

UNLAWFUL ACTS IN LAND TENURE DISPUTES BETWEEN PAKEL FARMERS AND PLANTATION COMPANIES

Inawati Santini, Faculty of Law, Pamulang, Email: dosen02196@unpam.ac.id

Ifa Latifa, Faculty of Law, Pamulang, Email: dosen02996@unpam.ac.id

doi: <https://doi.org/10.24843/KS.2026.v14.i10.p08>

ABSTRACT

This study aims to analyze the legal elements of unlawful acts in the civil dispute between farmers in Pakel Village, Banyuwangi Regency, and a plantation company claiming land rights through formal legal instruments. The dispute has become a significant legal issue because it reflects the tension between community-based land control that has existed for generations and the formal land tenure system recognized by the state. The urgency of this research lies in the increasing number of agrarian conflicts in Indonesia that involve claims of ownership, compensation demands, and allegations of unlawful occupation of land by local communities. This research employs a normative juridical method with a statutory, conceptual, and case approach. Legal materials are obtained from legislation, court decisions, legal doctrines, and relevant scholarly publications concerning land law and civil liability. The findings indicate that the determination of unlawful acts cannot be based solely on formal land title ownership but must also consider historical land control, the social function of land, and the principles of justice embedded in Indonesian agrarian law. Furthermore, communities that have occupied and cultivated land continuously over a long period deserve legal protection, particularly when the status of land rights remains disputed. The study concludes that resolving agrarian disputes requires balancing legal certainty with substantive justice to ensure equitable protection for all parties involved.

Keywords: Agrarian Conflict; Civil Liability; Land Tenure; Legal Protection; Unlawful Act

1. INTRODUCTION

1.1 Background of the Problem

Land disputes remain one of the most persistent legal problems in Indonesia. Despite the enactment of the Basic Agrarian Law of 1960 (UUPA) as the primary legal framework governing land tenure and utilization, conflicts involving communities, corporations, and the state continue to occur in various regions. These disputes generally arise from overlapping claims of land ownership, unequal land distribution, inconsistencies in land administration, and the tension between formal legal rights and long-standing community control over land.¹ In many cases, land conflicts no longer concern merely administrative matters but develop into civil disputes involving compensation claims and allegations of unlawful acts.

One of the most prominent agrarian conflicts in recent years is the dispute between farmers in Pakel Village, Banyuwangi Regency, and PT Bumi Sari Maju Sukses. The conflict has historical roots extending back to the colonial era and has continued through various political and legal regimes. The local community claims that the disputed land has been cultivated and managed by villagers for generations, while the company bases

¹ Robert Dicky Syahputra, Misranto Misranto, and Sunardi Sunardi, "Implications of Asset Structuring and Access on Land Tenure in Realizing Agrarian Reform," *Eduvest - Journal of Universal Studies* 5, no. 12 (2025), <https://doi.org/10.59188/eduvest.v5i12.52049>.

its claim on the existence of a plantation land right in the form of a Right to Cultivate (Hak Guna Usaha/HGU). The prolonged nature of the dispute has generated legal uncertainty and social tensions, ultimately leading to litigation involving demands for civil liability and compensation.² The dispute therefore raises important questions regarding the legal position of communities that have continuously controlled and cultivated land without formal title documents.

From the perspective of Indonesian civil law, the issue becomes increasingly significant when claims of unlawful acts are used as the basis for legal action against local farmers. Article 1365 of the Indonesian Civil Code stipulates that any unlawful act causing damage to another party obliges the wrongdoer to compensate for such losses. However, the application of this provision in agrarian disputes cannot be separated from the broader context of land tenure history, the social function of land, and the principles of justice embodied in Indonesian agrarian law.³ Consequently, determining whether the actions of local communities constitute an unlawful act requires a comprehensive legal analysis rather than a purely formal assessment of land ownership documents.

Several previous studies have examined land disputes and agrarian conflicts from various legal perspectives. Erwandi, Arba, and Putro, in their study entitled *Penegakan Hukum Terhadap Penelantaran Hak Guna Bangunan (HGB) Oleh Pemegang Hak*, emphasized that land rights holders are obligated to utilize and manage land in accordance with its designated purpose and social function, while the state possesses authority to take legal action against neglected land rights.⁴ The study primarily focused on land administration and the enforcement of land-right obligations. Furthermore, Sekarmadji, Moechtar, and Prihatinintyas (2025) analyzed the doctrine of *rechtsverwerking* in Indonesian customary land law and argued that land ownership rights may be lost when a right holder neglects or fails to exercise control over land for a prolonged period. Their findings highlight the importance of actual land control and utilization in determining the legitimacy of land claims.⁵ Meanwhile, Kontesa and Fernando (2024) examined agrarian law's response to land grabbing practices and found that conflicts over land ownership frequently arise from unequal power relations, competing claims, and the

² Trie Sakti and Eliana Sidipurwanty, "Conflict on the Land of Agriculture: Structural Land Disputes in Plantation Areas of Central Java," *BIO Web of Conferences* 208 (2026), <https://doi.org/10.1051/bioconf/202620804002>.

³ I. Kadek Gelgel Dwi Utama Jaya JAYA, Sarjita Sarjita, and Alfons Alfons, "The Approach of Agrarian Conflict Resolution through Land Redistribution in Sumberklampok Village," *Marcapada: Jurnal Kebijakan Pertanahan* 4, no. 1 (2024), <https://doi.org/10.31292/mj.v4i1.66>.

⁴ Muhammad Erwandi, Arba Arba, and Widodo Dwi Putro, "Penegakan Hukum Terhadap Penelantaran Hak Guna Bangunann (HGB) Oleh Pemegang Hak," *Jurnal Risalah Kenotariatan* 4, no. 1 (2023), <https://doi.org/10.29303/risalahkenotariatan.v4i1.95>.

⁵ Agus Sekarmadji, Oemar Moechtar, and Wilda Prihatiningtyas, "Rechtsverwerking In Indonesia: How Land Ownership Can Be Lost Under Customary Law," *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025), <https://doi.org/10.22373/petita.v10i2.836>.

marginalization of local communities in land governance processes.⁶ Although these studies have contributed significantly to discussions concerning land rights, agrarian justice, and legal certainty, they have not specifically analyzed the fulfillment of the elements of unlawful acts under Article 1365 of the Indonesian Civil Code in disputes involving competing claims between communities exercising long-term land control and holders of plantation cultivation rights. Therefore, this study seeks to fill that gap by analyzing the civil liability dimension of the Pakel agrarian dispute while simultaneously examining the scope of legal protection available to communities that have continuously occupied and cultivated disputed land over generations.

Although previous studies have provided valuable insights into the social, historical, and political dimensions of the Pakel conflict, most of them focus on agrarian reform, criminalization of farmers, human rights issues, or state policy responses. Existing literature has not sufficiently examined the dispute through the specific framework of civil liability based on Article 1365 of the Civil Code. In particular, limited attention has been given to assessing whether the legal elements of an unlawful act can be fulfilled when the alleged wrongdoing arises from a long-standing dispute involving competing claims of land tenure and historical occupation.

This condition reveals an important research gap. Previous studies tend to emphasize structural agrarian injustice and legal protection for local communities, whereas the civil law dimensions of unlawful acts and compensation claims remain underexplored. Furthermore, the relationship between formal HGU ownership and historical community control has not been comprehensively analyzed within the doctrinal framework of Indonesian civil liability law. As a result, there remains a lack of scholarly discussion regarding the appropriate legal standards for determining unlawful conduct in complex agrarian disputes.

While previous scholarship has extensively examined the Pakel agrarian conflict through agrarian reform, criminalization, land administration, and the protection of community land interests (Sekarmadji et al., 2025; Kontesa & Fernando, 2024), the unresolved doctrinal issue concerns the application of Article 1365 of the Indonesian Civil Code where the alleged unlawful occupation occurs within a historically contested land tenure relationship. The distinctive contribution of this article therefore does not lie merely in combining Article 1365 with the social function of land under the UUPA, an approach that has been substantially discussed in previous agrarian scholarship. Rather, this study operationalizes that interaction into a structured doctrinal assessment, termed the “Agrarian Tort Test,” for determining civil liability in contested land occupation disputes.

The proposed test does not create a new statutory cause of action. Instead, it provides an analytical sequence for applying the existing elements of Article 1365 to agrarian disputes in which formal land rights coexist with competing claims based on

⁶ Emelia Kontesa and Zico Junius Fernando, “Reclaiming Our Roots: Agrarian Law’s Battle Against Land Grabbing,” *Lex Scientia Law Review* 8, no. 2 (2024), <https://doi.org/10.15294/lslr.v8i2.10681>.

historical occupation. The assessment requires, first, identification of the legal status of the competing land claims; second, examination of whether the occupation is unlawful in light of the unresolved tenure relationship; third, assessment of fault, including whether the alleged actor could reasonably be regarded as knowingly interfering with an established right; fourth, verification of actual and legally attributable damage; and fifth, determination of a sufficiently direct causal relationship between the alleged conduct and the claimed loss. The social function of land and the broader principles of Indonesian agrarian law operate within this assessment as contextual legal considerations rather than as substitutes for the constituent elements of Article 1365.

Accordingly, the novelty of this research lies in developing a more structured doctrinal method for testing the elements of tort liability in agrarian disputes characterized by overlapping formal and historical claims. Applied to the Pakel dispute, the framework clarifies why physical occupation alone cannot automatically establish unlawful conduct and why the claimant must demonstrate not only a legally cognizable right but also fault, legally attributable loss, and causation. This approach distinguishes the present study from previous research that primarily addresses the Pakel conflict as a problem of agrarian justice, land administration, criminalization, or community protection.

1.2 Problem Statement

Berdasarkan uraian latar belakang di atas, penulis merumuskan permasalahan-permasalahan sebagai berikut:

How are the legal elements of an unlawful act under Article 1365 of the Indonesian Civil Code evaluated when a land occupation claim is rooted in historical community possession against a formal Right to Cultivate (HGU)? what forms of legal protection can be granted to local communities exercising long-term land tenure to ensure substantive justice without disregarding legal certainty?

1.3 Writing Purpose

1. To analyze how the legal elements of an unlawful act under Article 1365 of the Indonesian Civil Code are fulfilled in land occupation claims arising from historical community possession in conflict with a formal Right to Cultivate (Hak Guna Usaha/HGU).
2. To analyze the forms of legal protection available to local communities that have exercised long-term land tenure in land disputes involving holders of a Right to Cultivate (Hak Guna Usaha/HGU).

2. RESEARCH METHODS

This study employed normative legal research to examine legal norms, principles, and doctrines related to unlawful acts and land tenure disputes in Indonesian law. The normative approach was considered appropriate because the research focuses on analyzing legal issues arising from the dispute between Pakel farmers and PT Bumi Sari Maju Sukses, particularly regarding claims of unlawful acts and legal protection in agrarian conflicts.

The research specification is descriptive-analytical. The descriptive component explains the legal framework governing unlawful acts, land rights, and legal protection, while the analytical component evaluates the application of these legal norms to the facts and legal issues surrounding the Pakel land dispute. This approach enables a systematic assessment of the relationship between formal land rights and long-standing community land control.

To achieve the research objectives, this study applied three approaches: the statute approach, the conceptual approach, and the case approach. The statute approach was used to analyze relevant legislation, including Article 1365 of the Indonesian Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, Article 33 paragraph (3) of the 1945 Constitution, and Government Regulation Number 24 of 1997 concerning Land Registration. The conceptual approach examined legal doctrines relating to unlawful acts, legal certainty, justice, and legal protection, while the case approach focused on the legal aspects of the dispute involving Pakel farmers and PT Bumi Sari Maju Sukses.

The research relied on secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials included legislation and other binding legal instruments. Secondary legal materials comprised books, scientific journal articles, legal commentaries, and research reports relevant to agrarian disputes and civil liability. Tertiary legal materials included legal dictionaries, encyclopedias, and other supporting references. Data collection was conducted through library research by identifying, classifying, and reviewing legal materials relevant to the research topic.

The collected data were analyzed using a qualitative juridical method. Legal materials were interpreted and systematically examined to assess the fulfillment of the elements of unlawful acts under Article 1365 of the Indonesian Civil Code and to evaluate the legal protection available to communities that have continuously controlled and cultivated disputed land. The analysis was conducted by linking applicable legal norms with the factual circumstances of the Pakel dispute to formulate conclusions that are legally and academically justified.

3. RESULTS AND DISCUSSION

3.1 Fulfillment of the Elements of Unlawful Acts in the Civil Lawsuit Against Pakel Farmers

The legal issue surrounding the civil lawsuit filed against farmers in Pakel Village cannot be separated from the prolonged agrarian conflict that has characterized the relationship between local communities and plantation interests in the area. Unlike ordinary civil disputes involving unlawful occupation of land, the Pakel case emerges from a historical contestation over land tenure, where both parties rely on different legal narratives to justify their respective claims.⁷ On one side, PT Bumi Sari Maju Sukses bases its position on formal land rights recognized by the state, while on the other side, local farmers argue that they have continuously occupied, cultivated, and depended

⁷ Ahmad Dhiaulhaq and John F. McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *Asia Pacific Journal of Anthropology* 21, no. 1 (2020), <https://doi.org/10.1080/14442213.2019.1670243>.

upon the disputed land for generations. This situation creates a legal dilemma because the determination of unlawful conduct becomes inseparable from the question of whether the land rights asserted by each party possess equal legitimacy within the broader framework of Indonesian agrarian law.

From a civil law perspective, the lawsuit is primarily grounded in Article 1365 of the Indonesian Civil Code, which establishes liability for unlawful acts resulting in losses to another party. Nevertheless, Indonesian legal doctrine has consistently emphasized that unlawful conduct should not be interpreted narrowly as a mere violation of written law. Since the landmark development of modern tort doctrine, the concept of unlawfulness has expanded to include actions that infringe subjective rights, violate legal obligations, contradict moral standards, or conflict with principles of propriety and fairness recognized within society.⁸ Consequently, the legal analysis of the Pakel dispute requires a broader examination than simply determining whether the farmers occupied land claimed by the company.

One of the most significant aspects of the dispute concerns the historical basis of land occupation. The available records indicate that the conflict has existed for decades and has persisted through various governmental administrations. The farmers' claim is not founded upon a recent occupation aimed at acquiring economic advantage but rather upon a long-standing belief that the disputed land forms part of a territory historically managed and utilized by the local community. This distinction is legally important because a prolonged pattern of occupation creates a different juridical context from that found in conventional cases of trespass.⁹ The existence of historical occupation introduces questions regarding agrarian justice, recognition of community-based land tenure, and the legitimacy of state-issued land rights when such rights overlap with pre-existing social realities.

⁸ Ramadhani Ramadhani, "Legal Protection For Mining Iup Holders In Land Rights Disputes," *DE JURE Critical Laws Journal* 6, nos. 2 SE-Articles (2025).

⁹ R Mustar Lofi, "Looking at The Legal Philosophy Regarding The Grabbing of Pantai Raja Customary Land," *Jurnal Usm Law Review* 8, no. 1 (2025), <https://doi.org/10.26623/julr.v8i1.11845>.

Table 1. Normative Framework and Legal Issues in the Pakel Land Dispute

Legal Aspect	Relevant Legal Basis	Issues Identified in the Pakel Dispute
Unlawful Acts	Article 1365 Indonesian Civil Code	Determination of whether land occupation constitutes unlawful conduct when ownership remains contested
Social Function of Land	Article 6 Law Number 5 of 1960	Tension between formal land rights and community dependence on land for livelihood
State Control over Land	Article 33 Paragraph (3) of the 1945 Constitution	Obligation of the state to ensure equitable utilization of agrarian resources
Legal Certainty of Land Rights	Government Regulation Number 24 of 1997	Prolonged dispute indicates unresolved certainty regarding land tenure status
Legal Protection	Basic Agrarian Law and General Principles of Justice	Protection of communities exercising long-term land control in areas claimed under plantation rights

Source: Processed by the author from relevant legislation, 2026.

The legal issues summarized in Table 1 demonstrate that the dispute extends beyond the conventional boundaries of civil liability. The controversy involves not only the interpretation of Article 1365 of the Indonesian Civil Code but also the interaction between civil law principles and agrarian law principles.¹⁰ As a result, determining whether the farmers' actions constitute an unlawful act requires an integrated analysis of both legal regimes.

The first element requiring examination is the existence of an unlawful act itself. In ordinary civil disputes, unlawful conduct is generally easier to identify because the legal status of the object in dispute is already established. In the Pakel conflict, however, the legal status of land control remains contested. The company relies upon formal evidence of plantation rights, while the farmers rely upon historical occupation and cultivation. This circumstance raises an important juridical question regarding whether the exercise of a claimed right can be regarded as unlawful when the legitimacy of competing rights has not been conclusively resolved.

In the concrete civil proceedings concerning PT Bumi Sari Maju Sukses and the Pakel farmers, the allegation of an unlawful act must therefore be examined in relation to the specific conduct attributed to the defendants and the legal basis of the company's claim. The relevant proceedings, namely Civil Case No. 305/Pdt.G/2025/PN Byw and Civil Case No. 306/Pdt.G/2025/PN Byw before the Banyuwangi District Court, concern

¹⁰ Iwan Permadi and Fadhli Rahman Arif, "Agrarian Conflicts After the Establishment of the Land Bank Agency in Indonesia," *JUSTISI* 11, no. 1 (2024), <https://doi.org/10.33506/js.v11i1.2810>.

allegations of occupation and use of land claimed by the company under a Right to Cultivate (Hak Guna Usaha/HGU). The existence of the company's formal land right is relevant in establishing a legally protected interest, but it does not by itself establish that the defendants' conduct satisfies all elements of Article 1365 of the Indonesian Civil Code. The legal inquiry must therefore distinguish between the existence of a formal land right and the separate question of whether the defendants' conduct constitutes an unlawful interference with that right.

The same distinction is relevant to the assessment of fault, damage, and causation. The farmers' continued occupation and cultivation must be assessed in light of their asserted historical relationship with the disputed land and the circumstances in which the occupation occurred. Such circumstances are relevant to determining whether the defendants acted intentionally or negligently against a right that was sufficiently clear and legally established. Furthermore, any compensation claimed by the company must be supported by identifiable losses and a legally sufficient connection between those losses and the particular conduct attributed to the defendants. In a dispute that has developed over an extended period and involves competing claims concerning land tenure, economic losses cannot automatically be attributed solely to the physical occupation of the land without examining other potentially contributing circumstances.

Because the relevant civil proceedings do not yet provide a final judicial determination of liability, the present analysis does not purport to substitute the court's judgment or to construct a *ratio decidendi* or dispositive order that has not been issued. Instead, the case approach is used to test the allegations underlying the civil claims against the constituent elements of Article 1365. The case-specific analysis demonstrates that the central issue is not simply whether the farmers occupied land claimed under an HGU, but whether the claimant can establish, in relation to each defendant, the unlawfulness of the conduct, fault, legally attributable damage, and causation required for civil liability. This distinction provides the basis for applying the Agrarian Tort Test developed in this study to disputes involving competing formal and historical claims over land.

Several legal circumstances distinguish the Pakel dispute from conventional land occupation cases, namely: first, the dispute involves competing claims rather than a unilateral assertion of ownership; second, the occupation of land has occurred over an extended period rather than through recent encroachment; third, the land serves as a primary source of livelihood for the local community; and fourth, the conflict intersects with broader issues of agrarian reform and equitable access to land resources. These characteristics suggest that the assessment of unlawfulness must account for substantive realities rather than relying exclusively on formal documentation.¹¹

¹¹ Markus Suryoutom, Anggraeni Endah Kusumaningrum, and Siti Mariyam, "Liability of Hospitals for Negligent Health Services as a Tort," *Journal of Lifestyle and SDGs Review* 5, no. 2 (2025), <https://doi.org/10.47172/2965-730x.sdgsreview.v5.n02.pe03009>.

1. Unlawful Act (Onrechtmatige Daad)

The first element of Article 1365 concerns the existence of an unlawful act (onrechtmatige daad). The assessment should follow the broader conception of unlawfulness established through the 1919 Lindenbaum–Cohen decision, which recognizes several forms of unlawfulness, including violation of another person's subjective right, violation of a legal obligation, conduct contrary to morality, or conduct contrary to the standards of propriety prevailing in society. In the Pakel dispute, the farmers' occupation of the disputed land cannot therefore be classified as an unlawful act merely because the plantation company claims a formal Right to Cultivate (HGU). The relevant question is whether the specific acts of occupation and cultivation constitute an unlawful interference with the company's legally protected rights or otherwise violate a legal obligation, morality, or prevailing standards of propriety. The farmers' historical possession and continuous cultivation constitute relevant circumstances in assessing this element, but they do not automatically exclude the possibility of an unlawful act.

2. Fault (Schuld/Fault)

The second element is fault (schuld), which requires an assessment of whether the conduct was committed intentionally or negligently. In the context of land occupation, this element must also be distinguished from the legal character of possession (bezit). Articles 529–531 of the Indonesian Civil Code provide a framework for distinguishing possession and its good-faith or bad-faith character. If the Pakel farmers occupied and cultivated the land based on a genuine belief that they possessed a legitimate historical basis for controlling the land, this circumstance may be relevant to determining whether their conduct can be attributed to intentional or negligent interference with the rights claimed by the HGU holder. Conversely, if it can be established that the farmers knowingly occupied land despite having clear knowledge of the legally protected rights of another party, such circumstances may support a finding of bad faith. Accordingly, historical possession should not automatically be equated with good faith, while physical occupation alone should not automatically be treated as evidence of fault.

3. Damage (Schade)

The third element concerns the existence of actual and legally recognizable damage (schade). The plantation company's allegation that its utilization of the plantation area or its economic benefits were impaired must be supported by identifiable losses. The mere existence of occupation does not, by itself, establish the amount or existence of compensable damage. The claimant must demonstrate what specific economic loss resulted from the farmers' conduct and provide a sufficient factual and legal basis for that loss. In the Pakel dispute, the assessment of damage must therefore distinguish losses allegedly caused by the farmers'

occupation from losses that may have arisen from the broader uncertainty surrounding the history, control, and legal status of the disputed land.

4. Causal Relationship (Causal Verband)

The fourth element is the causal relationship between the unlawful act and the damage suffered. The company must establish that the alleged losses were sufficiently connected to the particular acts attributed to the Pakel farmers. This element is important because the existence of competing claims over the land and possible administrative or legal problems concerning the HGU may constitute circumstances that independently contribute to the alleged economic loss. Therefore, the company's claimed losses cannot automatically be attributed solely to the farmers' physical occupation. The causal relationship must be examined by determining whether the alleged damage would have occurred as a result of the farmers' conduct and whether there are other intervening circumstances that may have contributed to the loss.

Based on the foregoing analysis, the occupation of land by the Pakel farmers cannot be characterized as an unlawful act solely on the basis of the existence of a formal HGU. Conversely, historical possession and the social function of land cannot independently establish the legality of such occupation. The determination of civil liability under Article 1365 requires a cumulative assessment of unlawful conduct, fault, damage, and causation. The historical relationship of the community with the land and the social function of land therefore serve as contextual considerations in applying these elements, rather than as independent grounds for excluding liability.

The second element concerns fault. Under civil liability doctrine, fault generally refers to intentional or negligent conduct that results in harm to another party. The existence of fault becomes problematic when individuals act based on a genuine belief that they possess legitimate rights over disputed property. In the Pakel case, the farmers' continued cultivation of the land appears to be connected to a long-standing conviction regarding their entitlement to use and manage the area. Consequently, establishing fault requires more than proving physical occupation of land; it also requires demonstrating that the defendants knowingly acted against rights that were clearly established and legally recognized.¹²

The issue of damages likewise deserves careful scrutiny. The company argues that the occupation of land has prevented optimal utilization of plantation resources and caused economic losses. Nevertheless, civil liability principles require losses to be specifically identifiable and legally attributable to the conduct of the defendant. In agrarian conflicts characterized by legal uncertainty, proving such losses becomes significantly more complex. Economic consequences may arise not only from

¹² Abdul Wahid and Adi Sulistiyono, "Justification For The Establishment Of A Land Court In Indonesia: Realizing Justice In Land Dispute Resolution," *Masalah-Masalah Hukum* 54, no. 2 (2025), <https://doi.org/10.14710/mmh.54.2.2025.179-213>.

community occupation but also from unresolved legal disputes, administrative ambiguities, social resistance, and prolonged uncertainty regarding land tenure arrangements.¹³

Equally important is the question of causation. The doctrine of causation requires a direct relationship between the alleged unlawful conduct and the losses suffered by the claimant. In the Pakel dispute, causation cannot be automatically presumed because the existence of multiple contributing factors complicates the relationship between conduct and consequence.¹⁴ The prolonged nature of the conflict indicates that the alleged losses may stem from structural legal uncertainty rather than solely from the actions of local farmers. Therefore, establishing causation requires a detailed examination of whether the losses claimed by the company arise directly from community occupation or from the broader unresolved status of the dispute itself.¹⁵

A broader analysis reveals that the application of Article 1365 of the Indonesian Civil Code in the Pakel dispute cannot be detached from the philosophical foundations of Indonesian agrarian law.¹⁶ The Basic Agrarian Law does not view land merely as a commodity subject to exclusive ownership but as a social resource that must contribute to collective welfare. This principle is reflected in the doctrine of the social function of land, which requires land utilization to generate benefits not only for rights holders but also for society. Accordingly, a purely formal interpretation of land rights may be insufficient when assessing civil liability in agrarian conflicts involving communities that have relied upon disputed land for generations.

The foregoing analysis demonstrates that the legal characterization of the farmers' conduct as an unlawful act remains highly contested. The complexity arises not from uncertainty regarding the physical occupation of land but from the coexistence of competing claims, historical patterns of land control, and differing interpretations of legal legitimacy. Therefore, the determination of civil liability under Article 1365 of the Indonesian Civil Code should not be based exclusively on formal evidence of land rights. Rather, it requires a contextual and comprehensive assessment that reconciles legal certainty with agrarian justice, thereby ensuring that the resolution of land disputes remains consistent with the broader objectives of Indonesian land law.

¹³ Johan Kristian Zebua et al., "A Comparative Legal Study on the Regulation of Torts in Indonesia and Singapore," *Journal Research of Social Science, Economics, and Management* 5, no. 5 (2025), <https://doi.org/10.59141/jrssem.v5i5.1238>.

¹⁴ Romi Ardiansyah, Imam Asmarudin, and Tiyas Vika Widyastuti, "Tinjauan Yuridis Perbuatan Melawan Hukum Dalam Perkara Peralihan Hak Atas Tanah Dengan Sertipikat Hak Milik," *Pancasakti Law Journal (PLJ)* 1, no. 2 (2023).

¹⁵ Dino Rizka Afdhali and Irwan Triadi, "Pertanggungjawaban Pidana Korporasi Terhadap Pencemaran Lingkungan Hidup," *Journal Evidence Of Law* 3, no. 2 (2024), <https://doi.org/10.59066/jel.v3i2.673>.

¹⁶ Arum Martikasari, Wahyudi Wahyudi, and Saiman. Saiman, "Content Analysis On Agrarian Reform Policy In Indonesia," *Jurnal Partisipatoris* 5, no. 1 (2023).

3.2 Legal Protection for Communities Exercising Long-Term Land Tenure in Disputes with Holders of Cultivation Rights

The issue of legal protection constitutes one of the most fundamental aspects of the Pakel land dispute because the conflict is not limited to competing ownership claims but also concerns the position of communities that have continuously occupied and cultivated land over an extended period. In agrarian disputes, legal protection is often discussed in relation to the certainty of formal land rights. However, the Pakel case demonstrates that legal certainty alone is insufficient to resolve conflicts when social realities and historical patterns of land tenure differ from the formal records maintained by the state. Consequently, the legal protection of local communities must be assessed not only through a positivistic approach but also through the broader objectives of agrarian law, social justice, and equitable access to land resources.¹⁷

The Basic Agrarian Law of 1960 establishes a distinctive framework for land regulation in Indonesia. Unlike classical property law systems that emphasize individual ownership as an absolute right, the UUPA recognizes that all land rights carry a social function. This principle is expressly reflected in Article 6 of the UUPA, which provides that every right to land has a social function and therefore cannot be exercised solely for private interests without regard to broader societal needs. The significance of this principle in the Pakel dispute lies in its capacity to balance formal legal rights with the interests of communities whose livelihoods depend upon access to land.¹⁸ Consequently, the existence of plantation rights cannot automatically eliminate the need to consider the social and economic position of local farmers.

The legal protection of communities that have exercised long-term control over land is also closely related to the constitutional framework governing natural resources. Article 33 paragraph (3) of the 1945 Constitution stipulates that land, water, and natural resources are controlled by the state and utilized for the greatest prosperity of the people.¹⁹ This provision does not merely grant authority to the state but also imposes an obligation to ensure that land governance contributes to social welfare. Accordingly, state institutions are required to consider whether the implementation of formal land rights promotes substantive justice or instead creates new forms of exclusion and inequality.

In the context of the Pakel dispute, the constitutional principle of public welfare becomes particularly relevant because the disputed land serves as an important

¹⁷ Bunga Desyana Pratami, Minarsih, and Sri Ratu Ratna Intan, "Protection of Constitutional Rights for Female Coastal Workers in Pekalongan Against Loss of Land Rights: An Agrarian Law and Islamic Law Approach," *Al-Mazaahib* 12, no. 1 (2024), <https://doi.org/10.14421/al-mazaahib.v12i1.3662>.

¹⁸ Ikhsan Lubis, Duma Indah Sari Lubis, and Andi Hakim Lubis, "Reconstruction of National Land Law Based on Social Justice and Agrarian Reform," *Marcapada: Jurnal Kebijakan Pertanahan* 5, no. 1 (2025), <https://doi.org/10.31292/mj.v5i1.157>.

¹⁹ Irma Rachmawati, "The Transformation from Fault Liability to Strict Liability: A Cutting-Edge Indonesian Maritime Tort Law," *E3S Web of Conferences* 622 (2025), <https://doi.org/10.1051/e3sconf/202562202006>.

economic resource for local communities. For many farmers, access to land is not simply a matter of property but a prerequisite for sustaining household income, food security, and social stability.²⁰ As a result, the removal of community access to land may generate consequences extending beyond the legal sphere into broader social and economic dimensions. This reality reinforces the argument that legal protection should not be limited to formal rights holders but must also encompass communities whose existence and livelihoods are directly connected to the disputed land.

Table 2. Forms of Legal Protection Relevant to the Pakel Land Dispute

Aspect of Protection	Legal Basis	Relevance to the Pakel Dispute
Constitutional Protection	Article 33 Paragraph (3) of the 1945 Constitution	Guarantees land governance aimed at public welfare
Agrarian Protection	Law Number 5 of 1960 concerning Basic Agrarian Principles	Recognizes the social function of land and agrarian justice
Civil Law Protection	Indonesian Civil Code	Provides legal remedies against actions causing losses
Administrative Protection	Government Regulation Number 24 of 1997	Ensures legal certainty in land registration and tenure
Human Rights Protection	Law Number 39 of 1999 on Human Rights	Protects the right to livelihood and legal certainty

Source: Processed by the author from relevant legislation, 2026.

The legal framework presented in Table 2 demonstrates that protection for communities involved in agrarian disputes is multidimensional. It cannot be understood solely through the perspective of land registration or ownership documentation. Rather, legal protection emerges from the interaction between constitutional principles, agrarian law, civil law, administrative law, and human rights norms. The existence of multiple legal foundations indicates that disputes such as the Pakel case require a holistic approach capable of accommodating both legal certainty and social justice.²¹

A significant problem in agrarian disputes involving plantation rights is the tendency to prioritize formal legality while minimizing historical patterns of land control. Such an approach may produce legal certainty in a technical sense but can simultaneously generate perceptions of injustice among affected communities. In the

²⁰ Anthon Fathanudien, "Analysis of Moral Rights and Economic Rights of Songwriters in Cases of Unauthorized Use of Songs," *Jurnal Akta* 12, no. 3 (2025), <https://doi.org/10.30659/akta.v12i3.48528>.

²¹ Aldo Yanuarto, Aris Sunandar, and Abdul Khair, "Legal Study of Unlawful Acts by The Opponents In Land Dispute Decision Number 6/Pdt.Bth/2024/Pn Bpp," *Jurnal Usm Law Review* 8, no. 2 (2025), <https://doi.org/10.26623/julr.v8i2.11971>.

Pakel case, the farmers' claim is not based merely on economic interest but on a long-standing relationship with the disputed land.²² This relationship has developed through continuous cultivation, social interaction, and dependence on land as a source of livelihood. Consequently, the legal position of the farmers cannot be reduced to that of ordinary occupants lacking any legitimate connection to the land.

From a doctrinal perspective, legal protection may be divided into preventive and repressive mechanisms. Preventive protection seeks to prevent disputes from escalating through participatory decision-making, transparent land administration, and effective dispute-resolution procedures. Repressive protection, by contrast, operates after a dispute has arisen and generally takes the form of judicial remedies, mediation, compensation, or administrative review.²³ The Pakel conflict illustrates the limitations of relying exclusively on repressive mechanisms after tensions have already become entrenched. A more effective approach would involve strengthening preventive measures that allow competing claims to be examined before they evolve into prolonged litigation.

Several legal considerations support the need for enhanced protection of communities exercising long-term land tenure. First, continuous occupation and cultivation create a social and economic attachment that distinguishes such communities from opportunistic occupiers. Second, agrarian conflicts often arise from historical and administrative complexities that cannot be attributed solely to community actions. Third, the social function doctrine requires land utilization to contribute to public welfare rather than exclusively private interests. Fourth, constitutional principles mandate the state to ensure equitable access to agrarian resources.²⁴ These considerations collectively suggest that the legal system should not evaluate community claims solely through the lens of documentary ownership.

The protection of communities in agrarian disputes is also closely connected to the concept of substantive justice. Formal justice focuses on the consistent application of legal rules, whereas substantive justice seeks outcomes that reflect fairness in light of social realities. In cases such as the Pakel dispute, an exclusive reliance on formal legality may overlook the historical circumstances that shaped the relationship between communities and the disputed land. Consequently, a substantive justice approach becomes necessary to ensure that legal outcomes reflect both normative requirements and factual realities.

Legal protection should not be interpreted as denying the rights of plantation companies or other formal rights holders. Instead, it requires balancing competing

²² Fahrizzal Nasty, "Kedudukan Hak Atas Tanah Yang Dimiliki Peserta Plasma Yang Mengundurkan Diri (Studi Pada Pt. Anugerah Langkat Makmur)," *Jurnal Perspektif Hukum* 2, no. 1 (2021), <https://doi.org/10.35447/jph.v2i1.315>.

²³ Dedy Muharman, "Analysis of Recognition and Protection of Indigenous Peoples Rights in Land Policy in Indonesia," *Journal of Adat Recht* 1, no. 5 (2025), <https://doi.org/10.62872/xqyx4373>.

²⁴ Kusbianto Kusbianto, "Suguh Hati As An Alternative Form Of Land Dispute Settlement In Plantation," *Legalpreneur Journal* 4, no. 1 (2025), <https://doi.org/10.46576/lpj.v4i1.7951>.

interests through proportional and equitable mechanisms. The objective is not to replace legal certainty with social considerations but to harmonize both values within a coherent legal framework. Such an approach is consistent with the philosophy of Indonesian agrarian law, which seeks to reconcile economic development, legal certainty, and social welfare.²⁵

The analysis also reveals that the state occupies a central position in resolving disputes of this nature. Because the state exercises authority over land administration and resource governance, it bears responsibility for ensuring that conflicting claims are addressed through fair and transparent procedures.²⁶ Failure to provide effective legal protection may contribute to the continuation of agrarian conflicts and undermine public confidence in the legal system. Therefore, state institutions must actively facilitate dispute resolution mechanisms capable of accommodating both formal rights and legitimate community interests.

The Pakel dispute demonstrates that legal protection for communities exercising long-term land tenure cannot be viewed as an exception to the legal system but rather as an integral component of agrarian justice. The recognition of historical land control, the implementation of the social function of land, and the constitutional commitment to public welfare collectively support a broader understanding of legal protection in agrarian conflicts. Accordingly, communities that have continuously occupied and cultivated disputed land over generations should receive meaningful legal consideration, particularly when the status of land rights remains contested. Such protection does not undermine legal certainty; instead, it strengthens the legitimacy of the legal system by ensuring that the resolution of land disputes reflects both law and justice.

4. CONCLUSION

This study concludes that the assessment of civil liability under Article 1365 of the Indonesian Civil Code in the Pakel land dispute requires a cumulative examination of the elements of an unlawful act, fault, damage, and causation. Historical occupation and the social function of land do not, by themselves, establish the legality of community occupation or exclude civil liability. Rather, they constitute contextual factors that must be considered in determining whether the occupation violates a legally protected right, whether the farmers acted with fault, whether the claimant has demonstrated an identifiable loss, and whether the alleged loss is sufficiently connected to the conduct of the defendants. This approach prevents formal possession or an HGU from being treated as automatically determinative of civil liability without examining the substantive circumstances surrounding the disputed land.

²⁵ Ach. Fadlail and Maria Ulfa, "Peran Badan Pertanahan Nasional (BPN) Sebagai Mediator Dalam Penyelesaian Sengketa Pertanahan," *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 2, no. 1 (2024), <https://doi.org/10.62383/demokrasi.v2i1.751>.

²⁶ Vallensia Mizatul Khair and Wahib Assyahri, "Optimalisasi Administrasi Pertanahan Di Indonesia: Tantangan Dan Strategi Menuju Kepastian Hukum," *JPAMS: Journal of Public Administration and Management Studies* 2, no. 2 (2024).

The theoretical implication of this study lies in the formulation of the Agrarian Tort Test as a structured method for applying Article 1365 to agrarian disputes involving competing formal and historical claims. The test does not create additional elements of an unlawful act, but provides an analytical sequence through which the conventional requirements of unlawfulness, fault, damage, and causation can be assessed while taking into account the social function of land and the historical relationship between communities and the disputed land. In this framework, agrarian justice operates as a contextual consideration within the application of civil liability rather than as a substitute for the constituent elements of Article 1365.

The practical implication is directed particularly to judges handling civil claims for damages arising from disputed land occupation. Where the alleged unlawful act and the claimed loss depend upon the prior determination of the validity, scope, or administrative status of an HGU or other land right, the court should consider the existence of a prejudicial *geschil* and avoid determining civil liability solely on the assumption that the claimant's formal land right has conclusively established the unlawfulness of the defendants' conduct. Where necessary, the examination or adjudication of the civil claim for compensation may be suspended or deferred until the underlying dispute concerning the land right or its administrative validity has been resolved by the competent authority or court. Such an approach can prevent inconsistent judgments, avoid premature findings of fault and causation, and ensure that compensation is awarded only after the legal basis of the claimed right and the causal connection between the alleged unlawful conduct and the actual loss have been sufficiently established.

Accordingly, the appropriate judicial approach is not merely to balance legal certainty and substantive justice in abstract terms, but to sequence the adjudication of the dispute: first, clarify the legal status and validity of the relevant land right where it remains genuinely contested; second, assess the alleged conduct against the four elements of Article 1365; and third, determine the existence and amount of compensable damage only after a sufficient causal relationship has been established. This approach provides a more concrete mechanism for reconciling legal certainty with agrarian justice while maintaining

BIBLIOGRAPHY

- Ach. Fadlail, and Maria Ulfa. "Peran Badan Pertanahan Nasional (BPN) Sebagai Mediator Dalam Penyelesaian Sengketa Pertanahan." *Demokrasi: Jurnal Riset Ilmu Hukum, Sosial Dan Politik* 2, no. 1 (2024). <https://doi.org/10.62383/demokrasi.v2i1.751>.
- Aldo Yanuarto, Aris Sunandar, and Abdul Khair. "Legal Study of Unlawful Acts by The Opponents In Land Dispute Decision Number 6/Pdt.Bth/2024/Pn Bpp." *Jurnal Usm Law Review* 8, no. 2 (2025). <https://doi.org/10.26623/julr.v8i2.11971>.
- Ardiansyah, Romi, Imam Asmarudin, and Tiyas Vika Widyastuti. "Tinjauan Yuridis Perbuatan Melawan Hukum Dalam Perkara Peralihan Hak Atas Tanah Dengan Sertipikat Hak Milik." *Pancasakti Law Journal (PLJ)* 1, no. 2 (2023).
- Dhiaulhaq, Ahmad, and John F. McCarthy. "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia." *Asia Pacific Journal of Anthropology* 21, no. 1 (2020). <https://doi.org/10.1080/14442213.2019.1670243>.

- Erwandi, Muhammad, Arba Arba, and Widodo Dwi Putro. "Penegakan Hukum Terhadap Penelantaran Hak Guna Bangunann (HGB) Oleh Pemegang Hak." *Jurnal Risalah Kenotariatan* 4, no. 1 (2023). <https://doi.org/10.29303/risalahkenotariatan.v4i1.95>.
- Fathanudien, Anthon. "Analysis of Moral Rights and Economic Rights of Songwriters in Cases of Unauthorized Use of Songs." *Jurnal Akta* 12, no. 3 (2025). <https://doi.org/10.30659/akta.v12i3.48528>.
- JAYA, I. Kadek Gelgel Dwi Utama Jaya, Sarjita Sarjita, and Alfons Alfons. "The Approach of Agrarian Conflict Resolution through Land Redistribution in Sumberklampok Village." *Marcapada: Jurnal Kebijakan Pertanahan* 4, no. 1 (2024). <https://doi.org/10.31292/mj.v4i1.66>.
- Khair, Vallensia Mizatul, and Wahib Assyahri. "Optimalisasi Administrasi Pertanahan Di Indonesia: Tantangan Dan Strategi Menuju Kepastian Hukum." *JPAMS: Journal of Public Administration and Management Studies* 2, no. 2 (2024).
- Kontesa, Emelia, and Zico Junius Fernando. "Reclaiming Our Roots: Agrarian Law's Battle Against Land Grabbing." *Lex Scientia Law Review* 8, no. 2 (2024). <https://doi.org/10.15294/lslr.v8i2.10681>.
- Kristian Zebua, Johan, Joel Zevanya Paparang, Paolo Gibran Joesoef, Kenzie Samuel Tumondanh Bakara, and Rifaldo Aditya. "A Comparative Legal Study on the Regulation of Torts in Indonesia and Singapore." *Journal Research of Social Science, Economics, and Management* 5, no. 5 (2025). <https://doi.org/10.59141/jrssem.v5i5.1238>.
- Kusbianto, Kusbianto. "Suguh Hati As An Alternative Form Of Land Dispute Settlement In Plantation." *Legalpreneur Journal* 4, no. 1 (2025). <https://doi.org/10.46576/lpj.v4i1.7951>.
- Lubis, Ikhsan, Duma Indah Sari Lubis, and Andi Hakim Lubis. "Reconstruction of National Land Law Based on Social Justice and Agrarian Reform." *Marcapada: Jurnal Kebijakan Pertanahan* 5, no. 1 (2025). <https://doi.org/10.31292/mj.v5i1.157>.
- Martikasari, Arum, Wahyudi Wahyudi, and Saiman. Saiman. "Content Analysis On Agrarian Reform Policy In Indonesia." *Jurnal Partisipatoris* 5, no. 1 (2023).
- Muharman, Dedy. "Analysis of Recognition and Protection of Indigenous Peoples Rights in Land Policy in Indonesia." *Journal of Adat Recht* 1, no. 5 (2025). <https://doi.org/10.62872/xqyx4373>.
- Nasty, Fahrizzal. "Kedudukan Hak Atas Tanah Yang Dimiliki Peserta Plasma Yang Mengundurkan Diri (Studi Pada Pt. Anugerah Langkat Makmur)." *Jurnal Perspektif Hukum* 2, no. 1 (2021). <https://doi.org/10.35447/jph.v2i1.315>.
- Permadi, Iwan, and Fadhli Rahman Arif. "Agrarian Conflicts After the Establishment of the Land Bank Agency in Indonesia." *JUSTISI* 11, no. 1 (2024). <https://doi.org/10.33506/js.v11i1.2810>.
- Pratami, Bunga Desyana, Minarsih, and Sri Ratu Ratna Intan. "Protection of Constitutional Rights for Female Coastal Workers in Pekalongan Against Loss of Land Rights: An Agrarian Law and Islamic Law Approach." *Al-Mazaahib* 12, no. 1 (2024). <https://doi.org/10.14421/al-mazaahib.v12i1.3662>.
- R Mustar Lofi. "Looking at The Legal Philosophy Regarding The Grabbing of Pantai Raja Customary Land." *Jurnal Usm Law Review* 8, no. 1 (2025). <https://doi.org/10.26623/julr.v8i1.11845>.
- Rachmawati, Irma. "The Transformation from Fault Liability to Strict Liability: A Cutting-Edge Indonesian Maritime Tort Law." *E3S Web of Conferences* 622 (2025). <https://doi.org/10.1051/e3sconf/202562202006>.

- Ramadhani, Ramadhani. "Legal Protection For Mining Iup Holders In Land Rights Disputes." *DE JURE Critical Laws Journal* 6, nos. 2 SE-Articles (2025).
- Rizka Afdhali, Dino, and Irwan Triadi. "Pertanggungjawaban Pidana Korporasi Terhadap Pencemaran Lingkungan Hidup." *Journal Evidence Of Law* 3, no. 2 (2024). <https://doi.org/10.59066/jel.v3i2.673>.
- Sakti, Trie, and Eliana Sidipurwanti. "Conflict on the Land of Agriculture: Structural Land Disputes in Plantation Areas of Central Java." *BIO Web of Conferences* 208 (2026). <https://doi.org/10.1051/bioconf/202620804002>.
- Sekarmadji, Agus, Oemar Moechthar, and Wilda Prihatiningtyas. "Rechtsverwerking In Indonesia: How Land Ownership Can Be Lost Under Customary Law." *Petita: Jurnal Kajian Ilmu Hukum Dan Syariah* 10, no. 2 (2025). <https://doi.org/10.22373/petita.v10i2.836>.
- Suryoutom, Markus, Anggraeni Endah Kusumaningrum, and Siti Mariyam. "Liability of Hospitals for Negligent Health Services as a Tort." *Journal of Lifestyle and SDGs Review* 5, no. 2 (2025). <https://doi.org/10.47172/2965-730x.sdgsreview.v5.n02.pe03009>.
- Syahputra, Robert Dicky, Misranto Misranto, and Sunardi Sunardi. "Implications of Asset Structuring and Access on Land Tenure in Realizing Agrarian Reform." *Eduvest - Journal of Universal Studies* 5, no. 12 (2025). <https://doi.org/10.59188/eduvest.v5i12.52049>.
- Wahid, Abdul, and Adi Sulistiyono. "Justification For The Establishment Of A Land Court In Indonesia: Realizing Justice In Land Dispute Resolution." *Masalah-Masalah Hukum* 54, no. 2 (2025). <https://doi.org/10.14710/mmh.54.2.2025.179-213>.