

Published by the decision of the Scientific Council
of Khachatur Abovian
Armenian State Pedagogical University



Department of Philosophy and Logic
named after Academician Georg Brutian



W I S D O M

4(28), 2023

ASPU Publication

YEREVAN – 2023

DOI: 10.24234/wisdom.v28i4.1010

SPATIAL PLANNING AND PHILOSOPHY OF JUSTICE: CORRECTIVE ACTION ON COMMUTATIVE JUSTICE THEORY (A STUDY IN KALIMANTAN, INDONESIA)

Jhonsen GINTING^{1,2} | Absori ABSORI^{2,*}  | Khudzaiyah DIMYATI²  |

Kelik WARDIONO²  | Arief BUDIONO²  | Muhammad NUR³  |

Achmadi ACHMADI⁴ 

1 Agrarian Affairs and Spatial Planning Office/National Land Agency, Kotawaringin Timur, Indonesia

2 Universitas Muhammadiyah Surakarta, Surakarta, Indonesia

3 Lancaster University, Lancaster, United Kingdom

4 Universitas Muhammadiyah Palangkaraya, Central Kalimantan, Indonesia

* Correspondence

Arief BUDIONO, Jalan Ahmad Yani, Mendungan, Pabelan, Kec. Kartasura, Sukoharjo Regency, Central Java, 57162 Indonesia

E-mail: ab368@ums.ac.id

Abstract: The absence of an ideal legal norm in determining an equitable spatial arrangement and provision of land has created a major problem with the increase of certificate production concerning property rights and granting permits for managing areas. This research used normative juridical research methods with a philosophic research approach which analyzed research results that produce descriptive analysis data related to holistic written and examined data. Results show that an ideal breakthrough is required to provide a balanced solution between spatial planning and the provision of land for certificate products especially for indigenous people. The breakthrough can be in the form of corrective actions that can be implemented to provide a balance and an ideal solution for spatial planning and the provision of land for certificate products, especially in district/city areas. In addition, the basic principles of commutative justice are considered capable of providing equality, balance, and harmony among the existing laws.

Keywords: corrective action, spatial planning, land provision, product certificates, justice.

Introduction

The regulation of spatial planning is important to create a good quality of life for the citizens of a country. Spatial planning can be an effort to prevent and reduce the impacts of ecological damage and prevent disasters. In Indonesia, before the enactment of Law No. 11 of 2020 on Job Creation, spatial planning was regulated in Law

No. 26 of 2007 on Spatial Planning which regulated spatial planning, structure, and patterns. It also regulated the use of land, water, and other resources. Thus, land use management is an integral part of spatial planning and is a subsystem of it. Land use is currently the most dominant element in the spatial planning process.

Globalization and regional autonomy have left major problems related to chaotic spatial

planning in various cities and regencies in Indonesia. In Central Kalimantan Province, chaotic spatial planning is phenomenal because it has not been resolved and it has occurred since the 1990s. This problem causes conflicts between communities and entrepreneurs regarding land usage. Various problems and conflicts are caused by the portion of permit division for the Land Tenure Rights for Business and Building Usage Rights which often override legal rights to community land.

The chaotic spatial planning in Indonesia began with ambiguous and biased laws. Such laws philosophically do not provide the value of justice. Besides that, weak coordination systems and political interests-based decision-making processes add to the spatial planning problems. Moreover, sectoral interests, individual interests of heads of ministries or institutions, and business interests also worsen the situation. Ambiguous laws on spatial planning originated from the issuance of the Basic Agrarian Law, the Law on Forestry, and the Law on Spatial Planning. The three legal products were born under very different moods, spirits, philosophies, and ideologies.

The unclear spatial planning in East Kotawaringin Regency triggered conflicts between the community and oil palm plantation companies (Setiawan, 2018). In addition, case studies that occurred in this area are crucial to be elaborated to provide a more varied picture of conflicts due to unclear spatial and regional status in East Kotawaringin Regency, especially the ones related to social facilities, public facilities, certain areas, completion of programs government, settlements within the area, detailed spatial plans, agrarian reform, and community legality (*Perjelas Status Kawasan Dan Tata Ruang Kotim (Clarify the Regional Status and Spatial Planning of Kotim)*, 2021).

Considering the aforementioned facts, it is necessary to regulate land tenure and land utilization to overcome various unfinished land conflicts, especially in urban areas. Lawmakers should have a good understanding of the philosophies of the Central Kalimantan people and how they perceive forests, land, and regulations, to create laws that bring the value of justice. This is so that it can be used as an alternative solution for the government to realize the social justice of land and the quality of the urban environment in an orderly and well-managed manner (Kapoh,

2017). One of the reasons for the rampant unprocedural use of land in Central Kalimantan Province is the large number of plantation business permits issued by regents/governors that are suspected of being located in forest areas. According to Hartoyo (2011), this is an indication of corruption in granting plantation business permits. Corrupt laws fail to bring any justice because honesty is the main prerequisite to creating justice.

There are overlapping permits for space and land rights for the community in Government Regulation No. 43 of 2021 concerning the settlement of inconsistencies in spatial planning, forest areas, permits, and or land rights. This was allegedly caused by an inconsistency between the Basic Agrarian Law Number 5 of 1960 and Law Concerning Forestry No. 41 of 1999 enacted in the early days of the Reformation Era. These regulations have actually experienced distortion due to conflicts of interest, ideologies, and philosophies embraced by three governmental regimes. The Old Order regime (1945-1966) embraced the socialist ideology and the communal philosophy. Meanwhile, the Reformation regime (1998-now) embraces the ideology of the free market and liberalism.

The spatial rights and land rights in Central Kalimantan Province also refer to the Regional Regulation of the Central Kalimantan Province No. 5 of 2015 on the Central Kalimantan Provincial Spatial Plan for 2015-2035. But the constitutional law basis that was sourced from the Old Order makes these two laws have starkly different philosophies, causing legal chaos.

On the other hand, the conflict between the spatial planning of the Central Kalimantan Province with the Ministry of Forestry forest area spatial planning becomes one of the complicated problems that has been left unresolved for a long time. The problem worsened when the Head of the Regional Forestry and Plantation Office of Central Kalimantan Province requested consideration from the Head of the Planning Agency of the Ministry of Forestry and Plantations regarding the permits to release forest areas for plantations in Production Development Areas, Residential Areas and Other Uses based on the Central Kalimantan Provincial Spatial Plan (Rompas & Waluyo, 2013).

From the magnitude of the regulation's portion, the Basic Agrarian Law has a wide scope,

namely the entire territory of Indonesian law which includes land, seas, water, the air above the territory, and areas under the waters of the Indonesian state. But this law contained philosophic views and ideologies that are different from that embraced by the Reformation regime. Such unsynchronized laws lead to conflicts. Based on the background above, this paper describes the dynamics and conflicts in spatial planning and land provision in East Kotawaringin Regency, Central Kalimantan Province, Indonesia which have not been resolved. The important points to be discussed in this article concern solutions to spatial planning and the provision of land for equity-based property certificate products.

Research Methods

The research method is a series of ways that the authors used to find information to support the study of the paper. (Basri, 2019) In compiling this article, authors used the normative juridical research methods. The normative juridical method was used by collecting secondary data through a literature study that originated from documented legal materials in the form of books, journals, as well as related laws and regulations (Leks, 2015). The philosophic research approach was used to analyze the results of the research. It produced descriptive analytical data related to the holistic written and examined data (Fajar & Achmad, 2010). Data analysis was carried out qualitatively. Systematically, the steps of analysis began with data reduction, namely choosing relevant and valid points. The data were then interpreted. Lastly, the results of the analysis were presented in the form of descriptive-analytical descriptions (Parsaulian & Sudjito, 2019).

Results and Discussion

Spatial Planning and Provision of Land to Achieve Utilization of Community Social Functions Through Land Consolidation

Comprehensive, holistic, just, and integrated spatial planning based on development needs will strengthen national resilience. Therefore, spatial

planning must be carried out with a philosophy of justice that considers the perspective, assessment, and culture of the Kalimantan people. One of the strategies to solve the problem in the geographical area is to formulate a just and holistic spatial as the General Spatial Plan, in this case, the City/Regency Spatial Plan. This is to adequately provide geographic space as people's settlement (both in urban and rural areas) and a source of life (such as land/agricultural landscapes) for Indonesia's survival as a nation (Sianipar, 2015).

In general, the Central Kalimantan Province has abundant natural resource potential in various sectors, including forestry, agriculture, plantations, mining, marine, fisheries, etc. (*59 Tahun Kalteng Semakin Mantap (59 Years of Central Kalimantan Becoming More Steady)*, 2016). This makes Central Kalimantan Province attract various parties to undergo various utilization of natural resources. Natural power mining, forestry, and plantations become the sources of state revenue. These sectors are connected to land resources (the land-based sector) (Mumbunan, 2015). If development in these sectors is accommodated without consideration for the life philosophies of the local people, traditional philosophies, and preservation of nature, it will bring disaster and conflicts in the lands of Kalimantan.

Spatial utilization law is an effort to realize the spatial pattern based on the justice philosophy. It is applied through the preparation and implementation of programs and their financing. In such an understanding, the form of adjustment in participatory land tenure, use, and utilization can be carried out through land consolidation with consideration for good land use. There must be a consideration for residential areas, agriculture, business, and society's needs. These aspects must be equally considered by still respecting the perspectives of the local people (Bustomi & Barhamudin, 2020).

Article 2 clauses (1) and (2) of Regulation of the Head of the National Land Agency No. 4 of 1991 concerning Land Consolidation State that land consolidation aims to achieve optimal land utilization by increasing the efficiency and productivity of land use. Its target is to realize an orderly and well-regulated arrangement of land tenure and use according to the land's capabilities and functions. To create an orderly and well-

regulated arrangement of land, there needs to be the harmonization of laws, so that they can philosophically apply at the same time. The government needs philosophical and ideological reviews that can support these laws.

To realize such objectives, efforts regarding land consolidation that is carried out by realigning all of its aspects should be highly emphasized. This includes the constitutional philosophy which is achieving societal welfare and prosperity without conflict. justice (Wardiono, 2019) Equal treatment and an understanding of society's desires are the main prerequisites to making the law have a philosophy of justice (Hasni, 2010). Lawmakers need to consider:

- a) The rearrangement of all aspects related to the arrangements of culture, people, and use of natural resources. It does not only focus on the arrangement and issuance of the physical and non-physical form of the land but also includes the legal and philosophic relationship between landowners and their land;
- b) The rearrangement of all aspects related to the harmonization of land users with spatial and land use planning;
- c) The rearrangement of all aspects related to the land provision for construction interests of necessary public infrastructure and facilities;
- d) The rearrangement of all aspects related to improving the quality of the environment or the conservation of natural resources.

To optimally increase the efficiency and productivity of urban land utilization there need to be laws that are not only just but also humane. Development is carried out with the law that lives in society rather than merely using written laws. In carrying out this development, the desires of landowners and the peoples' cultures as consolidation participants must be taken into account. Therefore, the targets areas of land consolidation include:

- a) Areas that are planned to become new cities or settlements. The form of land consolidation cannot only be carried out independently in the form of mature plots of land by developers who will build new settlements in the area. Developers can sell in the form of mature plots of land or complete with houses. Government according to law should be intervened if this development is carried out without any consideration of the people (such as the action of displacing customary societies)

or the environment (by carelessly felling forests).

- b) Areas that have started to grow, where the land is generally located on the outskirts of cities that have already been inhabited. In such a situation, the people of this area must be invited for a discussion. Their aspirations need to be heard and considered to create a humane solution.
- c) Rapidly growing residential areas. These settlements grow with an irregular pattern of land parcels. As a result, this area faces difficulties in reaching or accessing infrastructure and other public facilities.
- d) Relatively empty areas where development is possible. For this, there needs to be a consideration on whether or not this area is an environmental area that is crucial to maintain balance, such as an area of water reserve which may cause floods if buildings are built on it.
- e) Areas that were previously inflicted by natural or social disasters, where renovation/reconstruction is required to rebuild.

The social function of land is based on Article 6 of the Basic Agrarian Law which was a law from the Old Order Era with a different philosophy, i.e., the socialism and communal philosophies. Therefore, land rights do not become an obstacle for the government in undergoing its authority on land consolidation. Meanwhile, associated laws and spatial laws are based on the liberalism and democracy philosophies applied by the Reformation Regime. This makes it difficult to achieve policies governing land tenure, adjusting land use with spatial and land use plans, land acquisition for development purposes, improving environmental quality, and preserving natural resources considering that each law has diametral differences (Hasni, 2010).

The Implementation of Corrective Action as Integration of Spatial Planning and Provision of Land for Equity-Based Property Certificate Products

To increase the product legality of land rights and to balance spatial planning in line with the General Spatial Plan, in this context, City/Regency Spatial Plans require a comprehensive ideal solution. Reviving the movement back to the Basic Agrarian Law 1960 which rec-

ognized hereditary individual rights (*erfelijk individual bezit*), communal rights (*communal bezit*), absolute property rights (*eigendom*), customary rights (*beschikkingsrecht*), and other traditional land institutions becomes relevant to the principle of benefit to society compared to the ownership system which is fully determined by the state, as what the law regulates.

Contradicting traditional ownership and even eliminating traditional use rights and replacing them with a formal legal system under the pretext of spatial planning harmony is counterproductive (Angelsen, 2010). It has the potential to cause social conflicts (Haug, 2007). In this case, land provision should not only be based on the rights granted by the state law. It should also accommodate the rights that originate from the recognition of land ownership and or customary forest where the plantation business is established. If the formulation of spatial regulations considers the land philosophy and the people, the law will be harmonious and it will live.

Land registration in Indonesia is regulated by Government Regulation No. 24 of 1997 concerning Land Registration. Article 1 point (1) of this Government Regulation defines land registration as “a series of continuous, sustainable and regular activities carried out by the government, including the collection, processing, bookkeeping, presentation, and maintenance of physical and juridical data, in maps and lists, regarding land parcels and apartment units, including the issuance of proof of title (certificate product) for land parcels that already have rights and ownership rights to apartment units and certain rights that burden them”.

Land acquisition for spatial planning is usually pursued by state administration agencies or officials through land acquisition. It means transferring the land with an allotment plan for public interests. Such a determination will result in the revocation or limitation of land rights, resulting in a person or civil legal entity losing their land rights. The loss of land, especially for the ordinary people of Kalimantan, is a painful thing. In the name of the state or public interests, contractors or other parties can easily displace custom-

ary people using the Law on Spatial Planning. This condition that often happens in Kalimantan leads to endless conflicts.

It is important to provide land that is balanced with spatial planning, citizen benefits, and culture to fulfill the legality of ownership (certificate products) of land rights containing physical and juridical data. The land tenure certificate is a certificate of proof of rights over a plot of land. It contains a copy of the land book which contains physical and juridical data, and a measuring letter that contains physical data.

A certificate is issued so that the holder of the rights can easily prove his/her ownership. This guarantees legal certainty and provides legal protection for the certificate owner. The certificate is issued for the benefit of the relevant rights-holder in line with the physical and juridical data that have been registered in the land book. The certificate may only be submitted to the party whose name is listed in the concerning land book as the rights-holder or to another party that obtained authorization from the rights-holder.

An obstacle that has so far happened was that certification was not given to customary people who owned the land from generation to generation. The philosophy of certification is personal or legal entity land tenure but it does not apply to customary people. For customary people, the land is treated as a whole and they are not divided. They are merely inherited from generation to generation. In the philosophy of land certification, land can be sold. It can have its rights shifted and it can be given away. This is different from the philosophy of customary land. (Rosyadi & Rizka, 2010)

In this case, an ideal breakthrough is required to provide a balanced solution between spatial planning and the provision of land for certificate products especially for indigenous people. This is especially important in East Kotawaringin Regency. It can be carried out by implementing Corrective Actions, i.e., actions taken to improve the accuracy of purpose or suitability required based on legal certainty. The implementation can be seen in the chart below:

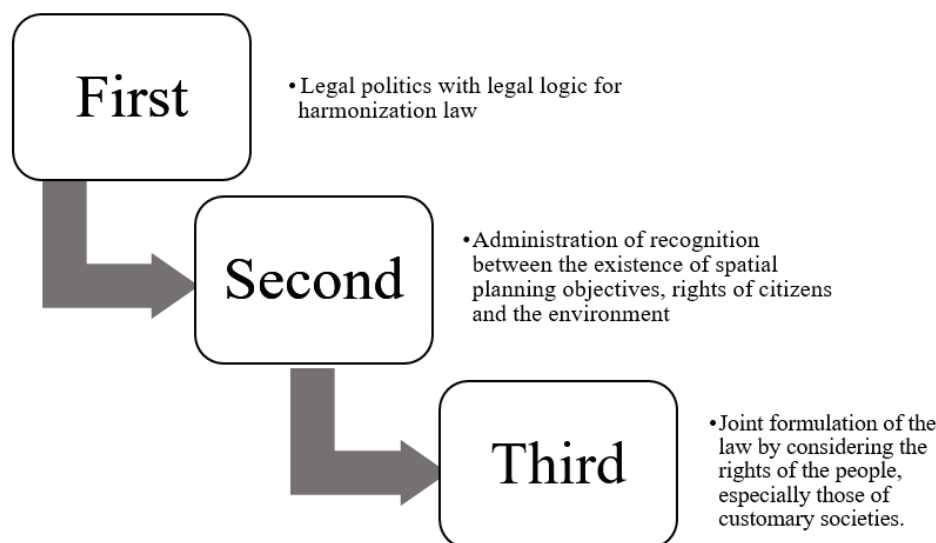


Figure 1. The Implementation of Corrective Actions

The contents of integration in the implementation of spatial planning corrective action and the provision of land for justice-based property rights certificate products are conducted by tak-

ing various legal considerations into account. The legal contents that need to be considered are shown in the table below:

Table 1.

Integration of the Legal Consequences of Spatial Planning and Land Provision

<i>Content of Legal Certainty</i>	<i>Description</i>
Reinforcing the purpose of spatial planning for land provision needs	Refers to Article 33 clause (3) of the 1945 Constitution and Article 4 clause (2) of the Basic Agrarian Law to acknowledge the rights of customary land.
The rules regarding spatial planning rights and land rights	Ownership and management of land based on nationality and social justice so that customary people can obtain customary land tenure rights according to their customs (where the land cannot be sold or have its rights shifted).
The rules regarding conflict resolution	Absolute authority is given to resolve various community conflicts arising from the implications of spatial planning and land provision from the previous era.

The land is given to people with rights that have been provided by the Basic Agrarian Law and is expected to be used. However, if its use is only limited to the soil as the surface of the earth, it will be necessary to use part of the body of the earth, water, and the space above it for other purposes. Therefore, Article 4 clause (2) of the Basic Agrarian Law states that land rights do not only give the authority to use a certain part of the earth's surface, which is called "land", but also the body of the earth, water, and the space on it. The Basic Agrarian Law has philosophically given more accommodation to customary land

and people compared to the new law that was sourced from liberalism and private ownership.

Providing justice in the Indonesian legal framework can be done by considering the philosophy of ideal truth; whether it is about places, objects, or people. John Rawls (1999) stated about this justice philosophy that "Justice is the first advantage (virtue) of social institutions, as well as truth in the system of thought" (p. 235). However, the law and its implementation in this case still failed to provide clarity on what is required by justice. Basically, justice is defined as putting everything in its appropriate place.

The correlation of the meaning of justice in the offer to implement corrective action in spatial planning and providing land for property certificate products is certainly based on commutative justice philosophy which concerns equality, balance, and harmony in the relationship between one rule and another or one party and another. Legal justice is already contained in commutative justice philosophy because legal justice is only a further consequence of the principle of commutative justice, namely for the sake of upholding commutative justice philosophy, the state must distribute rules that tend not to rise different sectoral egos and also different spirits and ideologies.

In this case, the meaning of justice in integrating spatial planning needs with land rights as well as land benefits for society. Land conflicts will disappear when laws that philosophically accommodate customary laws and land as well as personal ownership are created along with the implementation of the law that does not side investors with what has happened.

Conclusion

The philosophic implementation of corrective action to spatial planning and land provision should become a new model for integrating the need of the people in Indonesia. An action to improve the accuracy of purpose or suitability is required based on legal certainty. Especially the Basic Agrarian Law an ideal offer to maintain equality and balance in spatial planning and the provision of land. From the legal aspect, the need for a commutative justice implication can provide a principle so that equality, balance, and harmonious relations between one rule and another or one party with another party can find an appropriate legal concept in further consequences in the distribution of legal rules.

References

- 59 Tahun Kalteng Semakin Mantap (59 years of Central Kalimantan becoming more steady, in Indonesian). (2016). Palangka Raya: Isen Mulang.
- Angelsen, A. (2010). Mewujudkan REDD+: Strategi Nasional dan Berbagai Pilihan Kebijakan (Realizing REDD+: National strategies and policy options, in Indonesian) (A. Angelsen, Ed.). Bogor: Center for International Forestry Research
- Basri, B. (2019). Legal Reasoning Pattern Based On Trancendental Values: A Reflection on Legal Reasoning Based on Positivism Values. *Journal of Trancendental Law UMS*. 1(1). <https://doi.org/10.23-917/jtl.v1i1.8694>
- Bustomi, A., & Barhamudin, B. (2020). Konsolidasi Sebagai Alternatif Penyediaan Tanah Untuk Pembangunan Sarana dan Fasilitas Umum (Consolidation as an alternative to provision of land for the development of public facilities and facilities, in Indonesian). *Solusi*, 18(1), 46-63. <https://doi.org/10.36546/solusi.-v18i1.257>
- Fajar, M., & Achmad, Y. (2010). *Dualisme Penelitian Hukum Normatif & Empiris* (Dualism of normative & empirical legal research, in Indonesian). Yogyakarta: Pustaka Pelajar.
- Hartoyo, D. (2011). *Panduan Audit Investigatif Korupsi di Bidang Kehutanan* (Corruption investigative audit guide in the forestry sector, in Indonesian). Bogor: Center for International Forestry Research.
- Hasni (2010). *Hukum Penataan Ruang dan Penatagunaan Tanah dalam Konteks UUPA-UUPR-UUPLH* (Law on spatial planning and land use in the context of UUPA-UUPR-UUPLH, in Indonesian). (2nd ed.). Jakarta: Rajawali Pers.
- Haug, M. (2007). *Kemiskinan dan Desentralisasi di Kutai Barat: Dampak Otonomi Daerah terhadap Kesejahteraan Dayak Benuaq* (Poverty and decentralization in west kutai: The impact of regional autonomy on the welfare of the benuaq dayak, in Indonesian). Bogor: Center for International Forestry Research.
- Kapoh, S. J. (2017). Pengaturan Konsolidasi Tanah Untuk Pembangunan Perumahan Menurut UU No. 1 Tahun 2011 Tentang Perumahan Dan Kawasan Permukiman (Land consolidation arrangements for housing development according to law no. 1 of 2011 concer-

- ning housing and residential areas, in Indonesian). *Lex et Societatis*, *V*(6). <https://doi.org/10.35796/les.v5i6.17915>
- Leks, E. M. (2015). *Analisis dan Evaluasi Peraturan Perundang-Undangan Tentang Perumahan Rakyat* (Analysis and evaluation of laws and regulations concerning public housing, in Indonesian). Jakarta: The National Legal Development Agency, Ministry of Law and Human Rights of the Republic of Indonesia.
- Mumbunan, S. (2015). *Menautkan Dua Mata Rantai: Perizinan dan Penerimaan Negara di Sektor Berbasis Lahan di Indonesia* (Linking the two links: Licensing and state revenue in the land-based sector in Indonesia, in Indonesian). In T. N. Samadhi, & S. Mumbunan (Eds.), *Tambang Hutan dan Kebun: Tata Kelola Perizinan dan Penerimaan Negara di Sektor Berbasis Lahan* (Forest and Plantation Mining: Licensing Management and State Revenue in the Land-Based Sector, in Indonesian) (pp. 41-84). Bogor: IPB Press.
- Parsaulian, A. P., & Sudjito (2019). *Masalah tumpang tindih sertipikat hak milik atas tanah di Kota Banjarbaru (Putusan nomor: 24/G/2014/PTUN.BJM)* (The problem of overlapping land ownership certificates in Banjarbaru city (Decision number: 24/G/2014/PTUN.BJM, in Indonesian). *Bhumi, Jurnal Agraria Dan Pertanahan*, *5*(1), 129-135. <https://doi.org/10.31292/jb.v5i1.324>
- Perjelas Status Kawasan dan Tata Ruang Kotim (Clarify the regional status and spatial planning of Kotim, in Indonesian). (2021, December). *Kalteng Online*. Retrieved April 16, 2023, from <https://kaltengonline.com/2021/12/01/perjelas-status-kawasan-dan-tata-ruang-kotim/>
- Rawls, J. (1999). *A theory of justice* (Revised). Oxford: OUP.
- Rompas, A., & Waluyo, A. (2013). *Laporan Pemantauan Kejahatan Sektor Kehutanan di Wilayah Moratorium di Kalimantan Tengah* (Monitoring report on forestry sector crimes in the moratorium area in Central Kalimantan, in Indonesian). Palangkaraya: WALHI.
- Rosyadi, I., Rizka, R. (2021). Utilization of Land Pawning in Customary Law and Its Solutions Under Islamic Law. *Jurnal Jurisprudence UMS*. *11*(2). <https://doi.org/10.23917/jurisprudence.v11i2.16374>
- Setiawan, U. (2018). Tata ruang tak jelas di Kotim picu konflik antara masyarakat dan perusahaan (Unclear spatial planning in Kotim sparked conflicts between communities and companies, in Indonesian). *Antaranews*. Retrieved March 17, 2023, from <https://kalteng-antaranews.com/berita/280072/tata-ruang-tak-jelas-di-kotim-picu-konflik-antara-masyarakat-dan-perusahaan>
- Sianipar, L. (2015). *Ketahanan Nasional dan Permasalahannya* (National resilience and its problems, in Indonesian). Bahan Ajar PPRA LIII. PPRA: Semarang
- Wardiono, K. (2019). Prophetic: An epistemological offer for legal studies. *Journal of Trancendental Law UMS*, *1*(1). <https://doi.org/10.23917/jtl.v1i1.8797>