

## RESEARCH ARTICLE

# Strategy and Management of Dispute Resolution, Land Conflicts at the Land Office of Sleman Regency

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## ABSTRACT

Complex land disputes from time to time have increased both in quality and quantity. The cause is due to the needs of increasingly complex land use while minimal land availability. In addition, the cause can be triggered by any regulations that overlap and occur disharmony in its implementation. This problem is coupled with the lack of legal understanding in society due to acts committed on its soil and the publication of the registration system, which adopts negative publications, opening the faucet lawsuit and objections from other parties on the ground registered. Inequality in land ownership and the certificate and the use of land that is not following the location permit, allotment, use, and utilization of the land made into the complex problems of land disputes. This condition needs to be made to seek justice, legal protection, and law enforcement, namely the judiciary. In addition, the settlement of land disputes can flow through administrative channels that BPN, Mediation, Reconciliation, and ADR, which action significantly contributed to the completion of land disputes. Therefore, the necessary stakeholders to these ideals can be realized.

**Keywords:** Dispute Resolution; Land Conflicts; Land Office.

## INTRODUCTION

For the Indonesian people, the land is a vital element in the nation's life and state. The relationship between the Indonesian people and the land is eternal. The entire territory of the Unitary State of the Republic of Indonesia (NKRI) is the unitary homeland of the entire Indonesian nation. The land is the glue of the Unitary State of the Republic of Indonesia. Therefore, the land needs to be managed and regulated nationally to maintain the sustainability of the life system of the nation and state. Within this framework, the constitutional mandate emphasizes that land politics and policies are directed at realizing land for "the greatest prosperity of the people."<sup>1</sup>

Although it has been mandated in the 1945 Constitution that land is a source of people's prosperity, the number of poor people in Indonesia is still quite large (about 39 million people).

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<sup>1</sup>Badan Pertanahan Nasional, *Rencana Strategis Badan Pertanahan Nasional Republik Indonesia Tahun 2010-2014*, (Jakarta: BPN RI, 2010), p. 1.

This happens because there is still an imbalance in control, ownership, use, and utilization of land (P4T). P4T inequality and inequality with other production sources make it increasingly difficult to reduce poverty and unemployment. P4T inequality can also lead to damage to land resources and the environment, increasing disputes, conflicts, and land cases. Furthermore, this land issue will impact the vulnerability of food security which will ultimately affect national security.<sup>2</sup>

Awareness of the function and position of land is also revealed in the Basic Agrarian Law, which states that there is an eternal relationship between land and the Indonesian people. Therefore, Article 33 of the 1945 Constitution implies the phrase "controlled," which indicates that the state is not the landowner. This is confirmed by explaining the 1960 LoGA, which explains that the state only controls the land. The definition of land "controlled" does not mean "owned," but only certain powers granted by the state as an organization of power. This can be regulated in Article 2 paragraph (2) of the LoGA that the state's authority is

- a. Regulate and administer the designation, use, supply, and maintenance of the earth, water, and space.
- b. Define and regulate the legal relations between people and the earth, water, and space.
- c. Determine and regulate legal relations between people and legal actions concerning the earth, water, and space, all to achieve the greatest prosperity of the people in the sense of nationality, welfare, and independence in society and an independent Indonesian legal state, sovereign, just and prosperous.

Land problems arise when authority (the right to control the state) is faced with the human rights of citizens, incredibly individual property rights, and communal rights (layout land).<sup>3</sup> Land

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<sup>2</sup>*Ibid.*, p. 2.

<sup>3</sup>Serious attention to the rights of indigenous and tribal peoples, particularly related to land rights, began with the formation of the World Council of Indigenous People (WCIP) in 1966. Subsequently, in 1982 a Working Group on Indigenous People (WGIP) was formed through the approval of the United Nations Social and Economic Council. It was only since the declaration of the Convention concerning Indigenous and Tribal Peoples in Independent Countries (Convention No. 169) in 1989, the entity of indigenous peoples has been increasingly recognized by many countries, where every government is required to respect the culture and values that exist in indigenous and tribal peoples. In this convention, the basic principles regarding indigenous people and tribal people have been given as follows: "People in independent countries who are regarded as indigenous on account on their descent from populations which inhabited the country or geographical region to which the country belongs at the time of colonization or the establishment of present State boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. those from the population who inhabited a country or geographical area that the state had at the time of its colonization or the establishment of current national boundaries and regardless of their legal status retain some or all of their own social, economic, cultural and political institutions). "Tribal people in independent countries whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their customs, traditions or by special law or regulation. Independent states whose social, cultural, and economic conditions distinguish them from the rest of the national community and whose status is governed in whole or in part by their customs, traditions, special laws, or regulations). One of the important events related to the recognition and strengthening of indigenous and tribal peoples departed from the results of the Earth Summit in Rio de Janeiro in 1992 with the issuance of the Rio Declaration on Environment and Development (1992). In Principle 22, it is stated that customary law communities have an essential role in environmental management and development because of their traditional knowledge and practices. Therefore, the state must recognize and fully support the entity, its culture, and interests and provide opportunities to participate in the achievement of sustainable development actively. In addition to the Declaration, there are also actual results from the Earth Summit, namely Agenda 21. Chapter 26 of Agenda 21 emphasizes the protection of the customary rights of indigenous and tribal peoples, as follows: "Indigenous people and their communities have a historical relationship with their lands and are generally descendants of the original inhabitants of such lands. In the context of this chapter, the term "lands" is understood to include the environment of the areas which the people concerned traditionally occupy. In this context, the term

issues from year to year develop and are complex. The complexity and problems and the quantity are in line with the dynamics in the economic, social, and political fields. The typology of cases in the land sector can be broadly divided into five groups, namely:<sup>4</sup>

1. Cases related to people's cultivation of plantations, forestry, and other lands.
2. Cases regarding violations of land reform regulations.
3. Cases regarding accesses to land provision for development.
4. Civil disputes regarding land issues.
5. Disputes regarding layout land.

Land disputes and conflicts that have become more lively and complex are very clearly seen as more vertical conflicts and disputes between the community and the government or the authorities. At first glance, what appears to be a horizontal conflict between the community and entrepreneurs/investors or State-Owned Enterprises (BUMN). However, behind that, the people deal with the state, which protects entrepreneurs and state-owned enterprises. Compared to horizontal conflicts between other communities, conflicts with vertical dimensions are more dominant.<sup>5</sup> In 2009-2010, the Land Office of Sleman Regency recorded disputes/conflicts related to ownership of 31 cases, while disputes over the implementation of court decisions reached 4 cases. Meanwhile, based on the map of the distribution of land disputes and conflicts, they are spread in various sub-districts in Sleman Regency. One way to anticipate various problems over land disputes is by way of land registration to create legal certainty and strengthen land rights along with economic, social, and political developments, the land rights mentioned in Article 16 jo. Article 53 of the Logga is not a limitation, meaning that it is possible to create new land rights regulated explicitly by law in addition to the land rights mentioned in the Logga.<sup>6</sup> This paper describes the settlement of land disputes and conflicts in the Sleman Regency land office within the framework of legal certainty and justice. This paper is a continuation of previous writings that direct attention to resolving land disputes and conflicts within the framework of achieving legal certainty and justice carried out at the Sleman Land Office. The writing is based on the phenomenon of increasing disputes over land conflicts both vertically and horizontally.

## DISCUSSION

### ***Overview of the Public Interest Principle in Land Acquisition for Development***

The Universal Declaration of Human Rights (UDHR), also called the Universal Declaration of Human Rights (UDHR), has been adopted into the national law of many countries, including Indonesia. Actually, before the birth of the UDHR, Indonesia had included the provisions of

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"land" is understood to include the area environment in which the community concerned traditionally occupies). Furthermore, the United Nations Permanent Forum on Indigenous People, which was formed in 2000, ratified the United Nations Declaration of the Rights of Indigenous People (UNDRIP) on 12 September 2007, in which Indonesia is one of the signatory countries. This Declaration has recognized in detail the rights of indigenous and tribal peoples, both individually and collectively, starting from the economic, social, cultural, political, and other fields. Thus, the Indonesian state should respect, protect, and fulfill the rights of indigenous peoples that have been guaranteed in the Declaration.

<sup>4</sup>Maria SW Soemardjono, Nurhasan Ismail, Isharyanto, *Mediasi Sengketa Tanah (Potensi Penerapan Alternatif Penyelesaian Sengketa (ADR) Di Bidang Pertanian...*, (Jakarta: Penerbit Buku Kompas, 2008), p. 2

<sup>5</sup>Bernhard Limbong, *Konflik Pertanian...*,p. 4.

<sup>6</sup>Urip Santoso, *Hukum Agraria & Hak-hak Atas Tanah*, (Jakarta: Prenada Media Group, 2005), p. 89.

Human Rights (HAM) in the 1945 Constitution (UUD 1945) before the amendments, such as Article 27 regarding everyone being equal before the law and the right to work and a decent living, Article 28 on freedom of association and opinion, Article 29, freedom of religion and practice of worship, and Article 31 of the right to education. All of these are matters regulated in the UDHR and the 1945 Constitution before the amendment. This means that the formulators of the 1945 Constitution had known the concepts of Human Rights and incorporated them into the Constitution, which became the basis of the state before the General Assembly proclaimed the UDHR, United Nations (General Assembly, United Nations) on December 10, 1948. contained in the 1945 Constitution also underwent significant changes after the reformation. The 1945 Constitution has been amended four times. Regulations regarding Human Rights are also given a unique space. Provisions regarding human rights are regulated in the Human Rights Chapter, where there was no particular chapter called Human Rights, Chapter XA Human Rights. The Human Rights chapter contained in this Constitution was added to the second amendment adopted on August 18, 2000.

The various provisions in the UDHR are included in the 1945 Constitution, including protecting personal property, which no one can arbitrarily confiscate. This provision is contained in Article 17 paragraph (1) of the UDHR, which states, "Everyone has the right to own property alone as well as in association with others." Furthermore, in paragraph (2), "No one shall be arbitrarily deprived of his property." Whereas in the 1945 Constitution, it is contained in Article 28 H paragraph (4), "Everyone has the right to have private property rights, and these property rights may not be taken over arbitrarily by anyone." Meanwhile, Indonesia is a country that also adheres to a communalistic understanding, regulating private ownership of an object, in this case, land, not only functions for the owner but also has a social function. This is explicitly stated in Article 6 of Law Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles (UUPA), "All land rights have a social function." With this provision, the State can "take over" community lands for reasons of public interest to be developed for the common interest.

When the General Assembly declared the UDHR, United Nations, although no country refused, eight countries abstained from the UDHR. These countries include Saudi Arabia, Belarus, Czechoslovakia, Ukraine, Poland, the Soviet Union, Yugoslavia, and South Africa. Saudi Arabia and other Islamic countries object to the existence of Article 16 paragraph (1) of the UDHR, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." In Islamic teachings, marriage between Muslim women and non-Muslim men is prohibited. For this reason, Saudi as a country based on Islam, which is sourced from the Qur'an and Hadith, objected to the provisions of Article 16 paragraph (1) of the UDHR because UDHR abolished religious restrictions. to get married.

In addition, Saudi Arabia also objected to Article 18 of the UDHR, which states, "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." Islam teaches that there is no compulsion to enter Islam, but Islam forbids anyone who has embraced Islam to leave this noble teaching. The departure of someone from the teachings of Islam is called an apostate and has its threats both in this world and in the hereafter. For this reason, Saudi Arabia also objected to accepting the UDHR. It is clear from Article 18 of the UDHR, which is based on secularism, separating religious life from the world or setting aside religious teachings in the affairs of worldly life. Even though Islamic teachings not only regulate matters of worship rituals but also regulate world life.

For socialist countries, the existence of Article 17 is a reason for them to abstain. Article 17 of the UDHR states, "(1) Everyone has the right to own property alone as well as in association with others." Moreover, the verse "(2) No one shall be arbitrarily deprived of his property." The existence of this article is contrary to the socialist-communist teachings, which prioritize the common interest rather than the individual. In socialist countries, Article 17 of the UDHR is considered a manifestation of individualist understanding that upholds personal rights. While socialist teachings put more emphasis on communalistic teachings. Meanwhile, in Indonesia, the 1945 Constitution has accommodated the provisions of Article 17 of the UDHR in Article 28 H paragraph (4) of the 1945 Constitution, "Everyone has the right to have private property rights and such property rights may not be taken over arbitrarily by anyone." This article protects everyone's property from insecurity, from parties who want to seize it arbitrarily. Although Indonesia adopted the provisions of Article 17 of the UDHR in Article 28 H paragraph (4) of the 1945 Constitution, Article 6 of the UUPA also adopted an understanding that upholds common or social interests, "All land rights have a social function." In General Elucidation II number 4 of the LoGA, it explains the purpose of the Social Function, namely:

*"That any land rights that exist in a person, cannot be justified, that his land will be used (or not used) solely for his interests, especially if it causes harm to the community. The use of land must be adapted to its conditions and the nature of its rights so that it is beneficial for the welfare and happiness of those who own it and the community and the state. The Basic Agrarian Law also takes into account individual interests. The interests of the community and the interests of individuals must balance each other so that in the end, the main goal will be achieved: prosperity, justice, and happiness for the people as a whole (article 2 paragraph 3).*

The existence of Article 6 of the UUPA stipulates that all land rights owned by the community are not solely used for personal interests but must also pay attention to the people's interests. The principle of social function is taken from the provisions of Article 33 paragraph (3) of the 1945 Constitution, although this article does not explicitly state the term social function. With this principle, land should not harm the public interest, and to protect the public interest, the government can intervene in someone's land ownership. The existence of Article 6 of the LoGA takes a compromise route between two notions, namely individualism and communalism, or between personal interests and the community together. According to Sutiknyo, conveyed by Mahfud MD, the LoGA initially received criticism from two extreme camps who accused the LoGA of liberal individualism and conflict with Pancasila because it allowed land ownership even with certain limitations, while the other camp accused the LoGA of a communistic character because even though it allowed ownership of land on land by individuals but imposes restrictions that violate individual rights.

Historically, social functions were born in the West as a reaction to the excessive use of property rights, causing harm to the interests of others. Legal history recognizes it as an abuse of rights (*misbruik van eigendomsrecht*). Meanwhile, the concept of property rights was born in a situation of liberalism. Therefore, property rights reflect the character of the community. For people who follow liberalism, it is undoubtedly different from people who follow socialism. According to Mahfud MD, the consequence of the social function is that if there is abandoned land, the rights to the land return to the "right of control from the state." Besides that, it can also have consequences for the state's authority to determine the maximum and minimum area of land that can be used as property rights and revoke land rights needed for the public interest based on the provisions of the law. Related to the above, Article 36 of Law Number 39 of 1999 concerning Human Rights (UU HAM) has combined the provisions contained in Article 28H

paragraph (4) of the 1945 Constitution with Article 6 of the UUPA. Combining the protection of individual property rights with the social function of an object. Article 36 of the Human Rights Law:

- (1) *Everyone has the right to own property, either alone or together with others, to develop himself, his family, the nation, and society in a manner that does not violate the law.*
- (2) *No one may be deprived of his property arbitrarily and against the law.*
- (3) *Property rights have a social function.*

This provision shows the result of a compromise of two different understandings. On the one hand, recognizing individual rights, on the other hand, individual rights can be set aside if social interests so desire. This kind of arrangement is neither individualistic nor communalistic. According to Mahfud MD, this kind of arrangement is prismatic. The prismatic concept is a concept that brings together the excellent side of individualism (respect for individual freedom rights) and the good side of communalism (respect for the equality of human dignity). The rights of a person are not free (not unlimited) because they are always limited by the rights of others and the rights of the wider community, whether carried out by the government for reasons of public interest or by other parties for various development activities. Therefore, the expropriation of rights must be carried out per statutory regulations followed by fair compensation, both for fictitious losses (land, buildings, plants, etc.), certain advantages/benefits, etc.). In the explanation of Article 36 paragraph (3) of the Human Rights Law, it is explained:

*"Property rights have a social function" is that every use of property rights must pay attention to the public interest. If the public interest wants or needs it, the property rights can be revoked following the provisions of the legislation.*

According to Boedi Harsono, the public interest must take precedence over personal interests, following the legal principles that apply to living together in society. Nevertheless, individual interests are not ignored because individual land rights are respected and protected by law. So, if the public interest wants to override personal interests, which result in personal losses, then there must be compensation for all of it. Article 5 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest (Law No. 2 of 2012) states that "The Entitled Party is obliged to relinquish their land at the time of the implementation of Land Procurement for Public Interest after granting Compensation or based on a court decision which has obtained permanent legal force." With this provision, a person's ownership of land rights is limited by the public interest. Article 5 of Law no. 2/2012 clarifies the social function, namely, in the context of land acquisition for the public interest. Individual ownership of land can be waived if the public interest so desires. Article 10 of Law No. 2/2012 stipulates that land for public purposes is used for development:

- a. *national defense and security;*
- b. *public roads, toll roads, tunnels, railway lines, railway stations, and railway operating facilities;*
- c. *Reservoirs, dams, dams, irrigation, drinking water canals, sewers and sanitation, and other irrigation structures;*
- d. *Ports, airports, and terminals;*
- e. *Oil, gas, and geothermal infrastructure;*
- f. *Generation, transmission, substation, network, and distribution of electric power;*
- g. *Government telecommunications and information networks;*
- h. *Places for waste disposal and processing;*
- i. *Government Hospital/Local Government;*

- j. public safety facilities;*
- k. Public cemeteries of the Government/Regional Government;*
- l. Social facilities, public facilities, and public green open spaces;*
- m. Natural and cultural reserves;*
- n. Government Office/Regional/Village Government;*
- o. Arrangement of urban slum settlements or land consolidation, as well as housing for the community*
- p. Low income with rental status;*
- q. Government/Local Government education or school infrastructure;*
- r. Government/Local Government sports infrastructure; and*
- s. Public market and public parking lot.*

While the social functions regulated in Article 6 of the LoGA and Article 36 paragraph (3) of the Human Rights Law, as a juridical basis for social interests cannot make the state take people's land arbitrarily, but several provisions must be met, such as paying the land at a fixed price. Reasonable when taking public land for public purposes. Article 33 of Law no. 2/2012 states that the Appraisal of the Value of Compensation shall be carried out on a plot per plot of land, including:

- a. Land;*
- b. above ground and underground space;*
- c. building;*
- d. plant;*
- e. objects related to land; or*
- f. other losses that can be assessed.*

The value of the amount of compensation given is the value at the time of the announcement of the determination of the construction location for the Public Interest. The amount of compensation designed by the appraiser becomes the basis for discussion with the landowner. If certain land parcels affected by the Land Procurement have residues that can no longer be functioned according to their designation and use, the Entitled Party may request a complete replacement of the land parcels. Compensation can be given in the form of:

- a. Money;
- b. replacement land;
- c. Resettlement;
- d. Shareholding; or
- e. Both parties agree upon other forms.

To make compensation payments, it must be preceded by deliberation. If deliberation is not reached, the judiciary will decide the amount of compensation paid for land acquisition in the public interest. With this kind of arrangement, community ownership rights over their lands are not easy to be "taken away" by the state. The existence of these strict requirements shows that legislators respect and protect community land ownership. The acknowledgment of land ownership, which has been concretized with a certificate, has long occurred during the Ottoman Caliphate era, as stated in Article 1737 of the Islamic Civil Code. Likewise, in other countries

such as the UK, a certificate acknowledges one's land rights as regulated in the Land Registrations Act 1925).<sup>7</sup>

In Indonesia, land rights certificates serve as solid evidence confirmed in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which has now been revoked and reaffirmed. The study of the certificate's validity is significant, at least because first, the certificate provides legal certainty of land ownership for the person whose name is listed in the certificate. Issuance of certificates can prevent land disputes. Ownership of certificates will give a feeling of peace and security because they are protected from arbitrary actions by anyone. Second, the granting of certificates is intended to prevent land ownership disputes. Third, with the ownership of the certificate, the landowner can take any legal action as long as it does not conflict with the law, public order, and morality. In addition, certificates have economic value, where certified land has a high economic value if used as debt security with mortgage rights over the land.<sup>8</sup> Even though it has received recognition in the LoGA, the certificate does not guarantee legal certainty for the owner because the regulations themselves provide an opportunity where as long as other parties feel they own the land, they can sue the party whose name is civilly listed in the certificate to the General Court, or sue the Head of the BPN to the Administrative Court. State Enterprises, or lawsuits concerning the technical administration of the publication.<sup>9</sup> The lawsuit to the court is because the certificate has two sides, namely, on the one hand, civilly, the certificate is proof of ownership. On the other hand, a certificate is a form of determination (best hiking) issued by the Head of the Land Office as a State Administration Officer, which is the best hiking. It is a form of acknowledgment of land ownership rights for the owner. The certificate issued is also declaratory, namely a decision to recognize something that already exists and is given because it has fulfilled the specified conditions. The issuance of declaratory decisions is carried out to realize a provision in the law that is still abstract in the form of a concrete event, for example, a certificate issuer.<sup>10</sup>

There are lawsuits by other parties who feel they own land to court because land registration in the LoGA uses a negative publicity system, and the state does not provide guarantees. As for the positive registration system, the truth of the data presented is guaranteed by the state. In the negative publication system, the state does not guarantee the truth of the data presented. Land registration using a negative publicity system is motivated by land law in Indonesia, which uses customary law, where if one person for some time leaves his land uncultivated, then the land is worked on by someone else who acquired it in good faith, then the right to reclaim the land is lost.<sup>11</sup> Of these problems, there are at least three main problems behind the issuance of fake certificates. First, misunderstanding, recognizing, and applying for the position in the issuance of a fake certificate. Second, the problem is reinforced by a lack of understanding of the institution of land ownership rights or the institution of transferring land ownership and ignoring the link

<sup>7</sup>Pasal 1737 Kitab Undang-Undang Hukum Perdata Islam (Zaman Kekhalifahan Turki Usmani Versi Mazhab Hanafi), p.432. Read also Adrian Sutedi, *Sertifikat...*, p.1.

<sup>8</sup>Bachsan Mustafa, *Hukum Agraria dalam Perspektif*, (Bandung: Remaja Karya, 1988), p.57. Read also Rusmadi Murad, *Administrasi Pertanahan Pelaksanaannya Dalam Praktik*, (Bandung: Mandar Maju, 1997), p.46.

<sup>9</sup>Supriadi, *Hukum Agraria*, (Jakarta: Sinar Grafika, 2009), hlm.56. Read also Munsyarif dkk, *Kebijakan Pengaturan Pertanahan Daerah Yogyakarta*, (Yogyakarta: Pusat Penelitian dan Pengembangan BPN-RI, 2010). p.1-4. Ni'matul Huda, *Beberapa Kendala Dalam Penyelesaian Status Tanah Bekas Swapraja di DI Yogyakarta*, Jurnal hukum UII No.13 Vol. 7 April 2000.

<sup>10</sup>Sadu Wasistiono, *Kapita Selekta Penyelenggaraan Pemerintahan Daerah*, Bandung: Alqaprint Jatinangor, p. 27, lihat juga dalam Agung Hendarto, Nazar Suhendar (eds), *Good government dan Penguatan Institusi Daerah*, Masyarakat Transparansi Indonesia (MTI), 2002, hl 2-3.

<sup>11</sup>Phillipus M. Hadjon, *Pengantar Hukum Perizinan*, (Surabaya: Yuridika, 1993), p. 2.

points in legal institutions between legal systems. Third, there was an act of legalizing a mutation document with a legal defect, making a deed of transfer of rights not carried out by PPAT. Fourth, the land administration system is not sound, so it cannot prevent the birth of fake certificates. To anticipate or prevent certificate forgery, at least several things must be done, including:<sup>12</sup>

1. Good printing of certificate blanks, so they are difficult to forge.
2. Before making the deed of transfer of rights, first check the certificate of land rights at the Land Office.
3. Safeguarding the archives of land certificates, mainly land book archives and situation drawings/measurements.
4. Increase the accuracy and thoroughness of officials who issue certificates.

As for dual certificates, i.e., a plot of land has more than one certificate, there is a complete or partial overlap of multiple certificates because the certificates are not mapped in the land registration map or the situation map in the area. If a registration map or situation map at each Land Office is made, or a picture of the situation/measurement letter is made on the map, the possibility of duplicate certificates is minimal. However, if there is a double certificate, then there must be a cancellation from one of the parties by checking the supporting documents. This can take a long time, especially if there is a certificate lawsuit to the court, to request annulment for the aggrieved party. However, the case for dual certificates must be examined because it can be caused by various things, whether duplicated by an outside party or because it has been reissued. The birth of multiple certificates cannot be separated from the Land Office officials' actions, such as canceling an old certificate and issuing a new certificate for and on behalf of another person without the knowledge of the owner whose name was listed in the old land certificate.<sup>13</sup> Land problems from year to year develop and are complex. The complexity, problems, and quantity align with the dynamics in the economic, social, and political fields. The typology of cases in the land sector can be broadly divided into five groups, namely:<sup>14</sup>

1. Cases relating to people's cultivation of plantation, forestry, and other lands;
2. Cases regarding violations of Landreform regulations;
3. Cases relating to excesses of land provision for development;
4. Civil disputes relating to land issues;
5. Disputes regarding ulayat land.

One way to anticipate various problems over land rights is by way of land registration to create legal certainty and strengthen land rights. Along with economic, social, and political developments, “the land rights mentioned in Article 16 jo. Article 53 of the LoGA is not a limitation, meaning that in addition to the land rights mentioned in the LoGA, it is possible to create new land rights regulated explicitly by law.<sup>15</sup> The Land Registration Law, which was previously regulated in Government Regulation of the Republic of Indonesia Number 10 of 1961, is considered to be no longer able to fully support the achievement of more tangible results in national development and needs to be replaced by Government Regulation of the Republic of

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<sup>12</sup> Adrian Sutedi, *Sertifikat...*, p.10.

<sup>13</sup> *Ibid.*

<sup>14</sup> Maria SW Soemardjono, Nurhasan Ismail, Isharyanto, *Mediasi Sengketa Tanah (Potensi Penerapan Alternatif Penyelesaian Sengketa (ADR) Di Bidang Pertanian*, Cet kedua, (Jakarta, Penerbit Buku Kompas, , 2008), p. 2

<sup>15</sup> Urip Santoso, *Hukum Agraria & Hak-hak Atas Tanah*, (Jakarta: Prenada Media Group, 2005), p. 89.

Indonesia Number 24 of 1997 in order to ensure the improvement of sustainable national development and guarantee of legal certainty in the land sector. In his online article, Agust tries to compare the substance of PP No. 10 of 1961 with PP 24 of 1997 as follows:<sup>16</sup>

a. General requirements

In PP No. 24 of 1997, there is only one article but consists of twenty-four items. In these twenty-four points, the implementation of land registration starts from the 1960 BAL and the main points of PP. 10 of 1961. The implementation of land registration itself is not much different from PP. 10 of 1961, namely from the village. However, it is more equipped with an explanation of State land and biological data and juridical data.

b. Land Registration

In this chapter, there are differences between PP No. 10 of 1961 with PP No. 24 of 1997. in PP No. 10 of 1961, chapter two regulates the Measurement, Mapping, and Administration of Land Registration Administration, while in PP no. 24 of 1997, chapter two regulates the Principles and Objectives. In this case, in PP No. 24 of 1997, the implementation of land registration is discussed in Chapter III. The comparison between the implementation of land registration in the two PPs is that in PP No. 24 of 1997 concerning Land Registration, it is more clarified. The implementation and implementation of land registration and the object of land registration are discussed in detail—likewise, the composition of the Adjudication Committee.

c. Land Registration For the first time

In terms of comparison regarding land registration for the first time in PP No. 24 of 1997, it focuses on the stages of starting land registration which is explained in detail in stages. Meanwhile, in PP No. 10 of 1961 concerning land registration for the first time, it is not explained or even mentioned. PP No. 10 of 1961 only mentions the registration of rights, transfer, and revocation of land rights in the land book, organized into several parts.

d. Certificate Issuance

In the issue of certificates, there are quite striking differences between PP No. 10 of 1961 and PP No. 24 of 1997. PP No. 10 of 1961 mentions the issuance of new certificates, while PP No. 24 of 1997 mentions replacing replacement certificates. Explain because of this striking difference, the content of this section is undoubtedly very different, which is in PP No. 10 of 1961, the period for granting and issuing new certificates. While PP No. 24 of 1997 explained about the replacement of damaged or lost certificates. In terms of the issuance period, they are not much different, and only the management issues are different.

According to article 16 of the Basic Agrarian Law (UUPA), the land tenure system in Indonesia recognizes the following rights:

- a. Property rights are described as “the fullest and strongest rights one can have over land and which can be passed down from generation to generation.” A property right can be transferred to another party. Only Indonesian citizens (individuals) can get property rights, while when it comes to corporations, the government will determine which

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<sup>16</sup>Agust Hutabarat, Membandingkan Substansi PP No. 10 Tahun 1961 dengan PP No. 24 Tahun 1997, in *Mata Pena*, <http://agusthutabarat.wordpress.com/2009/01/07/membandingkan-substansi-pp-no-10-tahun-1961-dengan-pp-no-24-tahun-1997/>.htm, 2009.

- corporations are entitled to land ownership rights and what conditions must be met by corporations to obtain these rights.
- b. Cultivation right is a right to cultivate, which is the right to cultivate land directly controlled by the state for a specific time, granted to companies engaged in agriculture, fishery, or animal husbandry. A right to cultivate can only be granted on a minimum of 5 ha of land, provided that if the land in question is more than 25 hectares, sufficient investment will be made, and proper business management will be enforced. Cultivation rights can be transferred to another party. The period of granting the right of cultivation is strictly enforced (maximum 25 years). Only Indonesian citizens and business entities formed under Indonesian law and domiciled in Indonesia can obtain the right to cultivate. Cultivation rights can be used as loan collateral by adding a security title.
  - c. Hak Guna Bangunan is a right to use a building described as the right to construct and own a building on land owned by another party for a maximum period of 30 years. A right to use a building can be transferred to another party. Ownership of building use rights can only be obtained by Indonesian citizens and companies established under Indonesian law domiciled in Indonesia.
  - d. Use rights are usufructuary rights, which are rights to utilize or collect proceeds from land directly controlled by the state or land owned by other individuals who grant rights holders with the authority and obligations outlined in the rights grant agreement. A usufructuary right can be granted for a particular time, or as long as the land is used for a particular purpose, free of charge or a certain fee, or in exchange for certain services. Apart from being granted to Indonesian citizens, usage rights can also be granted to foreign citizens living in Indonesia. Concerning land directly controlled by the state, a usufructuary right can only be transferred to another party if it obtains permission from the competent authority.
  - e. Lease rights are the rights of a business entity or individual who has a lease right on land and has the right to use land owned by another party to use buildings by paying a certain amount of rent to the owner. Payment of this rent can be made all at once or in stages, both before and after using the land. Indonesian citizens, foreign nationals, business entities, including foreign business entities, can own land lease rights. Lease rights do not apply to state land.
  - f. The right to clear land and the right to collect forest products is the right to clear land, and the right to collect forest products can only be obtained by Indonesian citizens and is regulated by a Government Regulation. Using a legal right to collect forest products does not necessarily mean getting the right of ownership on the land in question. The right to clear land and collect forest products is a land right regulated in customary law.
  - g. Mortgage rights are mortgage rights listed in Law no. 4 1996 regarding the certainty of land rights and objects related to land (Security Title on Land and Land-Related Objects) in mortgage cases.

The 1960 BAL also often mentions ulayat rights, although the definition of this right is not spelled out. Those who have customary rights are customary law communities as the embodiment of all their members, not individuals. This type of right is related to civil law, which relates to joint ownership of the land, and public law, in the form of authority to manage, regulate and lead the allocation, control, use, and maintenance of it.

***Land Dispute with Political Dimension***

Talking about land disputes and conflicts involves several interrelated aspects. This is due to the various backgrounds of the disputes and conflicts. These tendencies are influenced by interest factors behind land disputes and conflicts, such as economic, political, civil, criminal, administrative, etc. In the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency concerning Procedures for Handling Land Disputes in Chapter I paragraph (2) it states that interested parties are parties who feel they have a legal relationship with specific land parcels or other parties whose interests are affected by the status of the land. Land disputes of a political nature are usually characterized by the following:<sup>17</sup>

- 1) Involve the community at large.
- 2) Causes anxiety and vulnerability in the community. Disruption of security and order.
- 3) Generating distrust of the government/state organizers.
- 4) Disrupt the implementation of national development, and pose a danger of national disintegration.

Land disputes with political tendencies are usually caused by factors outside the law, such as taking advantage of popular issues at certain times. Therefore, land disputes with a political dimension are more dominated by the political situation.<sup>18</sup> The manifestation of the political dispute above, carried out in the form of demonstrations, emphasis on government institutions through institutions that are felt to be able to channel the aspirations of the community such as non-governmental organizations, the People's Representative Council, the National Human Rights Commission, the Ombudsman Commission and even to the National Human Rights Institution Presidency. Its forms are, among others:

- a) Demands land return (reclaiming action) resulting from taking land during the colonial era.
- b) Demands the return of arable land, which another party now controls.
- c) Seizing of plantation lands.
- d) Occupation of government agency assets.
- e) Demands for granting rights to former private land occupied by the people.
- f) Claims for return of land or claims for compensation due to land acquisition policies for development in the past.
- g) Demands land tenure by customary law communities over ulayat lands in their territory.
- h) Demands the return of land controlled by the people on a large scale taken over by certain parties.
- i) Demands redistribution of land affected by land reform objects.
- j) Demands the process of acquiring land rights that do not consider the availability of land for the community or the interests of the surrounding community.
- k) Demands the return of land whose use is not following the location permit.
- l) The land belonging to the affected Dutch citizen
- m) Provisions of Law No. 3 of 1960.
- n) The issue of land belonging to a prohibited organization.

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<sup>17</sup>Bernhard Limbong, *Konflik Pertanahan...*,p. 277.

<sup>18</sup>These political disputes are, among others, due to: First, the discovery of many inequalities in the structure of land ownership and the existence of large-scale exploitation without considering the carrying capacity of the land and the environment, which disrupts land use. Second, the law has not fully touched all levels of society, especially the lower classes of society related to legal certainty in the rights to tenure.. Summerized Bernhard Limbong, *Konflik Pertanahan...*,p. 278.

Given its very vital nature, it can cause disturbances and involve many people, so proper handling is required. This is necessary for anticipation of adverse effects detrimental to the public interest, so the handling of land settlements in the corridor must be carried out immediately.

### ***Land Disputes with Socio-Economic Dimension***

Land disputes with socio-economic dimensions often arise in society. The leading cause is the existence of dominant land ownership inequalities. In society, there is a very striking difference between people who have vast lands. On the one hand, some people only have narrow land and do not even own land.<sup>19</sup> A very significant difference in the socio-economic field is the leading cause which is influenced by several factors, including several laws and regulations in the land sector that are not implemented, the emergence of land grabbing because the landowners ignore their obligations. Based on this, each holder of land rights is burdened with certain obligations that must be carried out, including:<sup>20</sup>

- 1) Actively cultivate the land.
- 2) Increase fertility and prevent soil damage.
- 3) Maintain land boundaries.
- 4) Manage the land according to its designation.

In the context of a dispute with a civil dimension, it is closely related to the subject and object of land on having a correlation and relationship of interest in the civic association. In this condition, it is necessary to understand that related to land certification through land registration activities, Government Regulation Number 24 of 1997 concerning Land Registration is determined on the procedures and procedures. Determining land rights based on these rules is primarily determined by biological data, administrative data, and juridical data. As long as the data is carried out correctly, the risk of errors in land certificates is minimal. The impact of mistakes and errors opens up opportunities for lawsuits or objections for other parties. This is possible, considering that our land registration system or system adheres to a negative system, even though it is not pure.<sup>21</sup> A negative Stelsel or publication system has the consequence that the government cannot fully guarantee that the data presented contains absolute truth. Therefore, the consequence is that even though the land in question has been registered and a certificate of land rights has been issued, it is still possible to be sued by other parties. Furthermore, the other party's lawsuit may win the lawsuit as long as it can prove that the land in question while obtaining a land title certificate has been proven to violate aspects and procedures that violate physical, administrative, and juridical data.<sup>22</sup>

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<sup>19</sup>Rusmadi Murad, *Menyingkap Tabir Masalah Pertanahan, Rangkainya Tulisa dan Materi Ceramah*, (Bandung: CV Mandar Maju, 2007), p. 17.

<sup>20</sup>Failure to fulfill these obligations can invite parties who are not entitled to control the land in question. This will lead to a dispute between the landowner and the parties who control the land illegitimately. The dispute is not only caused by the lack of equal distribution of control and ownership of land but can also be caused by the lack of available employment opportunities. While needs in social life demand to be fulfilled, then. illegal occupation of land is an act of compulsion. Summarized from Bernhard Limbong, *Konflik Pertanahan....*,p. 296.

<sup>21</sup>Agust Hutabarat, Membandingkan Substansi PP No. 10 Tahun 1961 dengan PP No. 24 Tahun 1997, dalam *Mata Pena*, <http://agusthutabarat.wordpress.com20090107membandingkan-substansi-pp-no-10-tahun-1961-dengan-pp-no-24-tahun-1997.htm>, 2009. Read also Urip Santoso, *Hukum Agraria & Hak-hak Atas Tanah*, (Jakarta: Prenada Media Group, 2005), p. 89.

<sup>22</sup>*Ibid.*

### ***Procedures for Handling Land Disputes and Conflicts at the Land Office of Sleman Regency***

The increase in the quality and quantity of land disputes is due to the increasing need for land and the increase in land acquisition for development for the public interest, which has also increased. Such conditions must be anticipated with laws and regulations as one of the resolutions of disputes for interested parties. Therefore, in one of the preamble points in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 1 of 1999 concerning Procedures for Handling Land Disputes, it is stated in considering letter a. that with the increasing need for land for development purposes, land disputes will also increase which are submitted to the Office of the State Minister of Agrarian Affairs/National Land Agency. Meanwhile, what is meant by land disputes is based on Chapter I, General Provisions, Article 1 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency (Kep PMA/BPN) Number 1 of 1999:

1. Land disputes are differences of opinion regarding:
  - a. The validity of a right;
  - b. Granting of AK over land;
  - c. The registration of land titles includes transferring and issuing evidence of their rights between interested parties and between interested parties and agencies within the National Land Agency.
2. Interested parties are parties who feel they have a legal relationship with specific land parcels or other parties whose interests are affected by the legal status of the land.
3. Minister is the State Minister/Head of the National Land Agency.

In carrying out its functions, especially in the Land Office of the Sleman Regency, it is based on the Regulation of the Head of the National Land Agency Number 5 of 2008 concerning the Description of Duties of Sub-Sections and Sections at the Regional Office of the National Land Agency and Job Descriptions of Affairs and Sub-Sections at the Land Office. In the Twelfth Part concerning the Dispute, Conflict, and Case Section Article 45, it is stated: The Dispute, Conflict and Case Section consists of:

- a. Land Disputes and Conflicts Subsection;
- b. Land Case Subsection.

In connection with the above, the Sub-section of Land Disputes and Conflicts has the task of preparing legal, social, cultural, economic, and political studies of land disputes and conflicts, proposing recommendations for the cancellation and termination of legal relations between people and or legal entities with land, implementing alternative dispute resolution through mediation, facilitation, and coordination in handling disputes and conflicts. The typology of cases in the defense sector can be broadly divided into five groups, namely:<sup>23</sup>

1. Cases related to people's cultivation of plantation, forestry, and other lands;
2. Cases regarding violations of Landreform regulations;
3. Cases relating to excesses of land provision for development;
4. Civil disputes relating to land issues;
5. Disputes with ulayat land.

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<sup>23</sup>Maria SW Sumardjono, dkk, *Mediasi Sengketa Tanah, Potensi Penerapan Alternatif Penyelesaian Sengketa di Bidang Pertanian*, (Jakarta: Gramedia, 2008), p. 2.

Using land dispute mediation, one can use ADR (Alternative Dispute Resolution), which is implicitly contained in Presidential Regulation Number 10 of 2006 concerning the National Land Agency. In the Organizational Structure, one deputy is formed, namely the Deputy for the Assessment and Handling of Land Disputes and Conflicts. BPN has also issued Technical Instructions for Handling and Settlement of Land Problems through the Decree of the Head of BPN RI Number 34 of 2007. In carrying out its duties related to land disputes and conflicts, the National Land Agency is one alternative that can use its efforts through mediation. The formation of a deputy is urgent due to the increased resolution of disputes and conflicts, and there is a belief that the settlement effort does not have to go through the courts but through mediation. In carrying out its duties in the Subsection of Land Disputes and Conflicts, the Land Office of Sleman Regency bases on Praturan Kep. BPN RI No. 5 of 2008 Calm Description of Duties of Subsections and Sections at the Regional Office of the National Land Agency and Job Descriptions of Affairs and Subsections at the Land Office, namely the thirteenth again on Job Descriptions for Subsections Paragraph 1 Description of Duties for the Subsection of Land Disputes and Conflicts in Article 46. The descriptions of such duties as referred to are contained in article 46 number (2) as follows:

- a. Submit suggestions or considerations to the Head of the Dispute, Conflict, and Case Section regarding the actions that need to be taken in preparing legal, social, cultural, economic, and political studies on land disputes and conflicts, regarding recommendations for the cancellation and termination of legal relations between persons or entities law with land, implementation of alternative dispute resolution through mediation, facilitation, and coordination of dispute and conflict handling;
- b. Collect and study laws and regulations, policies, guidelines, and technical instructions as well as other materials related to their field of work as guidelines and work bases;
- c. Make a plan of activities to be carried out by the Land Dispute and Conflict Subsection as a guideline for carrying out tasks and monitoring its implementation;
- d. Prepare materials in the context of preparing technical guidelines and instructions in preparing legal, social, cultural, economic, and political studies of land disputes and conflicts, matters of recommendations for the cancellation and termination of legal relations between people and or legal entities with land, implementation of alternative dispute resolution through mediation, facilitation, and coordination of dispute and conflict resolution;
- e. Collect, collect and systematize/process data and information related to legal, social, cultural, economic, and political studies of land disputes and conflicts, propose recommendations for the cancellation and termination of legal relations between individuals or legal entities with the land, implementation of alternative dispute resolution through mediation, facilitation, and coordination of dispute resolution;
- f. Collect and systematize data on disputes, land conflicts, and cancellations;
- g. Calling the problematic/conflicting parties for deliberation to reach consensus;
  - h. Continue the process of requesting cancellation of land rights to the BPN Regional Office or BPN RI;
  - i. Make reports of disputes and conflicts as well as cancellations;
  - j. Conduct legal guidance and counseling;
  - k. Organize dispute and conflict archives;
  - l. Conduct data research and prepare conflict and resolution studies;
  - m. Resolving disputes and conflicts through mediation, reconciliation, and or facilitation;

- n. Conduct site inspections in the context of collection and use as material for resolving land disputes and conflicts;
- o. Conduct data research and prepare proposed decisions on cancellation of rights;
- p. Conduct research and prepare recommendations for the cancellation of rights;
- q. Implement technical guidance in handling land disputes and conflicts;
- r. Prepare and carry out case titles;
- s. Prepare minutes of data processing;
- t. Conducting an inventory of problems and collecting materials in the framework of problem-solving in preparing legal, social, cultural, economic, and political studies of land disputes and conflicts, proposing recommendations for the cancellation and termination of legal relations between people and or legal entities with land, implementation of alternative dispute resolution through mediation, facilitation, and coordination of dispute and conflict handling;
- u. Carry out working relationships in the context of the smooth implementation of their duties with related work units;
- v. Carry out evaluations and compile reports on the implementation of work in preparing legal, social, cultural, economic, and political assessments of land disputes and conflicts, proposals for the cancellation and termination of legal relations between people and or legal entities with land, implementation of alternative dispute resolutions through mediation, facilitation, and coordinating the handling of disputes and conflicts;
- w. Carry out other tasks assigned by the leadership.

In the context of law enforcement, legal certainty, and justice related to the handling of land issues, especially those indicated by criminal acts, there has been a joint agreement between BPN and the Attorney General's Office, which is followed up at the regional level. This is stated in the Handling of Land Issues (Joint Agreement between the Prosecutor's Office of the Republic of Indonesia and the National Land Agency Number: KEP 427/A/J.A/07/2004 Number: 1/SKB/BPN/2004), which aims to:

- a. Equating perceptions in the rank of elaborating the provisions of the applicable laws and regulations, particularly concerning the investigation and handling of land cases that have indications of criminal acts;
- b. Develop a two-way communication and improve coordination in handling land cases that have indications of criminal acts.
- c. Completely resolve land cases that have indications of criminal offenses and legal issues in the civil and administrative fields under the authorities in their respective fields of duty.

As a follow-up to the Joint Agreement between the Prosecutor's Office of the Republic of Indonesia and BPN RI, it was followed up with the Submission of a Collective Agreement between the Prosecutor's Office of the Republic of Indonesia and the National Land Agency (Circular Letter of the Minister of Agrarian Affairs Number: 500-2204 of 2004. From this joint agreement, one of the facts is that in dealing with land disputes, preventive and persuasive actions should be prioritized and prioritize anticipatory security in terms of resolving problems that arise and equating perceptions of the application of laws and regulations in stages. This circular letter is also regulated in the case that the prosecutor's office requires evidence and testimony or as a witness. Experts so that this matter is coordinated with the District Attorney's Office or the local

High Prosecutor's Office and reports it to the leadership of the National Land Agency in anticipation of handling problems more effectively and efficiently in technical terms.

## CONCLUSION

Land disputes handled by the Land Office of Sleman Regency within the framework of legal certainty in land rights and justice, in its implementation using laws and regulations that have been determined and through mechanisms, and paying attention to the principle of propriety in society and using general principles good governance in carrying out public services within the framework of state administration carried out by state administrative apparatus. Legal certainty as one of the objectives in land registration has not been thoroughly carried out consistently. For example, when a land certificate that is more than five years old is closed for lawsuits or objections from other parties, its implementation has not been appropriately realized. This is correlated with the land registration publication system, which adheres to a negative system, even though it is stated that the certificate is a robust evidence tool related to land rights. In carrying out the settlement of land disputes, the land office in the settlement does not have to be completed by the Court but can use other instruments following the typology of the case, namely using a mediator and solving and resolving through Alternative Dispute Resolution (ADR). To achieve the above objectives, good cooperation and stakeholders are needed between relevant agencies, namely the Land Office of Sleman Regency, elements of the Court, as well as independent institutions that deal with land disputes, namely mediators, following the Decree of the Head of BPN RI No. 34/2007 concerning Technical Guidelines for Handling and Land Problem Resolution. Besides, it can use PP No. 24/1997, PMNA/Ka BPN No. 9/1999, and PMNA/Ka BPN No. 1/1999, namely mediation institutions, negotiation agencies, and ADR agencies. This opens the possibility of using consultations with relevant agencies for legal certainty of land rights.

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