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# Ownership of Undelivered Public and Social Facility Land and the Right to Compensation in Toll Road Development

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## Abstract

This study examines a dispute over public and social facility land in the Bawen City Land housing estate, Semarang Regency, affected by land acquisition for the Bawen–Yogyakarta Toll Road. Parcels designated in the ratified site plan as a prayer hall, a parking area, and a well and water reservoir were registered as freehold title in the developer director's personal name, encumbered as security for debt, never handed over to the regional government, and

ultimately became the basis for receiving compensation. Two problems are formulated: the legal status of those land rights in light of the handover obligation and the social function of land, and the reading of the entitled party norm that yields substantive justice. The study applies a normative juridical method with statutory, conceptual, and case approaches, drawing on legislation, Decision Number 8/Pdt.G/2024/PN Unr, and legal literature, reinforced by testimony from affected residents. The findings show that the developer's conduct satisfies the elements of circumvention of the law, because formally valid legal forms were deployed to evade a mandatory obligation, producing illusory certainty that is flawless on paper yet negates the social function of land. It argues that the right to receive compensation is not identical to the right to enjoy it unencumbered, because substitute money inherits the designation of the object it replaces, so the handover obligation converts into an obligation to provide equivalent replacement facilities. Its novelty is a four-stage function restoration model placing regional government as the principal actor.

## Keywords

*Public and Social Facilities; Circumvention of the Law; Social Function of Land Rights; Land Acquisition.*

## Introduction

The Constitution has never treated land as merely an object of private ownership. Article 33(3) of the 1945 Constitution of the Republic of Indonesia affirms that the

earth, water, and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, while Article 28H(1) guarantees every person the right to a dwelling and to a good and healthy living environment. Read together, these two norms generate a consequence that is frequently overlooked: control over a parcel of land is never the private affair of the certificate holder alone, but always intersects with the interests of others whose living conditions depend upon that land. When the land in question is land that sustains the roads, clean water, place of worship, and shared spaces of a settlement, that intersection bears directly upon the constitutional right of residents to adequate housing.

The tension between formal ownership and substantive interest is a classical problem of legal philosophy. Gustav Radbruch formulated three basic values that law must satisfy simultaneously, namely legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and expediency (*Zweckmäßigkeit*), which in many cases pull in opposing directions and thus compel judges to choose.<sup>1</sup> Radbruch subsequently maintained that the primacy of legal certainty must be withdrawn once the injustice it produces becomes intolerable.<sup>2</sup> This formulation is not merely a legacy of post-war German history; it has become an operational reference for assessing the quality of judicial decisions in

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<sup>1</sup> Gustav Radbruch, *Rechtsphilosophie*, ed. Ralf Dreier and Stanley L. Paulson (Heidelberg: C.F. Müller, 2003), 73–76.

<sup>2</sup> Gustav Radbruch, “Gesetzliches Unrecht und übergesetzliches Recht,” *Süddeutsche Juristen-Zeitung* 1, no. 5 (1946): 105–108.

Indonesia.<sup>3</sup> The difficulty is that civil adjudication frequently treats formal proof of ownership as the absolute embodiment of legal certainty, leaving the other two values with almost no room for consideration.<sup>4</sup> Such a mode of legal reasoning has been criticised as a veneration of text that disregards the very social reality the text is meant to govern.<sup>5</sup>

Yet national agrarian law has furnished a safety valve against such absolutism of ownership from the outset. Article 6 of Law Number 5 of 1960 on Basic Agrarian Principles provides that all land rights have a social function. Boedi Harsono explains that this principle means the use of land may not be tied solely to the personal interest of its holder, but must be adjusted to the circumstances and nature of the right so that it also benefits society and the state.<sup>6</sup> The principle stands alongside the state's right of control under Article 2 of the Basic Agrarian Law, which positions the state as guardian to ensure that individual control of land does not negate the economic and social rights of communities that already depend upon it.<sup>7</sup> The social function is therefore an instrument available to rebalance the Radbruchian triad. The

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<sup>3</sup> Hari Agus Santoso, "Perspektif Keadilan Hukum Teori Gustav Radbruch dalam Putusan PKPU 'PTB'," *Jatiswara* 36, no. 3 (2021): 325–334.

<sup>4</sup> Fence M. Wantu, "Mewujudkan Kepastian Hukum, Keadilan, dan Kemanfaatan dalam Putusan Hakim di Peradilan Perdata," *Jurnal Dinamika Hukum* 12, no. 3 (2012): 479–489.

<sup>5</sup> Vincentius Patria Setyawan, "Kematian Hukum dan Lahirnya Hukum Progresif: dalam Konteks Penegakan Hukum di Indonesia," *Sol Justicia* 8, no. 1 (2025): 11–20.

<sup>6</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, vol. 1 (Jakarta: Universitas Trisakti, 2018).

<sup>7</sup> Denico Doly, "Kewenangan Negara dalam Penguasaan Tanah: Redistribusi Tanah untuk Rakyat," *Negara Hukum* 8, no. 2 (2017): 195–212.

question is the extent to which that instrument is genuinely deployed when confronted with a concrete case.

The severest test of that balance arises in land acquisition for development in the public interest. Article 1(3) of Law Number 2 of 2012 defines the Entitled Party as the party that controls or owns the object of land acquisition. The formulation appears inclusive because it places control on a par with ownership, yet in implementation it contracts into the mere identification of the name recorded on a certificate. That narrowing becomes a serious problem when it confronts land designated for public and social facilities within housing estates. Article 47 of Law Number 1 of 2011 on Housing and Settlement Areas obliges developers to provide infrastructure, facilities, and public utilities and to hand them over to the regional government once construction is complete, an obligation elaborated through Minister of Home Affairs Regulation Number 9 of 2009. Compliance is strikingly low: research in Cirebon City shows that only 19 of 143 housing estates, or 13.28 percent, had handed over their infrastructure, facilities, and public utilities to the regional government as of 2023.<sup>8</sup> As a result, land that has functionally become the shared property of residents remains recorded in the developer's name, and that gap may persist for years unnoticed until an event compels it to be tested.

The Bawen City Land housing estate in Bawen Village, Bawen District, Semarang Regency, offers an almost perfect illustration of the anatomy of that problem. According to

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<sup>8</sup> Natasya Khairunnida and Budiman Rusli, "Implementasi Kebijakan Penyerahan Prasarana, Sarana, dan Utilitas (PSU) Perumahan di Kota Cirebon," *Responsive* 8, no. 1 (2025): 80–95.

Ungaran District Court Decision Number 8/Pdt.G/2024/PN Unr, a parent parcel of 11,652 m<sup>2</sup> was subdivided into 57 plots with an effective saleable area of 6,945 m<sup>2</sup>, or approximately 59.79 percent of the total. Two of those parcels, namely Freehold Title Certificate Number 3356 designated for a swimming pool and prayer hall, and Freehold Title Certificate Number 3357 covering 607 m<sup>2</sup> designated as a parking area, were expressly earmarked for public and social facilities. Neither, however, was registered in the name of the developer's business entity; both were registered in the personal name of its director and subsequently pledged as collateral for a loan from a savings and loan cooperative, accompanied by a power of sale. Land promised in the site plan drawings as a prayer hall, food court, swimming pool, water well, water reservoir, and electrical installation for residents ended up as security for personal debt.

When the Bawen–Yogyakarta Toll Road alignment reached those parcels, the administrative problem was transformed into a dispute over entitlement to money. Compensation was deposited by way of consignment pursuant to Ungaran District Court Ruling Number 10/Pdt.P-Kons/2025/PN Unr of 12 November 2025 in the amount of IDR 2,031,903,000.00. Consignment is lawful and indeed necessary to keep development on course, yet a number of studies caution that the institution may prejudice entitled parties because it removes bargaining space and

compels acceptance of a unilaterally determined value.<sup>9</sup> Meanwhile, the residents' claim was dismissed at first instance on reasoning resting upon the formal validity of the certificates, and that decision is not yet final because an appeal is pending. The residents' loss, moreover, is not merely an asset on paper. The author's interview with an affected resident, who asked to remain anonymous, revealed that the artesian well serving as the shared source of clean water had to be replaced by a new well approximately 50 metres deep, far shallower than the original well of approximately 80 metres. The residents did not lose money; they lost water, roads, and shared space.

Proceeding from that account, this article poses two questions. First, what is the legal status of land rights over public and social facilities that have not been handed over to the regional government yet are registered in the personal name of the developer's director and encumbered with security for debt? Second, what are the implications of that status for determining the party entitled to compensation in toll road land acquisition, and what form of settlement is capable of delivering substantive justice to affected residents?

A number of earlier studies have approached this terrain from different angles. Vorry Rahmad, Kurnia Warman, and Jean Elvardi examined the handover of housing infrastructure, facilities, and utilities from developers to the

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<sup>9</sup> Ragga Bimantara et al., "Konsinyasi Ganti Kerugian dalam Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum," *Jurnal IUS* 7, no. 2 (2019): 306–318.

regional government in Tanah Datar Regency.<sup>10</sup> That study maps the administrative obstacles within the handover process but halts at the relationship between developer and regional government, and therefore does not reach the situation in which an object not yet handed over is itself subjected to land acquisition. Abdullah Emile Oemar Alamudy, Martin Roestamy, and Endeh Suhartini studied legal protection for housing consumers regarding the provision of infrastructure, facilities, and public utilities.<sup>11</sup> That study lies close to the residents' interests discussed here, yet it rests upon the contractual relationship between consumer and developer and does not extend to determining the party entitled to compensation. Chelsy Naristya Utomo, Asmarani Ramli, and Suhadi examined the settlement of a dispute over former *recht van eigendom* land at Taman Sriwedari Surakarta through decision analysis.<sup>12</sup> The method is comparable, but the object is former Western-title land with a municipal government as party, not public facility land controlled by a private developer. A clear gap therefore remains: no study has yet dissected the defect in the root of title over public and social facility land while simultaneously drawing out its consequences for determining the party

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<sup>10</sup> Vorry Rahmad, Kurnia Warman, and Jean Elvardi, "Penyerahan Prasarana, Sarana, dan Utilitas Perumahan dan Permukiman dari Pengembang kepada Pemerintah Daerah (Studi pada Kabupaten Tanah Datar)," *UNES Law Review* 6, no. 1 (2023): 1710–1723.

<sup>11</sup> Abdullah Emile Oemar Alamudy, Martin Roestamy, and Endeh Suhartini, "Perlindungan Hukum bagi Konsumen Perumahan atas Penyediaan Prasarana, Sarana, dan Utilitas Umum," *Living Law* 14, no. 2 (2022): 87–102.

<sup>12</sup> Chelsy Naristya Utomo, Asmarani Ramli, and Suhadi, "Legal Resolution of the Land Dispute over Former *Recht van Eigendom* of Taman Sriwedari Surakarta and the Solo City Government," *Indonesian Journal of Agrarian Law* 3, no. 1 (2026).



entitled to compensation within a single, integrated line of analysis.

The novelty of this article lies in two layers of contribution. In the first layer, the article identifies the registration of public and social facility land in the personal name of the director of a limited partnership as circumvention of the law (*wetsontduiking*), that is, compliance with the letter of a norm precisely in order to evade its purpose.<sup>13</sup> In the second layer, the article offers a function restoration model for public and social facilities as a reconstruction of the Entitled Party norm, operating through graduated stages, namely recording the functions that have been lost, determining the status of the obligation, imposing a substitute obligation, and handover and recording as regional property. Within the Radbruchian framework, the first layer addresses a legal certainty that proves illusory, while the second restores the justice and expediency that have thus far been neglected.

This research is normative juridical legal research supported by limited empirical data, employing statutory, conceptual, and case approaches.<sup>14</sup> Primary legal materials comprise legislation in the fields of agrarian affairs, housing, and land acquisition; Ungaran District Court Decision Number 8/Pdt.G/2024/PN Unr together with the related consignment ruling; and the certificates and licensing documents adduced as evidence in the case. Secondary legal

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<sup>13</sup> Anita Dewi Anggraeni Kolopaking, *Penyelundupan Hukum Kepemilikan Hak Milik atas Tanah di Indonesia* (Bandung: Alumni, 2013).

<sup>14</sup> Sari Yulis, "Metodologi Penelitian Hukum sebagai Kerangka Analisis Isu Hukum Kontemporer," *Locus Journal of Academic Literature Review* 4, no. 9 (2025): 808–818.

materials consist of books, journal articles, and prior research. Empirical data were obtained through in-depth interviews with affected residents and a comparison of satellite imagery of the housing estate across the 2023 to 2026 period. All materials were analysed qualitatively and concluded deductively, moving from norm to concrete case. It must be emphasised that the interview data and satellite imagery are not employed to establish the material truth of a case still in progress, but solely as factual context for testing whether the court's legal reasoning has reached the social reality it is meant to govern.

## **A. Legal Status of Land Rights over Public and Social Facilities Not Yet Handed Over to the Regional Government**

Toll road development in Indonesia has shifted from a mere public work into one of the mainstays of economic growth and inter-regional connectivity policy. That shift is legible in the scale of the undertaking. The Yogyakarta–Bawen Toll Road, which forms the backdrop of this case, was designed to run 75.82 kilometres, traversing Central Java Province for 68.17 kilometres and the Special Region of Yogyakarta for 7.65 kilometres, and is being

constructed by a consortium of five state-owned enterprises.<sup>15</sup> Those figures show that the project is not a local undertaking but part of a national development agenda backed by institutional support and large-scale financing.

A scale of that magnitude does not operate of its own accord; it works through legal instruments that lend it coercive force. Critical studies of National Strategic Projects show that projects of this kind proceed through a power of exclusion resting upon four instruments, namely market, regulation, legitimacy, and coercion, so that their effects are not felt evenly across all social groups.<sup>16</sup> The success of development is therefore inadequately measured by the length of road connected. An equally important measure is how the law treats those in the weakest position when a project traverses their living space, including when compensation is pursued through deposit in court, an arrangement that itself still harbours normative contradictions.<sup>17</sup>

In Semarang Regency, that pressure has assumed a highly concrete form. The toll road alignment crosses the Bawen City Land housing estate and reaches parcels designated from the outset as public and social facilities, namely a swimming pool, a prayer hall, and a parking area, which were never

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<sup>15</sup> Directorate General of Highways, Ministry of Public Works and Housing, “Tol Bawen–Yogyakarta Mulai Dibangun,” accessed April 28, 2026, <https://binamarga.pu.go.id/index.php/berita/tol-bawen-yogyakarta-mulai-dibangun>.

<sup>16</sup> Agung Wardana and Dzaki Aribawa Darmawardana, “Pembangunan sebagai Proses Eksklusi: Kajian Hukum dan Ekonomi-Politik atas Proyek Strategis Nasional,” *Jurnal Hukum & Pembangunan* 54, no. 2 (2024).

<sup>17</sup> Robiah Adawiyah and Taupiqurrahman, “Problematika Pendanaan Pengadaan Tanah Proyek Strategis Nasional melalui Konsinyasi Pengadilan Negeri,” *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan* 17, no. 6 (2023).

handed over to the regency government. Those parcels were instead registered in the personal name of the director of the developer's limited partnership, encumbered as security for a debt to a savings and loan cooperative, and their compensation was deposited by consignment and then disbursed while the dispute was still pending. Herein lies the paradox. Against the grandeur of national infrastructure figures, legal protection for residents' shared facilities reveals its most naked fragility.

Confronted with that situation, the first research question demands a graduated inquiry. The legal status of a parcel of land cannot be answered merely by pointing to the name recorded in the land register, for it is precisely the validity of that name that is in question. A certificate is strong evidence, not absolute evidence, and its evidentiary force depends upon the validity of the legal act underlying it. This part is therefore arranged in three interlocking steps. The first step examines when a parcel within a housing estate changes character into public and social facility land, together with the handover obligation attaching to it. The second step tests the legal qualification of registering that land in the director's personal name and encumbering it with security for debt, using the doctrine of circumvention of the law as the analytical instrument. The third step reads the results of the two preceding steps through the principle of the social function of land rights, in order to assess whether the certainty offered by the certificate is genuine certainty or illusory certainty.

This ordering is not merely a mode of presentation but a line of argument. If the first step establishes the existence of a

mandatory obligation, and the second establishes that the obligation was evaded through a form that appears lawful, then the third will show that upholding formal validity in such circumstances amounts to legitimising injustice. It is at that point that Radbruch's thesis acquires its concrete relevance, and at that point too that the foundation for the following part concerning determination of the entitled party becomes secure.

### *1. Qualification of Public and Social Facility Land and the Obligation to Hand It Over*

The starting point of this analysis is the recognition that not all land within a housing estate shares the same status. Article 1(1), (2), and (3) of Minister of Home Affairs Regulation Number 9 of 2009 on Guidelines for the Handover of Housing and Settlement Infrastructure, Facilities, and Utilities in the Regions defines infrastructure as the basic physical completeness of an environment that enables a housing and settlement environment to function properly, facilities as supporting amenities for the conduct and development of economic, social, and cultural life, and utilities as supporting means of environmental service. All three definitions are functional rather than formal. That emphasis is reinforced by Article 9 of the same regulation, which lists places of worship, recreation and sports facilities, and parking facilities as housing and settlement facilities, so that the prayer hall, swimming pool, and parking area disputed in this case fall squarely within the category. A parcel enters this category not because of a label affixed by the developer, but because of the role it performs in rendering an

area fit for habitation. Consequently, assessment of the status of public and social facility land must begin with the question of function, not with the question of whose name appears as right holder.

That function acquires binding force through planning documents. Article 28(1) of Law Number 1 of 2011 on Housing and Settlement Areas provides that planning for housing infrastructure, facilities, and public utilities encompasses plans for the provision of land plots and plans for the completeness of infrastructure, facilities, and public utilities, while Article 29(2) requires that planning meeting those requirements obtain ratification from the regional government. It is that ratified site plan which Article 11(2)(b) of Minister of Home Affairs Regulation Number 9 of 2009 then adopts as the benchmark for handover. Once a site plan is ratified by the regional government and becomes the basis for the issuance of a permit, the designations within it change character from technical plan into a norm binding upon the permit holder. A developer does not obtain a permit merely for the plots it sells, but for the entire area with the composition of designations as approved. Selling plots while disregarding facility designations means taking the benefit of the permit while abandoning its burden, and such practice constitutes a form of negligence that has thus far remained almost untouched by law enforcement.<sup>18</sup>

A more fundamental change of character occurs the moment plots begin to be sold. From the point at which

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<sup>18</sup> M. H. Rifayandhi, Nia Kurniati, and Yusuf Saripudin Zamil, "Kelalaian Pengembang Perumahan dan Kesenjangan Penegakan Hukum atas Fasilitas Sosial dan Umum," *Jurnal USM Law Review* 8, no. 3 (2025): 1758–1780.

housing units pass to buyers, parcels designated for facilities no longer stand as assets freely owned by the developer, because their value has been absorbed into the sale price paid by consumers. The price of a house is never merely the price of its building and plot; embedded within it is also the value of the estate roads, drainage, lighting, and shared spaces that render the house habitable. Buyers have therefore paid in advance for the facilities promised to them. Urip Santoso emphasises that control of land must always be read in relation to the purpose of its designation, so that a right holder cannot treat land purely as an economic object detached from the context of its use.<sup>19</sup>

It is at this point that the distinctive legal character of facility land emerges, namely its attachment to a principal object. Facility land possesses no independent use value; its existence depends entirely upon the settlement it serves. This character resembles the relationship between a principal object and an accessory object, in which the accessory follows the fate of the principal and cannot be separated without impairing the function of the whole. Studies of the handover of infrastructure, facilities, and utilities by developers to regional governments show that land of this kind cannot juridically be treated as an independent object of transaction because it is already bound to the interests of residents.<sup>20</sup> A parcel of parking land without surrounding housing loses its

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<sup>19</sup> Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah* (Jakarta: Kencana, 2019).

<sup>20</sup> Jumiaty, Aan Aswari, and Muhammad Zulkifli Muhdar, "Tinjauan Yuridis Penyerahan Prasarana, Sarana, dan Utilitas oleh Pengembang kepada Pemerintah Daerah," *Qawanin: Journal of Economic Syariah Law* 3, no. 1 (2022): 27–45.

reason for existing, and a communal well without the houses it serves carries no economic meaning whatsoever.

The legislation then closes that sequence with the handover obligation. Article 47(4) of Law Number 1 of 2011 provides that infrastructure, facilities, and public utilities whose construction has been completed by any person must be handed over to the regency or municipal government in accordance with statutory provisions. Minister of Home Affairs Regulation Number 9 of 2009 elaborates that obligation operationally: Article 11(2) stipulates that handover be effected no later than one year after the maintenance period and in accordance with the site plan approved by the regional government, while Articles 19 and 20 govern the handover procedure through to its recording in the Register of Regional Property. This norm is mandatory, for it affords developers no option to withhold the object or transfer it to another party. That firmness is no mere exhortation: Article 150(1) of the same law treats a violation of Article 47(4) as conduct subject to administrative sanction, Article 144 prohibits legal entities conducting housing development from converting infrastructure, facilities, and public utilities away from their function, and Article 153(1)(a) threatens breach of that prohibition with a fine of up to IDR 5,000,000,000.00. This obligation is the logical consequence of the permit received, not an act of generosity that may be postponed at the permit holder's pleasure.<sup>21</sup>

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<sup>21</sup> Zidney Ilma Fazaada Emha, Lita Tyesta Addy Listya Wardhani, and Sekar Anggun Gading Pinilih, "Analisis Yuridis dan Sanksi dalam Penyediaan Rumah Ibadah Perumahan di Indonesia," *Jurnal Kajian Konstitusi* 5, no. 1 (2025): 77–103.



Failure to discharge that obligation is a widespread phenomenon. Practice shows that the majority of developers do not hand over infrastructure, facilities, and public utilities to regional governments, leaving the status of facility land suspended for lengthy periods and its maintenance neglected.<sup>22</sup> It is precisely this suspended condition that is dangerous, because in fact the land already functions as the shared property of residents while administratively it remains recorded in the name of a party that no longer has any interest in maintaining it. The gap between function and record creates a void which, as the following subsection will show, can be exploited for deviant purposes.

It must be emphasised that delay in handover does not extinguish the obligation. The mandatory character of a norm forecloses the possibility that an obligation lapses through the negligence of the party bound by it, for were it otherwise the violator would be the very party to profit from its own violation. Studies of the position of certificates in land registration affirm that registration functions to give certainty to a pre-existing legal state of affairs, not to create a new one.<sup>23</sup> Accordingly, the fact that facility land has not yet been handed over to the regional government means only that the obligation has not yet been performed; it does not mean that the land has become a free asset of the developer.

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<sup>22</sup> Achmad Idris Ramadhon, "Hambatan Penyerahan PSU Perumahan: Menilik Melalui Model Implementasi Kebijakan Ade Kearns & Louise Lowson di Kabupaten Sidoarjo," *Journal of Administrative and Social Science* 7, no. 1 (2026): 281–295.

<sup>23</sup> Rezeki Aldila Rajab, Bambang Eko Turisno, and Anggita Doramia Lumbanraja, "Sertifikat Hak atas Tanah dalam Kepastian Hukum Pendaftaran Tanah," *Notarius* 13, no. 2 (2020): 642–654.

The legal consequences of the foregoing may be formulated in three propositions. First, determination of the status of public and social facility land is objective and rests upon function and the site plan, not upon the unilateral will of the certificate holder. Second, from the moment that function attaches and housing units are sold, the developer stands as a right holder burdened with an obligation, not as a free owner. Third, the handover obligation is mandatory and remains alive so long as it has not been performed. These three propositions supply the benchmark for assessing the developer's conduct at the Bawen City Land housing estate, as summarised in Table 1.

**Table 1.** Comparison of Normative Obligations and Actual Practice Regarding Public and Social Facility Land at the Bawen City Land Housing Estate

| Aspect             | Normative<br>Obligation                                                                                      | Actual<br>Practice at<br>Bawen City<br>Land                                                                                          | Legal<br>Consequence                                                   |
|--------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Parcel designation | Established in the ratified site plan and binding upon the permit holder (Articles 28 and 29 of Law 1/2011). | The site plan designates a prayer hall, swimming pool, food court, parking area, well, water reservoir, and electrical installation. | The designation is legally binding and cannot be altered unilaterally. |
| Proportion of land | A portion of the land must be allocated to                                                                   | Effective plots of 6,945 m <sup>2</sup> out of an 11,652 m <sup>2</sup>                                                              | The remaining land is functionally                                     |

|                             |                                                                                                              |                                                                                            |                                                                     |
|-----------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------|
|                             | infrastructure, facilities, and public utilities.                                                            | parent parcel (59.79 percent).                                                             | bound as facility land.                                             |
| Right holder                | Vested in the developer's business entity until handover to the regional government.                         | Certificates No. 3356 and No. 3357 registered in the director's personal name.             | Unfounded separation of legal subjects; defective root of title.    |
| Handover to the region      | Mandatory once construction is complete (Article 47(4) of Law 1/2011 in conjunction with Regulation 9/2009). | Never carried out before the object was subjected to land acquisition.                     | The obligation is not extinguished and remains attached.            |
| Encumbrance as security     | Not permissible over an object bound by a handover obligation.                                               | Encumbered as security for a debt to a savings and loan cooperative, with a power of sale. | The object is exposed to transfer to a third party.                 |
| Status as regional property | Recorded as regional property following handover (Article 20(3) of Regulation 9/2009).                       | Not recorded as regional property.                                                         | The regional government loses any basis to maintain and protect it. |

*Source:* Researcher's Analysis, 2026.

The table reveals a consistent pattern: at every stage that ought to have locked in the social function of the land, what occurred instead was a loosening of the bond. Designations

were established but not implemented, the right holder was separated from the business entity, handover was not effected, and the object was instead burdened with debt. This sequence cannot be read as ordinary administrative negligence, for negligence is passive whereas what appears here is a series of active and mutually reinforcing acts. Studies of developer responsibility for the handover of infrastructure, facilities, and public utilities show that non-compliance generally stems not from ignorance but from the weakness of the legal consequences developers must bear.<sup>24</sup>

This subsection therefore yields an interim conclusion that anchors the discussion which follows. The disputed land at the Bawen City Land housing estate juridically qualifies as public and social facility land burdened with an obligation of handover to the regional government, and that obligation was still alive when the object was subjected to toll road land acquisition. Consequently, whoever's name appears on the certificate cannot treat the parcel as unencumbered freehold. What remains is how to assess, in legal terms, the act of registering that parcel in a personal name and encumbering it with security for debt, and it is precisely there that the true problem lies.

## ***2. Registration in the Director's Personal Name and Encumbrance as Security for Debt as Circumvention of the Law***

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<sup>24</sup> Dimas Purnayoga Rakayoni, Subekti, and Ernu Widodo, "Tanggung Jawab Pengembang terhadap Penyerahan Prasarana, Sarana, dan Utilitas Umum Perumahan kepada Pemerintah Daerah," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 1 (2025): 226–243.

The preceding subsection concluded that the handover obligation is mandatory and remains alive. The next question is how to assess, in legal terms, conduct that renders that obligation impossible to perform. Answering it requires a fundamental distinction between violation of the law and circumvention of the law. A violation occurs when someone openly does what is prohibited, so that the defect appears on the surface of the act. Circumvention works in the opposite manner, by selecting a wholly lawful legal form to achieve the very effect the norm seeks to prevent. This doctrine places the purpose of a norm above its letter, for without it any obligation could be neutralised simply by designing the right construction.<sup>25</sup>

In Indonesian legal practice, this doctrine is most often discussed in the context of land ownership by foreign nationals through *nominee* arrangements, in which every deed executed is formally valid yet the sequence as a whole aims to evade the prohibition on ownership.<sup>26</sup> The same pattern appears in sale and purchase binding agreements containing a repurchase clause, which are formally ordinary sale agreements but substantively intended to transfer control to a party not entitled to it.<sup>27</sup> The common thread is clear: the

<sup>25</sup> Yosia Hetharie, "Perjanjian Nominee sebagai Sarana Penguasaan Hak Milik atas Tanah oleh Warga Negara Asing (WNA) Menurut Kitab Undang-Undang Hukum Perdata," *Sasi* 25, no. 1 (2019): 27–36.

<sup>26</sup> Alvi Azzahra Putri N, "Perjanjian Pinjam Nama Warga Negara Asing dengan Objek Hak atas Tanah melalui Pranata Hukum Nasional (Analisis Simulasi Kasus dalam Putusan Pengadilan Negeri Denpasar Nomor 1138/Pdt.G/2020/PN Dps)," *Indonesian Notary* 6, no. 3 (2024).

<sup>27</sup> Elvira, "Penyelundupan Hukum Kepemilikan Tanah pada Akta Perjanjian Pengikatan Jual Beli yang Memuat Klausul Hak Membeli Kembali (Studi Kasus Putusan Peninjauan Kembali Nomor 539 PK/Pdt/2020)," *Indonesian Notary* 3, no. 3 (2021): 74.

validity of each act viewed in isolation does not cure the defect of the sequence viewed as a whole. The legal position of the party whose name is recorded must therefore be assessed from the entire process by which the right was acquired, not from its fragments.<sup>28</sup>

This framework is applied to the Bawen City Land case by examining its elements in sequence. The first element is the existence of a mandatory norm to be evaded, and this element was established in the preceding subsection in the form of the obligation to hand over infrastructure, facilities, and public utilities to the regional government. The second element is the use of a lawful legal form, satisfied through registration of freehold title in the director's personal name and encumbrance as security for a debt to a savings and loan cooperative accompanied by a power of sale. Neither act, standing alone, contravenes any provision; a person may hold land in their own name and may pledge it. It is precisely for that reason that the construction is effective.

The third element is an effect contrary to the purpose of the norm, and here the qualification becomes unmistakable. Registration in a personal name separates the object of the obligation from the subject burdened with it. The limited partnership is the party that obtained the permit and is therefore burdened with the duty to hand over, yet the parcel that must be handed over lies outside its control because it is recorded in the name of an individual who is formally not the permit holder. This separation creates a situation in which the

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<sup>28</sup> Yustisia Setiarini Simarmata, "Kedudukan Hukum Pihak yang Menguasai Objek Hak atas Tanah Terkait Proses Peralihan Hak yang Belum Sempurna," *Indonesian Notary* 3, no. 2 (2021).

party under the obligation does not own the object, while the party who owns the object feels no obligation. Yet responsibility for providing and handing over housing facilities attaches to the developer as the organiser of the development, and does not migrate to an individual whose name happens to be recorded on the certificate.<sup>29</sup>

Encumbrance as security for debt deepens that effect. A security right places its object in a position to be executed upon should the debtor default, and a power of sale accelerates the possibility of that transfer. Consequently, land that ought to have ended as regional property is instead positioned as an object capable of passing to any third party. The handover obligation is not breached by refusing to hand over, but paralysed by rendering the object no longer available to be handed over. The law of contract holds that an agreement founded upon an unlawful cause is void by operation of law, and an unlawful cause includes a purpose contrary to public order.<sup>30</sup>

The fourth element is intent, inferable from the pattern of conduct. The law does not require a direct admission of intent, for intent may be read from a sequence of acts too orderly to be called coincidence. In this case, the choice of a personal name rather than the business entity, the selection of precisely those parcels designated for facilities as the object of security, and the failure to effect handover over a period of years form a coherent pattern pointing to a single outcome. Proof through a series of mutually corroborating

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<sup>29</sup> Puspa Susilawati and Djumadi Purwoatmodjo, “Tanggung Jawab Pengembang Perumahan dalam Penyerahan Fasilitas Perumahan kepada Pemerintah Kota Semarang,” *Notarius* 12, no. 2 (2019): 669–678.

<sup>30</sup> R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2005), 17–20.

circumstances is a customary and legitimate method in the civil law of evidence.<sup>31</sup>

With all four elements satisfied, the developer's course of conduct at the Bawen City Land housing estate qualifies as circumvention of the law. Its legal consequence is fundamental. Where a sequence of acts is directed at evading a mandatory norm, that conduct cannot attract legal protection, and the certificate issued from that sequence carries a defect in its root of title. The defect lies not in the registration procedure, which may well have been properly conducted, but in the underlying legal act. The certificate remains administratively valid yet substantively fragile, because there exists no valid legal state of affairs for it to affirm.

At this point it is important to distinguish two layers of assessment so that the analysis is not drawn into a mistaken debate. Administratively, the registration remains effective until annulled through available procedures, so that both the land agency and the land acquisition authority may be understood when they base their actions upon the recorded juridical data. Substantively, however, that administrative validity cannot cure the defect in the root of title. Formal validity serves only to explain why officials acted as they did; it does not justify the outcome produced. To invert the relationship between the two would be to treat registration as a source of rights, whereas registration merely records them.

The sharpest consequence of this qualification touches the question of compensation. If the handover obligation still

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<sup>31</sup> M. Yahya Harahap, *Hukum Acara Perdata* (Jakarta: Sinar Grafika, 2017), 555–562.



attached when the object was subjected to land acquisition, then the sum paid as compensation replaces an object burdened with that obligation. The substitute money is not born as a clean value; it inherits the burden attaching to the object it replaces. The principle that a substitute assumes the legal position of the thing replaced is a widely recognised rule in the law of security and the law of property.<sup>32</sup> Accordingly, receipt of compensation by the party whose name appears on the certificate does not extinguish the obligation attaching to that value, and it is precisely here that the problem elaborated in the following part resides.

**Table 2.** Testing the Elements of Circumvention of the Law in the Bawen City Land Public and Social Facility Land Case

| Element of Circumvention of the Law        | Facts in the Bawen City Land Case                                                                                                                                       | Assessment |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| Existence of a mandatory norm to be evaded | Obligation to hand over infrastructure, facilities, and public utilities to the regional government (Article 47(4) of Law 1/2011 in conjunction with Regulation 9/2009) | Satisfied  |
| Use of a formally lawful legal form        | Registration of Certificates No. 3356 and No. 3357 in the director's personal name and encumbrance as security for debt with a power of sale                            | Satisfied  |

<sup>32</sup> Fani Martiawan Kumara Putra, "Tanggung Gugat Debitor terhadap Hilangnya Hak atas Tanah dalam Obyek Jaminan Hak Tanggungan," *Yuridika* 28, no. 2 (2013): 121–150.

|                                              |                                                                                                                                                         |                                        |
|----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| Effect contrary to the purpose of the norm   | The object of the obligation is severed from the subject bound by it and is exposed to transfer to a third party                                        | Satisfied                              |
| Intent inferable from the pattern of conduct | Choice of a personal name, selection of facility parcels as collateral, and failure to hand over across several years                                   | Satisfied                              |
| Legal consequence                            | The course of conduct attracts no legal protection; the root of title is defective and the handover obligation remains attached to the substitute value | Substantively void by operation of law |

Source: Researcher's Analysis, 2026.

### *3. Illusory Legal Certainty and the Neglect of the Social Function of Land*

The two preceding subsections yield mutually reinforcing findings, namely the existence of a mandatory handover obligation and the existence of a legal construction that paralyzes its performance. This subsection draws the theoretical consequence of both findings by posing a single central question: if a certificate issues from a defective course of conduct, what kind of certainty does it actually offer? The question matters because legal certainty is frequently invoked as the sole ground for refusing further scrutiny, as though the production of a certificate settled every legal question at once.

The principle of social function in Article 6 of the Basic Agrarian Law in fact forecloses such a reading. The principle is not a limitation arriving from outside the right, but an element inherent in the right itself. Studies of the standing of

this principle affirm that social function is an innate characteristic of every land right, so that no land right can be conceived without its social dimension.<sup>33</sup> Questioning whether the use of a parcel accords with its social function is therefore not a diminution of the right but part of the examination of that right. To refuse that examination in the name of legal certainty is to recognise a right whose examination remains unfinished.

The difficulty is that in judicial practice the principle of social function frequently halts at the level of normative statement without operative force. Analyses of the application of the social function principle in judicial decisions show that it is more often cited as background to the reasoning than employed as a basis for concretely assessing the validity of land control.<sup>34</sup> The result is a distance between the conceptual richness of the principle and the poverty of its application. Judges acknowledge that land rights bear a social function, yet that acknowledgement is not translated into an examining question, such as whether the control in dispute still performs the function that justified the grant of the right.

That shift from function to mere formal control can be observed directly in the physical landscape of the estate. A comparison of satellite imagery of the Bawen City Land housing estate in 2023 and 2026 shows that the open space and paving that formerly hosted the shared facilities have

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<sup>33</sup> Triana Rejekiningsih, "Asas Fungsi Sosial Hak atas Tanah pada Negara Hukum (Suatu Tinjauan dari Teori, Yuridis, dan Penerapannya di Indonesia)," *Yustisia* 5, no. 2 (2016): 298–325.

<sup>34</sup> Andrea Winda Amasta and Rekky Sean Paulus, "Penerapan Asas Fungsi Sosial Hak atas Tanah dalam Putusan Nomor 28/G/PU/2019/PTUN.Pbr," *The Juris* 8, no. 1 (2024): 17–25.

become part of the roadway and the construction working area, while the residential blocks to the south-west remain. This change carries legal significance because it demonstrates that what has been lost is not merely a parcel of land but the function that justified the grant of rights over it. When that function disappears while the handover obligation has never been performed, the certainty offered by the certificate becomes certainty over an object that has lost its reason for existing.

**Figure 1.** Spatial Condition of the Bawen City Land Housing Estate in 2023 Before Toll Road Construction Works



**Figure 2.** Spatial Condition of the Bawen City Land Housing Estate in 2026 Following Bawen–Yogyakarta Toll Road Construction Works



*Source of Figures 1 and 2:* Google Earth processed by the author, 2026.

It is here that legal certainty turns into illusory certainty. Genuine certainty is a condition in which parties may rely upon the law because the law operates in accordance with its purpose. Illusory certainty is a condition in which the documents appear complete and the procedures appear satisfied, yet the outcome produced runs contrary to the very aim of the governing norm. The order thereby produced is hollow because it obtains only at the administrative surface. Radbruch formulated his thesis precisely for situations of this kind, in which positive law that appears formally flawless must be reassessed because its conflict with justice has reached an intolerable degree.

Applying that framework to the Bawen City Land case reveals a sharp gap among the three basic values of law. Viewed from legal certainty, the certificate indeed designates a

single name unambiguously and raises no administrative doubt. Viewed from justice, however, the outcome is that residents who paid the value of the facilities within the price of their houses have lost those facilities without replacement, while the party that never performed its obligation receives the economic value of the object it ought to have handed over. Viewed from expediency, the outcome is a settlement deprived of its place of worship, parking space, and source of clean water, so that the habitability of the estate declines for dozens of families.

It bears noting that this loss is not abstract. The replacement of an artesian well of approximately eighty metres in depth with a new well of approximately fifty metres, as reported by affected residents in interview, reduces the reliability of the clean water supply, particularly during the dry season. The loss of the parking area displaces residents' vehicles onto the estate roadway, narrowing access and heightening safety risks. The loss of the prayer hall erases the only shared place of worship within the estate. All three touch upon the dimension of the right to adequate housing guaranteed by Article 28H(1) of the 1945 Constitution of the Republic of Indonesia, and cannot therefore be treated as questions of mere convenience.

The courts in fact possess room to reach that issue. Studies of the settlement of public facility land disputes show that judges may assess the validity of control on the basis of conformity between the designation established and the use actually made, without stepping beyond their authority in



civil proceedings.<sup>35</sup> That room exists because examination of the root of title is an inherent part of examining proof of ownership. When that room goes unused, what occurs is not caution but a narrowing of the examination into a mere matching of names on documents.

The consequences of such narrowing extend beyond the case at hand. If the construction of registration in a personal name coupled with encumbrance as security for debt proves successful in securing the economic value of facility land, then a decision endorsing it operates as a guide for other developers. Research on law enforcement against the conversion of urban green open space shows that weak enforcement contributes directly to the recurrence of similar violations, because offenders factor in the low risk they face.<sup>36</sup> The problem discussed in this article is therefore not an isolated deviation but a pattern liable to spread if left uncorrected.

From the foregoing it may be affirmed that privileging formal certainty in this case produces not order but the institutionalisation of injustice. Certainty is meaningful only where what is made certain is a valid legal state of affairs, and in this case the state of affairs made certain was itself born of defective conduct. The three Radbruchian values are therefore not in genuine conflict, for restoring the function of facility land simultaneously restores justice for residents,

<sup>35</sup> Christina Putri Ayu, Saut Parulian Panjaitan, and Akhmad Habriand, "Penyelesaian Sengketa Tanah Fasilitas Umum," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 14, no. 2 (2025).

<sup>36</sup> Ahmad Dzaki, Daffa Amanullah, Muhamad Syahrul Maulana, and Irfan Maulana, "Analisis Yuridis terhadap Penegakan Hukum Alih Fungsi Ruang Terbuka Hijau di Kawasan Perkotaan," *Aliansi: Jurnal Hukum, Pendidikan dan Sosial Humaniora* 1, no. 6 (2024): 212–221.

expediency for the estate, and certainty grounded in a valid root of title. What is sacrificed is only illusory certainty, and certainty of that kind does not deserve preservation.

This part accordingly yields a complete conclusion. The disputed land qualifies as public and social facility land burdened with a handover obligation; that obligation was evaded through a construction satisfying the elements of circumvention of the law; and upholding the formal validity of that construction produces only an illusory certainty that negates the social function of land rights. This conclusion forms the footing for the following part, which tests how those consequences ought to be translated into determining the party entitled to land acquisition compensation and into formulating a settlement that satisfies substantive justice.

## **Implications for Determining the Entitled Party and Forms of Substantively Just Settlement**

This part examines in depth the implications of the findings above for determining the party entitled to receive compensation and for the form of settlement that may be called substantively just. The examination employs a normative juridical approach enriched by empirical field data, comprising Decision Number 8/Pdt.G/2024/PN Unr, Ruling Number 10/Pdt.P-Kons/2025/PN Unr, testimony from affected residents, and a comparison of satellite imagery of the estate, so that the distance between legal norm and implementing practice becomes visible. The discussion is



arranged along three principal dimensions, namely the dimension of judicial reasoning, the dimension of the compensation trajectory, and the dimension of the restorative construction. Within that framework, this part seeks to show the extent to which land acquisition law and housing law have operated as instruments protecting residents' shared facilities, while identifying the structural obstacles impeding their implementation.

To analyse those three dimensions systematically, this article adopts the triad of basic legal values formulated by Gustav Radbruch as its assessment framework. The triad divides the purposes of law into legal certainty, justice, and expediency, all three serving as benchmarks for testing the distance between normative arrangement and practice on the ground. This choice of framework is not arbitrary. The Bawen City Land case places precisely these three values in mutual opposition, since the satisfaction of formal certainty is achieved by sacrificing justice for residents together with expediency for the residential environment. A situation of that kind demands a measure capable of weighing all three values simultaneously, rather than one that recognises a single value and treats the other two as accessories.

### ***1. Judicial Reasoning in Decision Number 8/Pdt.G/2024/PN Unr and Its Limitations***

In Decision Number 8/Pdt.G/2024/PN Unr, the Ungaran District Court dismissed the residents' claim on two principal footings. The first is the standing of the freehold certificate as strong evidence of ownership, so that the name recorded upon it is regarded as the lawful right holder. The

second is the failure to establish an unlawful act, because the defendants were assessed to have acted upon a root of title administratively free of defect. A reasoning structure of this kind is customary and technically defensible, yet custom does not of itself guarantee that the reasoning has reached every legal question placed before it.

The first limitation lies in the narrowing of the object of examination. The court examined whether the certificate was validly issued, but not whether the legal act underlying its issuance was validly performed. These are distinct questions. The distinction between procedural and substantive justice in land disputes shows that satisfaction of every procedural requirement does not preclude a substantively unjust outcome, so that judges must still test the conformity between legal form and the purpose it is meant to serve.<sup>37</sup> Where examination halts at the validity of issuance, a defect in the root of title will never come to light, because it was never sought.

The second limitation concerns the reading of the certificate's evidentiary force. Article 32(1) of Government Regulation Number 24 of 1997 on Land Registration states that a certificate is a document of proof of right operating as strong evidence, not as absolute evidence. Studies of the evidentiary force of freehold certificates in disputes affirm that such force may be defeated where a defect in the acquisition of the right is established.<sup>38</sup> Treating a certificate as evidence

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<sup>37</sup> M. Syamsudin, "Keadilan Prosedural dan Substantif dalam Putusan Sengketa Tanah Magersari (Kajian Putusan Nomor 74/Pdt.G/2009/PN.Yk)," *Jurnal Yudisial* 7, no. 1 (2014): 18–33.

<sup>38</sup> M. Irfan and Nia Kurniati, "Kepastian Hukum Hak atas Tanah dan Eksistensi Lembaga Rechtsverwerking dalam Perspektif Peraturan Pemerintah Nomor 24

beyond testing therefore confers upon it a force that the very regulation governing it withholds.

The third limitation concerns the use of the social function principle. In its reasoning, the court did not treat conformity between designation and use as a matter requiring examination, so that the fact that the disputed parcels were designated for a prayer hall, a parking area, and a well and water reservoir carried no legal weight whatsoever. Research on disparity in land dispute decisions shows that differences in outcome across decisions frequently originate in differences in the breadth of examination chosen by the judge, rather than in differences in the applicable norm.<sup>39</sup> Breadth of examination is thus a choice, and that choice determines the outcome.

The fourth limitation lies in the disregard of evidence lying outside the ownership documents. The ratified site plan, the designation drawings used as marketing material, and the field conditions demonstrating that the parcels had functioned as shared facilities are all legally relevant material for assessing the standing of the land. A comparison of satellite imagery of the Bawen City Land estate across the 2023 to 2026 period shows the disappearance of those parcels as work on the toll road alignment proceeded. Material of this kind is not counter-evidence against the certificate but

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Tahun 1997 tentang Pendaftaran Tanah,” *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 163–174.

<sup>39</sup> Tata Wijayanta and Sandra Dini Febri Aristya, “Disparitas Putusan Perkara Sengketa Tanah terkait Penerapan Hukum Formil,” *Jurnal Yudisial* 7, no. 2 (2014): 173–195.

supplementary evidence assisting the assessment of whether formal control accords with actual circumstances.<sup>40</sup>

The fifth limitation concerns the standing of residents as parties to the case. The residents did not claim that the land should become theirs; they claimed that the function they had paid for within the price of their houses should remain available. A legal interest of this kind is real and direct, even though it takes no form of ownership right. Studies of legal protection for affected communities show that narrowing legal standing to formal right holders causes those most affected to lose access to remedy.<sup>41</sup> In this case, that narrowing resulted in the most tangible loss going unexamined.

It must be stressed that this critique is not intended as an assessment of the material truth of a case still in progress, since the decision is not yet final and an appeal is being pursued. What is at issue is the method of examination, not the ultimate outcome. Judges possess ample authority to engage in legal discovery where the literal application of a norm produces a state of affairs contrary to the purpose of the norm itself, and that authority forms a legitimate part of the judicial task.<sup>42</sup> Exercising it is not an act in excess of jurisdiction but the proper discharge of the judicial function.

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<sup>40</sup> W. A. P. G. Frederik, D. R. Ringkuangan, and H. F. Tuwaidan, "Pendaftaran Hak atas Tanah dalam Perspektif Kepastian Hukum," *Amanna Gappa* 32, no. 1 (2024): 19–27.

<sup>41</sup> Dwi Wulan Pujiriyani, "Pengadaan Tanah dan Problem Permukiman Kembali: Skema Pemberdayaan untuk Perlindungan Masyarakat Terdampak," *Bhumi: Jurnal Agraria dan Pertanahan*, no. 40 (2014): 633–648.

<sup>42</sup> Vincentius Patria Setyawan, "Penemuan Hukum oleh Hakim dalam Perspektif Hukum Progresif," *Fundamental: Jurnal Ilmiah Hukum* 14, no. 1 (2025): 120–135.

Were the examination broadened as described above, the structure of the problem would change fundamentally. The question would no longer halt at whose name appears on the certificate, but would continue to whether that name is lawfully there, whether the obligation attaching to the parcel has been performed, and what consequences follow for the substitute value that now stands in the parcel's place. It is this sequence of questions that grounds the following subsection, which traces the trajectory of compensation from deposit to disbursement.

**Table 3.** Comparison of Formalistic and Substantive Reasoning on the Bawen City Land Case

| Aspect of Examination           | Formalistic Reasoning<br>(Decision Number<br>8/Pdt.G/2024/PN Unr) | Substantive Reasoning<br>Proposed                                                                         |
|---------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| Object examined                 | Validity of the issuance of the certificate                       | Validity of the legal act underlying the issuance of the certificate                                      |
| Standing of the certificate     | Treated as decisive evidence                                      | Treated as strong evidence that remains testable through its root of title                                |
| Principle of social function    | Not made a basis of examination                                   | Made the measure of conformity between designation and use                                                |
| Evidence beyond title documents | Not considered relevant                                           | Site plan, marketing material, field conditions, and satellite imagery assessed as supplementary evidence |

|                                  |                                                      |                                                                                    |
|----------------------------------|------------------------------------------------------|------------------------------------------------------------------------------------|
| Standing of residents            | Not regarded as holding a direct legal interest      | Recognised as holding an interest in the function paid for through the house price |
| Outcome under Radbruchian values | Illusory certainty; justice and expediency neglected | Certainty grounded in a valid root of title, with justice and expediency satisfied |

*Source:* Researcher's Analysis, 2026.

## ***2. The Trajectory of Compensation: Consignment, Disbursement, and Moral Critique of the Developer***

When a parcel of land becomes subject to land acquisition, the legal problem changes form. What was land with a particular designation turns into a sum of money, and the question that follows is whether that change of form also extinguishes the burden attaching to it. The answer determines the entire settlement of this case. If the money is regarded as born clean, then the whole of the preceding analysis becomes meaningless; if the money is regarded as inheriting the burden of its object, then the handover obligation lives on in another form.

Article 42(1) of Law Number 2 of 2012 permits compensation to be deposited with the district court where the entitled party rejects the form or amount of compensation, while Article 42(2) provides that deposit is also made where the entitled party's whereabouts are unknown, or where the object of land acquisition to be compensated is the subject of a case before the courts, is still disputed as to ownership, has been placed under attachment by a competent authority, or serves as bank collateral. The provision is designed to prevent development from being halted by dispute, and that aim is legitimate. In this case three

of the four circumstances under Article 42(2)(b) were present simultaneously: the object was the subject of a case before the Ungaran District Court, its ownership remained disputed, and part of the parcel was encumbered as security for a debt to a savings and loan cooperative. The convergence of those three circumstances ought to have demanded redoubled caution, for the statute positions deposit as a temporary holding until the legal status of the object becomes clear, not as a gateway to disbursement. It must also be noted that the institution of consignment operates as a temporary repository rather than as a resolution of the dispute. Studies of dispute settlement through consignment affirm that deposit merely shifts the object of dispute from land to money without resolving the underlying question.<sup>43</sup>

In this case, compensation was deposited pursuant to Ungaran District Court Ruling Number 10/Pdt.P-Kons/2025/PN Unr of 12 November 2025 in the amount of IDR 2,031,903,000.00. That deposit was made while the residents' claim was still under examination and not yet final. It is this circumstance that gives rise to the problem, for the funds were subsequently disbursed while the dispute over the object was still running, prompting the residents' legal counsel to lodge a formal objection with the Ungaran

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<sup>43</sup> Rena Dwi Fitriani, "Penyelesaian Sengketa terhadap Metode Konsinyasi dalam Pengadaan Hak atas Tanah bagi Pembangunan untuk Kepentingan Umum," *Jurnal Hukum dan Kenotariatan* 6, no. 1 (2022): 669–686.

District Court against the disbursement.<sup>44</sup> Disbursement in such circumstances transforms the character of consignment from protection into acceleration, because it hastens the passage of value to a party whose entitlement remains in question.

Formally, receipt of that disbursement has a basis. The name recorded on the certificate is the party registered as right holder, and the land acquisition authority works from the juridical data available. The position of the savings and loan cooperative as holder of security may likewise be explained, since the extinction of a land right serving as the object of security gives rise to a creditor's right over its substitute value.<sup>45</sup> The rule that the deposit of compensation carries legal consequences for the land right together with the rights encumbering it has indeed been examined in land acquisition practice.<sup>46</sup> This explanation matters for understanding why disbursement could occur, but it must immediately be stressed that explanation is not justification.

It is here that the argument of the preceding part operates decisively. The rule that a security right passes to the substitute value presupposes that the encumbrance itself is

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<sup>44</sup> Berita Merdeka Online, "UGR Bawen City Land Dicairkan Saat Sengketa Berjalan, Kuasa Hukum Warga Layangkan Keberatan ke PN Ungaran," accessed April 28, 2026, <https://www.beritamerdekaonline.com/ugr-bawen-city-land-dicairkan-saat-sengketa-berjalan-kuasa-hukum-warga-layangkan-keberatan-ke-pn-ungaran/jawa-tengah/>.

<sup>45</sup> Arisanta Pebrina Helena Siambaton, "Perlindungan Hukum terhadap Bank sebagai Kreditor atas Hapusnya Hak atas Tanah Obyek Hak Tanggungan karena Adanya Kegiatan Pengadaan Tanah," *Premise Law Journal* 1 (2015).

<sup>46</sup> Suyanto, "Akibat Hukum Penitipan Ganti Kerugian Uang di Pengadilan Negeri dalam Pengadaan Tanah untuk Kepentingan Umum terhadap Hak atas Tanah," *Jurnal Pro Hukum* 8, no. 1 (2019): 16–39.



valid. Where the object of security is land burdened with a mandatory handover obligation, that encumbrance is defective from the outset, and the rule on the transfer of security rights cannot be used to purify the value derived from it. The qualification of circumvention of the law established earlier forecloses the possibility that the money was born as a value free of burden. Administrative validity explains only the sequence of events; it does not alter the underlying legal position.

There may accordingly be formulated a distinction that forms the core of this article's argument, namely that the right to receive compensation is not identical to the right to enjoy it unencumbered. Receipt concerns to whom payment is directed, whereas enjoyment concerns the conditions under which that value may be used. Substitute money inherits the designation of the object it replaces, so that the handover obligation is not extinguished but converted into an obligation to provide equivalent replacement facilities. This distinction accords with the view that the award of compensation in land acquisition must be directed towards the restoration of conditions, not merely the transfer of value.<sup>47</sup>

From that distinction the moral critique of the developer derives its foundation. The critique is advanced not as a substitute for the legal argument but as its continuation. The incontrovertible fact is that it was the developer that received the consignment value over parcels designated as a prayer hall,

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<sup>47</sup> Sofyan Alim, "Pemberian Ganti Kerugian Pengadaan Tanah untuk Kepentingan Umum terhadap Tanah Hak Milik," *Gorontalo Law Review* 7, no. 1 (2024): 42–57.

a parking area, and a well and water reservoir. The value of those facilities had previously been paid by consumers through the price of their houses, so that the developer has in substance received payment twice over for the same object. Double receipt of this kind cannot be justified on any ground, even where every step leading to it appears administratively lawful.

That moral objection sharpens further when one recalls that performance of the obligation lay well within the developer's means. With a consignment value of that magnitude, the provision of a replacement prayer hall, the arrangement of alternative parking space, and the construction of an equivalent new well and water reservoir are measures technically and financially achievable. Studies of the discharge of developer obligations in providing public and social facilities show that the principal obstacle is not the absence of capacity but the absence of will, compounded by weak supervision.<sup>48</sup> Where capacity exists and the obligation is clear, non-performance is a choice, not a constraint.

Residents bear the consequences of that choice directly. A shallower replacement artesian well reduces the reliability of the clean water supply, the loss of the parking area displaces vehicles onto the estate roadway, and the loss of the prayer hall erases the only shared place of worship within the estate. This series of losses is cumulative and continuing, in contrast to the developer's position, whose loss is in fact a gain. A developer's liability for the obligation to provide

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<sup>48</sup> I Wayan Adi Indrayana, A. A. Sagung Laksmi Dewi, and Luh Putu Suryani, "Pelaksanaan Kewajiban Pengembang dalam Penyediaan Fasilitas Umum dan Fasilitas Sosial Perumahan di Kabupaten Badung," *Jurnal Analogi Hukum* 4, no. 1 (2022): 37–43.

infrastructure, facilities, and public utilities arises fundamentally from its legal relationship with consumers who have paid for that value, so that the obligation is not extinguished by the object's transformation into money.<sup>49</sup>

It must be stressed that this article draws no conclusion as to anyone's personal fault, since the principal case remains in progress and the assessment of material truth is the court's prerogative. What is at issue is the propriety of an outcome, namely a state of affairs in which the party that failed to perform its obligation profits from its own default while the party that has paid loses what it paid for. An outcome of that kind cannot be sustained on grounds of legal certainty, because certainty that protects the profits of a violation is not the certainty the law intends. It is precisely here that Radbruch's thesis finds its most concrete application in this case.

This subsection therefore yields two complementary conclusions. First, as a matter of law, the handover obligation is not extinguished by the disbursement of the consignment; it passes to the substitute value and is converted into an obligation to provide equivalent replacement facilities. Second, as a matter of morality, receipt of that value without performance of the obligation is improper because it takes the benefit of a social function that has itself been eliminated. Both conclusions demand a mechanism capable of turning them into concrete action, and it is that mechanism which the following subsection formulates.

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<sup>49</sup> Raihan Fakhri Alamsyah, "Tanggung Gugat Pengembang Perumahan atas Kewajiban Penyediaan Prasarana, Sarana, dan Utilitas Umum dalam Perumahan (Studi Kasus pada PT Wredatama Tiga Pilar di Jember)," *JPNM: Jurnal Pustaka Nusantara Multidisiplin* (2025).

### *3. A Function Restoration Model for Public and Social Facilities as Substantive Justice*

The conclusions of the preceding subsection demand an operational way forward. To state that the handover obligation lives on in the substitute value means nothing unless a mechanism exists to translate it into action. This subsection therefore offers a function restoration model for public and social facilities, a graduated framework placing the regional government as principal actor and aimed at restoring the functions that have been lost rather than merely shifting monetary value among the parties.

The basis of authority for this model already exists and requires no new norm. Article 47(4) of Law Number 1 of 2011 designates the regency or municipal government as recipient of the handover of infrastructure, facilities, and public utilities, and Articles 19 through 21 of Minister of Home Affairs Regulation Number 9 of 2009 govern the procedure for that handover through to its recording in the Register of Regional Property. Article 21 of that regulation even supplies a remedy that has hitherto gone almost unused: where infrastructure, facilities, and utilities are abandoned and not yet handed over, the regional government draws up a deed of acquisition and a statement of asset over the land as the basis for applying to register the land right at the local land office. This position as recipient gives rise to a direct legal interest, so that the regional government is not a third party outside the legal relationship but a party whose right remains unfulfilled. Studies of administrative law enforcement of the handover obligation affirm that administrative instruments

are in fact more effective than the civil route because they do not depend upon the initiative of residents in a weak position.

The first stage of this model is recording the functions that have been lost. The regional government conducts an inventory of the facilities that the site plan required and compares them with field conditions following land acquisition. The recording does not stop at noting parcel areas but measures the lost functions concretely, for example the capacity of the clean water supply, the capacity of parking space, and the availability of a place of worship. Research on service models for the handover of public and social facilities shows that the absence of an adequate database is the principal cause of delayed handover, because regional governments have no picture of what they ought to be receiving.

The second stage is determining the status of the obligation. On the basis of the recording, the regional government issues an administrative determination stating that the handover obligation over particular parcels has not been performed and therefore remains attached to the permit holder. This determination matters because it converts an obligation that has hitherto been implicit into one that is written, measurable, and enforceable. The responsibility of a developer that converts public facilities away from their function derives fundamentally from the permit it received, so that an administrative determination is the appropriate means of reasserting it.

The third stage is the imposition of a substitute obligation. Because the original parcels have become part of the toll road and cannot be restored in their original form, the

handover obligation is converted into an obligation to provide equivalent replacement facilities, whether by providing substitute land within the estate or by constructing facilities of comparable capacity. The measure of equivalence rests not on monetary value but on the restoration of function, since what residents lost was function rather than value. Studies of the application of regulations on the provision of public and social facilities in residential areas show that function-based measurement is more reliable than area-based measurement, because an identical area does not always yield an identical benefit.

The fourth stage is handover and recording as regional property. The replacement facilities, once available, are handed over to the regional government and recorded as provided in Minister of Home Affairs Regulation Number 9 of 2009. This stage closes the circle that was broken from the outset and simultaneously prevents recurrence of the same problem, because an object recorded as regional property can no longer be pledged or transferred by private parties. Experience with the provision of green open space shows that recording as a regional asset is the principal determinant of the sustained maintenance of public facilities.

This model also requires one improvement at the level of land acquisition procedure, namely an obligation to search for pending litigation before disbursing consignment funds. Before funds are released to the recorded party, the land acquisition authority and the court must ascertain that no case is pending over the object concerned, and where a case exists, disbursement is suspended until the case becomes final. This proposal is simple and does not impede development,

since only disbursement is suspended while physical control of the land may still proceed. The absence of such a mechanism is precisely the gap that allows a party whose entitlement is under challenge to enjoy the value first.

The merits of this model may be tested against the three basic Radbruchian values. From the standpoint of legal certainty, the model in fact strengthens it, because it rests upon existing norms and produces a definitive record of the status of facilities. From the standpoint of justice, it restores the position of residents who paid for the value of the facilities through the price of their houses, without having to declare those residents owners of the land. From the standpoint of expediency, it restores the habitability of an estate degraded by the loss of its facilities. All three can be satisfied simultaneously precisely because what is sacrificed is only illusory certainty, that is, protection for a benefit born of violation.

The model also has force reaching beyond the Bawen City Land case. Every settlement affected by a national strategic project is liable to face a similar problem where the handover obligation has not been performed, and such settlements are not few, given the low national rate of handover compliance. Research on the implementation of obligations to provide public and social facilities in housing estates shows that this problem is structural and recurs across regions in an almost uniform pattern. A framework operating at the administrative level therefore has far wider prospects of application than a settlement dependent upon litigation brought one case at a time.

Finally, it must be reaffirmed that this model is not intended to displace ongoing judicial proceedings. The courts retain authority to assess the validity of the root of title and to determine who is entitled to compensation. The function restoration model operates on a different track, the administrative track, and precisely for that reason can proceed without awaiting the conclusion of the case. The two are complementary: the court answers the question of right, while the regional government answers the question of function. So long as the second question goes unanswered, residents will continue to lack water, parking space, and a place of worship, whatever the answer given to the first.

## Conclusion

This research began from a simple question about who is entitled to compensation for a parcel of land, and ends with the finding that the question cannot be answered merely by reading a name on a certificate. On the first research problem, this study concludes that the parcels designated for a prayer hall, a parking area, and a well and water reservoir at the Bawen City Land housing estate qualify as public and social facility land burdened with an obligation of handover to the regional government, and that the obligation was still alive when the object was subjected to land acquisition. Registration of those parcels in the personal name of the director of the limited partnership, together with encumbrance as security for debt with a power of sale, satisfies every element of circumvention of the law, because formally lawful legal forms were used to achieve the very effect that a



mandatory norm seeks to prevent. Consequently, the certificate issuing from that sequence carries a defect in its root of title and produces only illusory certainty, namely certainty that is flawless on paper yet negates the social function of land rights guaranteed by Article 6 of the Basic Agrarian Law. Within the Radbruchian framework, a situation of this kind is a concrete instance in which the primacy of legal certainty must be withdrawn because the injustice it produces has reached an intolerable degree.

On the second research problem, this study concludes that the norm of the entitled party in Article 1(3) of Law Number 2 of 2012 must be read as a command to examine actual circumstances rather than merely to match a name against a document. From that reading emerges the distinction constituting this article's core novelty, namely that the right to receive compensation is not identical to the right to enjoy it unencumbered, because substitute money inherits the designation of the object it replaces, so that the handover obligation is not extinguished but converted into an obligation to provide equivalent replacement facilities. As an operational translation of that position, this study offers a function restoration model for public and social facilities operating through four stages, namely recording the functions that have been lost, determining the status of the obligation, imposing a substitute obligation, and handover and recording as regional property, with the regional government as principal actor and accompanied by an obligation to search for pending litigation before the disbursement of consignment funds. This model satisfies all three basic legal values simultaneously because it strengthens

certainty through definitive recording, restores justice for residents who paid for the value of the facilities through the price of their houses, and restores the expediency of a habitable estate. This study therefore recommends that regional governments exercise their administrative authority without awaiting the conclusion of civil litigation, that courts broaden their examination to reach the validity of the root of title and the conformity between designation and use, and that policymakers incorporate an obligation to search for pending litigation into consignment disbursement procedures as a preventive measure that is inexpensive yet decisive.

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