

**LEGAL PROTECTION FOR LANDOWNERS WHO HAVE NO ROAD ACCESS AND WHOSE LAND IS SURROUNDED BY OTHER PRIVATE PROPERTIES**

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**ABSTRACT**

The demand for land continues to increase, especially in major cities. As the availability of land remains relatively constant while the need for land rises, there is a necessity for proper, firm, and precise regulation concerning the control and use of land for the greatest prosperity of the people. In densely populated areas, the limited availability of land often leads to problems within the community. One such issue arises when a landowner whose property is entirely surrounded by land owned by others is unable to access public roads. The absence of clear legal provisions on this matter results in a legal vacuum. Therefore, this study focuses on legal protection and remedies available to landowners who lack access to public roads. This research adopts a normative legal approach. As a legal remedy, landowners who do not have access to a public road are entitled to request a right of way (easement) through neighbouring land. Furthermore, legal protection for such landowners includes both preventive and repressive measures. Preventive legal protection is embodied in legislation, specifically as regulated under Article 667 and Article 668 of the Indonesian Civil Code. Meanwhile, repressive legal protection is carried out through dispute resolution efforts, either through litigation in court or through mediation or deliberation outside the court.

**Keyword:** Legal Protection, Landowner Rights, Access to Public Roads, Civil Code

**1.0 INTRODUCTION**

The public's need for land continues to increase, especially in major cities. As land availability remains relatively fixed while demand continues to grow, proper, firm, and prudent regulation of land control and use is necessary to ensure the greatest possible prosperity for the people (Andy Hartanto, 2015). In relation to land ownership, Law Number 5 of 1960 concerning the Basic Agrarian Law (hereinafter referred to as UUPA) explicitly affirms individual rights to land ownership. However, land ownership in Indonesia does not follow an absolute ownership system, but rather embraces the principle of social function. This means that landowners cannot use their land arbitrarily according to their own will if such use would violate the rights of others.

The increasing demand for land often leads to land-related conflicts. According to Adrian Sutedi (2006), land holds different yet vital roles and positions in life. In densely populated areas, the limited availability of land frequently causes problems within the community. These problems are not only related to unhealthy living conditions due to cramped and adjacent

housing but also to issues involving access roads especially for properties that are trapped or enclosed by other land parcels. The social problems that arise and relate to land issues raise the question of how owners of landlocked properties can obtain road access. Ideally, such owners should be entitled to access roads from the surrounding landowners, with consideration to minimizing potential losses.

Article 6 of the UUPA regulates the social function of land rights, while Article 20 of the UUPA outlines the characteristics of land ownership rights. As such, social disputes in the community also impact land issues, creating contradictions in the social order. A landowner who blocks access for another landowner may act arbitrarily, treating ownership as absolute and denying others their right to access. In such cases, the landlocked owner may file a lawsuit against the landowner denying access, based on Article 667 of the Indonesian Civil Code, which stipulates that the owner of enclosed land has the right to demand access from neighboring landowners. However, the party requesting access must provide compensation for the land used as a passageway. Furthermore, Article 668 of the Civil Code states that the access road must be made along the nearest side to a public road or waterway, and must be constructed in a way that causes the least possible damage to the land being traversed.

In addition, the deliberate closure or blocking of access roads without permission may be subject to criminal penalties and fines as stipulated in Article 182 paragraph (1) of the Indonesian Penal Code, which states that anyone who intentionally and without authorization blocks a road may be subject to imprisonment for up to nine years. A fine may also be imposed in accordance with Article 63 paragraph (1) of Law Number 38 of 2004, amounting to IDR 1,500,000,000.

Land use must be adapted to its characteristics, conditions, and rights, so that it is beneficial not only to its owner but also to the welfare of the surrounding community and the land itself (Ratri Puspita Suryandari et al., 2016). Based on the legal provisions governing the existence of land as contained in the UUPA despite the UUPA revoking the provisions of Book Two of the Civil Code, including those related to land easements the underlying spirit of social function remains recognized. In customary law, provisions regarding servitudes exist and are known as the "right of way through another's land." With the enactment of the UUPA, the concept of land integration emerged. This right is also regulated under Book Two of the Civil Code in Chapter Six concerning Servitude of Yard Articles 674 to 710 of the Indonesian Civil Code regulate servitudes, also known as "Servitude of Yard" or rights of servitude.

This reflects that the social function of land rights is a legal norm governing land use, which prioritizes the interests of the community and excludes individual subjective rights. This principle asserts that regardless of the type of land rights an individual possesses, such rights cannot be justified when the land is used or not used solely for personal benefit in a way that harms the wider community.

The absence of comprehensive regulations governing the implementation of access rights for landlocked properties has resulted in the lack of firm sanctions for right holders who fail to fulfill their obligation to provide access, as well as the lack of a clear dispute resolution mechanism. Consequently, this leads to a legal vacuum. This societal issue necessitates state protection as a legal safeguard for individuals experiencing similar land access problems.

Ensuring legal certainty in the land sector requires the availability of clear, complete, and written legal instruments that are implemented consistently in accordance with their substance and spirit (Aldys Rismelin Alrasyid, Fatma Ulfatun Najicha, 2021).

## 2.0 METHODS

This legal research is normative in nature, as the discussion focuses on landowners who are denied access to their land because it is surrounded by the properties of other landowners. The research applies a statutory (legislative) approach, which involves examining all laws relevant to the issue under study and analyzing their coherence, consistency, and compatibility with each other. The outcome of this analysis serves as the basis for formulating arguments to resolve the legal issues discussed (Syamsudin, 2007).

## 3.0 RESULTS AND DISCUSSION

### 3.1 Legal Regulations and Remedies for Landowners Seeking Access Roads

In Indonesian agrarian law, the principles of legal certainty and publicity are strongly emphasized. These principles are embedded in the Basic Agrarian Law (UUPA), which declares that all land rights must be regulated and legally protected by the state. The UUPA serves as the principal legal framework governing land rights in Indonesia. It stipulates that land is controlled by the state as the highest authority, granting the state the power to determine land use, allocation, maintenance, legal protection of land rights, and the regulation of legal relations between people and land.

In addition to the UUPA, land regulations are also found in the Civil Code, particularly regarding yards and residential plots. These are set forth in Book Two, Chapter IV of the Civil Code, which outlines the rights and obligations of neighboring landowners. However, in matters involving access roads, specific provisions are found in Articles 667 and 668 of the Civil Code. Although these provisions and those on land servitudes have been revoked by the UUPA, the underlying spirit is still acknowledged by the UUPA through the principle of social function.

Furthermore, customary law also recognizes the concept of servitude, referred to as the "right to pass through another's land", which is similarly governed under Book Two, Chapter VI of the Civil Code on Servitude of Yard Articles 674 to 710 of the Indonesian Civil Code.

These articles govern what is referred to as servitude of yard (pengabdian pekarangan), also known as rights of servitude.

Access roads refer to a person's right to pass through land for conducting their activities. Therefore, when someone's land is entirely surrounded by the property of others and has no direct access to a public road, this can lead to disputes. A parcel of land that does not have direct access to public roads because it is fully enclosed by the land of others results in the landowner being unable to optimally utilize their land rights. This creates a legal necessity for obtaining access.

The absence of access roads gives rise to injustice, hinders daily activities, impedes the acquisition of economic rights, and potentially violates the fundamental rights of landowners. In such circumstances, the landowner has several legal remedies to obtain road access. These remedies are categorized into two types:

## 1) Deliberation and Written Petition to the Village Government or Land Office

This initial stage involves recommending a peaceful deliberation between the landlocked landowner and the surrounding landowners by verbally and formally requesting road access. Such deliberation reflects the principle of the social function of land rights as provided in Article 6 of the Basic Agrarian Law (UUPA), where every landowner must consider the interests of the community and neighboring landowners when exercising their land rights. Peaceful resolution is strongly encouraged to avoid prolonged conflict and to maintain good relationships between residents.

If deliberation fails, the landowner may seek assistance from village or sub-district officials to act as mediators or submit a written application to the local land office for technical handling and mapping of the access path. Village officials serve as mediators in resolving disputes between citizens, while the land office can provide technical mapping, identify land locations, and determine the most feasible access route according to topographical conditions and land use. This written application also serves as administrative evidence if the matter proceeds to court.

## 2) Legal Action Through the Courts

Filing a lawsuit with the District Court is the final step if deliberation and mediation fail. In cases where a land parcel is landlocked and lacks access to public roads, the landowner has the right to seek access through a neighbor's land under Articles 667 and 668 of the Civil Code. Land with no public access is subject to the concept of "emergency passage rights" (noodweg), regulated in Article 667 KUHP. This right provides a legal basis for landlocked landowners to request access through neighboring properties.

Additionally, Article 6 of the UUPA states that "all land rights have a social function." This implies that the exercise of land rights must not disregard public interests or the surrounding environment. Accordingly, landowners whose land is enclosed by others are entitled to treatment aligned with the social function of land that is, they must not be denied road access in a manner that harms public or individual interests. The social function principle serves as the foundation that land must not be used selfishly and must offer a fair balance of benefits to both individuals and the wider community (R. Subekti, 2005).

Thus, if a neighboring landowner closest to the public road controls the only potential access point but refuses to provide access, such conduct may constitute an unlawful act as defined under Article 1356 of the Civil Code. In such a lawsuit, the landowner may submit several demands, including:

- **Establishment of Emergency Passage Rights (Noodweg)**

This right is intended to grant the landlocked owner legal and valid access to exit their land and reach a public road.

## • Designation of the Shortest and Easiest Access Route

The access route requested should be the shortest and easiest possible, causing minimal harm to the landowner whose land will be traversed, as stipulated in Article 667 of the Civil Code.

## • Compensation to the Landowner Whose Land is Used for Access

A condition for granting *noodweg* is providing fair compensation to the landowner whose land will be used. The amount of compensation may be determined through deliberation or adjudicated by the court, considering factors such as land value, land use, and potential losses (Boedi Harsono, 2005).

### 3.2 Legal Protection for Landowners Without Road Access

Legal protection refers to all legal measures provided to legal subjects to ensure the fulfillment of their rights. According to Philipus M. Hadjon, legal protection can be divided into two types: preventive legal protection, which is provided before a violation of rights occurs, and repressive legal protection, which is granted after a violation has taken place. In this context, landlocked landowners have the right to request access to a road in the interest of promoting social justice within the community (I Nyoman Gede Sujana, 2019).

Based on this, the initial step to be taken is through non-litigation means, such as deliberation or voluntary requests. This stage involves family-based deliberation between the landlocked owner and the surrounding landowners by submitting verbal and written requests for access. This deliberation reflects the agrarian law principle of the social function of land rights (Article 6 of the Basic Agrarian Law/UUPA), whereby every landowner is obligated to consider the interests of the community and their neighbors in exercising their land rights. This approach is a form of preventive legal protection, intended to avoid disputes or rights violations.

However, if no agreement is reached, litigation becomes a legitimate option for landowners to seek repressive legal protection. Article 667 of the Civil Code stipulates that a landowner without access to a public road may request a way out through a neighboring property, provided that appropriate and proportional compensation is paid. Furthermore, Article 668 of the Civil Code requires that such access be established on the side of the land closest to a public road or waterway, and in a direction that causes the least possible damage to the land being crossed.

Therefore, if a neighboring landowner refuses to provide access, such conduct can be qualified as an unlawful act (*onrechtmatige daad*), as it fulfills the elements of Article 1365 of the Civil Code, particularly when the landlocked owner suffers a loss due to the denial of access to their home.

The purpose of this regulation is to reduce potential conflict between landowners, recognizing that not everyone is willing to give up part of their land for access by others without clear legal procedures and compensation. Legal mechanisms may be pursued through civil lawsuits in the

District Court. Additionally, the landowner may also file a petition with the land office for mediation or a request for passage rights, based on the principles of social function and justice.

Court decisions in such cases not only provide a concrete resolution to access disputes but also serve as a legal basis for administrative recording of the right of way at the Land Office. This helps avoid future conflicts and ensures legal certainty over the full utilization of the land.

## 4.0 CONCLUSIONS

Legal provisions and remedies for landowners without access to public roads establish that they have a legal right to request a right of way (right of passage) through their neighbor's land, as regulated in Articles 667 and 668 of the Civil Code. Additionally, the Basic Agrarian Law (UUPA) strengthens this legal foundation by recognizing land rights that may be utilized by other parties for legitimate interests. Such rights of way can be established through agreements between parties, court rulings, or administrative procedures in the land sector, thereby providing legal clarity and protection for landlocked landowners.

Legal protection for landowners without road access consists of two aspects: preventive and repressive. First preventive legal protection is manifested through statutory provisions such as those in Articles 667 and 668 of the Civil Code. Second repressive legal protection is enforced through dispute resolution, either via litigation in court or through mediation or deliberation outside of court proceedings.

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