rights. Building owners who build legally based on a land use agreement or permit should receive legal protection. When regulations such as Presidential Decree No. 62 of 2023 fail to address this issue in detail, an imbalance arises between state power and legally protected individual rights.

The principle of horizontal separation not only provides legal certainty for landowners but also for building owners, who have their own rights. When land is categorized as abandoned and the state takes over without identifying the objects on the land, this violates the principle of justice. This is evident in practices in several regions where buildings are demolished or taken over without first clarifying their legal status. Under Indonesian agrarian law, land use must also consider the social and economic value inherent in the objects standing on the land. The state should adopt a clear administrative and legal approach before taking over assets on land designated as abandoned.

The imbalance between public interests and private ownership arises when land management policies fail to fully consider the principle of legality. Regulations that emphasize land use for national interests or strategic development must still provide space for civil dispute resolution over objects on the land. Article 33 of the UUPA emphasizes the importance of the social function of land rights, but does not eliminate the protection of



private property rights. The state must ensure that in every land acquisition process, there is a mechanism to protect the rights to buildings or other objects legally standing on the land. An imbalance between strengthening state authority and protecting civil rights will create long-term legal uncertainty.

The potential for legal conflict increases when abandoned land is repurposed by the state or a third party based on a new allocation, but the legal status of the buildings or objects previously on the land has not been resolved. In this scheme, disputes often arise between the old building owners and the new owners who obtained land rights from the state. Clarity regarding who has rights to fixed objects remains unclear. This occurs because regulations such as Presidential Regulation No. 62 of 2023 and Ministerial Regulation No. 20 of 2021 focus more on land as a spatial unit, without elaborating on rights to fixed objects. This situation contradicts the spirit of Article 4 paragraph (2) of the UUPA, which emphasizes the possibility of separating rights between land and objects standing on it.

Additional legal instruments are needed that detail the mechanisms for handling immovable property on abandoned land that has been declared state land. These instruments should include procedures for identifying ownership, verifying third-party rights, and providing compensation if the immovable property is destroyed or transferred to the state. Strengthening the digital-based land administration system can also help detect the existence of dual rights to land and the objects thereon. Harmonizing Presidential Regulation No. 62 of 2023, the UUPA, and its implementing regulations is crucial to ensure that land acquisition by the state does not violate national land law principles. The state must uphold the principle of horizontal separation as a guarantee of justice and the protection of legitimate civil rights.

### **Problems that Arise and Efforts to Resolve Legal Issues Regarding Abandoned Land in the Context of the Principle of Horizontal Separation**

The implementation of Presidential Regulation Number 62 of 2023 has raised several legal issues that need to be systematically identified, particularly regarding the harmonization between regulations. When an implementing regulation does not precisely reference or align with the parent norm in the Basic Agrarian Law (UUPA), it creates a lack of synchronization, opening up room for multiple interpretations. The UUPA, as the legal umbrella for national land affairs, has established fundamental principles that must be used as a reference for every policy. The inconsistency between the norms of the Presidential Regulation and the UUPA is particularly evident in the neglect of the horizontal rights structure between land and the objects on it. Other implementing regulations, such as Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) No. 20 of 2021, also do not explicitly address the legal status of owners of buildings or permanent plantations. This situation creates a poorly coordinated legal framework for the management of abandoned land and risks creating legal uncertainty for all parties.

The lack of regulation regarding legal protection for building owners who do not hold land rights is a serious problem with direct implications for ensuring justice. In many cases, third parties who build or occupy land under leases, leases, or informal permits face the potential for loss of their assets when the land is designated as abandoned. There is no mechanism requiring agencies managing abandoned land to clarify or identify the ownership status of objects on the land before designating it as state land. The absence of a clause containing such administrative obligations demonstrates the state's weak protection for parties who may have legitimate interests in the land in question. Without clear regulations, the potential for civil rights violations is increasingly open and could lead to lawsuits against the state.

One aspect overlooked in Presidential Regulation No. 62 of 2023 is the lack of an administrative objection mechanism for parties harmed by the designation of abandoned land.

Objection instruments should be provided to provide a space for participation for parties whose interests are directly impacted. The absence of a formal forum for filing objections or requesting compensation reflects a fundamental procedural weakness. Under the principles of good governance, every state administrative action must provide an opportunity for correction, review, or fair compensation. The absence of an objection system also violates the principle of due process of law, which should be guaranteed in every executive action. Resolving legal issues without a clear objection procedure creates an imbalance between state power and the protection of citizens' rights.

The legal implications for ownership of buildings standing on land designated as abandoned become complicated when there is no legal instrument guaranteeing the protection of these rights. In national land law theory, the existence of fixed objects on land can have its own legal basis and does not always follow the land's legal status. When the state takes over land without identifying and clarifying building ownership, an indirect deprivation of rights occurs. This situation becomes more complex if the building is legally registered or has significant commercial value. The existence of a building certificate, building permit, or other acknowledgment documents should be accommodated in the assessment process for land to be taken over by the state. Not all land acquisition is unilateral or illegal, and many parties have used the land based on valid agreements.

A comparison with the Dutch land law system demonstrates a more cautious approach to land expropriation by the state. The Dutch system allows building owners or tenants to seek compensation or adjustments before the land is reused. In German law, the doctrine of the separation of ownership between land and the immovable property on it is also strictly regulated, including provisions on building use rights (*Erbbaurecht*), which guarantee the rights of building owners even if the land's status changes. This comparison provides an important lesson: in land management, the state is obliged to respect the existence of inherent civil rights horizontally. Land acquisition cannot be done without ignoring the principle of separation of ownership recognized in the positive legal system.

The situation becomes more complicated when buildings on abandoned land have been used as collateral or fiduciary guarantees by their owners to banking or financial institutions. In this case, building rights impact not only the individual owner but also the interests of the creditor. When the state seizes abandoned land and its buildings without considering the collateral rights, the state risks violating the principle of prudence in financial transactions and causing losses to third parties. National banking regulations require legal certainty regarding collateral objects to be used as a basis for granting credit. Without strong legal guarantees for the existence of buildings, financial institutions will hesitate to provide financing, which can slow economic growth across the board.

Legal resolution of these issues must begin with harmonization of regulations so that all regulatory instruments have a consistent logical and normative framework. Revision of Presidential Regulation No. 62 of 2023 or the issuance of new, more technical implementing regulations is urgently needed to ensure there is no legal vacuum. This harmonization could include the insertion of new articles that explicitly regulate the protection of immovable property and the rights of third parties. This process must involve the participation of the public, academics, and financial institutions to ensure that norm formulation is not solely top-down. Coherence between the Basic Agrarian Law (UUPA), Presidential Regulations (Perpres), and ministerial regulations is key to building a fair, functional, and legally accountable land system.

Affirming norms regarding the protection of rights to buildings and fixed assets standing on abandoned land must be part of the state's repossession framework. The state can establish an administrative verification mechanism before land is finally declared abandoned. This process involves collecting data on building ownership status, permits, and evidence of

actual use. If legitimate ownership rights to objects on the land are found, the state is obligated to provide the owner with options including compensation, limited legalization, or relocation. This model aligns with the principle of property rights protection as stipulated in Article 28H paragraph (4) of the 1945 Constitution and the principle of legal certainty as stipulated in Article 1 paragraph (3) of Law Number 30 of 2014 concerning State Administration.

Alternative resolution of abandoned land disputes involving building ownership can be achieved through administrative channels by opening up mediation or non-litigation. The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), together with local governments, can form ad hoc objection resolution teams to assess claims for rights to objects on land designated as abandoned. If administrative mediation fails to yield a solution, the aggrieved party can file a judicial review petition with the Supreme Court against the provisions of Presidential Regulation No. 62 of 2023 or file a civil lawsuit with the district court for compensation. These alternative solutions provide space for the state and citizens to reach a legal understanding without the need for prolonged conflict that burdens the judicial system.

An integrated national land database needs to be established, encompassing ownership information not only for land parcels but also for the fixed objects standing on them. This database will be a key tool in the fair and accurate process of determining abandoned land status. Integration between the land system, building administration, and building permit records is essential to avoid administrative errors. If this system is successfully established and supported by harmonious regulations, the management of abandoned land will be an effective instrument of social justice and will not violate any party's constitutional rights. The state will have credibility in carrying out its duties, and the public will receive adequate legal protection.

## CONCLUSION

The principle of horizontal separation, a fundamental principle in Indonesian land law, has not been adequately accommodated in the implementation of Presidential Regulation No. 62 of 2023 concerning the Management of Abandoned Land. The provisions of this Presidential Regulation still emphasize the repossession of land by the state without providing clarity regarding the legal status of fixed assets, such as buildings, plants, or infrastructure located on land designated as abandoned. It creates disharmony between the norms contained in the Basic Agrarian Law, the parent law, and the new implementing regulations, creating the potential for normative conflict and violations of the principle of civil rights protection. This lack of clarity in these regulations has serious implications for legal certainty, particularly for third parties who legally construct or manage fixed assets on land whose rights have been revoked or withdrawn by the state. This legal loophole threatens the principles of justice and legality that should be the foundation of every national land policy.

To ensure justice and comprehensive legal protection, the government needs to immediately draft implementing regulations or revise Presidential Regulation No. 62 of 2023, which explicitly outlines the mechanism for separating rights to land and objects on it, particularly in the management of abandoned land. The regulation should include procedures for identifying rights to buildings or plants, recognizing ownership of immovable property, and providing compensation or settlement schemes in the event of state takeover of objects with legal ownership. If any provisions in the Presidential Regulation are found to be substantially contradictory to the UUPA or the 1945 Constitution, a judicial review of the Presidential Regulation in the Supreme Court should be a constitutional option to ensure compliance with national land law principles. Furthermore, cross-sector collaboration



between the Ministry of Agrarian Affairs and Spatial Planning/BPN, the Supreme Court, and relevant institutions is essential in developing regulations that are harmonious, operational, and responsive to current challenges in the management of abandoned land. The integration will construct a land legal system that is not only functional, but also just and sustainable.

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