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# Restoration of Property Rights over Destroyed Land: Comparative Legal Analysis of Indonesia and the Philippines

**Adya Nurnisa<sup>1\*</sup>, Retno Saraswati<sup>2</sup>, Ana Silviana<sup>3</sup>**<sup>1,2,3</sup> Faculty of Law, Universitas Diponegoro, Indonesia\*correspondence email : [nurnisaadya8@gmail.com](mailto:nurnisaadya8@gmail.com)**Abstract**

**This study aims** to identify and analyze a comparison of the models for restoring property rights over land affected by destruction implemented by Indonesia and the Philippines, with a view to improving the legal system governing destroyed land in Indonesia in the future.

**This study employs** a doctrinal research method using statutory, conceptual, and comparative approaches. This study involves the collection and inventory of regulations regarding destroyed land in both Indonesia and the Philippines, followed by a descriptive analysis.

**The novelty** of this study lies in the conclusion that Indonesia needs to adopt a legal certainty framework for destroyed land using a hybrid model namely, judicial reconstruction and administrative reconstruction

**The results** of this study indicate that current regulations on lost land in Indonesia provide an opportunity for original titleholders to reclaim lost land within a one-year period; if they cannot prove ownership, it is not recognized as such. In contrast, unlike the Philippines, which uses a hybrid model to guarantee and recognize its citizens' property rights through judicial and administrative reconstruction, provided they possess "legal title" registered with the Land Registration Authority.

**The conclusion** of this study indicate that the current policy framework for land loss in Indonesia should take into account models for restoring property rights following land loss or damage that exist in other countries, such as the Philippines. This is to ensure that property rights

**Keywords:** Land Rights; Restoration of Property Rights; Comparison of Legal Systems; Land Destroyed.

**Abstrak**

**Penelitian ini bertujuan** untuk mengetahui dan menganalisis perbandingan model pemulihan hak milik yang terdampak tanah musnah yang dilakukan oleh Indonesia dan Filipina guna perbaikan sistem hukum tanah musnah di Indonesia di masa yang akan datang

**Metode penelitian** ini menggunakan penelitian doktrinal dengan pendekatan undang-undang, konseptual dan perbandingan. Penelitian berupa mengumpulkan dan menginventarisasi aturan-aturan mengenai tanah musnah baik di Indonesia maupun di Filipina kemudian dianalisis secara deskriptif.

**Kebaruan penelitian** ini dimana Indonesia kedepannya perlu mengadopsi ruang kepastian hukum tanah musnah dengan model hibrida sekaligus yakni rekonstruksi yudisial dan rekonstruksi administrasi

**Hasil penelitian** ini menemukan bahwa regulasi tanah musnah di Indonesia saat ini

memberikan ruang bagi pemegang hak milik asli untuk merekonstruksi tanah yang musnah selama satu tahun; jika tidak dapat membuktikan, maka tidak dianggap sebagai kepemilikan. Sebaliknya, berbeda dengan Filipina yang menggunakan model hibrida untuk menjamin dan mengakui hak milik warganya melalui rekonstruksi yudisial dan rekonstruksi administrasi, sepanjang memiliki "legalitas" yang terdaftar di Otoritas Pendaftaran Tanah.

**Kesimpulan** dalam penelitian ini menunjukkan bahwa desain kebijakan tanah musnah yang ada di Indonesia saat ini perlu mempertimbangkan model pemulihan hak milik akibat musnah atau rusaknya tanah yang ada di negara lain seperti Filipina. Hal ini agar kepemilikan hak atas tanah berupa hak milik dapat diakui dan dijamin keberadaannya sekalipun terdampak tanah musnah.

**Kata Kunci:** Hak atas Tanah; Pemulihan Hak Milik; Perbandingan Sistem Hukum; Tanah Musnah.

## 1. INTRODUCTION

Indonesia, situated on the Pacific Ring of Fire,<sup>1</sup> is highly susceptible to natural disasters, including earthquakes, tsunamis, volcanic eruptions, floods, landslides, and abrasion.<sup>2</sup> Such events frequently result in permanent alterations to land morphology, leading to the destruction of land ownership boundaries and the loss of authentic evidence of land rights. For instance, land tenure conflicts following land liquefaction disasters illustrate how land boundaries are obliterated, and ownership evidence is lost, complicating land identification and legal protection.<sup>3</sup> Indonesia's existence needs to be taken seriously to ensure legal certainty against the potential loss of land in the future. A comparable situation occurred in Pekalongan, where abrasion submerged land surfaces and buildings, rendering owners unable to control or use their land.<sup>4</sup> Under applicable regulations, this condition qualifies the land for classification as destroyed.<sup>5</sup>

The concept of "land loss" refers to the loss of land rights resulting from changes in the land's physical condition that render it unusable or unrecognizable.<sup>6</sup> In Indonesia, the legal status of land loss is governed by several regulations, including Government Regulation No. 18 of 2021 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the

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<sup>1</sup> Yulianus Pabassing, "Implementation of Land Registration in Providing Legal Certainty over Land Rights in Jayapura City," *Awang Long Law Review* 5, no. 1 (2022): 342–48, <https://doi.org/10.56301/awl.v5i1.583>.

<sup>2</sup> Fitriani, Masitah Pohan, and Ida Nadirah, "Perlindungan Hukum Terhadap Tanah Hak Milik Masyarakat Pasca Bencana Alam Erupsi Gunung Sinabung," *Iuris Studia: Jurnal Kajian Hukum* 3, no. 2 (2021): 464–78, <https://doi.org/10.55357/is.v2i3.162>.

<sup>3</sup> Tiara Dwi Rahayu, Yani Pujiwati, and Betty Rubiati, "Kepastian Hukum Kepemilikan Hak Atas Tanah Setelah Mengalami Likuidasi Tanah: Legal Certainty Of Ownership Of Land Rights After Experiencing Land Liquefaction," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 2 (2023): 250–66, <https://doi.org/10.23920/litra.v2i2.1315>.

<sup>4</sup> Bunga Desyana Pratami, Minarsih Minarsih, and Sri Ratu Ratna Intan, "Protection of Constitutional Rights for Female Coastal Workers in Pekalongan Against Loss of Land Rights: An Agrarian Law and Islamic Law Approach," *Al-Mazaahib: Jurnal Perbandingan Hukum* 12, no. 1 (2024): 95–124, <https://doi.org/10.14421/al-mazaahib.v12i1.3662>.

<sup>5</sup> O. S. Iarmolenko, "Protection of Creditors' Rights during the Application of Property Disposition Procedures to the Debtor," *Legal Novels* 24 (2024): 49–54, <https://doi.org/10.32782/ln.2024.24.07>.

<sup>6</sup> Embun Sari et al., "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* 7, no. 1 (2022): 50–67, <https://doi.org/10.26623/jic.v7i1.4390>.

National Land Agency No. 17 of 2021.<sup>7</sup> According to these regulations, land affected by liquefaction and no longer identifiable as its original plot is classified as lost, resulting in the revocation of land rights and their transfer to the state. Nevertheless, landowners are granted priority for reconstruction or reclamation within a specified timeframe and are eligible for compensation if the government reuses the land.<sup>8</sup> Indonesian land acquisition law also acknowledges the public interest in eroded land, facilitating reconstruction and revitalization through compensation. These provisions reflect an attempt to balance public interests with individual rights following the loss of land.

However, implementing this policy has encountered significant obstacles. The Lapindo mudflow disaster in Sidoarjo, for example, demonstrated the complexities of providing transparent information on the settlement and legal status of submerged land.<sup>9</sup> Incomplete compensation and discriminatory payment practices have created ongoing ambiguity about the post-disaster status of affected land, with mud-damaged plots classified as either destroyed or state land. These circumstances raise important questions about justice and legal certainty for the affected communities.<sup>10</sup>

Neighboring countries such as the Philippines, which are also susceptible to natural disasters, encounter comparable challenges related to land loss. Although the disaster contexts and legal systems differ, the fundamental principles of property rights protection and post-disaster recovery remain central concerns.<sup>11</sup> Comparing the legal systems of these two countries is expected to yield insights into approaches to addressing land loss, including models for property restoration, compensation mechanisms, and legal protection frameworks. Such analysis is essential for identifying best practices and policy innovations that may be adopted or further developed in Indonesia.

The concept of lost land represents a central issue within agrarian law, particularly in countries prone to natural disasters. Relevant prior research includes the work of Sari, Yamin, Purba, and Sembiring,<sup>12</sup> who examined the legal politics of land acquisition resulting from erosion following the enactment of the Job Creation Law. Their findings indicate that the elimination of land rights due to land destruction creates opportunities for landholders to rebuild or revitalize affected areas. Additionally, the provision of spiritual funds is identified as

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<sup>7</sup> Nurul Triagustina, "Implementation of Mortgage Rights Installation Services According to Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 5 of 2020," *JIHAD: Jurnal Ilmu Hukum Dan Administrasi* 6, no. 3 (2024), <https://doi.org/10.58258/jihad.v6i3.7166>.

<sup>8</sup> Roly Irvan and Bagio Kadaryanto, "Transfer Of Ulayat Land Ownership Rights According To Legislation And Regulations In Indonesia," *JCH (Jurnal Cendekia Hukum)* 7, no. 1 (2021): 152, <https://doi.org/10.33760/jch.v7i1.323>.

<sup>9</sup> Tsabita Latifaturrohman and Rochmat Junarto, "Perlindungan, Penegakan Dan Pemenuhan Hak Atas Tanah Korban Lumpur Lapindo," *Tunas Agraria* 6, no. 1 (2023): 56–70, <https://doi.org/10.31292/jta.v6i1.204>.

<sup>10</sup> Rahmia Rachman and Erlan Ardiansyah, "Legal Certainty of Land Rights Affected By Natural Disasters," *Arena Hukum* 17, no. 1 (2024): 112–32, <https://doi.org/10.21776/ub.arenahukum.2024.01701.7>.

<sup>11</sup> Mariëlle Van Es and Bert Bruins, "Pro-Poor Change in the Aftermath of Disasters – Exploring Possibilities at the Intersection of Disaster Politics and Land Rights Issues in Central Philippines," *Land Use Policy* 132 (2023): 106771, <https://doi.org/10.1016/j.landusepol.2023.106771>.

<sup>12</sup> Sari et al., "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja."

a measure to promote justice in compensation. This research underscores how regulatory changes, especially those introduced by the Job Creation Law, establish new provisions for land acquisition and the management of potentially lost abraded land, and broaden the definition of public interest.<sup>13</sup> This study examines models for restoring land ownership rights impacted by natural disasters or environmental changes in Indonesia and the Philippines.

Pratami, Minarsih, and Ratna Intan<sup>14</sup> conducted a focused analysis of the legal status of destroyed land under Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021. Their findings indicate that land plots impacted by tidal flooding in Pekalongan satisfy the criteria for classification as destroyed land. Land rights holders are prioritized for reconstruction or reclamation within one year and are eligible for compensation if the government utilizes the land. This study offers a comprehensive examination of the criteria and procedures for designating destroyed land and outlines the legal protections available to land rights holders affected by disasters. In addition to recovery, the current research examines recovery models implemented in other countries, such as the Philippines, and explores the strategies available to communities whose land ownership rights are impacted by natural disasters or environmental changes.

Rahayu, Pujiwati, and Rubiati<sup>15</sup> examine the legal certainty of land ownership following liquefaction. Their research indicates that land affected by liquefaction is classified as destroyed, resulting in the extinguishment of ownership rights and their transfer to the state. Systematic land registration is essential to ensure legal certainty and protection, particularly when land boundaries and ownership documentation have been lost. These findings suggest that, although ownership rights may be extinguished, the state remains responsible for protecting administrative procedures. In contrast to previous research, this study seeks to enhance legal certainty regarding lost land by comparing it with similar cases in other countries. Furthermore, it advocates for the provision of both administrative and legal channels for affected communities, as exemplified by the approach in the Philippines.

Fitriani, Pohan, and Nadirah<sup>16</sup> examined the legal protection of community-owned land after the Mount Sinabung eruption. They found that, although Article 27 of the Basic Agrarian Law identifies land destruction as a reason for the loss of ownership rights, this provision does not automatically terminate community ownership. Specific legal procedures must be followed before ownership rights are lost. The study further concluded that disaster victims' ownership rights remain valid and do not immediately transfer to the state, even in cases where the owner has died. The state is not permitted to assume direct control over post-disaster land, and

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<sup>13</sup> Muhammad Rifaldi Setiawan and Ayang Afira Anugerahayu, "Regulatory Reform of Land Acquisition for Public Interest after the Omnibus Law on Job Creation," *Privet Social Sciences Journal* 5, no. 12 (2025): 583–91, <https://doi.org/10.55942/pssj.v5i12.1120>.

<sup>14</sup> Pratami, Minarsih, and Ratna Intan, "Protection of Constitutional Rights for Female Coastal Workers in Pekalongan Against Loss of Land Rights."

<sup>15</sup> Dwi Rahayu, Pujiwati, and Rubiati, "Kepastian Hukum Kepemilikan Hak Atas Tanah Setelah Mengalami Likuidasi Tanah."

<sup>16</sup> Fitriani, Pohan, and Nadirah, "Perlindungan Hukum Terhadap Tanah Hak Milik Masyarakat Pasca Bencana Alam Erupsi Gunung Sinabung."

ownership must be restored to the community, particularly in regions still inhabited by indigenous peoples. Both studies address land loss; however, the previous research examined land ownership rights impacted by the eruption of Mount Sinabung. In contrast, the present study investigates a model for restoring land ownership rights following natural disasters or climate change, with a comparative analysis of the Philippines, which shares a geographic context with Indonesia.

Restoring property rights extends beyond administrative procedures and serves as a means to reestablish stability within communities following disasters.<sup>17</sup> Drawing on previous research and the identified legal challenges, this study provides a critical analysis and comparison of models for restoring property rights to land destroyed in Indonesia and the Philippines, with the aim of informing future enhancements to Indonesia's legal framework.

## **2. METHOD**

A doctrinal method<sup>18</sup> is employed to inventory positive law and identify specific statutes relevant to particular legal issues. The research design integrates legislative, conceptual, and comparative methodologies.<sup>19</sup> Specifically, a functional comparative approach is applied to describe and analyse the resolution of land depletion regulations and to examine best practices in the Philippines and Indonesia. The Philippines serves as the comparative object due to its similar mixed legal system, which incorporates both civil and common law traditions, as well as its presidential system of government. These similarities enhance the functional relevance of the comparison.

Through this framework, the analysis will focus on laws, government regulations, presidential regulations, and regulations issued by the Minister of Agrarian Affairs concerning lost land. The research was conducted by collecting primary legal materials, such as legislation and emerging case law, as well as secondary legal materials, including land law books and legal journals on lost land. The collection process involved identifying relevant legal regulations, analyzing pertinent legal issues, formulating arguments, and offering recommendations grounded in those arguments. Descriptive qualitative analysis was employed to examine the collected legal materials.

## **3. DISCUSSION**

### **3.1. The Restoration Regime for Property Rights in the Indonesian Land Destruction Law System**

In Indonesia, land degradation has been increasingly addressed through a range of laws and regulations, demonstrating the government's commitment to ensuring legal certainty and protection for landowners impacted by disasters. Land degradation refers to the loss of a plot's physical identity, location, boundaries, area, form, and legal function due to natural disasters or severe environmental changes. Phenomena such as abrasion, liquefaction, volcanic

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<sup>17</sup> Dinda Novianti, Adi Sulistiyono, and Sapto Hermawan, "Legal Protection For Land Rights Holders Upon Disposal Of Land Rights For Public Interest (Case Study Of Depok Toll Road Land Acquisition)," *International Journal of Educational Research & Social Sciences* 5, no. 6 (2024): 969–73, <https://doi.org/10.51601/ijersc.v5i6.906>.

<sup>18</sup> Soetandyo Wignjosebroto, *Hukum: Konsep Dan Metode*, Malang: Setara Press, 2013.

<sup>19</sup> Johny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*, Malang: Bayu Media, 2005.

eruptions, and tidal flooding may lead to land degradation and the subsequent loss of landowners' ownership rights.<sup>20</sup>

The Basic Agrarian Law Number 5 of 1960, particularly Article 27, establishes that destruction of land constitutes a basis for the loss of property rights. Nevertheless, this provision does not result in the immediate termination of community property rights. The revocation of such rights necessitates a series of procedural steps and formal recognition by the state.<sup>21</sup> After the enactment of the Basic Agrarian Law, further regulatory measures have been introduced to enhance legal protection. Notably, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 17 of 2021 outlines procedures for determining the extent of destroyed land. This regulation provides explicit guidance on the classification of desolate land, specifying the requirements and procedural steps.<sup>22</sup> For instance, in cases of tidal flooding in Pekalongan, submerged land may be classified as desolate land in accordance with Regulation Number 17 of 2021.

Land rights holders who have lost their land are granted priority to undertake reconstruction or reclamation within a specified period, typically one year. This policy ensures that original owners receive the initial opportunity to restore their land and ownership rights. If the land rights holder is unable or unwilling to proceed with reconstruction or reclamation, or if the land is designated for government use, the land rights holder may be eligible for compensation.<sup>23</sup> Such compensation funds are intended to address the loss of rights and are expected to promote justice and prosperity within the affected community.

The scope of public interest has broadened, particularly after the enactment of the Job Creation Law. Activities including industrial zones, special economic zones, tourism, food security, the gas industry, the oil industry, and technology development are now classified under public interest, thereby permitting land acquisition. Consequently, if privately owned land is deemed strategically significant for a public-interest project, the state is legally authorized to acquire it with appropriate compensation. Although this policy is intended to facilitate development, it necessitates rigorous oversight to safeguard the interests of affected communities.

A significant challenge in Indonesia's land rights restoration regime is identifying and legally protecting land ownership following disasters. Events such as liquefaction may obliterate land boundaries and remove evidence of ownership, thereby complicating boundary identification. Consequently, systematic land registration is essential to ensure legal certainty.

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<sup>20</sup> Muhammad Arif et al., "Environmental Literacy Scenarios Lead to Land Degradation and Changes in Riparian Zones: Implications for Policy in China," *Land Degradation & Development* 34, no. 1 (2023): 156–72, <https://doi.org/10.1002/ldr.4450>.

<sup>21</sup> Yevheniia V. Lytvynenko, Kateryna D. Yanishevskaya, and Svitlana S. Leleka, "Protection Of Intellectual Property Rights Under The Civil Law Of Ukraine: Material And Procedural Aspects," *Bulletin Of Alfred Nobel University Series "Law"* 1, No. 8 (2024): 49–56, <https://doi.org/10.32342/2709-6408-2024-1-8-5>.

<sup>22</sup> Gio Fandri Babuta, "Integrasi Mitigasi Likuifaksi Dalam Rencana Tata Ruang Provinsi Gorontalo: Evaluasi Peraturan Daerah Nomor 2 Tahun 2024 Tentang Rencana Tata Ruang Wilayah Tahun 2024-2043," *Arus Jurnal Sosial Dan Humaniora* 5, no. 2 (2025): 2096–103, <https://doi.org/10.57250/ajsh.v5i2.1394>.

<sup>23</sup> Zarema Akhmediyeva and Thomas Herzfeld, "Land Rights Perceptions and Farmer Behavior: Evidence from Central Asia," *Land Use Policy* 164 (2026): 107964, <https://doi.org/10.1016/j.landusepol.2026.107964>.

In the absence of accurate registration, landowners may encounter substantial obstacles in proving their rights, even when the physical land has been destroyed.

In the Lapindo mudflow disaster, plots of community-owned land that became submerged were classified as lost land because the community could no longer maintain the physical identity, location, boundaries, area, form, or function of their land rights. Subsequently, the affected area was reclassified as state land, enabling the state to re-grant land rights to the community or other parties through a formal rights application process. This case demonstrates the state's authority to manage lost land and the potential for rights restoration through redistribution or the grant of new rights.

Local governments play a critical role in reconstructing land boundaries following disasters. For example, in the aftermath of the Mount Semeru eruption, the Lumajang local government was tasked with re-inventorying land parcels, conducting re-mapping and re-measuring activities, validating ownership data, and facilitating the relocation of affected residents.<sup>24</sup> These responsibilities are consistent with broader efforts to integrate land policies with regional spatial plans, promote disaster risk mitigation, and advance sustainable development. Nevertheless, challenges such as the loss of land documents and limited technical capacity at the local level frequently impede these processes.

The property rights restoration regime in Indonesia has evolved to address the complexities of land loss. Although the legal framework is relatively comprehensive, implementation continues to encounter significant challenges, particularly in ownership identification, reconstruction financing, and inter-agency coordination.<sup>25</sup> Additional measures are required to enhance legal protections, guarantee equitable compensation, and streamline procedures for affected communities.

### **3.2. Model for Restoring Property Rights Due to Land Destruction in the Philippines and Comparison with Indonesia**

#### **3.2.1. Model for Restoring Property Rights Due to Land Destruction in the Philippines**

The Philippines, an archipelagic nation, is highly susceptible to natural disasters such as typhoons, earthquakes, and volcanic eruptions. This geographic vulnerability often results in significant land loss and violations of property rights.<sup>26</sup> As one of the most disaster-prone countries in Southeast Asia, the Philippines regularly experiences the destruction of settlements and critical land documents due to super typhoons and volcanic activity. Additionally, a prolonged history of armed conflict in the Mindanao region, combined with a major fire at the land registry office, has resulted in widespread "lost property rights," where

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<sup>24</sup> Inez Sholikhah and Icha Fitri, "Tanggung Jawab Pemerintah Daerah Lumajang Dalam Merekonstruksi Ketentuan Batas Hak Milik Tanah Pasca Bencana Alam," *Indonesian Journal of Law and Justice* 2, no. 4 (2025): 11, <https://doi.org/10.47134/ijlj.v2i4.4521>.

<sup>25</sup> Damianus Krismantoro, Maria Hutapea, and Christian Joe, "The Impact of the Implementation of Complete Systematic Land Registration on Legal Certainty in the Registration of Land Ownership Rights in Indonesia," *West Science Law and Human Rights* 2, no. 04 (2024): 320–31, <https://doi.org/10.58812/wslhr.v2i04.1241>.

<sup>26</sup> Emmanuel Skoufias et al., "Identifying the Vulnerable to Poverty from Natural Disasters: The Case of Typhoons in the Philippines," *Economics of Disasters and Climate Change* 4, no. 1 (2020): 45–82, <https://doi.org/10.1007/s41885-020-00059-y>.

essential documents have been destroyed and land has become inaccessible. In this context, the restoration of land rights extends beyond bureaucratic processes and represents a crucial effort to restore dignity and economic stability to millions of Filipinos who rely on land as their primary asset.<sup>27</sup>

The regulation of land rights is a fundamental component of any national land system, as it underpins legal certainty, agrarian prosperity, and economic development. In the Philippines, challenges extend beyond agrarian conflicts or disputes between farmers and large landowners.<sup>28</sup> Landowners also encounter the loss of land ownership documents, or land titles, resulting from damage, lack of registration, or failure to be officially recorded. This issue impacts not only individual landowners but also regional development, access to credit, and the overall credibility of the Philippine land system.

The Philippine land system operates under the Torrens Title model, which registers land titles through the land authority to safeguard property ownership.<sup>29</sup> Despite this framework, landowners throughout the archipelago remain vulnerable to losing original documents due to fire, flooding, force majeure, or other natural disasters. The absence of the original title frequently impedes its restoration and may result in the title being legally unrecognized. To mitigate these challenges, the Philippines has established specific legal procedures for the recovery or administration of lost or damaged land documents.<sup>30</sup> According to the Sampang Law Office, when an original title is lost or destroyed due to a disaster or force majeure, the landowner may file for the administrative reconstitution of the lost title with the local Registry of Deeds, provided certain conditions are met, such as the loss exceeding a specified threshold. This process can only proceed if supporting documents, including a duplicate certificate, remain available.

The principal legal framework for the reconstitution of title deeds is established by Republic Act No. 26 (R.A. 26), as amended. This statute is further supported by Presidential Decree No. 1529 (Property Registration Decree) and relevant circulars issued by the Land Registration Authority (LRA). Republic Act No. 26 outlines the judicial procedures required for the reconstitution of Torrens title deeds. Republic Act No. 6732 (R.A. 6732) subsequently amended both R.A. 26 and P.D. No. 1529, introducing the option for administrative reconstitution. This alternative, non-judicial process is available only under specific conditions, such as significant property loss or damage resulting from disasters. The appropriate reconstitution procedure is determined by the specific circumstances surrounding the loss.<sup>31</sup>

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<sup>27</sup> Benjamin John Wiesner and Paul Dargusch, "The Social License to Restore—Perspectives on Community Involvement in Indonesian Peatland Restoration," *Land* 11, no. 7 (2022): 1038, <https://doi.org/10.3390/land11071038>.

<sup>28</sup> Caroline Hambloch, "Contract Farming and Everyday Acts of Resistance: Oil Palm Contract Farmers in the Philippines," *Journal of Agrarian Change* 22, no. 1 (2022): 58–76, <https://doi.org/10.1111/joac.12462>.

<sup>29</sup> Stefano Moroni, "Property as a Human Right and Property as a Special Title. Rediscussing Private Ownership of Land," *Land Use Policy* 70 (2018): 273–80, <https://doi.org/10.1016/j.landusepol.2017.10.037>.

<sup>30</sup> Maria Zakharova, "Application of 3D Documents in the Land Cadastre: Problems of Legal Regulation," *Geocontext* 8, no. 1 (2021): 33–46, <https://doi.org/10.30987/2686-8326-2021-33-46>.

<sup>31</sup> Xinhong Li et al., "Damage Assessment of Buildings under Combustible Gas Explosion Resulting from Urban Gas Pipelines Leak," *Journal of Loss Prevention in the Process Industries* 96 (2025): 105635,

The two models of recovery procedures regulated under Philippine land law can be explained as follows: (a) Judicial Reconstitution (Under R.A. 26); Judicial reconstruction is generally undertaken when the loss pertains to a single property right or when administrative reconstruction cannot be applied. This procedure is adversarial and requires a court order.<sup>32</sup>

Step 1: Filing a Verified Petition with the District Court. The registered owner or any party with a legitimate interest in the property must file a verified petition with the Regional Trial Court (RTC) where the property is located. This petition, which must be prepared by legal counsel, constitutes a formal legal document and should include: a comprehensive statement of facts detailing the circumstances under which the original title certificate from the Land Registry was lost or damaged; the title certificate number and technical description of the property; the names and addresses of all property occupants, adjacent landowners, and other interested parties, including mortgage or lien holders; and the sources intended for use in the reconstruction. Step 2: Compliance with Mandatory Publication and Notification Requirements. This step is both essential and jurisdictional. The court issues an order scheduling the petition for a hearing. The order must be published at the applicant's expense in the State Gazette for two consecutive weeks. In addition, it must be posted in a prominent location on the land, on the courthouse notice board, and on the notice boards of the City or Regency Hall and the Land Registry Office where the land is located. These procedures ensure that all parties with potential adverse claims receive notification, thereby preserving the integrity of the legal process. Strict noncompliance with these requirements renders the entire process void.

Step 3: Presentation of Evidence and Hearing. At the hearing, the applicant must present evidence establishing both the validity of the title and the loss of the original certificate. Law No. 26 specifies a hierarchy of preferred sources for reconstruction: (a) a copy of the owner's title certificate; (b) a copy of the title certificate held by a co-owner, mortgagee, or tenant; (c) a certified copy of the title certificate previously issued by the Land Registry Office or its legal custodian; (d) a certified copy of the registration decree or patent; (e) any document, such as a deed of transfer or mortgage, registered with the Land Registry that describes the property; and (f) any other document the court considers sufficient and appropriate. Step 4: Court Order and Issuance of a New Title Certificate. If the court finds the evidence satisfactory, it will issue a decision or order directing the Land Registry to reconstruct the original lost title certificate. The new certificate will include the statement "Reconstructed based on Law No. 26" to indicate its legal foundation. (b) Administrative Reconstitution (Under R.A. 6732); Administrative reconstitution, overseen by the Land Registration Authority and the Deeds Registration Office,<sup>33</sup> enhances procedural efficiency but is accessible only under defined circumstances.

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<https://doi.org/10.1016/j.jlp.2025.105635>.

<sup>32</sup> P. N. Potapov, "The Determination of the Competent Court When Applying for Judicial Protection in an Administrative Offense Case," *Siberian Law Review* 19, no. 4 (2023): 343–55, <https://doi.org/10.19073/2658-7602-2022-19-4-343-355>.

<sup>33</sup> Vera Amelia, "The Role and Authority of a Notary/Official Land Deed Maker in Electronic Mortgage Registration at the Cirebon Regency Land Office," *Sultan Agung Notary Law Review* 4, no. 2 (2022): 675,

The process requires substantial loss or damage to land certificates due to fire, flood, or other force majeure events. Additionally, the lost or damaged certificates must represent at least 10% of the total certificates held by the Registration Office, or amount to at least 500 certificates. Furthermore, the property owner must present a valid basis for reconstitution, such as a duplicate owner's certificate.

Once these conditions are met, the Administrator of the Land Registration Authority issues a declaration authorizing administrative reconstitution at the relevant Deeds Registration Office.<sup>34</sup> The procedure entails submitting an application with the duplicate owner's certificate and supporting documents, issuing a reconstitution notice, and, upon verification and the absence of objections, the Deeds Registration Office issuing a new certificate. Key legal principles and potential challenges. Several key legal principles and challenges arise in administrative reconstitution. The applicant must prove the existence of the title certificate and its loss or destruction, as well as rightful ownership. The Supreme Court requires strict adherence to the procedural and jurisdictional requirements of Law No. 26, especially regarding publication and notification; failure to comply renders the process void. Reconstitution functions solely to restore lost official records and does not grant ownership or create new rights. Title certificates obtained fraudulently are void from inception and confer no rights, with criminal prosecution available for attempts to reconstitute them fraudulently. Under the "Mirror Principle," reconstituted title certificates have the same legal validity and effect as the originals, thereby upholding public confidence in the Torrens system, although they are annotated to reflect their reconstructed status.

The reconciliation of lost or destroyed land titles in the Philippines is crucial for maintaining the integrity of the Torrens system and protecting property owners' rights. While judicial remedies are more commonly employed, administrative remedies are generally more effective in situations involving substantial losses. Success in either approach depends on diligence, adherence to legal procedures, and the engagement of qualified legal professionals.

### **3.2.2. Comparison of Property Rights Recovery Models Due to Land Destruction in the Philippines and Indonesia**

The Philippines and Indonesia employ comparable strategies for managing lost land. Both nations emphasize legal certainty by restoring land rights through re-identification, surveying, and registration, which addresses the widespread loss of boundaries and ownership documentation following disasters. Government agencies play a central role in determining land status, providing compensation, and implementing relocation and reconstruction initiatives. Compensation, whether financial or non-financial, is consistently utilized to restore the rights of affected individuals. Indonesia's concept of "religious funds" may have parallels in other contexts. Both countries face similar implementation challenges, including bureaucratic obstacles, insufficient data, ownership disputes, and limited resources.

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<https://doi.org/10.30659/sanlar.4.2.675-689>.

<sup>34</sup> Ricco Survival Yubaidi, Mazliza Mohamad, and Saidatul Nadia Abd Aziz, "Land Registration Acceleration In Indonesia: A Lesson-Learned Guideline From Land Registration Issues In Malaysia," *UUM Journal of Legal Studies* 13 (2022), <https://doi.org/10.32890/uumjls.13.1.2022.10765>.

Key differences between the two countries include the specificity of regulations, bureaucratic efficiency, the extent of community participation, and the integration of disaster mitigation into land policy. Indonesia, through Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. Law No. 17 of 2021 establishes a detailed legal framework for identifying destroyed land and assigning priority rights for reconstruction. In contrast, the Philippines employs a more general or integrated approach within a broader disaster management framework.<sup>35</sup> Despite these distinctions, both countries share the overarching objective of safeguarding the rights of disaster-affected individuals and promoting equitable and sustainable community recovery.

### **3.3. The Future Adoption of a Land Loss Restoration Model in Indonesia**

Given the complexity and challenges of managing lost land in Indonesia, and the potential lessons from neighboring countries such as the Philippines, future adoption of a property rights restoration model should address several critical aspects. The objective is to establish a system that is more responsive, equitable, efficient, and sustainable.

#### **3.3.1. Strengthening the Legal and Policy Framework**

Indonesia maintains a comprehensive legal framework, including the Basic Agrarian Law, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 17 of 2021, and other pertinent regulations. However, further enhancement and harmonization remain necessary.<sup>36</sup> First, regulatory harmonization is crucial to align laws and regulations related to natural disasters and land management. The expanded definition of public interest in the Job Creation Law should be supported by stronger protections for landowners' rights, ensuring that compensation is substantively fair rather than restricted to a minimal "religious fund." Second, procedures for determining destroyed land, identifying rightful owners, and granting compensation or new rights should be streamlined and expedited. Bureaucratic complexity often impedes affected communities, underscoring the need for more detailed and accessible procedural guidance. Third, the recognition of customary or communal land rights is essential, particularly in disaster-prone areas where such lands may lack formal registration. Future legal frameworks should establish clear mechanisms to recognize and protect these rights in cases of land loss, thereby preventing illegitimate claims or encroachment.

#### **3.3.2. Integration of Disaster Mitigation in Spatial Planning and Land Policy**

A proactive strategy is essential for mitigating the impact of future landslides.<sup>37</sup> First, disaster-responsive spatial planning should explicitly incorporate disaster mitigation measures, including identifying disaster-prone zones, such as areas susceptible to liquefaction

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<sup>35</sup> Nelson M. Esgerra, "Status of Integrated Pest Management on Root Crops in the Philippines," *Status of Integrated Pest Management on Root Crops in the Philippines* 5, no. 3 (1982), <https://doi.org/https://doi.org/10.59852/tpa-a161v5i3>.

<sup>36</sup> Pingkan Dewi Kaunang, "Juridical Review of The Cancellation of Electronic Land Title Certificates Based on The Regulation of The Minister of Agrarian Affairs and Spatial Planning/Head of The National Land Agency of The Republic of Indonesia Number 21 of 2020," *International Journal of Law and Society* 2, no. 2 (2025): 154–66, <https://doi.org/10.62951/ijls.v2i2.383>.

<sup>37</sup> Babuta, "Integrasi Mitigasi Likuifaksi Dalam Rencana Tata Ruang Provinsi Gorontalo."

or abrasion. Development in high-risk zones must be restricted, and buffer zones must be established and enforced. Second, education and outreach initiatives should inform communities in disaster-prone areas about the associated risks, their rights concerning landslides, and the appropriate procedures to follow during a disaster. These initiatives enhance preparedness and reduce confusion following such events. Third, the development of disaster-resilient infrastructure, including investments in sea walls, mangrove restoration, and effective drainage systems, can reduce the risks of landslides and tidal flooding, thereby minimizing their occurrence.

### **3.3.3. Fair and Participatory Compensation and Relocation Mechanism**

Future policy frameworks should ensure that compensation and relocation processes are conducted fairly and transparently. First, objective compensation assessments require the establishment of clear and standardized guidelines for valuing destroyed land and buildings. This measure ensures that compensation aligns with fair market value and enables affected individuals to rebuild their lives. Second, when relocation is necessary, authorities should provide viable alternatives, including suitable replacement land with access to essential amenities such as clean water, sanitation, education, and livelihood opportunities. The relocation process should actively involve affected communities to ensure their needs and preferences are addressed. Third, establishing a dedicated land disaster emergency fund would secure adequate resources for compensation, land resurveys, and reconstruction programs, thereby reducing dependence on unpredictable annual budgets.

### **3.3.4. Cross-Sector and Inter-Institutional Collaboration**

A comprehensive strategy is essential to address the issue of lost land. First, improved coordination between the central government, including the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, and the National Disaster Management Agency, and local governments is necessary.<sup>38</sup> As local governments are frequently the primary responders to disasters, their technical capacity and resources should be enhanced. Second, engaging multiple stakeholders, such as academics, non-governmental organizations, and the private sector, in policy development and recovery program implementation can introduce innovative perspectives and additional resources. Third, comparative studies of disaster-prone countries, such as the Philippines, can provide valuable insights into best practices for land identification, compensation, and relocation programs.

For instance, examining how these countries manage lost ownership data and balance public interests with individual rights can inform domestic policy development. Implementing a multidimensional recovery model may enable Indonesia to strengthen its capacity to respond to natural disasters, safeguard the land rights of affected populations, and foster the development of more resilient and equitable communities.

## **4. CONCLUSION**

Indonesia has implemented targeted regulations to address land destruction, most

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<sup>38</sup> Sholikhah and Fitri, "Tanggung Jawab Pemerintah Daerah Lumajang Dalam Merekonstruksi Ketentuan Batas Hak Milik Tanah Pasca Bencana Alam."

notably through Regulation No. 17 of 2021 of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. This regulation establishes a compensation scheme for spiritual funds, prioritizes reconstruction for former landowners, and delineates administrative procedures. In contrast, the Philippines places greater emphasis on safeguarding private ownership, even when land is affected by natural disasters or climate change, utilizing both administrative and judicial reconstruction mechanisms. Indonesia may benefit from incorporating aspects of the Philippine approach, such as reaffirming the legal framework for land destruction policies, integrating natural disaster mitigation into spatial planning and land policies, ensuring equitable compensation and relocation, and fostering cross-sectoral collaboration among relevant institutions. These measures would strengthen legal certainty and promote justice for communities whose land is destroyed by natural disasters or climate change, while also upholding land ownership rights following destruction.

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