



International Journal of Artificial Intelligence and Machine Learning

Publisher's Home Page: <https://www.svedbergopen.com/>



Research Paper

Open Access

Diverging Paradigms in Agrarian Law: A Comparative Study of State Ownership, Land Classification, Foreigners' Land Rights, Lease Transferability, and the Land-Building Relationship in Indonesia and Russia

Diyani Cholifa^{1*}, Mochammad Saddam², Nely Nailaufar Afifi Choiriyati³, Alfredo Cakra Tunggal⁴

¹Universitas Airlangga, Surabaya, Indonesia. E-mail: diyani.cholifa-2025@fh.unair.ac.id

²Universitas Airlangga, Surabaya, Indonesia. E-mail: mochammad.saddam-2025@fh.unair.ac.id

³Universitas Airlangga, Surabaya, Indonesia. E-mail: nely.nailaufar.afifi-2025@fh.unair.ac.id

⁴Universitas Airlangga, Surabaya, Indonesia. E-mail: alfredo.cakra.tunggal.fh-2026@student.unair.ac.id

Abstract

Agrarian law serves as a primary instrument for managing a nation's territory. This study comparatively examines the agrarian legal frameworks of Indonesia and the Russian Federation. Employing a normative legal method with a comparative statutory approach, the research analyzes Indonesia's Basic Agrarian Law (UUPA No. 5 of 1960) and the Russian Land Code No. 136-FZ (2001). The analysis encompasses five key aspects: state control versus state ownership, land categorization systems, foreign land rights, leasehold transferability, and the legal relationship between land and buildings. The findings reveal distinct paradigmatic differences rooted in their respective legal traditions. Indonesia's agrarian system is characterized by the state's right of control, the social function of land rights, and the horizontal separation principle. This system prohibits foreign nationals from holding absolute ownership rights and does not explicitly regulate leasehold transferability. Conversely, Russia implements a hierarchical state ownership concept, employs a seven-tier land categorization system, permits conditional foreign land acquisition, and recognizes transferable leasehold rights. The study concludes that Indonesia's framework is structured upon functional flexibility and restrictions on foreign land rights, whereas Russia's framework is based on land categorization, regulated permitted uses, and property rights transferability.

Keywords: Agrarian Law; State Ownership; Foreign Land Rights; Land Classification; Leasehold Transferability.

1. Introduction

Land law governs the legal relationships among individuals, legal entities, and the State concerning land. Beyond determining ownership and use, land law establishes a legal framework for balancing private interests with public interests. Although land is regulated as a vital resource across many legal systems, rules governing its ownership, transfer, and use vary according to each country's legal tradition and constitutional framework.

Land in Indonesia is mainly regulated by Law No. 5 of 1960 on Basic Agrarian Regulations, known as UUPA. The enactment of this law aimed to build a unified national agrarian legal framework and to supersede the dualistic land law that dated back to the colonial era. Article 33 (3) of the 1945 Constitution provides its constitutional basis, while the State's Right to Control constitutes one of its central ideas. According to this idea, the State is not considered the owner of all land. Rather, it holds public authority to govern the allocation, control, use, and legal relations related to land. Customary law is also recognized by the UUPA as a source of national agrarian law, provided that the conditions and limitations established by the UUPA and other applicable legislation are met [1].

In the Russian Federation, land law is primarily regulated by the Land Code of the Russian Federation No. 136-FZ of 2001, together with relevant provisions of the Civil Code and other federal legislation. Unlike the Indonesian concept of State control, Russian law expressly recognizes state ownership as one form of land ownership alongside private and municipal ownership. Russian land law also classifies land into several categories according to designated function, including agricultural land, settlement land, industrial and special-purpose land, forest land, and specially protected areas. The classification of a land plot determines its permitted use.

The two legal systems also differ in several substantive respects. Indonesia regulates land primarily through a system of statutorily defined land rights, including right of ownership, right to cultivate, right to build, and right to use, among others. Russia combines rules on forms of ownership with a system of land categories and

permitted uses. The two systems also adopt different approaches to foreign ownership. Indonesian law reserves right of ownership exclusively to Indonesian citizens, whereas Russian law permits foreign nationals to own land, subject to restrictions applicable to certain categories and locations. The treatment of lease rights also differs. Under Indonesian law, the right to lease land for building purposes is governed by lease agreements, and the UUPA does not expressly provide a statutory mechanism for transferring the lessee's position to another party. By contrast, Russian law contains specific provisions governing the transfer and sublease of land lease rights, subject to statutory and contractual conditions.

The relationship between land and buildings constitutes another point of comparison. Indonesian land law adheres to the principle of horizontal separation, under which land and buildings may be held by different persons. Russian law generally establishes a closer legal connection between land and buildings or structures situated thereon, although applicable legislation provides for certain exceptions. This difference affects the legal treatment of transactions involving land and buildings.

Existing scholarship has generally examined Indonesian and Russian land law separately. Studies on Indonesia have addressed issues such as state control over land, agrarian reform, and customary land rights, while studies on Russia have examined land administration, privatization, land ownership, and land-use regulation. Comparative research examining the two systems remains limited, particularly research that situates their respective legal structures within a common analytical framework. Existing comparative discussions tend to focus on particular issues rather than examining the interrelationship among state authority, land classification, foreign ownership, lease transferability, and the legal relationship between land and buildings.

This article compares Indonesian and Russian land law through five analytical dimensions: (1) the concept of state authority over land; (2) the system of land rights and land categorization; (3) land ownership by foreign nationals; (4) the transferability of lease rights; and (5) the legal relationship between land and buildings. The comparison seeks to identify the principal differences between the two legal frameworks and to examine how these differences shape the regulation of land ownership, use, and transactions in Indonesia and Russia.

Fundamentally, land constitutes a divine endowment bestowed by God Almighty upon humanity and occupies a position of paramount importance in human existence. The significance of land extends beyond its function as a natural resource sustaining human livelihood; it also serves as a primary means for fulfilling diverse social, economic, and developmental needs. In everyday life, land is directly utilized as a medium for agricultural activities to ensure food security, as well as a site for human settlement and the construction of dwellings. Moreover, land holds strategic value as a supporting factor for business and development activities, including commerce, industry, education, public services, and the construction of various infrastructure and facilities that advance societal and national progress [2]. Indonesia, as a state that upholds the principle of legal supremacy, expressly declares its status as a rule of law state, in accordance with Article 1 (3) of the 1945 Constitution of the Republic of Indonesia [3].

Accordingly, the State bears an obligation to ensure legal certainty, protection, and order across various spheres of life, including in the field of land. In order to establish an integrated agrarian legal system that guarantees legal certainty for land rights, the government enacted Law No. 5 of 1960 concerning Basic Agrarian Regulations on 24 September 1960. This law subsequently became the principal foundation for the formation of a national agrarian legal system applicable throughout Indonesia, widely known as the Basic Agrarian Law (UUPA). The existence of the UUPA thus signifies the commencement of the unification of national land law and serves as the legal basis for regulating various legal relationships among individuals, communities, legal entities, and the State with respect to land as a resource possessing social, economic, and strategic value. Among the various types of land rights recognized in Indonesian agrarian law, right of ownership constitutes the form of land tenure possessing the highest degree of authority and legal protection. This is expressly stipulated in Article 20 of the UUPA, which constructs right of ownership as a heritable, strongest, and fullest right, conceptually distinguishing it from other land rights. The heritable nature indicates the continuity of the legal relationship between the right holder and the land, which is not terminated by death, thereby enabling the right to be inherited by subsequent generations. Meanwhile, the strongest nature affirms that right of ownership enjoys the highest level of legal certainty and protection, as it is not subject to a fixed term and receives full State protection against any form of disturbance or unlawful possession [4]. The fullest nature reflects the breadth of authority conferred upon the right holder to determine the use, utilization, and transfer of the land right in accordance with their interests. The holder of right of ownership is authorized to undertake various legal acts, including selling, donating, bequeathing, leasing, encumbering, or granting derivative rights to other parties. By virtue of these characteristics, right of ownership essentially constitutes the most complete legal relationship between a legal subject and land, as it provides a combination of legal certainty, protective strength, and flexibility of utilization not possessed by other land rights [5].

The provisions governing the control and utilization of land are not only relevant within the Indonesian land law system but are also found in land law systems across various jurisdictions. Fundamentally, every state maintains regulations concerning rights that confer authority upon legal subjects to control, use, and utilize land. The diversity of land right forms subsequently gives rise to distinct legal concepts that underpin the formation of land regulations in each country. These differences are influenced by the conditions, needs, and national policies of a state in regulating land within its jurisdiction. In its approach to land regulation, including the transfer of rights by means of sale and purchase, the Russian Federation displays notable characteristics of its own. The Russian

land law system is regulated by several instruments, one of which is the Land Code of the Russian Federation No. 136-FZ of 2001. This code includes a range of provisions addressing the status, use, control, and legal relationships related to land in Russia [6].

Foreign nationals are, in principle, permitted to acquire residential property in Russia, provided they comply with applicable legal requirements, including possession of a valid residence permit. Nevertheless, this right is not absolute, as restrictions exist on land ownership by foreign parties. One restriction of this kind appears in Article 15(3) of the Land Code of the Russian Federation. This provision bars foreign citizens, stateless persons, and foreign legal entities from holding ownership over land in border territories. Such border territories are designated by the President of the Russian Federation pursuant to federal legislation governing State borders. Beyond that, federal law may also impose restrictions on foreign ownership in certain other territories within the Russian Federation where this is expressly stipulated [7].

Based on the foregoing conceptual exposition, it is evident that land regulation in each country is shaped by distinct legal paradigms, State policies, and societal needs, such that the concepts of control, ownership, use, and transfer of land rights do not invariably share the same legal construction. These differences are clearly discernible in the land law systems of Indonesia and Russia. Indonesia constructs its land law system upon the concept of the state's right to control, subsequently elaborated through various types of land rights, whereas Russia recognizes the legal construction of State ownership of land coexisting with private and municipal ownership, accompanied by a land classification system based on categories and designated purposes. These paradigmatic differences subsequently have implications for the legal position of subjects and objects of land rights, including restrictions on land rights for foreign nationals, the possibility of leasehold transfer, and the legal relationship between land and buildings erected thereon. Accordingly, a comparative analysis of Indonesian and Russian land law cannot be adequately conducted merely by comparing applicable normative provisions; it is also necessary to identify the legal constructions underpinning each system. On this basis, the ensuing discussion will comparatively analyze five principal aspects: the position of the State with respect to land, the system of classification and types of land rights, the regulation of land rights for foreign nationals, the transferability of land lease rights, and the legal relationship between land and buildings, with the objective of identifying similarities, differences, and the characteristic features of the land law paradigms prevailing in Indonesia and Russia.

2. Methodology

The study relies on normative legal research, using a statutory approach together with a comparative law approach. Legal norms, principles, doctrines, and statutory provisions that regulate land law in Indonesia and the Russian Federation form the subject of normative legal research. The focus of analysis includes the legal frameworks governing state control or ownership of land, land rights and land categorization, foreign ownership of land, the transferability of leasehold rights, and the legal relationship between land and buildings. Relevant legislative provisions in both jurisdictions are examined and interpreted through the statutory approach. Primary legal materials comprise the 1945 Constitution of the Republic of Indonesia, Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) and its implementing regulations, the Constitution of the Russian Federation, the Land Code of the Russian Federation No. 136-FZ of 2001, the Civil Code of the Russian Federation, and other pertinent statutory provisions. These legal materials are analyzed to identify the legal basis, scope, limitations, and legal consequences of the rights and institutions governing land in each jurisdiction. The comparative law approach is employed to systematically compare the legal concepts, principles, statutory arrangements, and legal consequences applicable in Indonesia and the Russian Federation. The comparison is structured around five analytical dimensions: (1) state control or ownership of land; (2) land rights and land categorization; (3) foreign ownership of land; (4) transferability of leasehold rights; and (5) the legal relationship between land and buildings. This comparison aims to identify similarities, differences, and distinctive characteristics of the two legal systems and to explain the underlying legal paradigms reflected in their respective land laws. Secondary legal materials consist of scholarly books, academic journal articles, comparative law literature, and other relevant scholarly publications. These materials provide doctrinal interpretations, explain the development of relevant legal concepts, and offer theoretical and contextual support for the analysis. The legal materials are analyzed qualitatively through legal interpretation and systematic comparison, with findings presented descriptively and analytically to demonstrate the similarities and differences between the Indonesian and Russian land law frameworks.

3. Results and Discussions

3.1 State Authority over Land

The constitutional bedrock of Indonesian agrarian law rests on Article 33(3) of the 1945 Constitution. This clause stipulates that the State holds control over the earth, water, and the natural wealth embedded within them, to be harnessed for the maximum welfare of the people. This constitutional mandate is elaborated in Article 2 of Law No. 5 of 1960 (UUPA). The provision situates State authority over natural resources within a framework oriented toward public welfare rather than State ownership in the private law sense. The concept of State control over land in Indonesian law cannot be equated with the "*domein verklaring*" (domain declaration) doctrine employed during the colonial period. The UUPA expressly rejects the *domein verklaring* concept, under which land that

could not be proven by documentary evidence of ownership would automatically become State land. Instead, the UUPA adopts the concept of the State's Right to Control, as articulated in Article 2. Under this principle, the State assumes no position as owner of the land. It functions instead as the pinnacle organization of the Indonesian nation, granted the authority to: (1) direct and manage the allocation, exploitation, and conservation of land; (2) specify and govern the entitlements that may be claimed over (segments of) the earth, water, and outer space, and the natural riches therein; and (3) order and determine legal bonds among people and juristic acts bearing on the earth, water, and outer space. The State's Right to Control over land, including land held under individual rights as described above, is of a passive nature and becomes active only when such land is left uncultivated, unmaintained, or abandoned. In such circumstances, pursuant to Articles 27, 34, and 40 of the UUPA, the State may take measures including the revocation of land rights, rendering the land productive, or returning the land to the State [8].

Kartasapoetra [9] argues that the phrase "controlled by the State" must not be interpreted as conferring upon the State the right to own land. Rather, through the government, the State recognizes ownership rights over land held by citizens who are entitled thereto, provided such rights are acquired in accordance with applicable legal provisions and their utilization does not contravene Indonesian socialism as envisioned in the Preamble to the 1945 Constitution [9]. Hence, the concept of the State's Right to Control, as enshrined in the UUPA, places the State in the position not of a landowner but of an authority holder empowered to regulate and oversee land, thereby pursuing State aims and securing the welfare of the public [10].

The legal foundation for private land ownership in Russia was established by the Constitution of 1993 and supported by the Civil Code of 1996. Nevertheless, the regulatory mechanism for executing land transactions under Chapter 17 of the Civil Code remained suspended until October 29, 2001, when it finally entered into force alongside the newly adopted Land Code [11]. Under Russian law, the State may hold the position of actual owner of specific land plots or objects [11]. State ownership coexists with private ownership. The State occupies a dual position: on one hand, as the holder of public authority, and on the other, as an owner within private legal relationships concerning specific objects or land plots. Sukhanov [7] explains that State ownership may encompass objects withdrawn from or restricted in civil circulation. The State may also acquire objects through mechanisms unavailable to natural persons or private legal entities, such as taxation, seizure, confiscation, and nationalization [7]. Article 209 (1) of the Civil Code of the Russian Federation defines ownership through three entitlements: possession, use, and disposal. Possession constitutes the authority to physically hold and control an object; use constitutes the authority to derive benefits from the object; and disposal constitutes the authority to determine the legal fate of the object, including through sale, inheritance, modification, or destruction [7].

Despite their profound structural differences, both the Indonesian and Russian land law systems converge on the principle of the social function of land rights. Both jurisdictions explicitly mandate that private land utilization must not override public tranquility, health, and broader societal interests, as codified in Article 6 of the UUPA and Article 1 of the Russian Land Code [12]. The Constitution of the Russian Federation supplies the constitutional-level legal foundation for State ownership of land in that country. Under Articles 8(2) and 9(2), multiple forms of ownership of land and natural resources receive recognition and protection, including private, State, municipal, and other types. Article 71(e), moreover, vests the Russian Federation with jurisdiction over the management and disposal of federal State property. According to Anisimov and Ryzhenko [13], land plots represent the primary natural resource in the Russian Federation that fully embodies the constitutional principle of ownership diversity under Article 9, seamlessly operationalized through Articles 15 to 19 of the Land Code across federal, regional, municipal, and private domains.

These constitutional principles are further developed in the Civil Code of the Russian Federation. Article 212 (1) recognizes the existence of different forms of ownership within the civil law framework. More specifically, Article 214 establishes the legal basis for State ownership. This provision dictates that land and other natural resources falling outside the ownership of citizens, legal entities, or municipal entities are deemed to belong to the State. In addition, Article 214 separates property of the Russian Federation from property of the Russian Federation's constituent entities.

The Land Code of the Russian Federation lays down rules of greater specificity regarding the ownership and management of land held by the State. A legal framework for State and municipal land ownership is established by Articles 16 to 19. Article 16 stipulates that land not owned by citizens, legal entities, or municipal entities is State property. Land belonging to the Russian Federation is identified as federal property under Article 17, while land belonging to the constituent entities of the Russian Federation is regulated by Article 18. Article 19 deals with land under municipal ownership. Taken together, the Constitution, the Civil Code, and the Land Code establish a legal framework in which the Russian State may hold land not only in its regulatory capacity but also as an owner. State ownership is therefore distinct from the exercise of public regulatory authority over land. Ownership may be vested at different levels of government, including the federal level, the constituent entities of the Russian Federation, and the municipal level, in accordance with the allocation of ownership established by law.

This structure differs from the Indonesian concept of the State's Right to Control. Under Indonesian agrarian law, the State's authority over land is not constructed as ownership of all land. Rather, it represents a form of public authority to regulate the allocation, use, control, and legal relations concerning land. Russian law, by contrast, expressly recognizes State ownership as one of the forms of ownership and provides rules for determining

whether land belongs to the Russian Federation, a constituent entity, or a municipal entity. The distinction is therefore not merely terminological but concerns the legal basis on which the State exercises rights over land.

3.2 Land Rights System and Land Categorization

Within the doctrine of ownership and control under the UUPA, land rights are differentiated into two categories: (i) primary rights, namely all rights obtained directly from the State; and (ii) secondary rights, namely all rights obtained from holders of other land rights through contractual agreements. Land held under primary rights includes right of ownership, right to cultivate, right to build, and right to use, all granted by the state [14]. Secondary rights, by contrast, do not derive directly from the State's authority but are granted by holders of primary rights, such as lease rights, profit sharing rights, mortgage rights, and other analogous rights [14].

As an elaboration of the State's Right to Control, Article 4 of the Indonesian Basic Agrarian Law (Law No. 5 of 1960, hereinafter UUPA) establishes the legal basis for granting various rights over the surface of the earth namely, land to individuals and legal entities. These rights confer authority to use and derive benefits from the land and, to the extent necessary for the direct use of the land, may also extend to relevant portions of the earth beneath the land, water, and space above it. On the basis of this provision and the designated use of land, Article 16 of the UUPA sets out the principal categories of rights recognized under Indonesian agrarian law. This category encompasses ownership rights, cultivation rights, building rights, use rights, lease rights, land clearance rights, the right to gather forest products, other rights established through legislation, and temporary rights.

The respective legal characteristics of these rights are further regulated in Articles 20 to 53 of the UUPA. Right of ownership is characterized as a heritable right and constitutes the strongest and fullest right recognized under the UUPA, while its holders are principally limited to Indonesian citizens. For agricultural, fishery, and livestock activities, the UUPA provides right to cultivate, which may be granted over land directly controlled by the State. Right to build provides a legal basis for constructing and owning buildings on land not held under the holder's ownership, subject to statutory requirements governing the particular land.

For foreign nationals and foreign legal entities domiciled or established in Indonesia, the UUPA provides legal instruments through which land may be used without granting right of ownership. These include right to use and such as lease rights, subject to the requirements and limitations established by Indonesian law. This arrangement distinguishes the ability to use and benefit from land from ownership of land itself, which remains subject to nationality requirements applicable to right of ownership.

The Russian land law system takes shape through the various forms of land ownership as well as through land classification according to designated purpose. Among the constitutional anchors is Article 9 (1) of the Constitution of the Russian Federation, which declares that land and other natural resources are used and protected in the Russian Federation as the basis of the life and activities of the peoples inhabiting the relevant territory. The right of citizens and their associations to own land privately is recognized by Article 36, which also provides that owners may possess, use, and dispose of land and other natural resources freely, provided such exercise does not cause environmental damage or violate the rights and lawful interests of others. As regards the allocation of legislative and administrative authority, matters involving the ownership, use, and disposal of land, mineral resources, water, and other natural resources are established as matters of joint jurisdiction between the Russian Federation and its constituent entities by Article 72 (1) (e) and (j). These constitutional principles are further reflected in Chapter 17 of the Civil Code of the Russian Federation, which regulates the Right of Ownership and Other Real Rights to Land. Article 260 establishes the fundamental right for citizens and legal entities to own land (right of ownership), while Article 262 specifically regulates the utilization of land plots for public use (land plots of common use), where the public has free access to land not closed to the public for public interests and needs. This chapter also formulates various other real rights, including Article 263 concerning provisions for building on a land plot (construction on the land plot), Article 264 governing land rights for parties who are not landowners (Rights to the Land of Persons Who Are Not the Owners of the Land Plots), Article 267 regarding rules for managing and transferring a land plot under lifetime inheritable possession (disposing of a land plot in inheritable possession for life), and Article 269 regulating the possession and use of land based on permanent or long-term use rights (possession and use of land by the right of permanent (perpetual) use).

The Land Code of the Russian Federation provides more detailed rules on land categories and the rights that may be exercised over land. The Land Code of the Russian Federation provides more detailed rules on land categories and the rights that may be exercised over land. Pursuant to Article 7, land throughout the Russian Federation falls into one of seven classifications, each defined by its principal designated purpose. The categories comprise agricultural-purpose land; land of localities (settlements); land employed for industry, energy, transport, communications, radio broadcasting, television, information technology, space activity support, defense, security, and other special purposes; land of specially protected territories and facilities; forestry land; water stock land; and reserve land.

In addition to this classification, Chapters III and IV of the Land Code regulate various forms of ownership and land use rights. These include private, federal, regional, and municipal ownership under Articles 15 to 19; permanent (perpetual) use under Article 20; inheritable lifetime possession under Article 21; lease under Article 22; easements under Article 23; and gratuitous use for a specified period under Article 24.

In analyzing the definition of land, Russian agrarian law perceives land fundamentally as a natural object, which contrasts with the Indonesian framework that defines land more dimensionally to encompass the earth's surface,

whether land or water covered as well as the specific space above and within the earth's body [12]. The Indonesian and Russian systems therefore organize land rights through different legal structures. Indonesian law situates the types of land rights within the framework of the State's Right to Control and determines the legal status of each right according to its holder, duration, purpose, and statutory characteristics. Russian law combines different forms of land ownership with a system of land categories and specified forms of land use. The classification of land under Russian law determines the general purpose for which a land plot may be used, while the applicable ownership or use right determines the legal position of the person or entity exercising rights over that land. Unlike general movable assets, the right of ownership over land and natural resources is subjected to the greatest number of statutory restrictions, where the capacity to alienate or utilize these objects is strictly bound by environmental prescriptions, public prohibitions, and their specifically designated purpose [7].

The comparison is therefore not limited to the types of rights available in each jurisdiction. It also concerns the relationship between State authority, ownership, land classification, and land use. In Indonesia, these elements are primarily organized through the UUPA and the concept of the right to control the country. In Russia, they are distributed across the Constitution, the Civil Code, and the Land Code, with land classification under Article 7 of the Land Code forming an important component of the regulation of permitted land use.

3.3 Land Ownership by Foreign Nationals

In Indonesian agrarian law, one of the fundamental principles is the nationality principle. Article 9 of the UUPA provides that only Indonesian citizens may have a complete relationship with the earth, water, and outer space. Furthermore, Article 21(1) of the UUPA expressly stipulates that only Indonesian citizens may hold right of ownership, subject to limited exceptions for certain legal entities designated by the government. Where a foreign national acquires right of ownership through inheritance without a will or through commingling of assets in marriage [15], Article 21 (3) of the UUPA imposes an obligation to relinquish such ownership right within one year. If the right of ownership is not relinquished by the concerned party, the right is extinguished by operation of law, and the land reverts to the State, subject to the rights of other parties encumbering the land.

Article 26 (2) of the UUPA further reinforces the provisions restricting foreign nationals. This provision stipulates that sale and purchase, exchange, donation, bequest, and other legal acts intended, directly or indirectly, to transfer right of ownership to foreign nationals shall be null and void by operation of law. However, it is important to note that foreign nationals in Indonesia are prohibited only in the context of ownership. The provisions of Indonesian agrarian law under Article 42 of the UUPA permit foreign nationals or foreign legal entities to use and/or derive benefits from land directly controlled by the State or land owned by others through right to use. Articles 44 in conjunction with 45 of the UUPA also enable foreign nationals domiciled in Indonesia and foreign legal entities established in Indonesia to hold right of lease for buildings, (hereinafter HSUB). Thus, Indonesian agrarian law restricts right of ownership exclusively to Indonesian citizens, while foreign nationals and foreign legal entities are permitted to hold HSUB.

In general, Russian law permits foreign individuals and foreign legal entities to acquire and dispose of private land, subject to restrictions applicable to certain categories of land and designated areas, including certain border territories [11]. The legal status of foreign nationals in relation to land ownership and land use is established through a framework that combines the constitutional principle of equal rights with specific statutory restrictions. Russian law imposes strict restrictions on foreign ownership regarding specific categories of land. Notably, foreign individuals, stateless persons, foreign legal entities, and even domestic legal entities with more than 50% foreign ownership are legally prohibited from holding ownership titles to agricultural lands, restricting their possession of such properties strictly to leasehold arrangements [6].

Article 62 (3) of the Constitution of the Russian Federation lays down that foreign citizens and stateless persons hold rights and carry duties within the Russian Federation on the same terms as Russian citizens, except in cases where federal law or an international treaty of the Russian Federation provides differently. This provision establishes the general principle of equal legal treatment while allowing federal legislation to impose specific restrictions on foreign nationals in particular areas, including land ownership. As highlighted by Anisimov and Ryzhenkov (2019), the Russian Constitutional Court (Judgment No. 8-P/2004) affirmed that while the Constitution generally guarantees a "national regime" equalizing foreign and domestic subjects, targeted statutory exclusions, such as the prohibition on foreign land ownership in border territories under the Land Code are constitutionally justified to safeguard national sovereignty and economic security [13].

Article 5 (2) of the Land Code treats foreign citizens and foreign legal entities as subjects of land relations, placing them beside Russian citizens and domestic legal entities. Their entitlement to acquire ownership of land, however, remains subject to restrictions laid down by the Land Code and other federal legislation. Article 15 (3), in particular, provides that ownership of land may generally be acquired by foreign citizens, stateless persons, and foreign legal entities, unless federal law limits or excludes that ownership. These restrictions include certain border territories and other areas subject to specific statutory limitations.

Restrictions also apply to particular categories and forms of land acquisition. Article 28 (5) of the Land Code provides specific rules concerning the acquisition of rights to State-owned and municipal land by foreign citizens and foreign legal entities, including acquisition through payment in accordance with applicable legal requirements. The availability and conditions of such acquisition therefore depend on the type and legal status of the land concerned.

In addition to ownership, Russian law recognizes leasing as an alternative form of land use available to foreign nationals and foreign legal entities. Article 22 (1) of the Land Code provides that foreign citizens and foreign legal entities may lease land, subject to the general requirements of Russian land legislation and any restrictions applicable to particular categories or locations of land. A lease confers a right to possess and use the land for the period and purposes established by the lease arrangement but does not itself confer ownership of the land.

The Russian approach therefore distinguishes between the capacity of foreign nationals to acquire land ownership and the restrictions applicable to particular types and locations of land. Foreign nationals are not subject to a general prohibition on land ownership. Instead, Russian law permits ownership while imposing specific statutory restrictions where considerations relating to land category, location, or public interests require such limitations. Leasing provides an additional legal mechanism through which foreign nationals and foreign legal entities may use land without acquiring ownership of the land itself.

3.4 Transferability of Lease Rights

In comparing lease rights between Indonesia and Russia, Indonesian law regulates the right of lease for buildings (hereinafter HSUB) under Articles 44 in conjunction with 45 of the UUPA. HSUB is defined as the right to use land owned by another person for building purposes by paying a sum of money as rent to the landowner [14]. These provisions regulate who may hold HSUB and prescribe the manner of rent payment.

The UUPA provisions governing HSUB do not expressly address the lessee's authority to transfer the lease right, encumber it, sublease the land, or contribute it as capital to a business entity. Transfer or sublease remains possible but depends on the terms of the agreement, the landowner's consent, and compliance with applicable regulations. No general transferability is conferred directly by statute.

Article 16 (1) (e) lists the right to lease for building purposes among the rights referred to in the Basic Agrarian Law, while Articles 44 and 45 specifically regulate its use and the persons who may hold it. Article 44 provides that a person or legal entity may lease land belonging to another person for building purposes by paying rent to the landowner. The amount and method of payment may be agreed upon by the parties. Article 45 specifies the persons and entities that may hold the right.

The regulation of HSUB differs from the regulation of several other rights over land. Articles 20, 28, and 35 of the Basic Agrarian Law expressly provide for the possibility of transfer in relation to right of ownership, right to cultivate, and right to build. The provisions concerning HSUB in Articles 44 and 45 do not contain similar wording on the transfer of the right. The UUPA therefore does not provide a specific statutory mechanism for transferring HSUB to another party.

This point should be distinguished from the question of whether a lease agreement can involve a change of the lessee. The absence of an express transfer provision in Articles 44 and 45 does not, by itself, establish that every form of transfer is prohibited. The legal consequences of such an arrangement depend, among other things, on the terms of the lease agreement and the general rules governing contracts. The agreement may determine the rights and obligations of the parties, including whether the lessee may transfer its contractual position to another party.

A comparison can also be made with Article 43 (2) of the Basic Agrarian Law concerning the right of use over privately owned land. Under this provision, a right of use over privately owned land may be transferred to another party only where the agreement establishing the right expressly allows such transfer. The provision therefore provides an explicit statutory reference to the role of the underlying agreement in determining transferability. Articles 44 and 45 concerning HSUB do not contain an equivalent provision.

For this reason, HSUB should not be treated in the analysis as a proprietary land right equivalent to right of ownership, right to cultivate, or right to build. Its regulation is closely connected to the lease relationship between the landowner and the lessee. The relevant issue for comparison with Russian law is therefore not whether Indonesia recognizes a lease, but how the legal system defines the nature of the lease relationship and regulates a possible transfer of the lessee's position.

In the Indonesian system, the UUPA provides the legal basis for HSUB but does not expressly establish a statutory transfer mechanism comparable to those provided for several other land rights. The possibility of transferring the lessee's contractual position therefore needs to be considered in relation to the lease agreement and the applicable contract law.

In the Russian Federation, the transfer of leasehold rights over land is regulated by the Civil Code of the Russian Federation, particularly Chapter 34 on lease, read in conjunction with Article 264 concerning the ownership and use of land by persons who are not landowners. Within this legal framework, a tenant's rights under a land lease may be transferred, subleased, or otherwise encumbered in favor of a third party, subject to the applicable statutory provisions and the terms of the underlying lease agreement.

The Land Code of the Russian Federation provides more specific rules concerning the transfer of leasehold rights. Article 22 (5) provides that a lessee of a land plot may transfer its lease rights to a third party without obtaining the consent of the landowner, provided that the lease agreement has been concluded for a period exceeding five years. In such circumstances, the lessee is required to notify the landowner in writing. The lease agreement may, however, contain a provision restricting or excluding such transfer.

Article 22 (9) further provides for the possibility of subleasing the land and transferring the rights and obligations arising from the lease to a third party, subject to the conditions established by law and the lease

agreement. These provisions indicate that Russian land law provides a statutory basis for the transfer of a lessee's position and for subleasing, while also allowing the contractual relationship to determine certain restrictions. In practice, leases are generally granted for a maximum term of 49 years, and a lessee usually has a preferential right to renew the lease upon expiry [11]. Under Russian civil law, the fundamental triad of ownership possession, use, and disposal can be temporarily vested in another legal possessor, such as a lessee. A lessee is entitled not only to possess and use the property but also, with the lessor's consent, to sublease it or make considerable improvements, effectively exercising limited disposal powers without holding the absolute title [7]. In the context of privatizing State or municipally owned land, the legislative framework provides a preferential right to purchase for the existing lessee, operating under the established civil procedures governing the sale of common property to a third party [16].

The Russian approach differs from the Indonesian regulation of HSUB. Under Articles 44 and 45 of the Indonesian Basic Agrarian Law, HSUB is recognized and regulated as a right arising from a lease relationship, but the UUPA does not expressly establish a mechanism for transferring the lessee's position to a third party. In Russia, by contrast, the Land Code expressly regulates the transfer and sublease of land lease rights and specifies the circumstances in which the landowner's consent is not required.

The difference is therefore primarily found in the statutory regulation of transferability. Russian law expressly provides a legal mechanism for transferring lease rights and sets conditions for its exercise. Indonesian law does not contain an equivalent provision in Articles 44 and 45 of the UUPA.

3.5 Legal Relationship between Land and Buildings

In discussing the legal relationship between land and buildings in Indonesia, it is essential to understand that Indonesian law permits the ownership of land and buildings to be vested in different persons, as Indonesian agrarian law adheres to the principle of horizontal separation. Article 35 of the UUPA defines right to build as the right to establish and own buildings on land not owned by the holder. From this provision, it follows that a person may own a building situated on land not held under their ownership. Under the principle of horizontal separation, land and objects erected upon or attached thereto do not necessarily constitute a single legal object with the same owner. The application of the horizontal separation principle in national land law is a consequence of the recognition of customary land law as the foundation for the formation of national land law [16].

An implementation of the horizontal separation principle is the right of lease for buildings (HSUB), whereby a person or legal entity leases vacant land held under another person's right of ownership to construct a building thereon by paying a sum of money as rent for an agreed period. Under HSUB, there exists a horizontal separation between the landowner and the building owner: the land belongs to the landowner, while the building belongs to the lessee. Consequently, the landowner is not necessarily the owner of the building.

The concept embodied in the principle of horizontal separation also carries significant legal consequences in security law, particularly concerning the encumbrance of mortgage rights. Pursuant to Article 4 (4) of Law No. 4 of 1996 on Mortgage Rights, buildings constitute part of the mortgage object only if expressly stated in the Deed of Mortgage Grant (APHT). In other words, buildings do not automatically become part of the security object merely because they stand on land encumbered with mortgage rights. This regulation further reinforces that the legal relationship between land and buildings in the Indonesian legal system remains grounded in the principle of horizontal separation, such that the existence of buildings must be analyzed separately according to the underlying right on which they stand.

Russian land law recognizes the principle of the unity of the legal fate of land plots and objects strongly connected to them. This principle is reflected in Articles 1 (1) and 1 (5) of the Land Code of the Russian Federation, which establish the unity of the legal fate of land plots and objects firmly attached thereto. The principle establishes a legal relationship between land and buildings or structures located on the land, particularly in transactions involving their ownership and use. It does not, however, mean that ownership of the land and ownership of the building must always be vested in the same person. Russian law also recognizes situations in which a building is owned by one person while the underlying land is owned by another.

The application of this principle can be observed in Articles 271 and 272 of the Civil Code of the Russian Federation. Article 271 regulates the right of the owner of an immovable property to use a land plot owned by another person. Where a building or other immovable property is located on land belonging to another person, the owner of the building has the right to use the portion of the land necessary for the use of the building, subject to the conditions established by law and the relevant legal arrangement concerning the land. This provision therefore accommodates the possibility of separate ownership of the building and the land while preserving the necessary legal connection between them.

Article 272 addresses the consequences of the termination of a right to use another person's land and the relationship between the land and the immovable property situated thereon. The provision is relevant to situations in which the legal status of the building and the land changes as a result of the termination or alteration of the relevant land-use right. The provision therefore forms part of the legal framework governing the relationship between ownership of buildings and rights to use the underlying land.

The relationship between buildings and land is further regulated by Article 35 of the Land Code. Article 35 (1) provides that when ownership of a building or structure situated on land belonging to another person is transferred, the acquirer of the building obtains the same right to use the relevant land as the previous owner of

the building, and under the same conditions. The provision ensures continuity of the land-use right necessary for the use of the building following the transfer of its ownership.

Article 35 (4) establishes restrictions on transactions involving land and buildings where both are owned by the same person. In such circumstances, the transfer of a building without the corresponding transfer of the relevant land right, or the transfer of the land without the building situated thereon, is generally not permitted where the separation would contradict the legal requirements governing the unity of their legal fate. The provision therefore limits transactions that would artificially separate land and buildings when both are held by the same owner.

The Russian approach can therefore be understood as establishing a legal connection between land and buildings rather than requiring absolute unity of ownership. Where the land and building are owned by different persons, the law provides mechanisms for the building owner to use the land necessary for the building. Where both are owned by the same person, the law places greater restrictions on their separate transfer. The principle consequently operates as a rule governing the legal relationship between the two objects and the continuity of their use, rather than as an absolute requirement that the same person must always own both the land and the building.

4. Conclusion

This study comparatively examined the land law systems of Indonesia and the Russian Federation across five analytical dimensions: state authority over land, land rights and land categorization, foreign ownership, leasehold transferability, and the legal relationship between land and buildings. The findings reveal fundamental paradigmatic differences rooted in their respective legal traditions and constitutional frameworks. Indonesia's agrarian system is founded on the State's Right to Control, wherein the State exercises public authority to regulate land without being positioned as the owner of all land, employs a system of statutorily defined land rights (right of ownership, right to cultivate, right to build, right to use), reserves right of ownership exclusively for Indonesian citizens, treats lease rights as primarily contractual without statutory transferability, and adheres to the principle of horizontal separation between land and buildings. By contrast, Russian land law expressly recognizes State ownership as one form of ownership alongside private and municipal ownership, utilizes a seven-tier land categorization system based on designated function, permits foreign nationals to own land subject to restrictions on certain categories and locations, provides statutory recognition of leasehold transferability under the Land Code, and recognizes the principle of unity of legal fate connecting land and buildings. These differences reflect divergent historical trajectories, Indonesia's UUPA of 1960 emerged from the post-colonial project of constructing a unified national land law grounded in customary law, whereas Russian land law evolved through the transition from Soviet exclusive State ownership to a pluralistic framework. This study contributes to comparative land law literature by demonstrating that Indonesian and Russian land law cannot be adequately assessed merely by comparing formal ownership categories; rather, the legal position of land depends on a complex interplay of the type of right, status of the holder, land category, and permitted use. The findings offer theoretical insights for situating land rights within their broader constitutional and doctrinal contexts and practical guidance for policymakers, legal practitioners, and foreign investors navigating land transactions in both jurisdictions.

References

- [1] S. A. Siregar, D. E. Damanik, and A. L. Siahaan, "Causes and Resolution of Buleleng Bali Customary Land Disputes," *POLICY, LAW, NOTARY Regul. ISSUES*, vol. 4, no. 3, pp. 338–347, May 2025, doi: 10.55047/polri.v4i3.1726.
- [2] Suardi, *Hukum Agraria*. Badan Pernerbit IBLAM, 2005.
- [3] A. S. Herry, *Hak-Hak atas Tanah Menurut Hukum Agrarian dan Hak Pengelolaan*. Cilacap: Media Pustaka Indo, 2026.
- [4] R. F. Yuris and A. Sudiro, "Responsibility Of The Head Of The National Land Agency For The Issuance Of Land Ownership Certificates With Administrative Legal Defects," *POLICY, LAW, NOTARY Regul. ISSUES*, vol. 2, no. 4, pp. 437–445, Nov. 2023, doi: 10.55047/polri.v2i4.911.
- [5] I. Soerodjo, *Hukum Pertanahan Hak Pengelolaan atas Tanah (HPL): Eksistensi, Pengaturan, dan Praktik*. Surabaya: Laksbang Mediatama, 2014.
- [6] ILN, "Buying and Selling Real Estate in Russia," 2018, *International Lawyers Network*.
- [7] Y. Sukhanov, "The Concept of Ownership in Current Russian Law," *Juridica Int.*, vol. 6, pp. 102–107, 2001.
- [8] M. Hatta, *Hukum Tanah Nasional dalam Perspektif Negara Kesatuan*. Media Abadi, 2005.
- [9] Kartasapoetra, *Hukum Tanah*. Bina Aksara, 1985.
- [10] M. Bakri, *Hak Menguasai Tanah oleh Negara*. UB PRESS, 2010.
- [11] CMS, "The Property Regime in Russia," 2007, *CMS*.
- [12] M. Rafli and S. U. I. Artati, "Perbandingan Hukum Jual Beli Tanah di Indonesia dan Rusia," *Reformasi Huk. Trisakti*, vol. 5, no. 4, pp. 774–785, 2022, doi: 10.25105/refor.v5i4.18405.
- [13] A. Anisimov and A. Ryzhenkov, "Constitutional Legal Regulation of Environmental Protection and Nature Management in the Post-Soviet Space: Issues of Legal Technique," *Soc. Ekol.*, vol. 28, no. 2, pp. 117–144, 2019, doi: 10.17234/socekol.28.2.1.

- [14] S. Hajati, A. Sekarmadji, S. Winarsi, and O. Moechtar, *Politik Hukum Pertanahan Indonesia*. Jakarta: Kencana Prenamedia Group, 2021.
- [15] I. G. M. O. Mahendra and D. G. P. Yustiawan, "Legal Validity of Land Tenure by Foreigners Through Mixed Marriages Obtained From Inheritance From the UUPA Perspective," *POLICY, LAW, NOTARY Regul. ISSUES*, vol. 2, no. 2, pp. 187–197, May 2023, doi: 10.55047/polri.v2i2.619.
- [16] D. Tumenova, "Evolution of Land Reform in Russia: The 2001 Land Code and Its Impact on the Commercial Real Estate Market and Direct Foreign Investment," *Pacific Rim Law Policy J.*, vol. 11, no. 3, pp. 769–793, 2002.