

The Impact Of The Loss Of The Basement Seen From The Side Of The Principle Of Social Function

Nindya Annastasya Saputri^{1*}, Adi Sulistiyono², Supto Hermawan³

^{1,2,3} Sebelas Maret University

Faculty of Law, Master of Notary, Sebelas Maret University, Surakarta, Indonesia

*Corresponding Author:

Email : Nindyaannastasya4@gmail.com

Abstract.

The basement is a building that is below ground level; currently, with the increasing need for land to be built because of the increasing population, a basement will be built to be used as an underground building. The MRT, basement parking lots, and shops are examples of buildings currently being built. The building must follow the social function regulated in the UUPA so that it can be enjoyed and used by all parties and communities so that what is achieved for the greatest prosperity of the people has been achieved properly. However, it does not rule out the possibility of damage or loss of the underground, causing a negative social impact on the damage and loss of the basement. This research uses a type of normative research by analyzing using a statutory approach and a conceptual approach. The source of legal materials is the UUPA, the 1945 Constitution, and Government Regulation 18 of 2021 which regulates a few concerning using basements. The goal is to be able to answer all the problems that will be raised in the research in this article.

Keywords: Social Impacts, Basements, Damage, and Loss.

I. INTRODUCTION

Development is a way that is done when someone wants to achieve a goal, where what is built is a physical form in the form of buildings, and infrastructure, where this development certainly includes all social systems owned, such as in the world of politics, economics, infrastructure, defense, education, and institutional and cultural technology. The construction was carried out to build a building both above ground level and can occur underground. There is underground development because, in some places, there may be insufficient land to be built, causing development below ground level. Development is a way that is done when someone wants to achieve a goal, where what is built is a physical form in the form of buildings, and infrastructure, where this development certainly includes all social systems owned, such as in the world of politics, economics, infrastructure, defense, education, and institutional and cultural technology. The construction was carried out to build a building both above ground level and can occur underground. There is underground development because, in some places, there may be insufficient land to be built, causing development below ground level. Development is a way that is done when someone wants to achieve a goal, where what is built is a physical form in the form of buildings, and infrastructure, where this development certainly includes all social systems owned, such as in the world of politics, economics, infrastructure, defense, education and institutional and cultural technology (Adhim, 2019).

The construction was carried out to build a building both above ground level and can occur underground. The social function in the Basic Agrarian Law is an explanation of the application of Article 33, paragraph (3) of the 1945 Constitution, where the land rights granted must have a social function for the benefit of all communities so that later it will be achieved for the greatest prosperity for its people. Therefore, the basement is built like the example described above, namely the MRT, basement parking, and shops, seen from its usefulness for all communities so that the basement is built to achieve the greatest prosperity of its people and has fulfilled existing social functions. However, because Indonesia is prone to floods, earthquakes, fires, and so on when it happens, it does not rule out the possibility of the basement being damaged, so it suffers losses with the construction of the basement. So that the existence of it causes the malfunction of social functions; with that, of course, there is certainly an impact on social functions with

damage and loss to the basement. There is underground development because, in some places, there may be insufficient land to be built, causing development below ground level. Therefore, this article will discuss the impact of the basement's damage and loss on social function (Sibuea, 2013).

II. METHODS

This article uses normative legal research, a statutory approach (statute approach), and a conceptual approach (conceptual approach). The writing and preparation of this article use legal material sources in the form of primary legal materials in the form of laws and regulations related to the issues raised in this article. Secondary legal materials in the form of books, articles, and theses related to the author's needs in writing this article. Data collection techniques are carried out using content analysis methods connected with data analysis to answer all the problems discussed in this article.

III. RESULT AND DISCUSSION

In addition to regulating human activities related to duties, the UUPA also regulates the following: the State embodies the role of legal regulators who also direct these activities on achieving the desired goals as an expression of the function of "social engineering" in terms of the law. This is due to the provisions of articles 2, 6, 7, and 11 of the UUPA, which argue that state land regulations must be designed to achieve this even for the great prosperity of the people. This also applies to people-to-state relations and good legal relations between different people, not just for the prosperity of the parties, because it must also run with everything fair and balanced between them (Hukum et al., 2022). Using the basement is an interesting thing because the use of this basement has been quite a lot of decades.

Where lately, the main ones are in urban areas, for example, the construction of the MRT (subway) in Jakarta and other uses such as in Surabaya, Semarang, and Makassar, whose population is dense with the construction of basements as basements for shops, parking lots that usually occur in malls or apartments. On the other hand, the government's efforts in arranging this matter have only been enacted by Government Regulation 18 of 2021, which regulates a few things regarding the use of this basement. However, more is needed to regulate the course of the use of this basement. Even reportedly, more than the bill on land to be used as a refinement of the existence of the UUPA is needed to be able to regulate it. Even though this basement is very complex, more detailed arrangements are needed. Because of the construction of the basement, it is not only limited to regulating permits to be allowed to own the basement building or use the basement. However, it is also necessary to note that when there is use of the basement, if there is damage to the basement also has an impact on the social impact of damage to the basement. So that with the existence of things that need to be considered in this basement, including (Adhim, 2019):

[1] Juridical Authority

[2] The definition of land when viewed from the 1945 Constitution article 33 paragraph (3), which after that is further elaborated in the UUPA that land has the meaning, namely:

[3] In a broad sense, land is a natural object that is a unity of the homeland with its basic elements, namely earth, water, and space, including its natural wealth. This basic element is the national wealth of the Indonesian nation as a gift of God Almighty. Therefore, the nature of the relationship between the nation and its land becomes eternal.

[4] In the narrow sense, the land is the object of the right projection, namely the earth's surface. The duties and functions of the land office in land management are lands in the sense of the earth's surface. In this case, the land will be where various activities occur.

The relationship between state authority in the world of land that the State has the right to control, not to have, differs from during the colonial era when the State became the owner of the principle of *Domein Veklaringnya*. This State carries out the understanding of control based on the authority to regulate and manage. This ownership is certainly regulated in public law and private law. In the sense of silence, the State controls land by public law and is obliged to regulate, manage and resolve conflicts between private interests over ownership and rights to land. This means that the State, in the sense of moving, which is the government if it wishes to own land, must go through private law procedures and cannot abuse its authority

in public law. Meanwhile, outside the government, there are also private land ownership and tenure rights whose arrangements are regulated by private law and land owned by indigenous peoples. Based on this, the Akita bus distinguishes the types of ownership and land control, namely:

1. State Land

That is land that has not been attached by land right even though it has been controlled by agencies / Legal Entities or individuals.

2. State Land Attached to Land Rights

That is state land attached to a certain right such as HGB, HU, HP, and others as land in another period.

3. Owned Land

That is land that has been attached to property rights or has been owned customarily.

With public law, the State, in the sense of silence (Staat), ketig authorized to regulate and manage a type of ownership and control of the land where the authority in question is exercised by the State in the sense of moving (Gouvernement), which in this case is a government institution. But it remains within the corridor that the desire to own land by the government must be through private law. Given that land is a symbol of the nation's integrity, how vital and strategic is the position of land in the sovereignty of State and national administration? For this reason, it is necessary to have a function of government institutions on land administration (Hámor-Vidó et al., 2021). Law No. 5/1960 (UUPA) stipulates that at the highest level, all basic agrarian elements are controlled by the State as an organization of power of all the people.

This statement is interpreted as state power over land as a regulator, not an owner. Concerning the Local Government Law No. 22/1999 yo, Law No. 32/2004 and its amendments in Law No. 23/2014 yo, the second amendment in Law No. 9/2015 as if there is a confusion of authority in this land sector because the land parcel is included which is decentralized to the regions. This is regulated in Article 10 paragraph (3) and Article 14 paragraph (1) of Law No. 32/2004 and its amendments. The substance that can be linked between the two laws is a regional authority in land management. The law is one of the legal bases for implementing national and State life, so clarity and certainty are needed without dualism. The question is whether the substance regulated in the form of handing over land management to the regions in Law No. 32/2004 and its amendments can replace what is regulated by Law No. 5/1960 regarding the same substance. To answer this, a more in-depth study is needed (Li et al., 2023).

The content and authority of the purpose of the Right to Control the State as explained in article 2 paragraph (2) of the UUPA explain that:

"The right of control of the State previously described in paragraph (1) means that:

1. regulate and administer the allocation, use, supply, and maintenance of the earth, water, and space;
2. determine and regulate the legal relations between people and earth, water and space;
3. determine and regulate legal relations between persons and legal acts concerning earth, water, and space".

After seeing the explanation above regarding the right to control the State from the UUPA, of course, the type of land surface is good for individuals and together and legal entities. The rules regarding these types are certainly regulated and explained in Article 4 of the UUPA, where the contents of the article are as follows:

- Paragraph (1) defines that based on the right to control from the specified type of State as referred to in Article 2, the type of right to the surface of the earth, called land, which can be given to and owned by persons either alone or jointly with other persons and legal entities.
- Paragraph (2) defines that the land rights referred to in Article 1 authorize the use of the land concerned as well as the body of earth and water and space on it as necessary only for purposes directly related to the use of the land, within the limits of other higher laws.
- Paragraph (3) defines that in addition to the rights to land, as referred to in paragraph (1) of this article, the rights to water and space are also determined.

With the use of the term land rights described by each type, the right to the basement, according to Boedi Harsono, allows for building owners to be jointly owned so that the part can be owned for individuals separated from each other against certain parts to be owned together, for example regarding units of flats. So that individual parts are like basement units with property rights to the registered basement units and have

rights, for example, property rights to apartment units. So that it can be transferred to other parties and used as debt collateral by being burdened by dependent rights, the requirements regarding the subject matter are, of course, the same as the right to use the basement, and regarding the period is also the same (Grecksch, 2021).

With this, it does not have the authority of the holder of part of the earth's surface in taking and moving part of his earth's body under his soil? With that, its authority is limited to using not just what is needed, and it also directly relates to the use of the land concerned (Adhim, 2019).

1. Technical Criteria

The use of the basement cannot be separated from the existence of the building. This happens because utilizing the basement must be done simultaneously with building buildings so that the basement can function afterward. So technical criteria are certainly required if a grant will be made for Basement Rights. So that the technical criteria of the basement must certainly follow the principles, which include:

1. Safety/Security (fire, oxygen availability, ground movement, earthquakes, and floods).
2. Environmental Sustainability (water management and underground ecology)
3. Supporting Technology (pump and air conditioning).

The three technical criteria are the main factors are safety and security factors because it is like a high-ranking building, especially when it has a basement that must be considered for safety and security. Safety and security to avoid fire hazards, oxygen availability, ground shift/ground movement, earthquakes, and floods (Qiao et al., 2019).

- Fire Safety

In evacuating fires, if the fire causes all equipment that uses electricity to malfunction, it can be used only for fire ladders. Humans are limited to vertical movements of a maximum of 4 floors or approximately 20 m. Therefore, it can be the basis for consideration that the maximum basement is limited to 4 floors or approximately 20 m.

- Safety against Oxygen Demand

Good buildings in multi-story are certainly needed to pay attention to the availability of natural oxygen because it is not only artificial air. Certain heights of multi-story buildings for buildings above or below ground can also experience a lack of oxygen availability (O₂) which follows the availability of oxygen on the earth's surface. So that with the increasing height of the building, there is also a depletion of oxygen availability, which is deeper underground. Especially for underground buildings, oxygen availability is achieved by approximately 15-20 m without technology.

- Safety against Ground Shifting (Ground Movement)

Especially for areas that have geological faults (Caesar) need to be considered the safety of the building against the movement of the land. Because the area has a natural area of influence approximately 500 meters from now and the right of the geological fault area, for guaranteed safety against residents who have cracks and damage from multi-story buildings, the basement should not be more than one floor only for buildings in the area of influence on the geological fault (Caesar).

- Safety against Earthquakes

The region in Indonesia is one of the earthquake paths in the world, except Kalimantan Island, so it can be used as a consideration for earthquakes which are mandatory to pay attention to, especially for multi-story buildings. Shear forces and vibrations of the amplitude of the building if an earthquake is experienced, which is related to the height and low of the building. Making the height of the vibration building the greater the amplitude, the joints of the building become more and more tightly needed, of course. In this case, the deeper the basement, the stronger the reaction of the building to the earthquake.

- Flood Safety

Most of the cities in Indonesia are located in coastal areas, so the area is prone to flooding because the slope of the land is certainly relatively flat, close to 0%. So that to be safe from the dangers of flooding, the basement should be limited so that if a flood is not anticipated, the basement should also be able to save residents quickly. The mobility standard is only achieved on 3-4 floors because the maximum basement depth is limited.

2. The Social Impact of Damage to Basements

The understanding of social functions begins with the understanding of land based on the 1945 Constitution following Article 33 paragraph (3), which explains (Alrip & Kadarudin, 2021):

"Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." From this understanding, we can conclude that the government, namely the State, is only given authority in controlling the land but does not mean being the owner of the land; it is just that the land controlled by the State is given the authority so that the land and everything on the surface of the earth is achieved for the greatest prosperity for its people so that the people can enjoy everything on the surface of the earth following the needs to be able to use it at its best. This is explained in more detail in the Basic Agrarian Law (Bobylev, 2009). This social function, of course, has something to do with the land. This is explained in the rules of law number 5 of 1960 concerning basic regulations on agrarian principles, which include:

1. Article 6 says that all land rights have their social functions. Therefore, all the land rights granted following Article 16 of the UUPA have paid attention to the existing social functions so that every right given to them follows the orders described by the Basic Agrarian Law.
2. The social function in article 6 also has a relationship with article 18 of the UUPA because article 18 of the UUPA explains the public interest, including the interests of the nation and the State, as well as the common interests of the people to land, which is certainly revoked by being given proper compensation and following the rules stipulated in the law.

Because the purpose of the social function in article 6 of this Law explains that the social function of land rights to must contain the principle of primacy because regarding the statement of the importance of land *ha katas* has been formulated according to the nature of the togetherness of the social function of the National Land Law, because land has also been given rights to someone who certainly not only functions as a right to own someone but also must be for the Indonesian nation of course so that when used Land is not only for the benefit of the individual but still prioritizes the interests of other communities so as to produce a balance against personal interests and community interests, and this social function is also to oblige the rights owned to use the land for those concerned in accordance with the good condition of the land, the nature and purpose of being given that right so that the land can be sold properly so that it produces good quality as well as of course (Foster, Sehila, Bonilla, 2011). This land right also says that social functions arise because the relationship between land is not only limited to being able to do with something that the owner wants, but the owner must also own the property on his land. In addition, the purpose of this social function certainly leads to when the land is owned by the owner, who must know the usefulness of someone who owns the land can be used for what the land is. The use of the land must have benefits that are certainly not only give benefits that are limited to themselves but must also have benefits for many people so that social functions can certainly be carried out as well as possible to achieve the people's prosperity. The same is true for the basement because the principle of social function in land rights must also follow the social function of the basement, of course.

Because to know the construction of the basement, of course, it must have a social function over the construction of the basement (Rubaie Achmad, 2007). Therefore, the construction of a basement is allowed when the basement is currently built for shops, basement parking lots, or MRT because those examples built in the basement are useful for the whole community to enjoy. Of course, with this, social functions according to the principles that must be applied following the Basic Agrarian Law and Government Regulations become well realized. However, when the basement is damaged, either due to an underground fire, flood, or earthquake, for example, because considering Indonesia is a country that is prone to it certainly causes losses. The emergence of loss and damage makes anyone who will use the basement unable to use it again. The result of this becomes the existence of social impact. The social impact itself is a change in the social function of a thing, as in this case regarding the basement, its social function is that it can be used for all communities, personal interests, and the State. So that when damage and loss occur, of course, the implementation of the social function to use the basement becomes unrealized. The effect of it all, the social impact that occurs, is a negative impact that is obtained and felt, of course (Sitorus et al., 2006).

IV. CONCLUSION

From all the explanations above, it can be concluded that in addition to regulating human activities related to duties, the UUPA also regulates the following: the State embodies the role of legal regulators who also direct these activities on achieving the desired goals as an expression of the function of "social engineering" in terms of the law. This is due to the provisions of articles 2, 6, 7, and 11 of the UUPA, which argue that state land regulations must be designed to achieve this even for the great prosperity of the people. To achieve the prosperity of its people, social functions must be applied in this case, including the use of basements because the principle of basements and land is equally intended for the greatest benefit of its people. So that when there is damage that results in losses to the basement causes the basement to become unusable properly. With this, there is a negative impact on social functions because the damage makes the basement not intended for all communities, making social functions not run properly.

V. ACKNOWLEDGMENTS

The author expresses his deepest gratitude to all parties involved so that this writing becomes useful later for all who will read this article. The author also expressed his gratitude to the Editor, who has helped provide criticism and suggestions for improving this article so that this article becomes a good article to be read by all parties who want to read this article.

REFERENCES

- [1] Adhim, N. (2019). Penggunaan Ruang Bawah Tanah Dilema Antara Kebutuhan dan Pengaturan. *Jurnal Hukum, Universitas Diponegoro*, 4, 1–11.
- [2] Alrip, I., & Kadarudin, K. (2021). Problematika Penggunaan Ruang Bawah Tanah Dari Aspek Yuridis. *HERMENEUTIKA : Jurnal Ilmu Hukum*, 5(2). http://jurnal.ugj.ac.id/index.php/HERMENEUTIKA/user/setLocale/NEW_LOCALE?source=%2Findex.php%2FHERMENEUTIKA%2Farticle%2Fview%2F5938%2F2608
- [3] Bobylev, N. (2009). Mainstreaming sustainable development into a city's Master plan: A case of Urban Underground Space use. *Land Use Policy*, 26(4), 1128–1137. <https://doi.org/10.1016/j.landusepol.2009.02.003>
- [4] Foster, Sehila, Bonilla, D. (2011). The Social Function of Property: A Comparative Law Perspective. *Fordham Law Review*, 80, 101.
- [5] Grecksch, K. (2021). Out of sight ♦ out of regulation? Underground space governance in the UK. *Journal of the British Academy*, 9s10(November), 43–68. <https://doi.org/10.5871/jba/009s10.043>
- [6] Hámor-Vidó, M., Hámor, T., & Czirik, L. (2021). Underground space is the legal governance of a critical resource in the circular economy. *Resources Policy*, 73(October). <https://doi.org/10.1016/j.resourpol.2021.102171>
- [7] Hukum, P., Polis, P., Pembaharuan, P., Asuransi, P., Kasus, P., Bayar, G., & Jiwasraya, P. T. (2022). *Tanjungpura acta borneo journal*. 1(1), 1–22.
- [8] Li, Y., Qian, X., Zhang, S., Sheng, J., Hou, L., & Yuan, M. (2023). Assessment of gas explosion risk in underground spaces adjacent to a gas pipeline. *Tunnelling and Underground Space Technology*, 131(November 2021), 104785. <https://doi.org/10.1016/j.tust.2022.104785>
- [9] Qiao, Y. K., Peng, F. Le, Sabri, S., & Rajabifard, A. (2019). Socio-environmental costs of underground space use for urban sustainability. *Sustainable Cities and Society*, 51(August), 101757. <https://doi.org/10.1016/j.scs.2019.101757>
- [10] Rubaie Achmad. (2007). *Hukum Pengadaan Tanah untuk Kepentingan Umum*. Bayumedia.
- [11] Sibuea, H. Y. P. (2013). Tinjauan Yuridis Atas Pemanfaatan Ruang Di Bawah Tanah. *Negara Hukum*, 4(Land Reform), 18–34. <https://jurnal.dpr.go.id/index.php/hukum/article/view/194/135>
- [12] Sitorus, Oloan dan Sierrad, Z. (2006). *Hukum Agraria Konsep Dasar dan Implementasi*. Mitra Kebijakan Tanah Indonesia.