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# Legal Responsibility Of Land Use Rights Holders For Land Conversation That Violates The Social Function Of Land Rights

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## Abstract

This study aims to examine in depth how positive agrarian law qualifies the conversion of land use rights (HGU) that violate the social function of land rights. In addition, this study also aims to formulate an ideal legal accountability model for HGU holders in order to uphold social functions and prevent public losses. A normative juridical method was used in this study, which included a statute approach, a conceptual approach, and an analytical approach. The data sources consisted of primary, secondary, and tertiary legal materials, and the analysis was conducted qualitatively and prescriptively. The results of the study show that the conversion of HGU land, whether through active actions or negligence in supervision, causes environmental damage and public losses. This can be considered a violation of the social function of land rights, as stipulated in Article 6 of the UUPA and reinforced by PP No. 18 of 2021 and PP No. 20 of 2021. However, current law enforcement often stops at

administrative sanctions without adequate recovery mechanisms. Therefore, a substantive accountability model is needed that includes compensation and environmental restoration mechanisms as well as administrative sanctions for revocation of rights.

## Keywords

*Land Use Rights, Social Function of Land, Land Use Conversion, Legal Accountability.*

## A. Introduction

The constitutional concept of land ownership in Indonesia places land as a resource that has a strategic role for the life of the nation. Therefore, its regulation, management, and utilization are under the control of the state. This provision is explicitly regulated in Article 33 paragraph (3) of the 1945 Constitution, which is the main basis for land management policy in Indonesia. State control of natural resources, as stipulated in the 1945 Constitution, cannot be separated from the purpose of such control, which is to achieve the greatest prosperity for the people<sup>(1)</sup>. In national agrarian law, the subject and the land have a relationship that is more than just a private relationship. Land rights are not only equivalent to individual rights, but also have a public dimension, namely the social obligation to limit land use so that it does not have a negative impact on society and the environment. Land rights have a social function, so that the use of rights must be proportional and for the public interest, according to Article 6 of the UUPA.

The application of the principle of the social function of land rights originates from the theory of the social function of land rights put forward by French legal expert, Leon Duguit. In the concept of social function, there are no subjective rights

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<sup>1</sup> Dimas Putra Pradhyksa, "Regulation of Water Resources Utilization in the Job Creation Law and Their Correlation with Article 33 of the 1945 Constitution," *ASCARYA* 1, no. 2 (2021): 70, <https://doi.org/https://doi.org/10.53754/iscs.v1i2.16>.

(subyektief recht), but only social functions<sup>2</sup>. Land Use Rights (HGU) are used by the state in development and investment practices to provide a land tenure scheme for large-scale economic activities. The Right to Cultivate (HGU) is a right granted by the state to individuals or legal entities for the specific purpose of cultivating land within a specified time limit, mainly for agriculture, fisheries, and livestock farming<sup>3</sup>. Conceptually, HGU is not a right of ownership; rather, it is a limited right that is purpose-bound or goal-bound, and subject to certain zoning, spatial planning, and management regulations. The land regime reform stipulates HGU regulations in Government Regulation No. 18 of 2021, including transitional provisions that affirm rights that were in effect prior to the regulation.

Normatively, Government Regulation No. 20 of 2021 enhances social functions by requiring HGU holders to cultivate, use, utilize, and/or maintain the land they control for social functions, as well as to build and maintain environmental infrastructure, preserve the land, and maintain environmental sustainability. Social function means that every HGU holder, whether an individual or a legal entity that has a legal relationship with the land, is obliged to maintain the land, increase its fertility, and prevent damage with the aim of making the land useful and beneficial to the community and the environment<sup>4</sup>. With this design, social function is not only understood as a declarative principle, but is directed to become a concrete measure to assess whether the rights holder has fulfilled their obligations. In addition, the social function also serves as the basis for the state to

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<sup>2</sup> Diana R W Napitupulu, *Agrarian Law* (Jakarta: UKI Press, 2023).

<sup>3</sup> Rizaldi Muhammad, Dian Aries Mujiburohman, and Dwi Wulan Pujiriyani, "Mediation as an Alternative to Resolving Land Overlap Disputes Between Land Use Rights and Land Ownership Rights," *JURNAL WIDYA BHUMI* 3, no. 2 (2023): 137–51, <https://doi.org/https://doi.org/10.31292/wb.v3i2.62>.

<sup>4</sup> Wardatul Muniroh et al., "UTILIZATION OF ABANDONED LAND BASED ON THE MINISTRY OF AGRICULTURE AND SPATIAL PLANNING REGULATION / HEAD OF THE NATIONAL LAND AGENCY NO. 20 OF 2021," *Justness* 4, no. 01 (2024): 1–17, <https://doi.org/https://doi.org/10.61974/justness.v4i01.57>.

intervene through regulatory mechanisms in the event of irregularities in the utilization of land rights.

However, in the practice of HGU management, there is a difference between the norm (*das sollen*) and reality (*das sein*). If HGU land is used for non-agricultural purposes (such as tourism or property), especially in ecologically strategic areas such as upstream and water catchment areas, issues of legal status, sectoral policy inconsistencies, and questions regarding the responsibilities of rights holders often arise. One illustration is the utilization of PTPN I HGU land in the Puncak area (Bogor), which was highlighted in the House of Representatives Commission VI hearing on March 19, 2025, which emphasized the need for corrections in utilization, strengthening of supervision of cooperation with third parties, and encouragement of land function restoration and a moratorium on non-conservation cooperation. This situation shows that misuse through partnerships/cooperation can occur due to negligence in supervision by HGU holders and has the potential to cause ecological impacts and public losses.

HGU holders of PTPN in the area have more complicated land tenure issues due to land conversion through Operational Cooperation (KSO) with third parties. This violates the social function stipulated in Article 6 of Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA), because HGU holders do not ensure that the land is used for the public interest and the welfare of the people. In addition, HGU holders do not monitor their KSO partners who expand the land without complete permits, with only 160 hectares of the total 350 hectares granted permits. This has resulted in damage to the environment and the welfare of the people. This violation occurred because PTPN did not properly monitor its KSO partners, who expanded the land without complete permits, with only 160 hectares of the total 350 hectares being granted permits. This has caused environmental damage. The Ministry of Environment and Forestry has imposed administrative sanctions, including revoking 9 of the 33 business units that had permits. Furthermore, there are demands for the voluntary dismantling of 13 business units, as well as serious threats to the local

community. In terms of impact, land conversion in the upstream area of Gunung Mas has the potential to increase the risk of ecological disasters: changes in land cover and a reduction in water catchment areas can accelerate surface runoff, increase the threat of flooding/landslides, and shift the risk burden downstream to areas such as Jabodetabek<sup>5</sup>. Public concerns about the relationship between the destruction of the Puncak area, land conversion into villas/hotels/tourism developments, and increased flood risk have also been voiced by WALHI West Java, which recorded an increase in damage from 45% to 65% (2020-2025)<sup>6</sup>, making this factor the main cause of poor upstream carrying capacity. The conversion of PTPN's HGU is not merely a business matter, but a violation of crucial social functions that threaten public safety and environmental sustainability.

Law enforcement and accountability design are the next important issues. Through the control of abandoned land and warning systems, land law provides administrative sanctions. However, in the case of HGU conversion that has a socio-environmental impact, enforcement often stops at the administrative-procedural level. Meanwhile, mechanisms for public loss recovery, such as environmental restoration, compensation, and enforcement for negligence in supervision, have not been fully formulated. Therefore, the principle of social function must be seen as an operational compliance standard to evaluate whether HGU holders have properly carried out their obligations of cultivation, maintenance, and supervision, including in cases of third-party utilization.

A number of previous studies provide important insights, but generally move partially according to their respective focuses. From a conceptual-constitutional perspective, *King*

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<sup>5</sup> Riza Mulyadi, "Bogor Regency Government Assists KLH in Evaluating PTPN KSO in the Puncak Region," *ANTARA*, July 28, 2025, <https://www.antaranews.com/berita/4997473/pemkab-bogor-bantu-klh-evaluasi-kso-ptpn-di-kawasan-puncak>.

<sup>6</sup> Irsyan Hasyim, "Walhi: Jabodetabek Floods Are an Ecological Disaster Resulting from the Accumulation of Crises," *Tempo*, March 8, 2025, <https://www.tempo.co/lingkungan/walhi-banjir-jabodetabek-merupakan-bencana-ekologis-akibat-akumulasi-krisis-1216732>.

*Faisal Sulaiman (2021) in "The Polemic of the Social Function of Land and State Control Rights after Law Number 12 of 2012 and Constitutional Court Decision Number 50/PUU-X/2012"* emphasizes the need to place social function as a balancing mechanism so that the implementation of State Control Rights remains based on the mandate of public prosperity and does not obscure the dimension of protecting public interests. At the level of the HGU regime after regulatory reform, *Farida Patittingi, Sri Susyanti Nur, Liong Rahman, and Andi Surya Nusantara Djabba (2022), through "Consistency of Regulations Regarding Land Use Rights after the Enactment of the Job Creation Law,"* highlight the issue of consistency and the direction of HGU regulations in the new regime, which is relevant for understanding the obligations and compliance standards of HGU holders within the framework of the latest norms. On the issue of conversion and cross-sectoral overlap, *Albert (2021) in "The Legal Status of the Conversion of Plantation Land Use Rights (HGU) Plantations to Mining Areas"* shows the complexity of legal qualifications when HGU shifts from agricultural purposes to other sectors, thus emphasizing that conversion cannot be assessed solely as an administrative issue, but touches on the purpose of granting rights and the consequences of compliance for holders. From the perspective of state corrective instruments, *Muhammad Afif Naufal (2025) in "Disputes over the Determination of Abandoned Land under Cultivation Rights Number 18 of PT Gunung Meranti Raya Plywood: Problems in the Transition from Government Regulation No. 11 of 2010 to Government Regulation No. 20 of 2021,"* describes the problems of controlling abandoned land on HGU objects during the regulatory transition period, which is important for understanding how administrative enforcement (warnings to revocation of rights) works and its weaknesses. Meanwhile, to strengthen the perspective of accountability when conversion causes public socio-environmental losses, *Muhammad Ainurrasyid Al Fikri, Fatma Ulfatun Najicha, and I Gusti Ayu Ketut Rachmi Handayani (2022) in "Application of Strict Liability by Companies in the Context of Environmental Conservation in Indonesia"* emphasize the relevance of corporate accountability

principles oriented towards restoration and prevention, so that they can serve as a conceptual reference when land administration instruments need to be integrated with the need for restoration due to socio-environmental impacts.

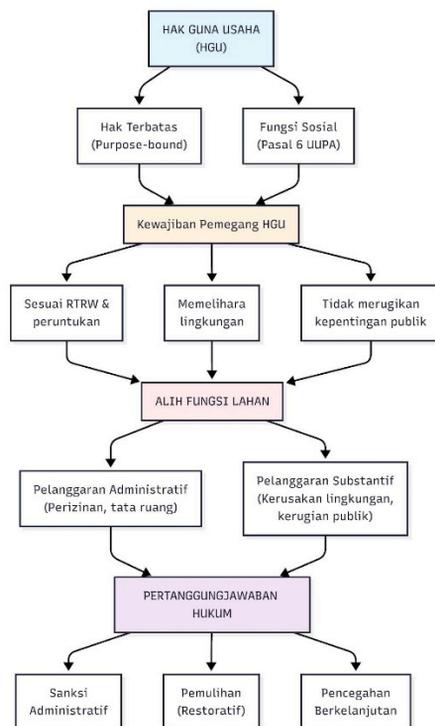
Based on these five research pillars, it appears that the literature has provided an important framework regarding social function as a limiting principle, the renewal of HGU regulations, the qualification of conversion issues in a cross-sectoral context, and administrative control mechanisms through the abandoned land regime, even enriching the discourse with perspectives on corporate responsibility and environmental restoration. However, there is still room for further exploration when the issue is directed at the situation that is the focus of this article, namely the conversion of HGU land in ecologically strategic areas involving a combination of active actions and/or negligence in supervision by rights holders, resulting in widespread public risk or loss.

The purpose of this article is to examine how positive agrarian law (*ius constitutum*) qualifies the conversion of HGU land due to the negligence of HGU holders that causes public harm as a violation of social function. Furthermore, it examines how an ideal model of legal accountability for HGU holders (*ius constituendum*), which includes administrative sanctions for revocation or cancellation of rights, functions to uphold social functions and prevent recurring public harm. With regard to this topic, this updated article focuses on efforts to apply the principle of social function as a substantive compliance standard for HGU holders to assess not only active conversion actions but also negligence in supervision. They must also be linked to a liability design that focuses on recovery and prevention of public losses rather than just administrative consequences.

In this normative legal study, legislative, conceptual, and analytical approaches are used. Spatial and environmental regulations, the Basic Agrarian Law (UUPA), Government Regulation No. 18 of 2021, and Government Regulation No. 20 of 2021 are the primary legal materials. Books, journals, and recent research are secondary legal materials, and legal dictionaries and encyclopedias are tertiary legal materials. Beginning with reviewing documents and analyzing their

content, the collection of materials is followed by a qualitative-prescriptive analysis that distinguishes between *ius constitutum* (existing law) and *ius constituendum*. This is done to produce practical compliance parameters and accountability designs that focus on recovery and prevention. A conceptual framework was created to explain the line of reasoning and the relationship between variables in this study. This conceptual framework maps the relationship between the nature of HGU as a purpose-bound right (*hak yang terikat tujuan*), the principle of the social function of land rights, the obligations of HGU holders, and the establishment of qualifications for violations and the types of legal accountability that can be imposed. This framework serves as an analytical basis for organizing the discussion in the following sections.

**Figure 1.** Conceptual Framework of Legal Liability of HGU Holders



Source: Researcher's Analysis, 2026

The chart explains that the legal responsibility of HGU holders is not separate, but rather a natural result of the nature of HGU as a right that has specific objectives and social function principles. With this structure, this study will first examine how positive law classifies changes in land use as violations of social function before designing an appropriate liability framework.

## **B. Qualification of HGU Land Use Change as a Violation of Social Function in Positive Law**

One of the land rights owned by the state is the right to cultivate (HGU). HGU is limited to the use of land for business activities in the fields of agriculture, fisheries, and/or animal husbandry. HGU is regulated normatively in Article 28 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which states that HGU means "the right to cultivate land directly controlled by the state, for a certain period of time, for agricultural, fishery or livestock companies." This provision illustrates that this right is different from ownership rights, as the purpose of land use with right of use is limited to agriculture, fisheries, and livestock businesses. This right of use can only be granted by the State<sup>7</sup>, so that the purpose of land use is an essential element in the granting and implementation of rights. Furthermore, the regulation of HGU in Government Regulation Number 18 of 2021 concerning Land Use Rights, Building Use Rights, and Land Use Rights elaborates on the implementation of this right in more detail, including the obligation of the right holder to cultivate the land in accordance with the designation and conditions for granting the right.

Every land right in Indonesia, including HGU, has a social function basis, as emphasized in Article 6 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which states that "all land rights have a social function." According

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<sup>7</sup> Yunantha Rachmat and Gultom Elfrida Ratnawati, "DISPUTE RESOLUTION AND LEGAL CONSEQUENCES OF LAND USE RIGHTS FOR PLANTATIONS," *Encyclopedia of Education Review* 6, no. 2 (2024): 42–51.

to this principle, land use must be based on the interests of the community and the environment, not just the interests of the individual rights holder.

The conversion of HGU land in this context raises normative issues, especially when the change in land use deviates from the purpose of granting the rights and has an impact on the community and the environment. This is regardless of whether the deviation still falls within the scope of administrative violations or whether it has reached the level of violating the social function of land rights. As a result, this section examines whether the conversion of HGU land meets the normative criteria within the framework of social function according to positive law.

Substantively, HGU is characterized as a conditional and limited right, which is inherently subject to the social function of land<sup>8</sup>. Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration stipulates that HGU holders are responsible for using and utilizing the land in accordance with its purpose, preserving the environment, and ensuring that they comply with spatial planning regulations and legislation. Thus, PP 18/2021 becomes a specific compliance standard used to determine whether land use is still in line with the purpose of granting rights and its social function.

In addition, Government Regulation No. 20 of 2021 concerning the Control of Abandoned Areas and Land emphasizes that land, including land rights, must not be abandoned and must fulfill its social function. Abandonment, such as neglect and negligence in land use, allows the state to regulate through administrative mechanisms. Thus, social functions no longer serve as declarative principles. Instead, they function as compliance standards with legal consequences and oversight mechanisms.

The following table illustrates a comparison of the regulation of social functions and the obligations of HGU

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<sup>8</sup> Nazhara Widyatama Putri, "Implementation of Social Function and Legal Protection in HGU Abandonment Cases," *Journal of Private and Commercial Law* 2, no. December (2025): 95–112, <https://doi.org/https://doi.org/10.20885/JPCOL.vol2.iss1.art5>.

holders in the UUPA, PP 18/2021, and PP 20/2021. It is designed to facilitate the reading of these standard constructions.

**Table 1.** Comparison of HGU Legal Provisions and Social Functions of Land

Aspect	UUPA (Law No. 5/1960)	Government Regulation No. 18/2021	Government Regulation No. 20/2021
Legal Basis for Social Function	Article 6: "All land rights have a social function"	Maintaining land, preventing damage, annual reporting	Control of abandoned land
Obligations of HGU Holders	Utilizing land for agriculture/fisheries/livestock	Article 27: Obligation to use land in accordance with its designated purpose	Cultivating, using, utilizing land
Penalties for Violations	Revocation of rights	Administrative sanctions, revocation of rights	Rectification, warning, revocation of rights
Supervision Mechanism	State control of land	Cross-sector coordination	Evaluation and enforcement

Source: Researcher Analysis Results, 2026

Article 6 of the Basic Agrarian Law (UUPA) stipulates that "all land rights have a social function," which means that land rights cannot be used or not used solely for personal gain, especially if it causes harm to the community<sup>9</sup>. For the conversion of HGU land, indicators of social function violations can be formulated based on the social function

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<sup>9</sup> Priyo Sudarso, Zulkifli Makkawaru, and Andi Tira, "CONVERSION OF AGRICULTURAL LAND INTO HOUSING DEVELOPMENT AREAS IN THE CONTEXT OF SPATIAL PLANNING IN GOWA REGENCY," *Indonesian Journal of Legality of Law* 6, no. 1 (2023): 65–73, <https://doi.org/10.35965/ijlf.v6i1.3838>.

principles listed in Article 6 of the UUPA and the responsibilities stipulated by HGU holders in PP 18/2021 and PP 20/2021:

- 1) Inconsistency between land use and the purpose of granting HGU (agricultural allocation);
- 2) Violation of spatial planning/RTRW;
- 3) The occurrence of significant environmental damage or public loss;
- 4) Land abandonment (not cultivated/utilized/maintained); and
- 5) Negligence in supervision that allows abuse by third parties.

The following table summarizes the indicators to clarify how they are used to assess HGU land conversion.

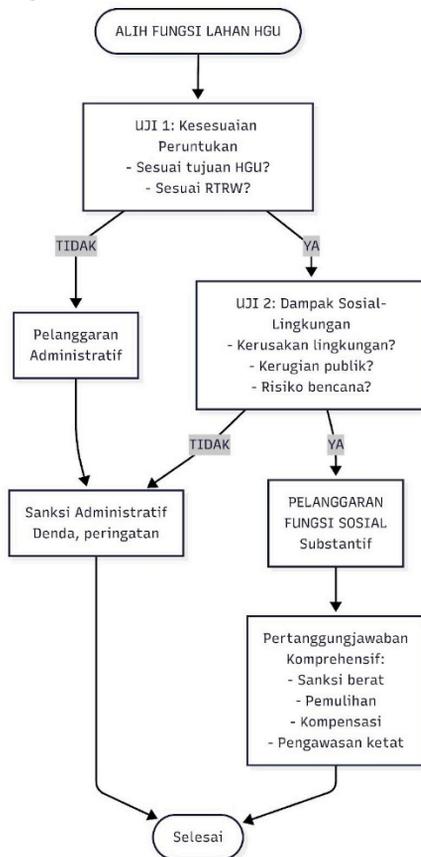
**Table 2.** Indicators of Land Use Violations

Indicator	Form of Violation	Impact	Category
Inappropriate land use	Conversion to non-agricultural use (tourism, property)	Community losses, agrarian conflicts	Administrative-Substantive
Environmental damage	Land cover change, reduced water absorption	Flooding, landslides, ecosystem degradation	Substantive
Land abandonment	Not cultivated/utilized	Loss of productive function of land	Administrative
Violation of spatial planning	Not in accordance with spatial planning	Sectoral policy disharmony	Administrative-Substantive
Negligence in supervision	Illegal occupation by third parties	Ecosystem damage, public loss	Substantive

Source: Researcher Analysis Results, 2026

In this study, the "administrative" category refers to non-compliance that is primarily related to licensing or administrative order and can still be remedied through enforcement. Meanwhile, the "substantive" category indicates deviations that negate the purpose of granting HGU and cause significant public losses or environmental damage, while the "administrative-substantive" category indicates transitional situations that require additional testing through separate "tests." Using these indicators, the conversion of HGU land can be evaluated through a "separate test" in positive law. This test distinguishes between incompatibilities of use that can be remedied through administrative instruments and deviations that substantially contradict the purpose of granting rights and the social function of land rights. To place these qualifications in a more systematic framework, it is necessary to establish a normative test. To determine the level of violation, this testing model uses a socio-ecological impact test as a material parameter in addition to a land use and spatial planning suitability test.

**Figure 2.** Qualification of Violations of the Social Function of Land Rights in the Context of HGU



Source: Researcher Analysis Results, 2026

Normatively, HGU is a conditional and limited right that is subject to the principle of the social function of land according to the Indonesian agrarian principle of "10" (the land belongs to the people). The conversion of HGU land can be considered a violation of the social function of land rights if its use clearly deviates from the purpose of the land grant. Conversely, if the deviation in land use is limited to licensing and/or spatial planning irregularities that can be remedied through enforcement mechanisms and administrative

<sup>10</sup> Putri, "Implementation of Social Function and Legal Protection in HGU Abandonment Cases."

sanctions, the conversion of HGU land tends to be merely an administrative violation. The existence of HGU in agrarian policy often ignores customary rights and the principle of the social function of land, thereby causing social conflict and injustice<sup>11</sup>. The social function serves as a reference for determining whether deviations in land use are still within the realm of administrative order or have reached a level of substantive violation that normatively justifies state intervention to regulate and improve the function of land. In this situation, social function serves as a reference. To reduce inequality and improve community welfare, it is even recommended that the principle of social justice be at the center of changes to HGU regulations.

In positive law, the indicator of "environmental impact" is used as a substantial parameter to operationalize the assessment of HGU utilization irregularities. This parameter is used to determine whether irregularities in land use are still within the scope of administrative order. Non-compliance related to licensing or spatial planning, for example, can basically still be corrected and remedied through administrative instruments. This is similar to the cancellation of land rights as a result of administrative defects, which emphasizes the importance of complying with the provisions of laws and regulations relating to the transfer of land rights. Article 64 of Government Regulation No. 18 of 2021 explicitly stipulates that the revocation of land rights due to administrative defects can be carried out. This emphasizes the importance of compliance with the provisions of laws and regulations related to the transfer of land rights<sup>12</sup>.

The principle of the UUPA that rights such as Right to Cultivate are subject to Article 6 and that land must be used

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<sup>11</sup> Pasamai Syamsuddin, "Customary Land Rights Versus Land Use Rights (HGU)," *Injury: Interdisciplinary Journal and Humanity* 4, no. 7 (2024): 483–90, <https://doi.org/https://doi.org/10.58631/injury.v2i3.1447>.

<sup>12</sup> Rendra Adi Wibowo and Kenotariatan Universitas Diponegoro, "Analysis of Land Rights Cancellation Process Due to Administrative Non-Compliance with Applicable Law in Indonesia" 8, no. 1 (2024): 368–72, <https://doi.org/10.36526/js.v3i2.3647>.

for public interest, not just for private interest, reflects its social function. The concept of customary rights is also in line with Article 6 of the UUPA, which states that land must have a more important social function for the benefit of the wider community or for the common good while adhering to the principle that land must have a social function<sup>13</sup>. Similarly, land use causes significant environmental damage and disregards the principles of social justice and ecological sustainability. This occurs when land management focuses on development without considering pollution prevention instruments and the need for comprehensive rehabilitation to minimize environmental damage. This shows that land use is no longer in line with the social function of land rights.

In this normative study, the issue of land use conversion of HGU managed by PTPN is the focus of attention in supervisory practices. This is evident, among other things, when Commission VI of the Indonesian House of Representatives urges that converted land be returned to its original function "in order to maintain ecosystem balance," emphasizing that asset optimization must be carried out with "consideration for environmental aspects" and not in conflict with the Spatial Plan (RTRW), and requesting evaluation and coordination across agencies. There is no legal assessment based on this reference. Instead, it indicates that the issues under study have significant spatial planning and ecological aspects.

In line with this, scientific studies on the suitability of HGU land use show that the link between spatial planning and land use opens up the possibility of land use inconsistencies with the Spatial Plan (RTRW), which conceptually can be placed as part of the realm of administrative order that can still be restored through licensing control and spatial utilization control<sup>14</sup>. The placement of "environmental

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<sup>13</sup> Ni Ketut Suartining and Benny Djaja, "LAND RIGHTS IN THE LAND LAW SYSTEM IN INDONESIA ACCORDING TO THE BASIC AGRARIAN LAW NUMBER 5 OF 1960," *Journal of Social Research*, no. 5 (2023): 1775–85.

<sup>14</sup> Novta Sukma Ardila and Budiati Lilin, "Analysis of the Suitability of Land Use Rights for Business Purposes in Relation to Regional

impact" as a material parameter is also consistent with a disaster mitigation-based spatial planning approach that requires cross-sectoral synergy so that spatial planning is effective as an instrument for disaster risk reduction<sup>15</sup>. To clarify this parameter (without changing the normative nature of the research), the research results are used only to support the argument that land conversion to agriculture, plantations, or other types of use can "increase surface runoff and reduce groundwater retention capacity," which means increasing the risk of flooding. Therefore, environmental impact indicators serve as a practical tool for evaluating the level of deviation, whether it is still "recoverable" administratively or whether a substantial violation of the social function of land rights has occurred, even though this research remains based on the formulation of the UUPA standards and their implementing regulations as part of the relevant positive law.

### C. Legal Liability of HGU Holders within the Framework of *Ius Constitutum*

Within the framework of positive law (*ius constitutum*), the legal responsibility of HGU holders is a direct consequence of the nature of HGU as a purpose-bound land right and the inherent social function of every land right<sup>16</sup>. HGU holders not only have the authority to cultivate state land, but also bear an imperative legal obligation to ensure that the use of the land is in line with its designation, spatial planning, and the interests of the community and the environment. Therefore, if there is a change in land use that deviates from the purpose of the right or causes socio-environmental impacts, the HGU holder remains the main legal subject responsible. The relationship between the principle of social function and the emergence of legal responsibility in the

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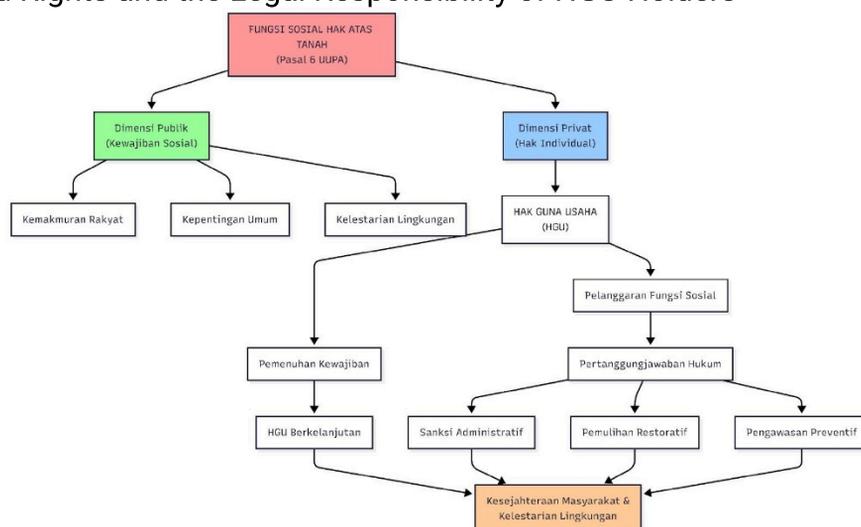
Spatial Planning and Land Use," no. 26 (2025).

<sup>15</sup> Heri Junedi, Dedy Antony, and Agus Kurniawan Mastur, "The Impact of Converting Forest Land to Plantation Land on Soil Physical Quality," *Journal Silvasa Tropiksa* 9, no. 1 (2025): 71–84.

<sup>16</sup> Tri Retno Ayuningtyas et al., "Legal Analysis of the Regulation of Land Use Rights in the National Capital," *Unes Law Review* 6, no. 4 (2024): 11766–76.

context of HGU s can be mapped as a systematic normative relationship. Social function serves as a compliance standard that limits the use of rights, while deviations from it form the basis for legal consequences. This relationship can be illustrated as follows.

**Figure 3.** Relationship between the Social Function of Land Rights and the Legal Responsibility of HGU Holders



Source: Researcher's Analysis Results, 2026

The chart shows that violations of social functions are a transition point between the private dimension of land rights and the public dimension attached to them. When deviations occur, the state's authority to regulate, enforce, and restore legitimacy is normative. Land Use Rights (HGU) are rights granted by the state for specific purposes and are bound by social functions. HGU holders are fully responsible for land management even when third parties are involved<sup>17</sup>. This legal responsibility does not automatically lapse even if the land is used through third parties, such as partners or tenants,

<sup>17</sup> Immanuel Posumah et al., "Legal Review of the Granting of Land Use Rights to Foreign Investors in the Capital City of Nusantara Based on Law No. 5 of 1960 concerning the Basic Agrarian Law," *Lex Privatum Journal of the Faculty of Law, Unsrat* 15, no. 5 (2025).

because legal control over the object of the right remains with the HGU holder.

The granting of HGB and HGU rights with reference to the UUPA does not fully enable rights holders to exercise their rights over the land in accordance with the nature and purpose of the rights granted<sup>18</sup>. Holders of HGU rights bear full legal responsibility for all forms of land use within the scope of their rights, including in partnership schemes with third parties. Therefore, right holders are obliged to ensure that land use remains in line with the provisions set out in the decision granting the rights and complies with the provisions on spatial utilization in the applicable spatial plan, as stipulated in Article 27 of Government Regulation No. 18 of 2021. Thus, negligence in supervision or tolerance of deviant land use can be the basis for demanding legal accountability from HGU holders.

Within the framework of *ius constitutum*, the basis for such liability is not only based on agrarian and spatial planning norms, but can also be constructed through the civil regime, specifically Article 1365 of the Civil Code concerning unlawful acts. This provision opens up the possibility of liability if the misuse of land causes losses, as long as the elements of unlawful acts, fault, loss, and causal relationship are fulfilled. Thus, negligence in supervision (omission), especially in partnership schemes or utilization by third parties, can be positioned as the basis for civil liability if it is proven to cause losses.

This construction shows that within the framework of positive law, the liability of HGU holders is not only potentially administrative in nature, but can also have a civil dimension if the elements of unlawful acts are fulfilled. However, in practice, in cases such as the management of PTPN land in the Puncak area, the response that has emerged has emphasized administrative evaluation and the restoration of land function, rather than through civil litigation mechanisms.

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<sup>18</sup> Maulana Arba Satryadin and Ikhlusal Akmal Aulawi, "Changes in Land Rights Policy in the Capital City from the Perspective of Presidential Regulation No. 75 of 2024," *Jurnal Pertanahan* 15, no. July (2025): 30–43.

The case of PTPN land management in the Puncak area provides a concrete illustration of how the legal responsibility of HGU holders is tested in practice, especially when land use change raises spatial planning and environmental issues. Based on the Brief Report of the House of Representatives Commission VI Hearing on March 19, 2025, the House of Representatives accepted PTPN's explanation regarding land conversion, but firmly urged that the converted land be restored in order to maintain the ecological balance in the Puncak and West Java regions. The insistence on restoring the land function shows that the issue at stake is not merely one of administrative disorder, but is considered to touch on the substantive aspects of the social function of land and compliance with spatial planning.

Furthermore, there are demands for PTPN to optimize its assets without violating laws and regulations and national, provincial, and district/city spatial plans (RTRW), while still paying attention to environmental aspects. This is in line with the view that land use changes that do not take into account zoning regulations and RTRW often become a source of legal disputes between the community, the government, and private companies. The legal impact of land use changes also includes legal conflicts between the community and the government or private companies. Violations of zoning regulations and spatial plans (RTRW) often become a source of legal disputes<sup>19</sup>.

This affirmation of legal responsibility gains strong juridical legitimacy through inter-agency coordination, because HGU holders essentially hold both legal authority and obligations over the land, and HGU can be terminated if the holder does not fulfill their obligations or neglects the land, or through a court decision. Regulation and control are necessary to prevent land conflicts. When someone acquires rights to land, they have authority related to ownership of that

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<sup>19</sup> Sanjesti Winidya and Ana Silviana, "The Impact of Converting Agricultural Land to Dry Land," *Legal Standing Journal of Law* 9, no. 2 (2025): 420–35, <https://doi.org/https://doi.org/10.24269/lj.v9i2.11650>.

land accompanied by obligations regulated by law<sup>20</sup>.

Although land function restoration is often encouraged in supervisory practices, positive law has not yet provided a structured and standardized restorative mechanism within the HGU accountability regime. Inconsistencies in land use conversion with these legal instruments within the framework of *ius constitutum* are, in principle, subject to administrative sanctions, ranging from written warnings, administrative fines, to the most severe consequences in the form of cancellation or revocation of the Right to Cultivate if obligations are not fulfilled. These administrative instruments are designed as corrective mechanisms to restore land use to the purpose for which the rights were granted. The House of Representatives also urges the evaluation of licensing, land use, and patterns of cooperation with partners, which normatively reinforces the principle that land use by third parties does not remove the legal responsibility of HGU holders for controlling land use.

The significance of this legal responsibility is further evident in the DPR's support for a moratorium on the granting of permits for the use of PTPN I HGU land in the Puncak area. This policy is strictly enforced except in the context of strengthening environmental conservation programs. Within the framework of *ius constitutum*, such actions indicate that when the social function of land is deemed unfulfilled, the state can demand that HGU holders correct their policies and reorganize land use.

To clarify the relationship between indicators of social function violations within the framework of *ius constitutum* and state oversight and enforcement practices, systematic mapping is required. In the context of spatial planning ( ), land use must be in accordance with its designation, taking into account environmental sustainability in line with its function of protecting spatial functions and preventing and mitigating

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<sup>20</sup> Rambe Noni and Khalid, "Analysis of Administrative Court Decision No. 118/g/2023/PTUN.MDN Regarding Business Use Certificates from a Siyasaḥ Qada'iyah Perspective," *Legal Standing Journal of Law* 9, no. 2 (2025): 282–95, <https://doi.org/https://doi.org/10.24269/lj.v9i2.11505>.

negative impacts on the environment, as well as achieving a balance between ecological, social, and economic interests.<sup>21</sup>

. This principle emphasizes that deviations in land use are not only assessed from an administrative perspective, but also from their ecological and social implications. Based on this framework, Table 3 below maps indicators of social function violations, the DPR's affirmation as secondary legal material, the implications of accountability in *ius constitutum*, and its relevance to the ideal model (*ius constituendum*).

**Table 3.** Mapping of Indicators of Social Function Violations, Implications of HGU Holder Accountability, and Direction of the Ideal Model

Indicators of social function violations ( <i>ius Constitutum</i> )	Affirmation of the DPR (secondary legal material)	Implications of HGU holder accountability ( <i>ius Constitutum</i> )	Relevance to the ideal model ( <i>ius Constituendum</i> )
Conversion/ misuse requiring restoration of land function	Commission VI urges PTPN to restore the function of land that has been converted in order to maintain ecosystem balance.	This shows that violations of social functions are not treated as mere administrative irregularities; HGU holders can be required to make corrections and restorations (restoration of land function).	Restorative sanctions need to be integrated into the accountability design.

<sup>21</sup> Siregar Wildan, Nurlinda Ida, and Maret Priyanta, "ENVIRONMENTAL LAW ENFORCEMENT POLICY ON SPATIAL PLANNING ADMINISTRATIVE VIOLATIONS AND LAND USE CHANGES ALONG RIVERBANKS IN THE CONTEXT OF SUSTAINABLE SPATIAL PLANNING," *JURNAL POROS HUKUM PADJADJARAN*, no. 42 (2021): 130–49, <https://doi.org/https://doi.org/10.23920/jphp.v3i1.710>.

<p>Inconsistency between land use and the Spatial Planning and Development Plan (RTRW) and disregard for environmental aspects</p>	<p>Commission VI requests that asset optimization not conflict with national, provincial, and district/city spatial plans and take environmental aspects into account.</p>	<p>HGU holder compliance standards must be interpreted across regimes (spatial planning–environment); in case of deviation, HGU holders remain the primary parties held accountable.</p>	<p>Clear parameters are needed to assess violations of social functions based on RTRW compliance and environmental impact.</p>
<p>Violations that require cross-sector coordination (agrarian–environment–local government) in enforcement</p>	<p>Commission VI requested re-evaluation and coordination with ATR/BPN, KLH, the West Java Provincial Government, the Bogor and Cianjur District Governments, and referred to spatial planning instruments.</p>	<p>The accountability of HGU holders cannot be assessed solely from a land sector perspective; consequently, the enforcement/recovery process involves multiple authorities and requires HGU holders to comply with a cross-sectoral framework.</p>	<p>An integrated cross-sectoral monitoring mechanism is needed.</p>
<p>Deviations that occur through third parties (partners/KSO/cooperation) still trigger the responsibility of HGU holders.</p>	<p>Commission VI urges an evaluation of licensing, land use, and cooperation patterns with partners.</p>	<p>Reaffirming the key principle: the involvement of third parties does not transfer the obligation of control/supervision from HGU holders; negligence in supervision can be the basis for liability ( ).</p>	<p>There is a need to emphasize the duty to control and accountability for negligence in supervision.</p>

<p>Risk of disasters/public losses due to land use change in upstream areas and water catchment areas</p>	<p>Commission IV urges an evaluation of permits/cooperation agreements that cause land conversion in upstream areas and water catchment areas to prevent floods and landslides.</p>	<p>Reinforce the qualification that widespread misuse of HGU (flooding/landslides) can be positioned as a violation of social function (substantive), not merely an administrative violation of licensing.</p>	<p>The parameters for social function violations should ideally include indicators of disaster risk and ecological damage (carrying capacity, absorption capacity, slope).</p>
<p>Ecological damage/degradation requiring restoration measures (rehabilitation – reforestation)</p>	<p>Commission IV urges rehabilitation and reforestation in open areas and steep slopes.</p>	<p>Emphasizing the orientation of restoration in accountability: when social functions are disrupted due to environmental damage, the response required is not only administrative but also restoration measures.</p>	<p>There is a need for a clear obligation for ecological restoration</p>
<p>Illegal occupation/occupation that damages ecosystems (an indicator of failure of supervision) and a lack of transparency /data for control</p>	<p>Commission IV requested decisive action on illegal occupation, urged the announcement of revoked permits and coordination with law enforcement</p>	<p>Strengthening accountability because negligence in supervision (tolerance of occupation) can be considered a failure to fulfill a social function; effective control requires transparency of permit status and</p>	<p>The ideal model needs to combine: (a) responsibility for negligence in supervision, (b) the obligation of transparency and data integration (permits, cooperation, occupation), and (c) coordinated</p>

	agencies, and requested mining data (and emphasized that this applies not only to mines but also to plantations).	adequate data.	enforcement of regulations across sectors/law enforcement agencies.
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*Source: Summary compiled from the conclusions of the DPR meeting discussing land use/management (Commission VI related to PTPN Puncak, and Commission IV related to land use change in upstream areas and catchment areas).*

Based on the summary in Table 3, it can be seen that the issue of HGU land conversion in the PTPN Puncak case study is positioned not merely as a formal administrative issue, but as a matter that touches on the social function of land, compliance with spatial planning, and substantive environmental protection. Relevant legal studies show that HGU holders have an obligation to understand and comply with applicable agrarian and land provisions, including legal obligations in relation to land use and the resolution of agrarian conflicts, which are sometimes caused by overlapping regulations and weak law enforcement<sup>22</sup>.

The table also emphasizes that the responsibilities of HGU holders within the framework of *ius constitutum* include the obligation to control and supervise the use of land by third parties, the obligation to correct and reorganize land use to be in line with the RTRW and environmental provisions, and the consequence of restoring land function when there are indications of ecological degradation. Furthermore, within the framework of land law applicable in Indonesia, the responsibilities of HGU holders include control, supervision, and utilization of land in accordance with the RTRW and

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<sup>22</sup> Arpangi and Awaliana Maulida Rofy, "LEGAL PROTECTION FOR HOLDERS OF LAND USE RIGHTS (HGU) IN LAND CONFLICTS ACCORDING TO INDONESIAN LAW," *Sultan Agung Scientific Journal* 4 (2025): 27–34.

applicable agrarian provisions, where non-compliance in utilization can be a source of conflict and potential legal violations. Other studies also confirm that the obligations of HGU holders do not stop at the administrative granting of rights ( ), but also include the obligation to maintain land functions and ensure that its utilization is in accordance with agricultural objectives and spatial planning provisions in order to maintain social and ecological balance <sup>(23)</sup>.

Thus, this mapping provides an argumentative basis to show that an accountability regime that relies solely on formal administrative instruments may be inadequate if it is not accompanied by a recovery mechanism. which then becomes a bridge to the discussion of an ideal accountability model that emphasizes more measurable parameters of social function violations, strengthening responsibility for negligence in supervision, the application of restorative sanctions, and cross-sectoral supervision and enforcement.

The discussion of land use change in the Indonesian House of Representatives Commission IV further reinforces this accountability context. This meeting positioned plantation land use change as a national strategic issue that has a long-term impact on ecosystem damage, the risk of deforestation, and flooding. In addition, land use change is directly linked to threats to food security due to a reduction in the national food supply. The increase in land conversion also has implications for the decline in farmers' welfare and the disruption of environmental sustainability<sup>24</sup>. The emphasis on the weak supervision of the relevant ministries shows that land conversion is not seen as merely a technical land use issue, but as a matter of public interest that demands

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<sup>23</sup> Subekti Rahayu, Salma Jane Benedicta, and Hadhika Afghani Imansyah, "THE POSITION OF LAND OWNERSHIP AND EFFORTS TO CONTROL LAND USE CHANGE IN INDONESIA," *Bina Hukum Lingkungan* 7, no. No. 2 (2023), <https://doi.org/https://doi.org/10.24970/bhl.v7i2.318>.

<sup>24</sup> Indriana Diani Putri, Rochmat Martanto, and Rohmat Junarto, "The Impact of Land Use Change on Food Security, the Environment, and Agricultural Sustainability in Sleman Regency," *JURNAL WIDYA BHUMI* 4, no. 2 (2024): 192–211, <https://doi.org/https://doi.org/10.31292/wb.v4i2.108>.

accountability from the state and land rights holders. This perspective complements the PTPN Puncak case by emphasizing that the legal responsibility of HGU holders is not only administrative in nature, but also closely related to environmental protection and the sustainability of food production as part of the social function of land rights.

Thus, within the framework of *ius constitutum*, the legal responsibility of HGU holders for land conversion is a normative consequence of the nature of HGU, which is bound by the purpose of granting rights and the obligation to fulfill social functions. When land use—including through third-party utilization schemes—deviates from these objectives, HGU holders remain subject to the obligation to ensure that the land is properly managed in accordance with the circumstances, nature, and purpose of the rights granted<sup>25</sup>. The PTPN Puncak case shows that HGU holders still bear legal responsibility for land use, including that carried out through third parties, and can be asked to make corrections, restorations, and reorganize land use if the social function of the land is not fulfilled. Land should not merely be an object of speculation, but must be managed in accordance with the principles of sustainability and social function<sup>26</sup>.

#### **D. Ideal Accountability Model (*Ius Constituendum*)**

In normative legal research, the use of legal theory serves as an analytical tool to (i) structure norms that are still general in nature into operational criteria, (ii) explain why a legal consequence should be attached to a particular subject,

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<sup>25</sup> Wulan Rahmadini, "LEGAL PROTECTION FOR HOLDERS OF RIGHTS TO USE LAND UNDER THE POLICY OF RETURNING COMMUNITY LAND AND GOVERNMENT ENCLAVES (STUDY OF DECISION NO. 03/G/2011/PTUN-BNA)," *Notary Journal* 1, no. 2 (2023): 368–80.

<sup>26</sup> Muhammad Afif Naufal, "Dispute over the Determination of Abandoned Land for Business Use Rights Number 18 PT Gunung Meranti Raya Plywood: Problems of Transition from Government Regulation Number 11 of 2010 to Government Regulation Number 20 of 2021," *Padjajaran Law Review* 13 (2025): 44–55, <https://doi.org/https://doi.org/10.56895/plr.v13i2.2462>.

and (iii) formulate the direction of legal reform (*ius constituendum*) that is coherent with the legal objectives to be achieved. Based on the focus of this study, namely the accountability of HGU holders for land use changes that violate social functions, the theoretical framework chosen must be able to address two needs simultaneously. First, it must ensure that "social function" does not stop at normative principles, but can be operationalized as an indicator for assessing forms of land use deviation. Second, it must develop a construct of accountability that does not stop at administrative compliance, but also includes consequences for the ecological and social impacts caused.

These requirements are in line with the direction of land use regulation reconstruction, which is not merely administrative and procedural, but also integrates distributive justice, restorative justice, and environmental protection. This orientation is reflected in the mapping of indicators in Table 3, which summarizes a number of emphases, including the push to restore the function of converted land and the demand for evaluation of permits and cooperation agreements that trigger conversion in upstream areas and water catchment areas as a measure to prevent flooding and landslides. Thus, the theory in this study is not placed as a complement, but as an argumentative basis for bridging the indicators in Table 3 towards a more ideal and operational accountability model design. As normative legal research uses legal theory, social justice, and public policy to build comprehensive arguments and answer research problems systematically<sup>27</sup>.

The first theoretical framework used is the doctrine of the social function of land rights as the basic principle of land law as stated in Article 6 of the Basic Agrarian Law ( ). This doctrine places land rights—including Cultivation Rights (HGU)—not as absolute authority, but as authority whose use

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<sup>27</sup> Petrus Roni Kristian Sihombing and Anne Gunadi Martono Widjojo, "Occupation of State Land by Residents in Kampung Baru Harjamukti Depok: A Study of Legal Certainty and Social Justice," *SIGn Jurnal Hukum* 7, no. 1 (2025): 285–300, <https://doi.org/https://doi.org/10.37276/sjh.v7i1.438>.

must be directed as much as possible for the prosperity of the people. Within this framework, land rights have a dual dimension as a social asset and a capital asset, the management of which must take into account the principles of prosperity, order, and humanity<sup>28</sup>. Therefore, land issues must take into account the principles of prosperity, security, and humanity<sup>29</sup>. To strengthen the effectiveness of these principles in the context of HGU originating from state land and being bound by objectives, the analysis is combined with the doctrine of State Control Rights (HMN), whereby state control rights are the allocation of power granted by law to the state to act in order to carry out its interests<sup>30</sup>. As stipulated in Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the UUPA, the State Control Right (HMN) is regulated. Land management must provide the greatest possible benefits for the people in terms of nationality, justice, prosperity, social independence, and the rule of law<sup>31</sup>. At this point, the combination of social function and HMN explains why the conversion of HGU land cannot be understood merely as an administrative irregularity, but can be interpreted as a deviation from the social mandate of state land. This framework is in line with the indicators in Table 3, particularly row (1), which emphasizes the need for restoration or return of land function when there is a deviation in utilization.

The second theoretical framework consists of

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<sup>28</sup> I Putu Agus et al., "The Position of Traditional Villages as Landowners in Indonesian Positive Law" 06, no. 03 (2021): 696–706, <https://doi.org/https://doi.org/10.24843/AC.2021.v06.i03.p17>.

<sup>29</sup> Baetal Bachtiar, Dwi Kusumo Wardhani, and Ekawati Dian, "INTERPRETATION OF STATE CONTROL OVER LAND IN THE DIMENSION OF CONSTITUTIONAL POLITICAL LAW," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum Dan Keadilan* 8, no. 2 (2021).

<sup>30</sup> Isnaini and Anggreni A Lubis, *Agrarian Law: A Comprehensive Study* (Medan: CV. Pustaka Prima (ANGGOTA IKAPI), 2022).

<sup>31</sup> Asmarani Ramli et al., "EMBRACING SOCIAL JUSTICE: EXPLORING THE JOURNEY FROM LAND REFORM TO AGRARIAN REFORM," *The Fourth International Conference on Innovations Social Sciences Education and Engineering*, no. 62 (2024).

environmental and spatial planning principles used to make social function a more measurable parameter. In the context of land use change, the measure of “violating social function” is inadequate if it is limited to the presence or absence of a permit, because the impact on the public often manifests in ecological degradation and increased risk of disasters. Therefore, the principles of sustainable development and the precautionary principle are relevant as a normative basis for including indicators of ecological damage or risk as part of the assessment of social function violations. The measurability of these indicators can be supported by the environmental carrying capacity and capacity framework (DDDTL), so that social function violations can be projected, for example, as a decrease in infiltration/hydrological function, land clearing on steep slopes, or an increase in hydrometeorological risk. This line of analysis parallels the mapping of indicators in Table 3, particularly row (2) concerning the compatibility of spatial planning and environmental aspects, as well as rows (5)–(6) which highlight the risk of flooding/landslides and the need for rehabilitation–reforestation, so that social function violations are assessed based on spatial compatibility as well as their socio-ecological consequences.

The third theoretical framework is the theory of legal liability in determining the basis for imposing liability on HGU holders. The obligations of HGU holders are not only related to active acts (commission) but also include negligence (omission). In Indonesian civil law, Article 1365 of the Civil Code stipulates that any unlawful act committed due to negligence and causing loss, including as a result of negligence, obliges the perpetrator to compensate for the loss. This norm is important to “lock in” the liability of HGU holders even if the land is used through partners, because contractual relationships do not remove the substantive obligations attached to rights. Article 1365 of the Civil Code also allows for restoration to the original state. However, the fault-based construction and reliance on the burden of proof ( ) in such lawsuits have not been specifically designed as a standardized and preventive ecological restoration instrument in the context of violations of the social function

of land. Therefore, without negating its applicability, it is necessary to strengthen the liability model by integrating compensation with the obligation to restore the environment in a measurable and systematic manner.

The fourth theoretical framework of environmental restoration as the core of accountability, not merely administrative punishment. The polluter pays principle stipulates that parties causing environmental damage are obliged to bear the costs of restoration and mitigation of the impacts of the damage caused<sup>32</sup>. This principle is in line with the ideas of environmental restoration and restitutio in integrum, where restoration as close as possible to the original state is the focus of environmental law enforcement<sup>33</sup>. Thus, at the *ius constituendum* level, administrative sanctions need to be combined with restoration obligations and, where relevant, compensation to affected communities as part of a more comprehensive legal responsibility.

Finally, to prevent the entire model from falling into partial enforcement, Lawrence Friedman's legal system theory is used for institutional design. This theory emphasizes that the effectiveness of law is influenced by the integration of legal structure, legal substance, and legal culture<sup>34</sup>. Its relevance is evident in the need for cross-sector coordination and consolidation of monitoring and enforcement mechanisms so that norms do not remain mere texts but are put into practice. In the mapping in Table 3, the indicators of cross-sector coordination (row (3)) and the need for transparency/data and enforcement coordination (row (7))

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<sup>32</sup> Muh Rifqy Ramadhan and Salmi, "Application of the Polluter Pays Principle in Environmental Cases Using a Restorative Justice Approach," *Jurnal To Ciung* 4, no. 2 (2024): 48–59, <https://doi.org/https://doi.org/10.64078/tociung.v4i2.2872>.

<sup>33</sup> Kana Kurnia, Indra Rizqullah Fawwaz, and Lita Herlina, "Application of the Polluter Pays Principle in Oil Spill Cases in Balikpapan Bay," 2023, 561–82, <https://doi.org/10.20885/iustum.vol30.iss3.art5>.

<sup>34</sup> Moh DM Yusuf et al., "ANALYSIS OF FACTORS HINDERING CRIMINAL LAW ENFORCEMENT IN INDONESIA FROM THE PERSPECTIVE OF LAWRENCE FRIEDMAN'S THEORY," *Jurnal Ilmiah Advokasi* 13, no. 2 (2025): 711–25.

need to be understood as structural requirements, because cross-sector collaboration is necessary for the principle of social function to work effectively in supervision and recovery execution<sup>35</sup>.

Based on the overall doctrine and theory, the ideal accountability model (*ius constituendum*) is elaborated as a normative consequence of the mapping of indicators in Table 3. To formulate a more operational and measurable accountability construct, a model is needed that integrates parameters of social function violations, forms of responsibility, oversight mechanisms, and recovery instruments. The model is further formulated in the following table.

**Table 4.** Legal Accountability Model for HGU Holders

Form of Accountability	<i>Ius Constitutum</i> (Current)	<i>Ius Constituendum</i> (Ideal)
Administrative	Warnings, fines, revocation of rights	Integrated with recovery mechanisms
Civil	Compensation (Article 1365 of the Civil Code)	Measurable compensation + environmental restoration
Restorative	No clear integration mechanism	Rehabilitation, reforestation, hydrological restoration
Supervision	Sectoral, fragmented	Integrated cross-sectoral (ATR-BPN, KLHK, Local Government)

Source: Researcher Analysis Results, 2026

The mapping shows that although there has been a push for recovery in the practice of evaluation and supervision, the

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<sup>35</sup> Winny Sanjaya, "THE IMPACT OF THE ONE MAP POLICY IN THE LAND SECTOR ON CERTIFICATES AS PROOF OF LAND OWNERSHIP IN INDONESIA," *LITRA: Journal of Environmental, Spatial and Agrarian Law* 2, no. April (2023), <https://doi.org/https://doi.org/10.23920/litra.v2i2.1291>.

accountability mechanisms in the current HGU regime still tend to be administrative and are not yet fully integrated systematically into a restorative framework. Table 4 shows that the accountability of HGU holders is inadequate if understood solely as administrative control; rather, it needs to be constructed in a layered and integrated manner. The four dimensions complement each other to ensure that violations of social functions are not only regulated, but also restored and prevented from recurring. Based on this construction, the following description outlines the parameters of violations and institutional prerequisites that must be met for the ideal model to work effectively.

The parameters for social function violations need to be confirmed through testing the suitability of the objectives of granting HGU and RTRW as well as socio-ecological impact indicators, so that the qualification of violations does not stop at the formality of permits. At the same time, third-party involvement and illegal occupation/trespassing should not become loopholes for shifting responsibility; therefore, the ideal model needs to "lock in" the duty to control HGU holders as an obligation that can be assessed through monitoring, partner compliance audits, cooperation termination mechanisms, and corrective actions for violations.

Furthermore, indicators that require restoration (particularly lines (1) and (6)) direct the design of sanctions so that they do not stop at administrative control, but rather ensure measurable restoration of land function through rehabilitation/reforestation obligations, restoration of infiltration/hydrological functions, and the imposition of restoration costs on the responsible parties. The polluter pays principle can be used as an argumentative basis so that the burden of restoration is not shifted to the state/community, but is borne by the party that caused the damage. For the overall design to be effective, indicators of cross-sector coordination and the need for transparency/data require an integrated monitoring mechanism in the form of integration of licensing and spatial data, joint inspections/audits across agencies, and coordinated enforcement from administrative control to restoration execution. With this construction, the administrative " "

sanction instrument is retained as an initial enforcement tool, but its effectiveness is ensured through a substantive accountability mechanism oriented towards integrated control, restoration, and enforcement, so that the ideal model truly addresses the indicators of social function violations mapped in Table 3. Thus, the ideal accountability design does not replace existing administrative instruments but positions them as an entry point reinforced by restoration obligations, civil accountability when measurable losses occur, and integrated cross-sectoral oversight to prevent fragmented enforcement.

## **E. Conclusion**

Positive agrarian law (*ius constitutum*) normatively affirms that the utilization and/or conversion of HGU land that deviates from the purpose of granting rights, contradicts the suitability of land use and spatial planning, and causes social losses and/or environmental damage, can be qualified as a violation of the social function of land rights, either through active actions or through negligence in the supervision of rights holders. Within this framework, the responsibility of HGU holders remains attached even if the land is used by third parties such as partners or joint venture partners, because contractual relationships do not transfer the obligation to control and supervise the land that is the object of the HGU. The mapping of indicators in Table 3 includes the DPR's affirmation of the demand for the restoration of land functions, evaluation of licensing and cooperation patterns, compliance with spatial planning and environmental aspects, rehabilitation and reforestation, and the need for cross-sectoral coordination, indicating that the issue of HGU land conversion, as in the case study of PTPN Puncak, is positioned as a substantive issue of social function fulfillment that requires correction and restoration, not merely formal administrative control.

However, the strong push for ecological restoration in the DPR's oversight practices has not always been directly proportional to effective enforcement guarantees, as restoration often still depends on procedural administrative

and inter-agency coordination, without uniform, measurable, and enforceable standards for violations and indicators of restoration as consequences of accountability. Therefore, the development of an ideal legal accountability model (*ius constituendum*) needs to combine administrative sanctions with substantive responsibilities. This is done by establishing clear parameters for violations of social functions, based on the suitability of HGU objectives, RTRW provisions, and the social and ecological impacts caused.

In addition, it needs to be emphasized that HGU holders remain responsible for negligence in supervision, including in partnership and occupation schemes. The form of accountability is not only in the form of administrative sanctions, but also the obligation to restore through rehabilitation or reforestation, return to infiltration or hydrological functions, and provide compensation if proven to cause losses to the community. To support its implementation, cross-sector cooperation between the agrarian, environmental, and spatial planning sectors is needed through the harmonization of regulations, data integration, joint inspections, and coordinated enforcement. Thus, the principle of social function is not only a normative principle but is actually applied in HGU management to ensure compliance, protect the public interest, and ensure recovery in the event of violations.

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