

## The Authority Of The National Land Agency And The Legal Certainty Of Land in Indonesia

Syukur<sup>1</sup>, Maryono<sup>2</sup>, Supaphorn Akkapin<sup>3</sup>

<sup>1,2</sup>Jayabaya University, Indonesia

<sup>3</sup>Rajamangala University of Technology Krungthep-Thailand

<sup>1</sup>[184syukur@gmail.com](mailto:184syukur@gmail.com), <sup>2</sup>[maryano.myn@gmail.com](mailto:maryano.myn@gmail.com), <sup>3</sup>[supaphorn.a@mail.rmutk.ac.th](mailto:supaphorn.a@mail.rmutk.ac.th)

### ABSTRACT

This article discusses the authority of the National Land Agency (BPN) in creating land legal certainty in Indonesia, as well as the challenges and strategies needed to improve the effectiveness of land management and dispute resolution. Through an analysis of regulations governing BPN's authority, such as the Basic Agrarian Law and Minister of Agrarian Affairs and Spatial Planning Regulations, it is found that BPN has a vital role in land registration and dispute resolution. However, challenges such as overlapping authority, multiple certificates, and land mafia practices still hinder effective implementation. This research recommends strengthening BPN's authority through the establishment of a clearer and more specific law and the addition of an article on Land Civil Servant Investigators (PPNS) in Law No. 5/1960. Hopefully, these measures can strengthen land law enforcement, improve transparency and accountability, and create better legal certainty for the community. Thus, BPN can contribute more effectively in managing and resolving land disputes, as well as promoting justice in natural resource management in Indonesia.

**Keywords:** National Land Agency, legal certainty, land disputes, conflict resolution.

### Introduction

Land conflicts in Indonesia are increasing and are often accompanied by acts of violence (Utomo, 2020; Latif & Shiddiqy, 2023; Lubis, Abdilla, & Berutu, 2024). Such tensions indicate serious problems in the land management and registration system. Although the negative publication system implemented through the Basic Agrarian Law (UUPA) and Government Regulation (PP) No. 24/1997 is expected to provide legal certainty, its implementation in the field has not been fully effective. Cases of overlapping certificates and land ownership disputes are still common, indicating that the existing system has not been able to guarantee clarity on the legal status of land and property rights (Komnas HAM, 2016).

One of the roots of the problem is the application of a negative publication system that is not fully understood by the Land Office. Negative publication means that the state only records the data provided by the applicant without thoroughly verifying the validity of the land rights. As a result, the certificates issued are often vulnerable to challenge and cause uncertainty for landowners. This also opens the door to corruption and abuse of power, as transparency in land registration is not always maintained.

In addition, the principle of *nemo plus iuris* confirms that a person cannot transfer rights that are greater than those he or she owns (Sutedi, 2023; Rahmadanil & Mirwati, 2023; Rachmawati, 2024). . In other words, land registration does not always ensure legal ownership. Certificates issued without adequate verification can result in multiple or overlapping rights, fuelling ownership conflicts. This requires the government to strengthen the implementation of regulations, including GR No. 18/2021, to improve data quality and close loopholes for disputes.

In dealing with land issues, there are two main approaches: litigation and non-litigation. The litigation process, while resulting in binding decisions, is often time-consuming and costly. In contrast, non-litigation settlements - such as mediation and negotiation - are a

more efficient alternative. The role of the National Land Agency (BPN) in this non-litigation settlement is vital to reduce conflict escalation and promote substantive justice in the community.

BPN has broad authority in the management, supervision and resolution of land disputes, including regulating social, economic and political aspects related to land as a vital state asset (LPKN, 2024). However, the handling of land disputes that are sectoral and involve various institutions often creates new problems, especially when government actors, including the National Police (POLRI), fail to maintain neutrality (Komnas HAM, 2016). This shows the importance of cross-sectoral synergy and consistency in law enforcement.

Successful land management relies heavily on legal certainty in the land system. A clear and fair land registration system ensures that land utilization is carried out efficiently and sustainably (Surata, 2016). In this context, the implementation of a negative publication-based land registration system with positive elements must be improved so that it not only records, but is also able to verify land rights thoroughly. Without this improvement, efforts to create legal certainty will continue to be hampered by potential disputes.

To create legal certainty and prevent the accumulation of cases in the courts, the government needs to strengthen BPN's authority in resolving land conflicts. Concrete steps to be taken include increased transparency, supervision, and consistent application of the law. With firmer regulations and transparent implementation, BPN can play a more significant role in ensuring land justice and legal certainty in Indonesia.

- a) To study the role and authority of the National Land Agency (BPN) in the management, supervision, and resolution of land cases in Indonesia, particularly in the context of the application of the negative publication system.
- b) To analyse the effectiveness of the land registration system in creating legal certainty and the factors that influence the occurrence of multiple certificates, overlapping rights, and land ownership disputes.
- c) To find concrete solutions to strengthen BPN's authority and improve the implementation of land regulations in order to achieve transparency, efficiency and legal justice in resolving land conflicts in Indonesia.

How does the authority of the National Land Agency (BPN) contribute to creating land legal certainty in Indonesia, and what challenges and strategies are needed to improve the effectiveness of land dispute management and resolution?

This research is expected to make theoretical and practical contributions to land management in Indonesia. From a theoretical perspective, this research will explore the authority of the National Land Agency (BPN) in land dispute resolution, highlighting relevant regulations, implementation effectiveness, and emerging challenges. The findings will enrich the agrarian law and land administration literature, especially in the context of the application of the negative publication system and efforts to realize legal certainty. Practically, this research is expected to provide policy recommendations that support BPN's strategic role in handling land conflicts, overcoming overlapping rights, and reducing the potential for multiple certificates. In addition, this research also aims to strengthen transparency and fairness in the land system, and encourage the realization of sustainable and equitable land development. The results of this research can serve as a reference for stakeholders at the national and international levels in formulating effective land management strategies that are adaptive to the social and political context.

In an effort to understand the authority of the National Land Agency (BPN) and land legal certainty in Indonesia, this research adopts various relevant theories as the basis for analysis. The three main theories used as a literature review are the Grand Theory of Legal Certainty by Gustav Radbruch, the Middle Range Theory of Authority by Bagir Manan, and the Applied Theory of Dispute Resolution by Dean G. Pruitt and Jeffrey Z. Rubin. Rubin.

These three theories complement each other to provide an in-depth understanding of the issues discussed.

Legal certainty is an essential element in the legal system, especially in written legal norms. According to Radbruch, law without the value of certainty loses meaning and does not function as a behavioural guide for individuals in society (Santoso, 2021; Nahak, 2023). In this context, Radbruch identified three main objectives of law: justice, expediency, and legal certainty (Santoso, 2021; Nahak, 2023). Although legal certainty as a new concept emerged with the development of modern law, the values of justice and expediency have long existed in the legal tradition (Akmal, 2021). Radbruch defined legal certainty as "Scherkeit des Rechts selbst" and underlined four important aspects: law as something positive is sourced in legislation, based on facts, clearly formulated, and not often changed (Hernawati & Suroso, 2020). The principle of legal certainty provides a guarantee that the law must be carried out properly and precisely, and without certainty, the law loses its identity. This research adopts Radbruch's theory of legal certainty to evaluate and formulate the necessary regulations in land dispute resolution.

The Authority Theory proposed by Bagir Manan offers an approach to analyze the authority of the BPN in handling land disputes. According to Manan, authority includes rights and obligations, where rights are defined as the freedom to act, while obligations are the obligation to carry out certain actions (Arsyad, 2024). In the context of state administrative law, government authority is obtained through attribution, delegation, and mandate (Langkay, Mawuntu, & Pinasang, 2023). The BPN's authority serves as the primary domain in law enforcement, which includes the responsibility of the police and prosecutors to investigate and prosecute perpetrators of the land mafia. Thus, BPN's authority in ensuring the validity of land certificates and conducting ownership audits is crucial. This theory highlights how BPN and other institutions perform their roles in realising legal certainty in the land sector.

As an Applied Theory, this research uses the Dispute Resolution Theory proposed by Pruitt and Rubin to analyse dispute resolution mechanisms in the land sector. According to Madiistriyatno (2022), Pruitt and Rubin identified five main approaches: contending, yielding, problem solving, withdrawing, and inaction. In addition, Nader and Todd (1978) suggested seven ways of dispute resolution commonly found in society, including lumping it, avoidance, coercion, negotiation, mediation, arbitration, and adjudication. Taking into account the various ways of resolving disputes, BPN as a government agency authorized to resolve land disputes has its own process based on established rules. This theory helps to understand more about the approach used by BPN in resolving disputes in the community.

By integrating these three theories, this research aims to provide a comprehensive understanding of BPN's authority and land legal certainty in Indonesia, as well as create a useful contribution to landowners, society, and the wider economy.

## **Methods Research**

The research method used in this article is normative juridical, which is a library legal research that aims to collect materials in the form of theories, concepts, legal principles, and legal regulations (Benuf & Azhar, 2020) related to the authority of the National Land Agency and land legal certainty in Indonesia. This research involves an analysis of legal principles, legal systematics, and the level of legal synchronisation vertically and horizontally, with the statute approach as the main focus. In this process, conceptual approach, analytical approach, and comparative approach are also applied to enrich relevant legal considerations in dealing with the legal issues at hand. The research specification is descriptive analytical, which provides an explanation of the product of legal behaviour through the study of laws and regulations. The legal materials examined consist of primary legal materials, such as the 1945

Constitution of the Republic of Indonesia and various agrarian-related laws, as well as relevant secondary and tertiary legal materials. The analysis technique used is a qualitative method with an analytical descriptive approach, in which analysis is carried out on primary legal materials through interpretation in accordance with legal science and content analysis of secondary legal materials. Thus, this research aims to reconstruct the authority of the National Land Agency in handling land cases and realising legal certainty in Indonesia.

## **Result and Discussion**

The National Land Agency (BPN) has a vital role in creating land legal certainty in Indonesia. The authority assumed by BPN is regulated in various laws and regulations, where the exercise of such authority aims to regulate the allocation, use and maintenance of natural resources for the prosperity of the people.

Based on Article 33 paragraph (3) of the 1945 Constitution and Article 2 of the Basic Agrarian Law (UUPA), BPN is responsible for carrying out effective land registration, measurement, and land dispute resolution. These activities are further regulated in Government Regulation (PP) No. 24 of 1997 on Land Registration and PP No. 18 of 2021 on Management Rights. Through a clear land registration system, people will gain legal certainty over their land rights, thereby reducing disputes that often arise due to unclear ownership.

However, in practice, BPN faces various challenges that hamper the effectiveness of land management and dispute resolution. These include overlapping authority between agencies and a lack of adequate supervisory instruments. As explained in Article 10 of Law No. 26/2007 on Spatial Planning, it is important to harmonise spatial allocation policies with land rights arrangements so that spatial management can be effective and sustainable.

Gustav Radbruch's theory of legal certainty provides a basis for understanding the importance of certainty in land management. Radbruch argued that legal certainty must be combined with the principle of justice (Anuar & Hazmi, 2023). Therefore, BPN needs to strengthen its policies on land rights determination and land registration, and ensure that the dispute resolution process is conducted with clear and fair procedures. The use of a mediation approach in dispute resolution, as stipulated in the Minister of ATR/Head of BPN Regulation No. 21/2020, also needs to be strengthened with training for mediators to be more effective in handling land conflicts.

Bagir Manan's theory of authority is also relevant to explain the dynamics between stakeholders in land dispute management and resolution. The synergy between BPN policies, public awareness, and support from other institutions is key to improving land legal certainty in Indonesia. Such efforts must be in line with Article 33 of the 1945 NRI Constitution and applicable laws and regulations so that land management is not only effective but also equitable.

The results of this study show that the authority of BPN contributes significantly to creating legal certainty of land in Indonesia through the land registration system regulated in the UUPA. Land registration serves as strong evidence to guarantee land rights, as stipulated in Article 23 of the LoGA which states that every ownership right, transfer, abolition, and encumbrance of rights must be registered. However, challenges such as multiple certificates, overlapping ownership, and land mafia practices still affect the validity of certificates.

To improve the effectiveness of land management and dispute resolution, reforms in the land law system are needed. This includes improving administration and applying the principle of transparency in land registration. Gustav Radbruch's concept of legal certainty emphasises that to achieve legal certainty, the law must be ensured through efficient and transparent administration. This is in line with Bagir Manan's theory of authority, which states that clear authority in land administration will increase public trust and reduce disputes.



The application of the dispute resolution theory by Dean G. Pruitt and Jeffrey Z. Rubin provides an additional perspective on effective approaches to dealing with land conflicts. They underline the importance of understanding the interests of the parties involved and the need to create win-win solutions. In this context, mediation and negotiation should be the main options in dispute resolution, allowing parties to actively participate in the process, which in turn can accelerate resolution and increase satisfaction for all parties.

Necessary strategies also include strengthening collaboration between the BPN, police and prosecutors in land law enforcement. The establishment of a specialized judicial institution to handle agrarian disputes, in accordance with Presidential Regulation No. 86/2018 on Agrarian Reform, is expected to provide better access to justice and effective solutions in resolving disputes. In this effort, civil servant investigators (PPNS) in the land sector proposed in the Land Bill are expected to provide more power to the BPN to take action against violations in the land sector, so as to increase legal certainty and justice for the community.

Overall, the results of this study confirm that the authority of the National Land Agency (BPN) has a central role in creating land legal certainty in Indonesia. Although there are significant challenges, with the right reforms and strategies, BPN can improve the effectiveness of land dispute management and resolution, and ensure that every citizen has clear and protected land rights.

## **Conclusion**

Based on the analysis of the implementation of the legal authority of the National Land Agency (BPN) in handling land cases, it can be concluded that although BPN has been given the authority to handle and resolve cases in accordance with the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 21 of 2020, the legal force of this regulation is still relatively weak because it is under the law, thus reducing legal certainty in practice. Referring to Gustav Radbruch's theory of legal certainty, the legal certainty required in resolving land disputes requires a firmer legal force, while the study of authority theory by Bagir Manan shows that to strengthen the role of BPN, there needs to be a reconstruction of the regulation with the addition of provisions regarding the establishment of Land Civil Servant Investigators (PPNS). This will enable BPN to take direct legal action in land cases and act as an investigator in land crimes, as well as strengthen law enforcement to prevent wider conflicts in the land sector. By integrating the dispute resolution theory of Dean G. Pruitt and Jeffrey Z. Rubin, more effective and systematic law enforcement is expected to provide better legal certainty in the settlement of land cases in Indonesia.

## **Suggestion And Recommendation**

To increase the authority of the National Land Agency (BPN) in handling and resolving land cases, it is recommended that the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 21 of 2020 on Handling and Settlement of Land Cases be upgraded to a Law, which will provide a stronger and clearer legal basis. In addition, the Minister of Agrarian and Spatial Planning/Head of BPN needs to propose a legal update to Law No. 5/1960 on Basic Agrarian Principles through the president, with the addition of an article that specifically regulates the Land Civil Servant Investigator (PPNS). This will not only strengthen BPN's authority to take legal action in land cases, but will also clarify BPN's roles and responsibilities in dispute resolution, thereby improving legal certainty and preventing wider conflicts in the land sector.

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