



Legal Liability for Utilization of Aboveground and Underground Spaces with Different Rights Ownership Status in Indonesia

Nurhimmi Falahiyati ^{1, a)}, Muhammad Yamin ^{2, b)}, Maria Maria ^{3, c)}, Oloan Sitorus ^{4, d)} and Rosmalinda ^{5, e)}

¹²³⁵⁾Universitas Sumatera Utara, Jalan Universitas 19, Medan 20155, Indonesia

⁴⁾Kementrian Agraria Dan Tata Ruang/ Badan Pertanahan Nasional, Indonesia

^{a)}Corresponding author: nurhimmi19@gmail.com

^{b)}yaminlubis16@gmail.com

^{c)}maria@usu.ac.id

^{d)}stpnoloan123.sitorus@gmail.com

^{e)}rosmalinda@usu.ac.id

Abstract. This research aims to analyze the responsibility for the utilization of space above ground and underground, where the ownership rights status differs. The background of this study focuses on the existence of buildings that require space within the earth's body, which is physically unrelated to the structures on the surface, as well as the differences in ownership and utilization. In this context, a critical question arises regarding how the rights holders are accountable for the utilization of such spaces. The research employs a normative legal approach, examining the applicable legal norms. The findings indicate that the responsibility of land rights holders encompasses various dimensions, including legal compliance with existing regulations, protection of the rights of affected communities, legal recognition of legitimate ownership, and socio-economic contributions to the surrounding society. This study is expected to contribute to the development of fairer and more sustainable land policy, as well as to enhance awareness of the importance of accountability in the utilization of spaces with differing ownership statuses. The findings are anticipated to serve as a reference for stakeholders in the more effective and responsible management of land and underground spaces, ultimately promoting a balanced approach to land use and ownership rights.

Keywords: Legal Liability, Aboveground, Underground Spaces, Rights Ownership Status, Indonesia

1 Introduction

This research is about the responsibilities of land rights holders, whether it is the right to the surface of the land, the right to the space above the land or the right to the underground space. Aboveground space and underground space, as part of the land, have significant potential for commercial and infrastructure use but also pose legal challenges regarding their ownership and use. The application of the principle of horizontal separation on land is

further strengthened by the issuance of work copyright law number 6 of 2023 and government regulation number 18 of 2021 concerning management rights, land rights, apartment units, and land registration [1]. Through this law, it is possible to have different ownership of a land parcel, where one land parcel can consist of several rights holders, namely holders of rights to surface land, holders of rights to space above the land, and holders of rights to underground space.

One of the important aspects in this research is the legal certainty that holders of rights to underground space must have. Certificates of land rights, including rights to land space and rights to underground space, serve as proof of legal ownership and provide legal protection for the owner [2]. However, challenges arise when there are disputes or overlapping ownership, which often occurs in land registration practices [3]. Therefore, it is important to explore existing legal mechanisms to deal with these issues and ensure that right holders can properly carry out their responsibilities.

In addition, this research also needs to consider the role of the government in regulating and supervising the use of underground space. The government has the responsibility to ensure that the utilization of underground space not only benefits the right holders, but also takes into account the public interest and the environment. In this context, previous research shows that complete systematic land registration (PTSL) plays an important role in improving legal certainty and community access to land [4].

As such, this research is expected to make a significant contribution to the understanding of the responsibilities of land rights holders, as well as offer recommendations for the improvement of existing legal policies and practices.

2. Method

The legal research method that will be used in this research is the normative juridical method with a statutory approach. This research aims to analyze the responsibilities of land rights holders, both land surface rights holders, land space rights holders, and land space rights holders towards the land they utilize, as well as the legal implications that may arise from such utilization. The normative juridical method was chosen because the focus of this research is on applicable legal norms, including laws, government regulations, and relevant legal doctrines [5,6].

In this research, a statutory approach will be used to examine various regulations governing rights to underground space and its utilization. This includes an analysis of Law No. 5 of 1960 on Basic Agrarian Principles, work copyright law No. 6 of 2023, government regulation No. 18 of 2021 on management rights, land rights, apartment units, and land registration, as well as other regulations related to land. By using this approach, researchers can understand how the law regulates the responsibilities of right holders and how these provisions are applied in practice.

Data analysis will be conducted qualitatively, where researchers will collect and analyze primary, secondary, and tertiary legal materials. Primary legal materials include relevant laws and regulations, while secondary materials include legal literature and doctrines that

discuss related issues [7]. The conclusions of this research will be drawn in a deductive manner, i.e. drawing general conclusions from the analysis conducted on existing legal norms and practices.

3. Result And Discussion

Legal liability is a concept that refers to the obligation of individuals or entities to take responsibility for unlawful acts or omissions, which may result in legal sanctions or consequences. In a legal context, this liability can be divided into several types, including criminal, civil, and administrative liability, each with different characteristics and enforcement mechanisms [8–10]. This liability applies not only to individuals, but also to legal entities such as companies, which must comply with regulations set by law [11]. In practice, legal liability can arise from various situations, such as breach of contract, criminal acts, or negligence that causes harm to other parties.

Criminal liability arises when an individual commits an act that violates criminal law, either intentionally or through negligence. In this case, the individual may be subject to sanctions in the form of imprisonment or fines, depending on the severity of the offense committed. For example, in the context of medical malpractice, health workers can be held criminally liable if they are proven to have made mistakes that result in harm to patients [9]. In addition, criminal liability can also be applied to other cases, such as organ theft in autopsies, where doctors may be subject to criminal and civil sanctions [12].

On the other hand, civil liability focuses on damages that must be paid by the offending party to the injured party. In this context, a doctor who commits malpractice may be required to pay damages to the family of the injured patient [12]. This liability aims to recover the losses suffered by the injured party, as well as provide justice for them.

The concept of legal liability also includes corporate responsibility, whereby legal entities can be held accountable for actions committed by their officers or employees. For example, in the case of money laundering crimes, companies can be subject to legal sanctions if proven to be involved in the practice [8]. This shows that legal liability applies not only to individuals, but also to legal entities operating in society.

The ideal concept of legal liability includes several important elements. First, there is clear legal certainty, which allows individuals and entities to understand their rights and obligations. Second, effective law enforcement mechanisms, which ensure that violations of the law can be identified and acted upon appropriately [10]. Third, the protection of individual rights, including the right to justice and protection from arbitrary action [10]. In addition, the effectiveness of law enforcement is essential to prevent violations and ensure that those who violate the law can be held accountable [8,9].

Liability for the utilization of above-ground and underground space, especially when ownership status differs, is a complex legal issue that requires an in-depth understanding of the applicable regulations. In this context, holders of land and underground space rights have different legal responsibilities based on the type of rights held and the regulations governing them.

It is important to understand that the utilization of underground space is governed by the principle of horizontal separation of rights to underground space, which states that rights to underground space can be separated from rights to the land above [1]. This creates a situation where the holder of the right to the basement does not always have the same rights as the owner of the land above. In this case, the holder of the rights to the underground space is responsible for ensuring that the utilization of the space does not violate the rights of the landowner above, as well as complying with applicable laws and regulations [1].

The legal responsibility of rights holders over underground space also includes the obligation to obtain the necessary permits prior to utilization. For example, in the context of electronic registration of mortgage rights, the land deed official (PPAT) has the responsibility to ensure the validity of the data and documents submitted [13,14]. This suggests that rights holders over basements should coordinate with PPATs and other relevant agencies to fulfill existing legal requirements.

Furthermore, violations of legal provisions governing space utilization can result in legal sanctions. For example, if right holders of underground space make utilization that is not in accordance with the permit granted, they may be subject to administrative or even criminal sanctions, depending on the severity of the violation committed [15]. Therefore, right holders must understand and comply with all applicable provisions to avoid adverse legal consequences.

In the context of differences in ownership status, it is also important to consider how space utilization control is carried out. Research shows that controlling space utilization through land use designation permits (IPPT) still faces various challenges, including violations of established spatial plans [16]. Therefore, collaboration between rights holders, the government, and the community is essential to ensure that space utilization is carried out sustainably and in accordance with the public interest.

In the context of accountability for the utilization of above-ground and underground space, especially when the ownership status is different, there are several parties involved. These parties have different roles and responsibilities in ensuring that space utilization is carried out legally and in accordance with applicable legal provisions.

1. Landowners and Above-ground or Underground Spaces: Landowners who have rights over the above-ground space and owners of underground space have the responsibility to comply with the legal provisions governing space utilization. They should ensure that their use of the space does not infringe on the rights of others and is in accordance with the permits granted by the competent authority. In this case, basement owners should coordinate with the owners of the land above to avoid conflicts [17].
2. Government and National Land Agency (BPN): The government, through BPN, has the responsibility to regulate and supervise space utilization. BPN is tasked with ensuring that the registration of land and basement rights is done correctly and transparently. In addition, BPN also plays a role in resolving disputes that may arise between landowners and basement owners. In this context, BPN must ensure

that all parties understand their rights and obligations in accordance with applicable regulations.

3. Land Deed Official (PPAT): PPAT has an important role in the process of transferring land and basement rights. They are responsible for drafting valid deeds and ensuring that all documents required for title registration are properly prepared. PPAT's responsibilities also include verifying the validity of documents submitted for registration [18,19]. If an error occurs in the registration, the PPAT can be held liable.
4. Communities and Space Users: Communities that use space, whether above or below ground, also have a responsibility to comply with the applicable provisions. They must understand the boundaries set by the rightful owner and the existing regulations. In the event of a dispute, the community can act as a mediator or party involved in dispute resolution through deliberation [20].
5. Judicial Institutions: In the case of disputes that cannot be resolved amicably, the judiciary acts as a party to resolve conflicts between land and basement rights holders. The court will assess the evidence and arguments from both parties to determine who has the right to utilize the space [21].

Thus, accountability for the utilization of aboveground and underground space involves various parties, each with different roles and responsibilities. Cooperation between all these parties is essential to ensure that space utilization is carried out fairly and in accordance with applicable laws.

4. Conclusion

Based on the work copyright law jo. Government Regulation No. 18 of 2021, there is a change in concept where the holder of the right to the surface of the land is different from the holder of the right to the aboveground space and the underground space. The form of protection for land rights holders is through the granting of land rights certificates, both holders of surface land rights, land rights over land space, or rights over underground space. Land rights holders in the utilization of their land parcels must comply with the permits granted and coordinate with land rights holders above or below them. If there is a loss due to the utilization, the right holder is obliged to compensate. The government through the BPN is obliged to provide certainty in the registration of land rights.

5. Acknowledgments

The authors would like to express their deepest gratitude to all those who have contributed to the preparation of this article. First, the author would like to thank the Universitas Sumatera Utara and Universitas Negeri Semarang for organizing ICOSEND 2024.

Furthermore, thanks to the supervisor who has provided valuable guidance and direction during this research process. Thanks are also due to colleagues who provided constructive feedback and discussions, which enriched the author's perspective in understanding complex legal issues. In addition, the authors appreciate the support of the institutions that provided access to the necessary resources and literature. Hopefully this article can make a meaningful contribution to the development of legal science and become a reference for further research.

References

1. Hashami, F.; Octariana, N.F. Asas Pemisahan Horizontal Hak Atas Ruang Bawah Tanah. *E-Jurnal SPIRIT PRO PATRIA* **2023**, *9*, 59–71, doi:10.29138/spirit.v9i1.2232.
2. Rajab, R.A.; Eko Turisno, B.; Lumbanraja, A.D. Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah. *Notarius* **2020**, *13*, 642–654, doi:10.14710/nts.v13i2.31085.
3. Anggraeni, D.; Widjajaatmadja, D.A.; Koto, Z. Kepastian Hukum Penerbitan Sertipikat Ganda Bagi Pemegang Hak Milik Atas Tanah Oleh Kantor Pertanahan. *J. Multidisiplin Indones.* **2023**, *2*, 2017–2031, doi:10.58344/jmi.v2i8.412.
4. Haikal, M.A.; Dewi, M.A.; Hidayat, N. Peran Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Dalam Meningkatkan Keadilan Akses Tanah Bagi Masyarakat Jember. *J. Indones. Soc. Soc.* **2024**, *2*, 126–130, doi:10.59435/jiss.v2i3.238.
5. Benuf, K.; Azhar, M. Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer. *J. Gema Keadilan* **2020**, *7*, 20–33, doi:https://doi.org/10.29303/risalahkenotariatan.v4i2.194.
6. Disemadi, H.S. Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies. *J. Judic. Rev.* **2022**, *24*, 289–304, doi:https://doi.org/10.37253/jjr.v24i2.7280.
7. Nurhayati, Y.; Ifrani, I.; Said, M.Y. Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum. *J. Penegakan Huk. Indones.* **2021**, *2*, 1–20, doi:10.51749/jphi.v2i1.14.
8. Arifin, R.; Choirinnisa, S.A. Pertanggungjawaban Korporasi Dalam Tindak Pidana Pencucian Uang Dalam Prinsip Hukum Pidana Indonesia (Corporate Responsibility on Money Laundering Crimes on Indonesian Criminal Law Principle). *J. Mercat.* **2019**, *12*, 43, doi:10.31289/mercatoria.v12i1.2349.
9. Hermawan, S.M.; Juhana, U.; Kusumah, H.A. Reformasi Hukum Islam. **2023**, *27*, 89–95.
10. Xu, J.; Li, Z.; Li, S. Legal Ethics and Professional Responsibility in the Legal Profession. *SHS Web Conf.* **2024**, *190*, 02006, doi:10.1051/shsconf/202419002006.
11. Fernando, R.; Djaja, B. Implementation Of Limited Liability Company Dissolution Reviewed From Law Number 40 Of 2007 (Case Study at PT Sumber Berkas Jaya

- Hidup Baru- Batam City) " Ricco. *Edunity* **2023**, 2, 683–697.
12. Setiawan, S.P. Pertanggung Jawaban Pihak Dokter Kepada Pihak Keluarga Akibat Dari Pencurian Organ Tubuh Dalam Autopsi. *J. Locus Penelit. dan Pengabdi.* **2024**, 3, 194–202, doi:10.58344/locus.v3i2.2459.
13. Anggraeni, S.Z.; Marwanto, M. Kewenangan Dan Tanggung Jawab Hukum Pejabat Pembuat Akta Tanah Dalam Pelaksanaan Pendaftaran Hak Tanggungan Secara Elektronik. *Acta Com.* **2020**, 5, 261, doi:10.24843/ac.2020.v05.i02.p05.
14. Kristianty, E.; Cahyarini, L.L. Pertanggung Jawaban Pejabat Pembuat Akta Tanah Dalam Pendaftaran Hak Tanggungan Elektronik. *Notarius* **2021**, 14, 867–876, doi:10.14710/nts.v14i2.43755.
15. Vita Sari Djakaria, D.; Husein, R. Efektivitas Kantor Pengendalian Pertanahan Daerah (KPPD) Dalam Pengendalian Pemanfaatan Ruang Melalui Izin Peruntukan Penggunaan Tanah (IPPT). *J. Gov. Public Policy* **2017**, 4, doi:10.18196/jgpp.4278.
16. Arnowo, H. Mengkaji Potensi Kesesuaian Kegiatan Pemanfaatan Ruang (KKPR) Untuk Pengendalian Pemanfaatan Ruang Dan Tertib Pertanahan. *Widya Bhumi* **2023**, 3, 99–112, doi:10.31292/wb.v3i2.59.
17. Utami, L.P.J.; Sukirno, S.; Cahyaningtyas, I. Penertiban Dan Pendaaygunaan Tanah Terlantar (Studi Di Kantor Pertanahan Kabupaten Gianyar). *Notarius* **2021**, 14, 566–580, doi:10.14710/nts.v14i1.39134.
18. Ardani, M.N. Pemanfaatan Tanah Hak Guna Usaha Guna Mencegah Tanah Menjadi Terlantar. *Gema Keadilan* **2021**, 8, 63–79, doi:10.14710/gk.2021.11395.
19. Supriyanti, T.; Ardhi, A.A.; Mahasari, J. Pengaturan Dan Penerapan Asas Contradictoire Delimitatie Di Kantor Pertanahan Kabupaten Kebumen. *Widya Bhumi* **2023**, 3, 46–61, doi:10.31292/wb.v3i1.39.
20. Amin, M.; Herwastoeti; Isrok, M. Analisis Praktik Jual Beli Tanah Di Bawah Tangan Yang Dilakukan Di Hadapan Kepala Desa (Studi Kasus Di Desa Cangkring Kecamatan Amuuntai Selatan Kabupaten Hulu Sungai Utara). *Indones. Law Reform J.* **2021**, Vol.1, p.273-287.
21. Kus, K.; Khisni, A. Perlindungan Hukum Bagi Pemegang Hak Atas Tanah Dalam Kasus Tumpang Tindih Kepemilikan Atas Sebidang Tanah Di Badan Pertanahan Nasional/ATR Kabupaten Kudus. *J. Akta* **2017**, 4, 71, doi:10.30659/akta.v4i1.1596.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

