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The Right to Compensation for Landholders Whose Land Contains Water Resources Utilized by Other Parties

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Abstract: This study addresses the absence of an operational mechanism for compensating landholders whose land contains water resources utilized by other parties, which creates legal uncertainty and social conflict. It situates the problem in Indonesian constitutional law: Article 33(3) of the 1945 Constitution and Constitutional Court Decision No. 85/PUU-XI/2013 establish the state's right of control (*hak menguasai negara*) over water, yet that right does not extinguish rights over land, and any limitation of ownership must satisfy Article 28J(2), namely a statutory basis, a legitimate aim, and proportionality. Using a socio-legal approach, the study analyzes the practice of water-resource utilization in Gangsiran Ledok Hamlet, Tlekung Village, Batu City, examines its implications for landholders' rights, and formulates a model of legal protection. Primary data were obtained through in-depth interviews with village officials, the managers of HIPPAM Kali Kiban, and landholders; legal materials were analyzed through norm inventory, hierarchy (*lex superior, lex specialis*), and harmonization. The findings show a disparity in treatment: HIPPAM's use of water on one landholder's land was never compensated, whereas private use on two other landholders' land received monthly compensation. This disparity stems from the absence of technical norms on the procedure, form, and amount of compensation under Article 61(1)(d) of Law No. 17 of 2019 on Water Resources, compounded by the absence of village regulation and administrative supervision. The study argues that Article 61(1)(d) alone is not a sufficient legal basis and proposes a statutory provision (Article 61A) with delegated technical regulation that secures legality, public participation, administrative supervision, and legal remedies.

Keywords: *Land Rights; Compensation; Legal Protection; Water Resources.*

Introduction

Land is a basic human need with economic, social, and juridical value. Under national agrarian law, ownership rights (Hak Milik) over land constitute the primary and most complete right, as regulated by Article 20(1) of Law Number 5 of 1960 concerning Basic Agrarian Law (UUPA), which grants the authority to use land together with everything contained within it, so

long as this does not conflict with the public interest. This right nevertheless remains constrained by the social function of land (Article 6 of the UUPA), meaning that the use of privately owned land containing strategic natural resources such as water must have regard to the public interest.

Indonesia adopts an ecocentric paradigm in the development of land and environmental law, holding that moral obligations extend to every entity within the ecosystem, not merely to living beings.[1] Water resources are controlled by the state, as provided in Article 33(3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), for the greatest possible prosperity of the people. Their utilization must be directed toward that purpose (*doelmatig*),[2] while also being regulated and supervised so that it does not unduly override citizens' rights. The Constitutional Court has accordingly established six principles limiting state control over water, prioritizing primary public needs before permits are strictly granted to private parties,[3] forming the basis for formulating and implementing public decisions on water-resource management.[4]

The constitutional framework governing this problem has four connected layers. First, Article 33(3) of the 1945 Constitution is the source of the state's right of control (*hak menguasai negara*) over water. According to Putusan MK No. 001-021-022/PUU-I/2003, the Constitutional Court has construed this right not as ownership but as five functions of the state, they are policy-making (*kebijakan*), administration (*pengurusan*), regulation (*pengaturan*), management (*pengelolaan*), and supervision (*pengawasan*). Second, Constitutional Court Decision No. 85/PUU-XI/2013 subjects state control over water to limiting principles, among them that control must not negate the people's right to water and that state supervision and control over water remain absolute. Third, because state control is a function and not ownership, it does not by itself extinguish rights over land held under Article 20(1) of the UUPA, which are protected as property under Article 28H (4). Fourth, where the exercise of state control restricts such rights, Article 28J (2) requires that the restriction be set by law, serve a legitimate aim, and be proportionate, while Article 28D (1) guarantees fair legal certainty. This article follows that framework in which compensation for landholders is not a favor dependent on the goodwill of the water user, but a constitutional consequence of a restriction on property rights imposed in the name of state control. The question is therefore not only whether a mechanism exists, but whether the existing statutory basis suffices and how any gap may be filled without breaching the principle of legality.

Although controlled by the state, water resources are in practice frequently inseparable from land owned by the community. This relationship between land ownership and the resources it contains is governed by the principle of horizontal separation (*horizontale scheidingsbeginsel*), which affirms that ownership of land does not automatically extend to the resources attached above or beneath it. Water therefore remains under state control even on privately owned land, but this separation must not be interpreted as extinguishing the landowner's rights and economic interests, making it necessary to regulate compensation as a form of legal protection.

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[1] Sutoyo Sutoyo, "Paradigma Perlindungan Lingkungan Hidup," *ADIL: Jurnal Hukum* 4, no. 1 (June 2015): 202, https://doi.org/10.33476/ajl.v4i1.33.
[2] Indah Dwi Qurbani, "Politik Hukum Pengelolaan Minyak Dan Gas Bumi Di Indonesia," *Arena Hukum* 5, no. 2 (August 2012): 79–112, https://doi.org/10.21776/ub.arenahukum.2012.00502.5.
[3] Anna Triningsih, "Penguasaan Negara Atas Sumber Daya Air Sebagai Upaya Mendukung Ekonomi Nasional," *Jurnal Legislasi Indonesia* 17, no. 3 (September 2020): 343–54.
[4] Rachmad Safa'at, Aminudin Afandi, and Anthon Efani, *Penyediaan Lahan Pertanian Berkelanjutan: Konsep Perlindungan Hukum Dan Pengendalian Alih Fungsi Yang Bertumpu Partisipasi Masyarakat* (Malang: Setara Press, 2025).

Although controlled by the state, water resources are in practice frequently inseparable from land owned by the community. The relationship between the two cannot rest on the principle of horizontal separation (*horizontale scheidingsbeginsel*) alone, because that principle in Indonesian agrarian law chiefly distinguishes land from the buildings and plants attached to it.[5] The more relevant provision is Article 4(2) of the UUPA, under which the holder of a land right is authorized to use the land and, as far as necessary for the use of the land, the water and space above it. Read together with Article 33(3), these provisions mean that water remains under state control even on privately owned land, while landholders keep their authority over the land affected by other-party utilization of that water. Regulating compensation is therefore a form of legal protection for that retained authority, not an act of generosity.

The problem is that the applicable laws and regulations do not adequately regulate compensation mechanisms for landowners whose water resources are used by other parties. Article 61 paragraph (1) letter d of Law Number 17 of 2019 concerning Water Resources (UU SDA) regulates the right of the community to obtain fair compensation, in accordance with Article 28 paragraph (1) and 28 letter h (4) of the 1945 NRI.[6] However, this has not been followed by technical provisions regarding the procedure, form, and amount of compensation. Similarly, the compensation provisions in Law Number 2 of 2012 concerning Land Acquisition only regulate land acquisition for the public interest.[7] A similar gap appears in the relationship between Article 4(3) and Article 1(4) of the UUPA concerning water rights, which ought to be specifically regulated so that the corresponding rights and control needs are properly accommodated.[8]

This difference is evident when compared to other sectors. Where Law Number 2 of 2012 concerning Land Expropriation provides compensation through the relinquishment of rights (Deed of Relinquishment), while Article 1(14) of Law Number 30 of 2009 concerning Electricity as amended by Law Number 6 of 2023, has introduced compensation without relinquishment. Meanwhile, the use of water resources on residents' land outside government projects, regional and village-level regulations have not clearly distinguished between these two concepts.

A preliminary study in Gangsiran Ledok Hamlet, Tlekung Village, Junrejo Subdistrict, Batu City, East Java, found a practice reflecting this legal vacuum. Land belonging to Sutadji, containing the Kali Kiban spring, is used by HIPPAM (the community-based drinking-water association) without compensation, whereas land belonging to Ruslan (Kali Ampo) and the heirs of Rawi (Kali Belik) has received monthly compensation from the private operator of Batu Ekonomis Park (BEP) since 2014. This different treatment risks triggering resentment and social conflict, as

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[5] Devina Maya Ganindra and Faizal Kurniawan, "Kriteria Asas Pemisah Horizontal Terhadap Penguasaan Tanah Dan Bangunan," *Yuridika* 32, no. 2 (August 2017): 228, https://doi.org/10.20473/ydk.v32i2.4850; Sri Harini Dwiyatmi, "Asas Pemisah Horizontal (Horizontale Scheiding Beginsel) Dan Asas Perlekatan (Verticale Accessie) Dalam Hukum Agraria Nasional," *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 1 (October 2020): 125–44, https://doi.org/10.24246/jrh.2020.v5.i1.p125-144.

[6] Riki Wahyu Saputra, "Perlindungan Hukum Bagi Pemilik Tanah Yang Terkena Pengadaan Tanah Untuk Pembangunan Kepentingan Umum (Studi Kasus Di Kuta, Lombok Tengah)," *Jurnal Universitas Mataram*, 2020.

[7] Muhammad Yusrizal, "Perlindungan Hukum Pemegang Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum," *De Lega Lata* 2, no. 1 (2017): 118–19, https://doi.org/https://doi.org/10.30596/dll.v2i1.1143.

[8] Rachmad Safa'at and et al., *Relasi Negara Dan Masyarakat Adat: Perebutan Kuasa Atas Hak Pengelolaan Sumber Daya Alam*, Edisi revisi (Malang: Inteligensia Media, 2023).

previously occurred in the sand-mining case in Lumajang for the absence of compensation.[9] This gap between *das sollen* and *das sein* demands that the government ensure water-resources utilization does not harm citizens' constitutional rights, since, under the doctrine of *state liability* developed in the jurisprudence of the *Conseil d'État* in France and the *House of Lords* in England, the state bears responsibility for losses suffered by citizens as a result of deficient administrative regulation.[10]

Against this background, the study addresses three questions: (1) how water resources on land belonging to residents of Gangsiran Ledok Hamlet are utilized by other parties, and how authority to regulate and supervise that utilization is distributed among the central government, the Batu City Government, and the village; (2) whether the absence of compensation meets the constitutional requirements for limiting landholders' rights under Articles 28D(1), 28H(4), and 28J(2) of the 1945 Constitution; and (3) whether Article 61(1)(d) of the Water Resources Law is a sufficient basis for compensation, or whether the gap must be filled through technical regulation, in what legal form, and with what model of legal protection, without violating the principle of legality.

Historically, Indonesia's water resource management paradigm shifted from local institutions (*ulu-ulu desa*, P3A) under *state-based management*[11] toward *market-based management* after the Reform era, producing Law Number 7 of 2004 on Water Resources before the Constitutional Court annulled it for overemphasizing water's economic function.[12] The current Water Resources Law adopts a *cooperative management* approach combining local communities and government while recognizing customary rights.[13] This tension between water's social and economic functions underlies the absence of a clear compensation mechanism addressed here.

The final concept concerns the rights attached to landownership under Article 20(1) of the UUPA, conferring authority to use, transfer, encumber, and defend the land and obtain legal protection for it.[14] The concept is supported by a land registration system that produces certificates as proof of ownership.[15] Although, the certificate is not seen as absolute proof.[16] Among these is the right to compensation where land use is disturbed by another party. water resources on

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[9] Rachmad Safa'at and Indah Dwi Qurbani, "Alternatif Penyelesaian Sengketa Pertambangan (Studi Di Kabupaten Lumajang Provinsi Jawa Timur)," *Jurnal Konstitusi* 14, no. 1 (July 2017): 158, https://doi.org/10.31078/jk1417.
[10] Siti Hatia Adzannya Basuki, Yani Pujiwati, and Yusuf Saeful Zamil, "Perlindungan Hukum Terhadap Pemilik Hak Atas Tanah Belum Terdaftar Yang Dirugikan Akibat Maladministrasi Perangkat Pemerintahan Desa," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 1 (October 2022): 35, https://doi.org/10.23920/litra.v2i1.979.
[11] Jati Nugroho, "Pergeseran Paradigma Hukum Pengelolaan Sumber Daya Air Dan Pengaruhnya Terhadap Pengakuan Kelembagaan Lokal Berdasarkan Prinsip Keadilan (Perspektif Sejarah Hukum)," *Transparansi Hukum* 3, no. 1 (January 2020): 73–78, https://doi.org/10.30737/transparansi.v3i1.668.
[12] Wahyu Fahmi Rizaldy, "Paradigma Dan Pengaturan Pengelolaan Sumber Daya Air Pasca Lahirnya Undang-Undang Nomor 17 Tahun 2019," *Journal of Law and Administrative Science* 1, no. 2 (October 2023): 51–62, https://doi.org/10.33478/jlas.v1i2.13.
[13] Andi Sri Rezky Wulandari and Anshori Ilyas, "Pengelolaan Sumber Daya Air Di Indonesia: Tata Pengurusan Air Dalam Bingkai Otonomi Daerah," *Gema Keadilan* 6, no. 3 (December 2019): 291–92, https://doi.org/10.14710/gk.2019.6750.
[14] Suharyono, Khalisah Hayatuddin, and Muhamad Sadi Is, "Perlindungan Hukum Hak Asasi Manusia Dalam Memperoleh Hak Atas Tanah Di Indonesia," *Jurnal HAM* 13, no. 1 (2022): 18.
[15] Rezeki Aldila Rajab, Bambang Eko Turisno, and Anggita Doramia Lumbanraja, "Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah," *NOTARIUS* 13, no. 2 (August 2020): 648, https://doi.org/10.14710/nts.v13i2.31085.
[16] Iwan Permadi and Herlindah, "Electronic Title Certificate as Legal Evidence: The Land Registration System and the Quest for Legal Certainty in Indonesia," *Digital Evidence and Electronic Signature Law Review* 20 (July 2023): 47, https://doi.org/10.14296/deeslr.v20i.5636.

privately owned land can cause loss without adequate compensation, covering both the economic value of lost water rights and their social impact, and is mandatory since the owner loses full use of the land. The principles of *fairness* and *restorative justice* underlie the determination of compensation, accounting for socio-ecological impacts.[17]

This research's originality is confirmed against three prior studies with related but distinctive focus, they are on the legal vacuum following the annulment of Law Number 7 of 2004 and Constitutional Court Decision Number 85/PUU-XI/2013, on permits for riverbank use for floating restaurants in Makassar, and on the *beneficiary pays principle* in environmental protection reform, which recommends broadening that principle within the Water Resources Law.[18] Unlike these studies, the present research specifically targets compensation regulation for landowners whose land contains water resources utilized by other parties, filling a gap not yet addressed by prior research. Beyond filling this gap, the study contributes to constitutional doctrine in three ways. First, it clarifies that the state's right of control over water is a bounded function and not ownership. Second, it applies the Article 28J(2) test to a limitation of property rights that arises through the absence of implementing norms. Third, it identifies the legal form and level of regulation that would satisfy the principle of legality.

Research Method

This study employs a juridical-empirical method, examining applicable legal provisions alongside the actual conditions in society in order to obtain empirical data, which are then analyzed to identify problems and formulate solutions.[19] The study uses a single-case design, with Gangsiran Ledok Hamlet chosen because it offers a natural internal comparison where springs located on private land are used within the same hamlet by two different users, a community drinking-water association (HIPPAM) for public needs and a private tourism operator by Batu Economis Park (BEP) for business, and under different compensation arrangements and with the same absence of village regulation. This makes the case informative about how a statutory gap operates in practice. The findings are not generalized statistically, but analytically, to the extent that other localities share the same legal structure, namely springs on privately held land, community water systems or businesses using them, and the same set of norms. Where those conditions differ, for example where a regional regulation on compensation already exists, the findings should be tested rather than assumed.

The study draws on sociological approach, which examines the reflections and relationships that arise when a system of norms operates actively within society,[20] viewing law not merely as a written norm but as a living social phenomenon that is analyzed both normatively and in terms of

[17] Sisi Widya Putri and Ismail Ismail, "Legal Protection of Indonesian Citizens Who Conduct Marriage With Foreign Citizens Related to the Acquisition of Land Rights," *The Juris* 7, no. 1 (June 2023): 44–50, https://doi.org/10.56301/juris.v7i1.779.
[18] Dicky Eko Prasetio and Muh. Ali Masnun, "Beneficiary Pays Principle : Rekonstruksi Pengaturan Pelindungan Lingkungan Dalam Mewujudkan Kelestarian Sumber Daya Air," *Jurnal Hukum Lingkungan Indonesia* 11, no. 1 (October 2025): 8, https://doi.org/10.38011/jhli.v11i1.957.
[19] Bambang Waluyo, *Penelitian Hukum dalam Praktek* (1996; Cet. 2, Jakarta: Sinar Grafika, 2002), 15–16.
[20] Wiwik Sri Widiarty, *Buku Ajar Metode Penelitian Hukum* (Yogyakarta: Publika Global Media, 2024), 137.

how it functions within society.[21] Primary data were obtained through in-depth and semi-structured interviews with the Head of Gangsiran Ledok Village, the manager of HIPPAM Kali Kiban, and holders of land rights containing water resources, are Sutadji (Kali Kiban spring), Ruslan (Kali Ampo spring), and the heirs of Rawi, namely Sumali and Rabun (Kali Belik spring). The informants were selected using purposive sampling, based on their knowledge, experience, authority, or direct involvement in the practices under study.[22] Informants gave oral informed consent after the purpose of the study was explained, and consented to the interviews being recorded and to the use of their statements. Data were triangulated across sources and methods from interview statements with landholders, HIPPAM managers, and village officials were compared with each other, with the documents available (land certificates and, where obtainable, the agreements with BEP), and with the legal materials. Statements that could not be verified are marked as informant accounts in the text.

Analysis proceeded in five steps. First, interview data were transcribed and coded, with themes according to form of agreement, form and amount of compensation, supervision, and conflict. Second, applicable legal materials were inventoried from the Constitution down to village regulation, they are the 1945 Constitution and Constitutional Court decisions, the UUPA, the Water Resources Law and its implementing regulations, the Village Law, regional government law, and sectoral compensation regimes. Third, those norms were tested for hierarchy and consistency using the principles of *lex superior, lex specialis*, and *lex posterior*, and each gap was classified as a vacuum, a vague norm, or a norm that exists but has not been operationalized. Fourth, the empirical findings were set against the constitutional requirements of Article 33 (3), 28D (1), 28H (4), and 28J (2) of the 1945 Constitution, so that social facts were tied to constitutional norms through the three-part test of statutory basis, legitimate aim, and proportionality. Fifth, empirical data on water utilization are examined against compensation arrangements in other sectors to provide functionally the elements of a model of protection and a drafting proposal, such as Article 61 of the Water Resources Law, the Basic Agrarian Law (UUPA), Law Number 2 of 2012 concerning Land Acquisition, and Law Number 30 of 2009 concerning Electricity

Discussion and Analysis

The Practice of Water Resource Utilization in Gangsiran Ledok Hamlet

Tlekung Village is one of the villages in Junrejo Subdistrict, Batu City, East Java, geographically located in a hilly area at an elevation of 750–950 meters above sea level. Its topography and fertile andosol soil give the area substantial water resource potential, including springs, rivers, and water catchment areas, which support the local agriculture, livestock, and tourism sectors. The village comprises the hamlets of Gangsiran, Putuk, and Tlekung, and plays a strategic role as a water catchment and environmental buffer area for Batu City, making its

[21] Sulistyowati Irianto and Shidarta, eds., *Metode Penelitian Hukum: Konstelasi dan Refleksi* (Jakarta: Yayasan Obor Indonesia, 2009), 177.
[22] Agnes Afdi Pratama dan Juliana Kurniawati, "Strategi Komunikasi Badan Usaha Milik Desa (Bumdes) Dalam Meningkatkan Perekonomian Masyarakat Di Bengkulu Selatan," *Jurnal Sarjana Ilmu Komunikasi (J-SIKOM)* 6, no. 2 (2025): 356, https://doi.org/10.36085/jsikom.v6i2.9355.

management important for maintaining a balance between economic and social interests and environmental sustainability.[23]

Water resources located on land owned by residents, such as Kali Kiban and Kali Belik, were originally used traditionally for bathing, washing, irrigation, and household needs. As community needs developed, their management was modernized through the establishment of the Drinking Water Users' Association (HIPPAM), which manages, distributes, and operates the water supply for the community, before the resources also came to be used for business purposes by a private party, namely Batu Ekonomis Park (BEP, formerly known as Predator Fun Park), since 2014.

Land belonging to Sutadji, covered by Ownership Certificate Number 02212/Tlekung/2021, contains the Kali Kiban spring, which has been used by HIPPAM Kali Kiban since 2010. According to interview findings, Sutadji initially agreed to the use of the water source on condition that he receive monthly monetary compensation to be used for the benefit of the local mosque, but this agreement was never fully realized.[24] The compensation Sutadji has received to date consists only of exemption from HIPPAM's water usage fees and gifts on religious holidays, while HIPPAM Kali Kiban itself provides the Hamlet with financial assistance of Rp1,500,000 for every village event.[25] No written record of the original agreement between Sutadji and the Hamlet Head exists at the Village Office, and HIPPAM itself was neither involved in nor fully aware of the content of that agreement.[26] This condition indicates a breach of the agreement on water resource utilization, as well as weak administrative governance at the village level.

In contrast to Kali Kiban, the Kali Belik water source, located on land belonging to the Rawi family (now registered through the PTSL program in the name of the heirs under Ownership Certificate Number 03198/Tlekung/2021), as well as the Kali Ampo source on land belonging to Ruslan, have been used by BEP for tourism business purposes since 2014 under a written agreement. In return for this use, BEP provides compensation of Rp1,000,000 per month, increasing every three years, divided between the landowner (Rp750,000) and the residents who maintain the pipeline, namely the HIPPAM management (Rp250,000).[27] Following Rawi's death, this compensation has been managed solely by Rabun as one of the heirs, without any renewal of the agreement or consultation with the other heirs, creating the potential for future conflict within the family.[28]

Table 1: Comparison of water resource utilization practices in Gangsiran Ledok Hamlet (processed from interview results, 2026)

Aspect	**Kali Kiban (managed by HIPPAM)**	**Kali Ampo & Kali Belik (managed by BEP)**
Type of utilization	Public interest	Business/commercial interest

[23] "Desa Wisata Tlekung Mandaya Aguna," Pesona Indonesia, accessed May 20, 2026, https://jadesta.kemenpar.go.id/desa/tlekung_mandaya_aguna.
[24] Sutadji, "Interview," (Dusun Gangsiran Ledok, Kota Batu), May 10, 2026.
[25] Giono, "Interview," (Dusun Gangsiran Ledok, Kota Batu), June 10, 2026.
[26] Ansori, "Interview," (Dusun Gangsiran Ledok, Kota Batu), May 10, 2026.
[27] Sumali, "Interview," (Dusun Gangsiran Ledok, Kota Batu), 2026 5 AD.
[28] Rabun, "Interview," (Dusun Gangsiran Ledok, Kota Batu), June 27, 2026.

Basis of agreement	Oral, with no written record at the village office	Written agreement (document untraceable)
Form of compensation	Water-fee exemption, holiday gifts	Rp1,000,000/month, increasing every 3 years
Implementation	Inconsistent with the original agreement (breach)	Ongoing, but not transparent to all heirs
Village government oversight	None	None

Authority over water resources in this case is layered. Under the Law No 17/2019 on Water Resources and Law No. 23/2014 on Regional Government, the central government, the provinces, and the regencies or cities hold different authorities depending on the status of the river basin and the source. In this regard, Kali Kiban, Kali Ampo, and Kali Belik are under the authority of Batu City government, given that Law No. 23/2014 gives the local government has the authority to manage irrigation system which has an area of less than 1.000 hectares, although their springs flow into Brantas River, which is under the national regulation. Therefore, villages do not hold water-resource authority as such. Their authority derives from Law No. 6 of 2014 on Villages, which covers rights of origin and local-scale authority and empowers villages to issue village regulations (*peraturan desa*), and from any regional regulation that delegates authority to them.

Two consequences follow. First, the compensation arrangement for the Kali Kiban spring rests on no regulation but an oral agreement with a Hamlet Head is not a village regulation, and it binds neither HIPPAM, which was unaware of its content, nor the Village Office, which holds no record of it. Second, no authority at any level has accepted responsibility for supervision. The Batu City Government provided a reservoir and pipe network but does not monitor how they are used. The problem is therefore not only a lack of "trust among the parties" but a matter of legality, because no norm authorizes or regulates the arrangement; of accountability, because no official answers for its non-performance; and of governmental responsibility, because the public facilities involved were provided without supervision.

A second distinction explains part of the disparity. Use of water by HIPPAM for basic daily needs and use by BEP for business fall under different regimes, where the former does not require a business licence, while the latter does. Whether BEP holds a water-use licence for these springs, and whether the licence contains any compensation condition, determines whether its private agreements with landholders supplement or substitute for the compensation duty the statute envisages. If BEP holds no licence, a contract with landholders cannot legalize the use. If it does, the absence of a compensation requirement in the licence shows the gap also lies in the licensing norms. Either way, the contrast between HIPPAM and BEP is better described as a disparity arising from different regimes, and from the lack of any rule requiring compensation in both, than as discrimination.

This disparity in treatment confirms that the utilization of water resources in Gangsiran Ledok Hamlet takes place without a clear legal umbrella, whether at the village level or at higher levels of governance. The absence of a village regulation governing the utilization of water resources on privately owned land means that the legal relationship between landowners, HIPPAM, and business operators depends entirely on the trust and good faith of the parties, without adequate mechanisms for oversight or enforcement. Viewed through John Rawls's Theory

of Justice, this condition reflects the failure to fulfil the principle of justice as *fairness*, because the distribution of benefits from water resource utilization has not proceeded fairly or proportionately for all parties bearing the burden of that utilization.

Legal Implications for the Rights of Landholders

State control over water resources under Article 33(3) of the 1945 Constitution does not automatically extinguish the right of control over privately owned land containing a water source. Ownership rights continue to confer authority to use, utilize, and derive economic benefit from the land, so long as this does not conflict with the social function of land under Article 6 of the UUPA.[29] Restrictions on ownership rights arising from the presence of water resources utilized by other parties must be understood as a consequence of that social function, without extinguishing the owner's underlying rights.[30] The Ownership Certificates held by Sutadji and Rawi's heirs demonstrate a strong and valid legal position, so that any restriction on their use should still be accompanied by an equivalent guarantee of legal protection.[31]

If landholders' rights are restricted by the utilization of water on their land, that restriction must satisfy the three requirements of Article 28J(2) of the 1945 Constitution. The first is a statutory basis. Article 28J(2) requires that limitations be set "by law", so the restriction itself cannot rest on an oral agreement, a village practice, or a lower regulation, although technical details may be delegated. The Water Resources Law provides a basis for state control and recognizes a right to compensation in Article 61(1)(d), but does not set out the subjects, procedure, form, or amount of that compensation. The second is a legitimate aim, which is met here, since utilization serves the people's need for water and the welfare purpose of Article 33(3). The third is proportionality, understood as suitability, necessity, and balancing. In Gangsiran Ledok, the Kali Kiban landholder bears a continuing limitation on the use of his land for public benefit without a defined or enforceable form of compensation, while landholders whose water is used commercially receive monthly payments; a burden that is indefinite, uncompensated, and unequally distributed fails the balancing stage because a less restrictive means, a defined compensation, is readily available.

The second legal implication is the emergence of a right to compensation. Article 61(1)(d) of the Water Resources Law grants the community the right to receive fair compensation for losses arising from water resource management, whether in the form of physical compensation (money, resettlement, shares, or other forms) or non-physical compensation (employment, livelihood guarantees, or other forms), as reinforced by Article 52(4) and (5) of Government Regulation Number 30 of 2024, which requires the initiator of an activity to provide compensation where that activity causes loss to the community. Although the term "compensation" is not used explicitly, the phrase "fair replacement" substantively signals recognition of the concept of compensation without requiring any transfer of land rights, functioning as a *restorative* instrument for the

[29] Suharyono, Hayatuddin, and Is, "Perlindungan Hukum Hak Asasi Manusia Dalam Memperoleh Hak Atas Tanah Di Indonesia," 18.
[30] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Universitas Trisakti, 2018), 234–36.
[31] Rajab, Eko Turisno, and Lumbanraja, "Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah," 648.

community's socio-economic condition.[32] However, this provision does not specify who is entitled to compensation, nor its procedure, form, or amount, so that its implementation, as in Sutadji's case, depends entirely on the good faith of the manager, without adequate legal certainty.

This compensation differs in kind from compensation for land acquisition under Law No. 2 of 2012. Land acquisition involves the relinquishment of the right and compensation for its loss, whereas here the landholder keeps title and loses only part of the use of the land, or the economic value of the water drawn from it. A closer analogy is the compensation for indirect land use in the Electricity Law, which is paid without relinquishment of rights, and the compensation is therefore periodic and use-based, not a one-time payment for loss of title. Article 61(1)(d), however, does not specify who is entitled to compensation, nor its procedure, form, or amount, so its implementation, as in the Kali Kiban case, depends on the good faith of the manager.

From the perspective of legal relations, the relationship between landowners and water resource managers is essentially a contractual one, as reflected in the oral agreement between Sutadji and the Hamlet Head and the written agreement between Rawi's heirs and BEP. The failure to fulfil compensation in the Kali Kiban case demonstrates a breach of the principle of good faith,[33] while the landowners' weak bargaining position makes their compensation rights difficult to enforce, since the agreements were made informally without adequate documentation. This situation is made more problematic by the fact that neither the village government nor the Batu City Government has ever played an active role in managing or supervising water resource utilization in Gangsiran Ledok Hamlet, merely providing a reservoir and pipe network without regular monitoring.

Where HIPPAM does not or cannot perform, responsibility cannot stop with the manager. The government controls water under Article 33(3) and bears the constitutional duty to protect rights under Article 28I(4), and this includes the duty to regulate and supervise utilization of water it controls. Failure to do so can be framed as an unlawful act by the government (*onrechtmatige overheidsdaad*) before the general courts under Supreme Court Regulation No. 2 of 2019, as a factual act or omission before the administrative courts under Law No. 30 of 2014 on Government Administration, and as maladministration before the Ombudsman.[34] The responsibility is subsidiary where the party that utilizes the water bears primary responsibility for compensation, while the state is responsible for regulating and supervising and, where that fails, for ensuring that the right is not left without protection. This is consistent with the state liability doctrine developed by the *Conseil d'État* in France and the *House of Lords* in England for losses caused by deficient administrative regulation, which offer comparative support but not the foundation of the argument.

Viewed from the perspective of constitutional rights, the absence of a definite compensation mechanism weakens the guarantee of ownership rights protected under Articles 28D(1) and 28H(4) of the 1945 Constitution, which affirm that everyone is entitled to fair legal certainty and

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[32] Takdir Rahmadi, *Hukum Lingkungan Di Indonesia* (Jakarta: Rajawali Pers, 2023), 88.
[33] Agus Yudha Hernoko, *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*, Edisi pertama (Jakarta: Kencana, 2010), 57.
[34] Basuki, Pujiwati, and Zamil, "PERLINDUNGAN HUKUM TERHADAP PEMILIK HAK ATAS TANAH BELUM TERDAFTAR YANG DIRUGIKAN AKIBAT MALADMINISTRASI PERANGKAT PEMERINTAHAN DESA," 35.

to protection of their property from arbitrary seizure. The lack of certainty regarding compensation essentially creates a restriction on ownership rights without an adequate constitutional guarantee, contrary to the spirit of lawful rights limitation.[35] In terms of Article 28J(2), the absence of a compensation mechanism means that the restriction lacks a complete statutory basis and fails the proportionality requirement, so that the constitutional problem lies not in the existence of state control but in the unregulated manner of its exercise. The gap between *das sollen*, in the form of the constitutional guarantee of ownership rights, and *das sein*, in the form of the actual absence of compensation, underscores the urgency of enacting explicit technical norms that set out this right to compensation.

Formulating an Ideal Model of Legal Protection

To formulate an ideal model of compensation, this research compares compensation arrangements in three similar sectors. First, Law Number 2 of 2012 on Land Acquisition recognizes compensation, that is, fair and proper replacement for the relinquishment of land rights for the public interest, through a detailed mechanism involving inventory, valuation, deliberation, and finally the relinquishment of the land.[36] Second, Law Number 30 of 2009 on Electricity recognizes compensation for land rights in the case of direct use, and compensation for indirect use that reduces the economic value of the land without any relinquishment of rights, as provided in Article 30 of the Electricity Law and the market-value-percentage formula set out in Regulation of the Minister of Energy and Mineral Resources Number 13 of 2025. Third, Law Number 32 of 2009 on Environmental Protection and Management regulates compensation for pollution through the *polluter pays principle*, whereby the party that derives a benefit is obliged to bear the cost of its impact.[37]

Table 2: Polluter Pays Principle

Sector	Term	Legal Basis	Main Characteristics
Land Acquisition	Compensation	UU No. 2/2012	Full relinquishment of land rights
Electricity	Compensation & indemnity	UU No. 30/2009 jo. Permen ESDM 13/2025	Compensation without relinquishment of rights, calculated as a percentage of market value
Environment	Compensation (polluter pays)	UU No. 32/2009	Based on liability for pollution/damage impact
Water Resources	Fair replacement (not yet detailed)	UU No. 17/2019, Pasal 61	No clear formula, subject, or procedure yet

[35] Vinda Agustina, H. S. Tisnanta, and Muhtadi Muhtadi, "Restorative Justice as an Effort to Fulfill the Constitutional Rights of Citizens," *Jurnal Konstitusi* 21, no. 2 (June 2024): 248, https://doi.org/10.31078/jk2125.
[36] Dekie G. G. Kasenda, "Ganti Rugi Dalam Pengadaan Tanah Untuk Kepentingan Umum," *Jurnal Morality* 2, no. 2 (2015): 135–37.
[37] Rahmadi, *Hukum Lingkungan Di Indonesia*, 90.

Of these three models, the compensation concept under the Electricity Law is considered the most relevant point of reference for regulating water resource compensation, because the two are similar: the landowner does not lose the right absolutely, as in land acquisition, but instead experiences a restriction on control as a result of the resource being utilized by another party. The *beneficiary pays* principle, which holds that the party deriving the benefit is obliged to bear the cost of its utilization, is relevant for determining who is obliged to provide compensation, whether government, business entities, or non-profit organizations,[38] consistent with the *polluter pays principle* in the international literature on distributive justice, which likewise affirms that both the beneficiary and the party causing the impact are obliged to bear the compensation.[39]

An ideal model of compensation rests on the principle that water is controlled by the state for the prosperity of the people, while the land on which the water source is located remains an individual right protected by law, so that the two interests must be reconciled through proportionate compensation. Drawing on Rawls's theory of social justice, the guarantee of equal liberty for every party, including those who are economically disadvantaged, provides the philosophical basis for compensation that accommodates both the landowner's interest and the public interest in water. Compensation should ideally be provided before utilization begins, set out in a written agreement, and may be further strengthened through legislation in order to guarantee legal certainty as to its timing and amount.

The parties entitled to receive compensation are not limited to the holder of ownership rights who made the original agreement, but also include holders of Building Use Rights, Cultivation Rights, lawful heirs as in the cases of Rabun and Sumali, and customary law communities where the water source is located on communal land, so long as the water resource continues to be utilized, with entitlement ceasing if utilization is discontinued. The parties obliged to provide compensation include local government, the regional water utility (PDAM), HIPPAM, state-owned enterprises managing water resources, village-owned enterprises (BUMDes), private business entities, tourism area managers, and industry, consistent with the *beneficiary pays principle*, under which any party that utilizes water is obliged to bear the cost of compensating for it.[40]

Compensation need not take the form of cash, but may also consist of financial compensation (periodic payments, profit-sharing, or payments based on water volume) or non-financial compensation (road-access improvements, water-source conservation, public facilities, free water connections, or economic empowerment for the landowner's family). This flexibility is consistent with experience from *payment for ecosystem services* (PES) schemes in various countries, which shows that both monetary and non-monetary incentives are equally effective in encouraging local community participation,[41] including Brazil's experience in maintaining water discharge and

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[38] Prasetio and Masnun, "Beneficiary Pays Principle," 8.
[39] Sue Spaid, "Taking Climate Change Seriously: The 'Values Approach,'" *E-International Relations*, February 13, 2023, 2.
[40] Muh. Ali Masnun, "Integration of Preventive and Repressive Legal Instruments Related to Water Resource Sustainability in Achieving SDG's 2030," *Proceeding Of ICCoLaSS: International Collaboration Conference on Law, Sharia and Society* 4, no. 1 (2025): 80.
[41] Walters Nsoh, "Achieving Groundwater Governance: Ostrom's Design Principles and Payments for Ecosystem Services Approaches," *Transnational Environmental Law* 11, no. 2 (July 2022): 397, https://doi.org/10.1017/S2047102522000164.

quality,[42] although its implementation in Indonesia is still constrained by both macro-level policy and micro-level operational factors.[43] To avoid unilateral determination, this research formulates objective parameters consisting of the area of land affected, water discharge, number of users, the economic value of the water, the degree of restriction on land use, and the landowner's contribution to preserving the water source, drawing on the market-value formula set out in Regulation of the Minister of Energy and Mineral Resources Number 13 of 2025.

The ideal model for legal protection and compensation for landowners with water resources is based on the principle that water is controlled by the state for the prosperity of the people, while the land where the water source is located remains an individual right protected by law and cannot be overridden by the state. The state controls water for its availability and management, while landowners retain the right to control and benefit from their land. Therefore, the use of water resources for the public interest must be accompanied by adequate compensation. This foundation aligns with John Rawls' Theory of Social Justice, which emphasizes guaranteeing equal freedom for all parties as a way for the less fortunate to fight for their livelihoods. The ideal model of legal protection and compensation for landowners with water resources is based on the principle that water is controlled by the state for the prosperity of the people, while the land where the water source is located remains an individual right protected by law and cannot be set aside by the state. The state controls water for its availability and management, while landowners retain the right to control and benefit from their land. Therefore, the use of water resources for the public interest must be accompanied by adequate compensation. This foundation is in line with John Rawls's Theory of Social Justice, which emphasizes the guarantee of equal freedom for all parties as a way for the less fortunate to fight for their livelihoods.[44] Therefore, the use of water for social purposes must not harm landowners whose control and benefits from the land are reduced.

The parties entitled to receive compensation are not limited to the initial landowner who made the agreement, but also holders of Building Use Rights (Hak Guna Bangunan), Cultivation Use Rights (Hak Guna Usaha), legal heirs, and customary law communities if the water source is located on customary land, as long as the use continues. The parties obliged to provide compensation include the Regional Government, PDAM, HIPPAM, State-Owned Enterprises (BUMN) managing natural resources, BUMDes, private business entities, tourism area managers, and industries utilizing water resources. This is in accordance with the beneficiary pays principle which requires parties who benefit from water resource management to pay a certain fee as a contribution and legal responsibility to ensure its provision and sustainability.[45] In this case, the water user is the one who is obliged to compensate the landowner, both the government and the private sector representing them such as HIPPAM.[46] This principle is in line with the

[42] Mariana Beraldi Rigonato et al., "Payment for Water-Related Ecosystem Services as a Strategic Watershed Management Approach," *Journal of Environmental Protection* 14, no. 08 (2023): 664, https://doi.org/10.4236/jep.2023.148038.
[43] Helen Suich et al., "Payments for Ecosystem Services in Indonesia," *Oryx* 51, no. 3 (July 2017): 489–97, https://doi.org/10.1017/S0030605316000259.
[44] Zainal Arifin Mochtar and Eddy O. S. Hiariej, *Dasar-Dasar Ilmu Hukum: Memahami Kaidah, Teori, Asas Dan Filsafat Hukum*, Cetakan ke-1 (Depok: Rajawali Pers, 2023), 336.
[45] Prasetio and Masnun, "Beneficiary Pays Principle," 8.
[46] Masnun, "Integration of Preventive and Repressive Legal Instruments Related to Water Resource Sustainability in Achieving SDG's 2030."

internationally accepted polluter pays principle, where parties who pollute or harm the environment are also obliged to pay compensation or restitution to the affected parties,[47] in this context, the landowners where the water is used.

The legal form of the proposed norm follows from the principle of legality and the hierarchy of norms. Three layers can be distinguished. Matters that create or limit rights and impose obligations on private parties, namely the landholder's right to compensation, the persons obliged to pay it, and the principle that utilization of water on privately held land is conditional on compensation, require a statute, both because Article 28J(2) of the 1945 Constitution demands that limitations be set by law and because beneficiary-pays obligations burden HIPPAM, BUMDes, and private operators. Technical matters, namely the procedure, valuation parameters, dispute handling, and supervision, can be delegated to a Government Regulation, provided the statute contains an express delegation. Local implementation, namely registration of agreements and village-level mediation, can be left to regional and village regulations.

This points to a conditional answer on the form. If Article 61(1)(d) or another provision of the Water Resources Law already delegates the compensation procedure to a Government Regulation, the gap can be filled by amending Government Regulation No. 30 of 2024, which already addresses compensation by the initiator of an activity (Article 52(4)-(5)), without amending the statute. If no such delegation exists, a regulation that creates new obligations would exceed its legal basis and would itself breach the principle of legality, and the right to compensation must therefore be set in the statute, which is the reason for proposing Article 61A. Applying the beneficiary-pays principle also requires a limit grounded in the public interest: utilization for the basic daily needs of the community, such as that of HIPPAM, may justify non-monetary or reduced compensation, so that the obligation does not undermine the public service it is meant to protect.

Compensation does not have to be monetary, but can be financial, either monthly/annual payments, water management revenue sharing, or volume-based payments. It also can be non-financial, such as improved road access, water source conservation, public facilities, free water connections, tariff reductions, or economic empowerment of landowner families. This model aligns with the compensation concept in Article 36 of Law Number 2 of 2012 concerning Land Acquisition, as well as international experience with payment for ecosystem services schemes, which show that both cash and non-cash incentives are equally effective in encouraging local community participation.[48] Ideally, the form of compensation should be mutually agreed upon by the landowner and manager, or clearly stipulated in legislation.

The amount of compensation should be based on objective and measurable parameters to avoid injustice and conflict, referring to the valuation concept in Article 33 paragraph (2) of ESDM Regulation Number 13 of 2025, which refers to the market value of land, buildings, and plants. These parameters include the area of affected land, water discharge, number of users, the economic value of water utilization, the level of land use restrictions, and the landowner's contribution to preserving water sources, so that compensation is not determined unilaterally by the manager.

In line with Philipus M. Hadjon's Theory of Legal Protection, preventive protection is realized through mandatory written agreements, pre-use compensation, registration of agreements

[47] Spaid, "Taking Climate Change Seriously: The 'Values Approach,'" 2.
[48] Nsoh, "Achieving Groundwater Governance," 397.

with the village government or a notary, and periodic evaluation. Repressive protection is implemented after a conflict arises, through mediation between the parties, settlement by the village/regional government, civil lawsuits in the District Court, or PTUN lawsuits if an administrative decision is detrimental to the landowner.

As a legal reform (*ius constituendum*) to fill the normative gap, this study proposes the addition of Article 61A after Article 61 of Law Number 17 of 2019 concerning Water Resources, which sets out the subject, form, procedure, amount, dispute resolution, and supervision of compensation:

(1) "A holder of rights to land on or within which water resources are located and utilized by another party is entitled to appropriate and proportional compensation from the party utilizing the water resources." (2) "Compensation may take the form of money, public facilities, payment for environmental services, conservation of the water source, or another form agreed by the parties, and shall be set out in a written agreement made before utilization begins." (3) "The amount of compensation shall be determined on the basis of the area of land affected, the water discharge, the number of users, the economic value of the water, the degree of restriction on the use of the land, and the right holder's contribution to preserving the water source. Utilization for the basic daily needs of the community may be compensated in non-monetary form." (4) "The agreement shall be prepared through deliberation involving the right holder, the utilizing party, and the surrounding community, and shall be registered with the village government or a notary." (5) "If no agreement is reached, the parties shall resort to mediation facilitated by the village government or the regional government, and may thereafter seek legal remedies before the competent court." (6) "The Central Government and the Regional Governments, in accordance with their authority, shall guide and supervise the implementation of compensation. Objections to a decision or action of a government agency under this Article may be submitted through administrative remedies and to the administrative court." (7) "Further provisions on the entitled parties, procedure, calculation, dispute resolution, and supervision shall be regulated by Government Regulation."[49]

The proposal meets the requirements developed in this article. It places the right to compensation in a statute, as Article 28J(2) requires; it serves a legitimate aim by reconciling state control over water under Article 33(3) with the protection of property under Articles 28D(1) and 28H(4); and it is proportionate because compensation is tied to objective parameters and can take non-monetary forms where the use serves the community's basic needs. It also gives the model from what is missing from the policy, namely public participation through deliberation (paragraph 4), administrative supervision (paragraph 6), and legal remedies (paragraphs 5 and 6). It clarifies the meaning of compensation in Article 61(1)(d) and gives a firm basis for implementing regulations down to the village level, so that the state's right of control and the landholders' constitutional rights can be balanced in the interest of justice, certainty, and benefit.

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[49] The Indonesian Version: *(1) Pemegang hak atas tanah yang di atas atau di dalam tanahnya terdapat sumber daya air yang dimanfaatkan pihak lain berhak atas kompensasi yang layak dan proporsional dari pihak yang memanfaatkan sumber daya air. (2) Kompensasi dapat berupa uang, penyediaan fasilitas umum, pembayaran jasa lingkungan, konservasi sumber air, atau bentuk lain yang disepakati para pihak, dan dituangkan dalam perjanjian tertulis yang dibuat sebelum pemanfaatan dimulai. (3) Besaran kompensasi ditentukan berdasarkan luas tanah terdampak, debit air, jumlah pengguna, nilai ekonomi air, tingkat pembatasan penggunaan tanah, dan kontribusi pemegang hak terhadap pelestarian sumber air; pemanfaatan untuk kebutuhan pokok sehari-hari masyarakat dapat dikompensasi dalam bentuk bukan uang. (4) Perjanjian disusun melalui musyawarah yang melibatkan pemegang hak, pihak pemanfaat, dan masyarakat sekitar, serta dicatatkan pada pemerintah desa atau notaris. (5) Dalam hal tidak tercapai kesepakatan, para pihak menempuh mediasi yang difasilitasi pemerintah desa atau pemerintah daerah, dan selanjutnya dapat menempuh upaya hukum pada pengadilan yang berwenang. (6) Pemerintah Pusat dan Pemerintah Daerah sesuai kewenangannya melakukan pembinaan dan pengawasan atas pelaksanaan kompensasi; keberatan terhadap keputusan atau tindakan badan atau pejabat pemerintahan berdasarkan Pasal ini dapat diajukan melalui upaya administratif dan pengadilan tata usaha negara. (7) Ketentuan lebih lanjut mengenai pihak yang berhak, tata cara, penghitungan, penyelesaian sengketa, dan pengawasan diatur dengan Peraturan Pemerintah.*

Conclusion

This study presents three main conclusions and corresponding recommendations. First, water resource utilization in Gangsiran, Ledok Hamlet, follows two distinct patterns, namely the use by HIPPAM Kali Kiban for public purposes without compensation, and the use by private operators of BEP for business purposes with compensation based on agreements that are also still not transparent. Therefore, water resource managers at the village level, including HIPPAM, must base any use of privately owned land on a written agreement that stipulates rights, obligations, forms of compensation, and dispute resolution mechanisms. Second, the absence of clear regulations on compensation mechanisms weakens the protection of property rights and the constitutional rights of landowners, as the use of water resources on privately owned land essentially limits control and use of that land without legal certainty regarding compensation. Therefore, landowners need to understand their legal rights, particularly the potential for compensation for use by other parties. Third, the ideal legal protection model should be built on Rawls's principles of distributive justice and Hadjon's preventive-repressive model, with reference to the concept of compensation in the Electricity Law as the most relevant comparison. This article proposes the addition of Article 61A to the new Water Resources Law, which explicitly regulates the subject matter, forms, and mechanisms of compensation based on certain requirements.

The House of Representatives and the Central Government should take four steps. First, include the amendment of the Water Resources Law in the national legislation program (Prolegnas), supported by an academic paper (*naskah akademik*) that uses this study's findings and the draft of Article 61A. Second, before the bill is finalized, determine whether the Law or Government Regulation No. 30 of 2024 already contains a delegation for compensation procedures, since the answer decides whether the gap is filled by statute or by regulation. Third, harmonize the draft vertically and horizontally with the Village Law, the regional government law, Law No. 2 of 2012, and the Electricity Law, so that the term "compensation" and its elements are used consistently across sectors. Fourth, ensure meaningful public participation in the drafting process, including landholders, community water associations, and business operators. Pending these steps, the Batu City Government and the village governments can issue interim measures within their authority. A regional or village regulation requiring written agreements and their registration, and a supervisory role for the village government, so that legal certainty for landholders does not wait for the amendment.

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