

Legal Certainty and Procedural Justice in Land Management in Indonesia: Ensuring Rights Protection and Effective Dispute Resolution

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Abstract

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Land disputes are a persistent issue in many countries, including Indonesia, often complicated by conflicting land certificates and ambiguous regulations. This article explores the multifaceted aspects of resolving such disputes, emphasizing the pivotal role of land certificates in achieving legal certainty. In addressing these challenges, the research employs the juridical-normative legal method to analyze the complexities inherent in land dispute resolution. A significant finding is that disputes involving dual certificates frequently entail multiple stakeholders, necessitating a meticulous determination of rights and liabilities among the parties involved. Thus, the principle of dignified justice becomes paramount in adjudicating these disputes, ensuring equitable outcomes for all parties. The prevalence of dual certificates exacerbates legal uncertainty for landholders, undermining the efficacy of certificates as conclusive evidence of ownership. Consequently, there is a pressing need for legislative reforms aimed at fortifying the validity and indisputability of land certificates. Strengthening the legal framework is essential to uphold the integrity of property rights and enhance confidence in the judicial process. Agrarian reform emerges as a pivotal strategy in addressing these issues, offering a systematic approach to resolve disputes and establish robust legal frameworks. By reforming existing regulations, stakeholders can mitigate ambiguities and streamline processes, thereby fostering an environment conducive to sustainable development and equitable land distribution. Effective resolution of land disputes hinges upon collaborative efforts among diverse stakeholders, including government bodies, legal institutions, and community representatives. These collaborations are instrumental in devising comprehensive strategies that promote legal certainty and uphold justice.

1. Introduction

Land holds significant value as a highly valuable asset and plays a central role in human life, as humans heavily rely on land in their daily activities to meet their needs. Issues related to land ownership inherently often concern legal certainty over land rights for the community.¹ Therefore, it becomes clear that systematic recording of land and land rights is of great importance, both for the functioning of government, planning, and land use development, as well as for achieving legal certainty in the process of land ownership or transfer.² Broadly speaking, agrarian issues in Indonesia are governed by Law Number 5 of 1960 concerning Basic Agrarian Principles (Law No. 5/1960), followed by the issuance of Government Regulation Number 10 of 1961 concerning Land Registration (hereinafter referred to as PP No. 10/1961) and further refinement through Government Regulation Number 24 of 1997

¹ Iwan Permadi, "Problematika Pelaksanaan Program Pendaftaran Tanah Sistematis Lengkap (PTSL) Terhadap Pendaftaran Tanah Yang Berkepastian Hukum," *JUSTISI* 10, no. 1 (December 1, 2023): 68–79, <https://doi.org/10.33506/jurnaljustisi.v10i1.2512>.

² Putri Maha Dewi, "Kajian Tentang Perkembangan Globalisasi Dalam Formulasi Kebijakan Pembangunan Hukum Nasional Indonesia," *Adil Indonesia Jurnal* 1, no. 2 (December 30, 2019).

concerning Land Registration (PP No. 24/1997). The establishment of Law No. 5/1960 aims to provide certainty and legal protection regarding aspects of land tenure and ownership, in accordance with the aspirations of land rights holders. However, in reality, it has not fully achieved these goals in line with the essence of Law No. 5/1960. In practice, Law No. 5/1960 still falls short of the expectations and benefits anticipated by the community, primarily because certificates resulting from the land registration process often fail to provide adequate legal certainty and protection for their owners. Certificates serve as a form of evidence that affirm land rights³, functioning as authentic documents to provide legal certainty to their holders.⁴ Both individuals and legal entities holding land rights can easily verify their ownership status over a parcel of land, such as through information on land area, boundaries, existing building structures, contributions made to the land, and other relevant details. Despite land registration having taken place, disputes over land rights continue to occur within communities, resulting in lawsuits that lead to the blocking of land title certificates by the National Land Agency (BPN). Requests to suspend the validity of land title certificates can be submitted to the court for various reasons, such as lawsuits involving issues like dual certificates, debts, bankruptcy, and others. The existence of two or more certificates related to the same land plot indicates differences in both juridical and physical data. Physical information includes details about location, boundaries, land size, and units within registered condominiums, as well as information regarding any buildings or parts thereof.⁵

The issue I will discuss here pertains to the legal certainty and protection for victims of disputes involving dual land title certificates, which in reality is a prevalent issue in society. Coupled with the increasing complexity of land issues, this not only raises concerns among the populace but also significantly impacts the performance of the BPN, the primary institution responsible for land administration in Indonesia. Dual certificates arise when a single parcel of land has more than one certificate, creating legal uncertainty for land rights holders. This inevitably leads to disputes among certificate holders who accuse each other of possessing legitimate ownership, even when one of the certificates is proven false with information that does not align with reality. Thus, in ensuring legal clarity regarding land title certificates, one of the certificate holders needs to file a lawsuit in the State Administrative Court. This step aims to provide legal clarity for the rightful holder and annul one of the controversial certificates, thereby recognizing only one certificate as legally valid. The emergence of conflicts related to dual certificates is caused by objections raised by parties who feel aggrieved, subsequently filing claims against the decisions of the State Administrative Court issued by the BPN. The objection process is carried out with the aim for certificate owners to resolve issues administratively to obtain clarification and corrections from the BPN Administrative Officer. Initially, the resolution of disputes concerning dual certificates is conducted through negotiation, and if no agreement is reached, the Head of the BPN Office may unilaterally decide. However, if the parties are still dissatisfied with the decision, they may file a lawsuit in the State Administrative Court.⁶

³ Edi Wahjuningati, "Analisis Yuridis Kekuatan Hukum Sertifikat Sebagai Alat Bukti Kepemilikan Hak Atas Tanah," *MAKSIGAMA* 17, no. 1 (May 6, 2023): 19–28, <https://doi.org/10.37303/maksigama.v17i1.138>.

⁴ Abdul Muthallib, "Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Dan Ekonomi Islam* 12, no. 1 (July 11, 2020): 21–43, <https://doi.org/10.32505/jurisprudensi.v12i1.1673>.

⁵ Iva Haniva, "Perlindungan Hukum Terhadap Pembeli Hak Atas Tanah Sertifikat Ganda," *JISOS: Jurnal Ilmu Sosial* 1, no. 7 (August 25, 2022).

⁶ Reynaldi Tito Sukarno and Widyawati Boediningsih, "Penyelesaian Sengketa Sertifikat Ganda Hak Atas Tanah (Studi Kasus Di PTUN Semarang)," *Journal Transformation of Mandalika* 2, no. 3 (September 13, 2022).

Many previous studies have discussed legal protection related to dual certificates, as conducted by Kiki Rizki⁷; Zulfikar Rangga Utama and Ufran⁸; Maya Anas Taqiyyah, and Atik Winanti⁹. However, this study demonstrates a departure from previous research. It not only focuses on legal protection alone but also delves deeper into the procedural justice aspects in the context of dual certificates. The research explores how issues related to dual certificates are analyzed using a procedural justice perspective. Procedural justice becomes the primary focus in considering how cases of dual certificates are handled fairly and equitably for all parties involved. This analysis not only examines whether there are legal violations in the issuance or use of dual certificates but also scrutinizes the legal processes and institutions involved in handling such cases. Therefore, this research aims to provide a distinct contribution to understanding how the law regulates dual certificates and how procedural justice can be applied to ensure a fair and transparent legal process for all parties involved in such cases.

2. Methods

The method applied in this research paper is the Juridical-Normative legal writing method. According to Soerjono Soekanto, the Juridical-Normative approach involves legal research conducted by examining library materials or secondary data as the basis for investigation through systematic exploration.¹⁰ The normative legal approach essentially combines juridical elements derived from various regulations and literature related to the researched issues, such as laws, legal research journals, books, and various relevant data sources. This normative legal approach allows for the integration of normative legal principles found in legal literature and other data sources. The normative writing method involves applying normative legal principles (found in laws) to each legal event in a society. This analytical technique entails in-depth study of legal materials or literature to provide a comprehensive overview of the research topic, thereby offering accurate guidance to the author in formulating conclusions.

3. Results and Discussion

3.1. Legal Framework of Land Registration

The fundamental principle of the rule of law ensures legal certainty and legal protection, where citizens' rights should be safeguarded and guaranteed by the State. In this context, the Constitution of the Republic of Indonesia Year 1945 (UUD NRI 1945) stipulates that the State, as the highest entity or institution, has the authority to regulate all aspects related to the interests and welfare of society. From the perspective of Law No. 5/1960, the concept of agrarian law holds a comprehensive meaning, encompassing various aspects including land, water, and their natural resources. Additionally, airspace, areas above land, and water containing energy potential and elements utilized for the conservation and development of soil fertility, water, and their natural resources, as well as matters related to water utilization, are also included in the definition of agrarian law. On the other hand, land in juridical context can be defined as a right to a certain portion of the earth's surface, with limitations and

⁷ Kiki Rizki, "Perlindungan Hukum Pemegang Sertifikat Hak Milik Atas Terbitnya Sertifikat Ganda Berdasarkan Asas Kepastian Hukum," *Aktualita (Jurnal Hukum)* 3, no. 2 (December 17, 2020): 688-704, <https://doi.org/10.29313/aktualita.v0i0.6763>.

⁸ Zulfikar Rangga Utama and Ufran Ufran, "Analisis Perlindungan Hukum Bagi Pihak Pemegang Sertifikat Hak Milik Terhadap Penerbitan Sertifikat Ganda," *Indonesia Berdaya* 4, no. 1 (December 20, 2022): 417-22, <https://doi.org/10.47679/ib.2023418>; Maya Anas Taqiyyah and Atik Winanti, "Perlindungan Hukum Pemegang Sertifikat Atas Tanah Ganda Berdasarkan Peraturan Pemerintah No.24 Tahun 1997," *Jurnal Justisia : Jurnal Ilmu Hukum, Perundang-Undangan Dan Pranata Sosial* 5, no. 1 (July 8, 2020): 77, <https://doi.org/10.22373/justisia.v5i1.7272>.

⁹ Taqiyyah and Winanti, "Perlindungan Hukum Pemegang Sertifikat Atas Tanah Ganda Berdasarkan Peraturan Pemerintah No.24 Tahun 1997."

¹⁰ Soerjono Soekanto, *Pengantar Penelitian Hukum*, 3rd ed. (Jakarta: Universitas Indonesia, 2014).

dimensions in length and width.¹¹ Over time, land has become a source of prolonged conflicts among humans due to its limited availability, sparking fierce competition for land rights.¹² Landowners often make significant sacrifices to maintain their ownership. Furthermore, asserting that agrarian or land issues are essential to human life, as land is the origin and provider of food for humans. Revoking land rights means challenging access to food and life-supporting elements for humans. Therefore, many people are willing to sacrifice anything, including their lives, to defend their land ownership, ensuring survival for future generations.¹³

Land plays a crucial role in the life of a society. No individual or community group can be detached from its connection to land. Land serves as a foundation for various life resources, providing the basis upon which individuals or communities depend for survival. It is used for constructing various structures, establishing plantations, agricultural activities, fisheries, and other endeavors. In today's era, characterized by rapid population growth and modernization in transportation, communication, and information, the demand for land has escalated. This phenomenon is unavoidable, impacting both urban and rural populations. Hence, competition among humans intensifies to gain control over land as its economic value rises. Naturally, this can lead to land conflicts between individuals, individuals and communities, individuals and governments, communities, and even between communities and governments. These conflicts and disputes are integral to societal life, particularly with the rapid population growth, which increases the demand for land.¹⁴ In this context, land can be considered a source of problems, especially when ownership is not in accordance with procedures and lacks valid proof of ownership. In Islamic law, owned lands (*ardl mamlukah*), particularly those known as *ardl 'amiroh*, grant the owner exclusive rights without anyone having the right to contest or disturb the owner without permission. On the other hand, lands classified as *ardl ghamiroh* (unproductive lands) also remain under the ownership rights of their owners, who have the authority to sell, bequeath, or transfer them to others or institutions. These rights remain valid as long as the owner is known. If the owner or their heirs become unknown, the land may become unclaimed land (*luqathah*), cultivated by others, or revert to state ownership.¹⁵

Individual land rights all have elements or aspects of civil law, among them:¹⁶ Individual rights to land directly and even not directly originate from the collective rights of the nation. Various types of land rights are described in Article 16 and Article 53 of Law No. 5/1960, as well as in Government Regulation Number 40 of 1996 concerning Right to Cultivate, Right to Build, and Right to Land (hereinafter referred to as PP 40/1996), LNRI Year 1996 Number 58-TLNRI Number 3643. These types of land rights include Ownership Rights, Right to Cultivate, Right to Build, Right of Use, Building Lease Rights, Land Opening Rights, Forest Produce Collection Rights, Land Mortgage Rights, Profit-sharing Rights, Rights of Passage, and Agricultural Land Lease Rights. The regulation of land endowments is governed by Article 49 paragraph 3 of Law No. 5/1960 jo Government Regulation Number 28 of 1977 concerning Endowment of Owned Land (PP No. 28/1977), the implementation of which is then carried

¹¹ Sahnan, *Hukum Agraria Indonesia* (Malang: Setara Press, 2016).

¹² Sejahtera Imanuel Ginting and Idham Idham, "Perlindungan Hukum Untuk Pemegang Hak Atas Tanah Dengan Kasus Sertifikat Ganda Atas Sebidang Tanah Di Badan Pertanahan Nasional," *ARBITER: Jurnal Ilmiah Magister Hukum* 3, no. 2 (December 30, 2021): 188–202, <https://doi.org/10.31289/arbiter.v3i2.646>.

¹³ Anjani Puji Rahayu et al., "Penyelesaian Sengketa Sertifikat Ganda Kepemilikan Hak Atas Tanah," *JURNAL RUANG HUKUM* 3, no. 1 (May 20, 2024): 11–20, <https://doi.org/10.58222/juruh.v3i1.771>.

¹⁴ Ginting and Idham, "Perlindungan Hukum Untuk Pemegang Hak Atas Tanah Dengan Kasus Sertifikat Ganda Atas Sebidang Tanah Di Badan Pertanahan Nasional."

¹⁵ Sahnan, *Hukum Agraria Indonesia*.

¹⁶ Sahnan.

out through Minister of Home Affairs Regulation Number 6 of 1977 concerning Land Registration Procedures Regarding Endowment of Owned Land (Permendagri No. 6/1977) which stipulates the Land Registration Procedure in the Endowment of Owned Land. Endowment is defined as a legal act by individuals or legal entities that allocate half of their property in the form of land ownership and determine it permanently for personal or public interests in accordance with Islamic teachings, as explained in Article 1 paragraph 1 of GR No. 28/1977. Mortgage Rights are one form of collateral rights on land structured under national land law. According to Law No. 5/1960, mortgage rights can be applied to Ownership Rights (Article 25), Right to Cultivate (Article 33), and Right to Build (Article 39). Article 51 of Law No. 5/1960 also states that further regulations regarding Mortgage Rights are governed by Law. The Law related to Mortgage Rights is Law Number 4 of 1996 concerning Mortgage Rights on Land and Associated Objects (hereinafter referred to as Law No. 4/1996). Mortgage Rights refer to collateral rights placed on land rights in accordance with the provisions outlined in Law No. 5/1960.

Land registration process is a series of continuous and planned actions conducted by the government. This activity involves the collection, processing, recording, presentation, and maintenance of physical and legal data related to land and condominium units in the form of maps and lists. The process also includes issuing certificates as official documents that provide evidence of land rights that have been recognized, whether it is ownership rights over a piece of land or specific encumbrances affecting the land (see Article 1 number 1 of PP No. 24/1997). Rights to land are defined as rights described in Article 16 of Law No. 5/1960. Meanwhile, land parcels refer to portions of the earth's surface considered as a unit. Initially, land registration can be conducted through organized and irregular approaches. Land registration can occur in two main ways: systematically and sporadically. Systematic land registration involves registering land for the first time initiated by the government. This process is conducted simultaneously and covers all land registration objects not previously registered in a village or urban district. On the other hand, sporadic land registration involves registering land for the first time initiated by interested parties. This process can involve one or several land registration objects in a village or urban district, either individually or in larger quantities.¹⁷

Land registration, as outlined in Article 1 number 1 of PP No. 24/1997, can be defined as a series of continuous and scheduled actions conducted by the government. This process involves the accumulation, processing, archiving, presentation, and maintenance of physical and legal data in the form of maps and lists related to land and condominium units. The process also includes issuing certificates as evidence of ownership rights to the land, ownership of condominium units, and specific encumbrances affecting the land. The concept of land registration in this regulation expands the scope of land registration activities based on PP No. 10/1961, which previously only covered land surveying, mapping, bookkeeping, land registration, transfer of land rights, and issuing strong evidence of rights. Land registration activities involve two categories of data: physical data and legal data. Physical data provide details regarding the geographic position, boundaries, and area of the land, including information about registered building structures or components. Meanwhile, legal data includes information about the legal status of the land and registered condominium units, ownership rights, other involved parties, and any other legal burdens that may affect ownership of the land.

Law No. 5/1960 provides a legal framework for the Government to conduct land registration across the entire territory of the Unitary State of the Republic of Indonesia. The primary objective of this land registration is to secure legal certainty regarding land rights.

¹⁷ Sahnun.

The process of land registration includes various stages such as land surveying, land acquisition, and land clearing; recording land rights and their transfers; and issuing land certificates that serve as strong legal evidence. This law identifies several types of land rights that can be evidenced by a certificate, namely Ownership Rights, Right to Cultivate (*Hak Guna Usaha*), and Right to Build (*Hak Guna Bangunan*). Land registration is mandatory to provide legal certainty to individuals who own and possess land, thereby granting them formally recognized rights under the law and by the state. In other words, owning land without a certificate may lead to it not being legally recognized, making land registration and certificate issuance crucial steps. Land certificates serve as written documents containing both physical and legal data registered in the land book.¹⁸ These certificates guide landowners as written proof confirming their ownership rights. Ideally, each land certificate is issued for a single parcel of land. However, in reality, situations of multiple certificates for one parcel of land still exist, indicating challenges and complexities within the land registration system that need to be addressed.

The factors contributing to the occurrence of multiple certificates include the inability of the BPN to provide a valid and detailed database concerning land, which is a major obstacle. As a result, when land is re-registered, it is difficult to verify whether the land was previously owned and certified. Landowners are motivated to re-register land certificates because obtaining a new certificate is considered simpler and more economical than transferring land rights. The procedure for transferring rights involves the involvement of a Land Deed Official (PPAT) and payment of a 5% Acquisition Duty (BPHTB) based on the Tax Object Sales Value. A 5% Income Tax (PPH) is also levied on the Tax Object Sales Value. Additionally, there are additional costs such as PPAT deed-making fees. Landowners opt for issuing new certificates as collateral to various banks without incurring these expenses. This results in one piece of land having several different certificates, even though the land rights remain the same.

The negligence of the BPN in carrying out the Survey Registration Map occurs when each land measurement implementation fails to consider the technical base point bonds. Furthermore, the placement of images on land parcels is often careless and can lead to errors, such as incorrect placement of images or even instances where land parcels are forgotten to be depicted on the Registration Map. The limited availability of land registration maps covering the entire district area exacerbates this issue. The large number of land parcel images that have not been adequately mapped worsens the situation. Currently, Base Maps are obtained through the Land Office Computerism (LOC) application at land offices, along with AutoCAD Map facilities that can be used in Survey Registration Map production; however, the information provided still inadequately supports addressing this issue. The resolution of land disputes, typically falling under civil law jurisdiction, can be achieved either outside court through negotiations between parties or through litigation if no agreement is reached. Resolving disputes in state courts is a common option if negotiations between the parties fail to reach a consensus. Many land cases ultimately require court intervention, where resolution is formal and requires valid evidence. The importance of legal certainty regarding land rights is crucial in today's legal context. The law stipulates that certificates serve as highly persuasive evidence, ensuring that owners obtain legal certainty and appropriate legal protection. This is particularly relevant in the context of modern legal systems that prioritize legal certainty as a fundamental value.¹⁹

¹⁸ Wahjuningati, "Analisis Yuridis Kekuatan Hukum Sertifikat Sebagai Alat Bukti Kepemilikan Hak Atas Tanah."

¹⁹ Haniva, "Perlindungan Hukum Terhadap Pembeli Hak Atas Tanah Sertifikat Ganda."

Disputes such as cases of double certificates often involve more than two parties or groups²⁰, which means their resolution requires determining winners and losers. Despite being symbolized as a match, this dynamic often sidelines or disadvantages certain parties perceived as weaker. The disputing parties hope to achieve fair justice efficiently and economically. However, in litigation institutions like courts, disputes often take a long time and incur substantial costs. The aspiration to resolve conflicts quickly and affordably is often difficult to achieve. The development of judicial institutions in society is sometimes viewed as lacking independence because many cases are brought by parties with greater financial resources, eroding public trust in the fairness of these institutions. In reality, resolving land disputes is not inherently difficult when parties prioritize principles of dignified justice, which respect human rights. In handling land disputes, several steps should be taken. Firstly, dispute resolution should adhere to the constitution, particularly Article 33 paragraph (3) of the 1945 Constitution which states, "The land, water, and natural wealth contained therein shall be controlled by the state and used for the greatest prosperity of the people." This article asserts the nation's right over land, water, and natural resources, the state's authority to control them, and its obligation to utilize them to the fullest extent for the welfare of the people.

The second step involves aspects of information sustainability and community participation through:²¹

- a) Ensuring the continuity of information and community participation in quality spatial planning, such as Neighborhood/Community Units (RT/RW) at the District/City and Provincial levels, as well as Coastal and Small Islands Spatial Zoning Plans (RZWP3K P).
- b) Providing continuity of information and community involvement in the planning of national strategic development projects or updates.
- c) Establishing unified data and maps accessible to the public at large.

And the third is agrarian reform, recognition of indigenous communities, and social forestry in accordance with regulatory provisions, including:

1. Presidential Regulation No. 88 of 2017 concerning Settlement of Land Tenure in Forest Areas; Ministry of Environment and Forestry Regulation No. 17 of 2018 concerning Procedures for Release of Forest Areas and Revision of Forest Area Boundaries in Land Reform Object Areas.
2. Presidential Regulation No. 86 of 2018 concerning Agrarian Reform.
3. Ministry of Environment and Forestry Regulation: P.83/MENLHK/SETJEN/KUM.1/10/2016 concerning Social Forestry, and Ministry of Environment and Forestry Regulation: P.39/MENLHK/SETJEN/KUM.1/6/2017 concerning Social Forestry in Perhutani's Working Areas.
4. Ministry of Environment and Forestry Regulation: P.17/MENLHK/SETJEN/KUM.1/8/2020 concerning Customary Forests and Rights Forests; Ministry of Agrarian Affairs and Spatial Planning/National Land Agency Regulation No. 18/2019 which sets procedures for managing customary land of indigenous customary law community units explained in the Procedures for Arranging Customary Land of Indigenous Customary Law Community Units; Ministry of Marine Affairs and Fisheries Regulation No. 8/Permen-Kp/2018 regarding Procedures for Determining the Management Area of Indigenous Customary Law Communities in the Utilization of Space in Coastal and Small Islands Areas; and Ministry of Agrarian Affairs and Spatial

²⁰ Muhammad Rafi and Arsin Lukman, "Penyelesaian Sengketa Atas Kepemilikan Sertifikat Hak Atas Tanah Ganda Di Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 7, no. 1 (January 3, 2023), <https://doi.org/10.58258/jisip.v7i1.3989>.

²¹ Isnaini and Anggreni A. Lubis, *Hukum Agrari: Kajian Komprehensif* (Medan: CV. Pustaka Prima, 2022).

Planning/National Land Agency Regulation No. 17 of 2016 concerning Land Arrangement in Coastal and Small Islands Areas.

Referring to the ideal legal framework, handling land disputes is expected to provide dignified justice for all parties involved.²² However, in reality, litigation processes aimed ideally often fall short in effectively resolving plantation disputes. These disputes tend to favor compromise approaches to achieve satisfactory solutions for all involved parties. In efforts to provide legal certainty and protection for land rights holders, the issuance of certificates is regarded as an official form of proof of ownership rights. Although Law No. 5/1960 does not specifically mention the term for the proof of land rights certificate, Government Regulation No. 10/1961 and Article 1 number 20 of PP No. 24/1997 state that such documents are called certificates. These certificates replicate the land book and survey letter, bound together with a cover paper applied by the Ministry of Agrarian Affairs. These documents are issued by the land office at the district/city level and include information about land rights, management rights, waqf land, ownership of apartment units, and even registered mortgage rights listed in the respective land books.

In cases of sporadic individual land registration, the certificate will be signed by the Head of the District/City Land Office. In situations where random land registration involves a large number of cases, the signature on the certificate is performed by the Head of the Land Registration Measurement Section, based on the authority granted by the Head of the District/City Land Office. The government, particularly the Ministry of Agrarian and Spatial Planning, must make greater efforts to ensure legal certainty in the land sector through the issuance of land rights certificates. This process should adhere to principles of legal certainty, accuracy, and security to ensure the legal validity and certainty of rights recorded in the issued certificates. The concept of legal protection is often seen as an effort provided by law enforcement officials to provide security, both physically and psychologically, to victims and witnesses from potential threats, disturbances, terror, and violence that may arise from various parties. Legal protection can be preventive or repressive and can be explicit or implicit. Thus, in every legal relationship, rights and obligations will arise. If there is maladministration in land affairs, resulting in overlapping land rights certificates, the impact will be felt by the general public, who are generally the aggrieved parties. This is due to increased risks of land conflicts that can lead to losses of their rights. Landowners with multiple certificates, obtained in good faith and in accordance with procedures, are likely to suffer losses, both material and immaterial. To ensure legal certainty and protect landowners, regulations are needed to protect the rights of landowners who obtain their rights in good faith and in compliance with regulations, especially in handling disputes that may arise due to the presence of multiple land certificates

Article 32 paragraphs 1 and 2 of Government Regulation No. 24/1997 elaborate on the nature of proof provided by land certificates as evidence of land rights. The main purpose of land registration processes is to provide legal certainty and legal protection to landowners. This enables landowners to easily prove their ownership of the land they possess. Such proof involves recording all documents demonstrating ownership rights over the land, including both physical and juridical data. The recorded data during land registration serves as a basis for identifying land ownership rights. In cases of multiple certificates, if one of the certificate holders falsifies data on the certificate, this can be uncovered through archive inspections held by the National Land Agency (BPN). However, Article 32 paragraph 1 of Government Regulation No. 24/1997 has weaknesses, such as the lack of assurance regarding the accuracy

²² Annisa Shafarina Ayuningtyas, Rosita Candrakirana, and Fatma Ulfatun Najicha, "Perlindungan Hukum Bagi Pemegang Sertifikat Hak Atas Tanah Dalam Kasus Sertifikat Ganda," *Jurnal Discretie* 1, no. 1 (April 30, 2020): 69, <https://doi.org/10.20961/jd.v1i1.50222>.

of physical and juridical data presented. Certificate owners are also not guaranteed security, as they may face lawsuits from other parties claiming damages due to certificate issuance. To address these weaknesses and provide legal protection to certificate owners, making the certificate an indisputable proof requires revisions to existing regulations. Article 32 paragraph (2) of Government Regulation No. 24/1997 attempts to mitigate potential issues by providing opportunities for resolving disputes related to land already certified and held by the rightful owners for several years. The certificate is considered as absolute proof if it meets all cumulative requirements, including:

- a. Legally issued in the name of an individual or legal entity.
- b. Obtained by the landowner in good faith.
- c. Physical possession of the land by the landowner is evident.
- d. Within 5 years of issuance, no written objections have been raised against the certificate holder or the Head of the District/City Land Office, and no legal claims regarding ownership or certificate issuance have been brought to court.

The State Land Certificate (KTUN) serves as civil proof of ownership for individuals or legal entities regarding land. In cases of disputes or overlapping certificates, resolution can occur through two legal avenues. Firstly, issues related to the issuance of certificates by the BPN can be contested through an administrative court, where applications for cancellation can be filed. Secondly, regarding the issuance of certificates as proof of ownership by individuals or legal entities, applications can be made to verify ownership legitimacy through proceedings in a district court. The legal strength of a land certificate depends on legal certainty as strong evidence of ownership, unless countered by evidence from another party claiming rightful ownership and proving it. Therefore, certificates provide material legal certainty. However, they also possess valid formal legal certainty, including written provisions regulated by laws or other regulations, and are absolute and not subject to challenge.²³

3.2. Legal Certainty and Procedural Justice in Land Management in Indonesia: Ensuring Rights Protection and Effective Dispute Resolution

The fundamental principles of the rule of law emphasize legal certainty and legal protection as the core of procedural justice. Legal certainty means that the law must be clear, accessible, and predictable, allowing individuals to plan their actions in accordance with applicable laws.²⁴ Legal protection refers to the right of every individual to be protected from abuse of power by the state or other parties, and the right to access fair and impartial judiciary.²⁵ Procedural justice is a highly important concept in the rule of law, as it ensures that law enforcement processes and decision-making are carried out fairly, transparently, and in accordance with established procedures.²⁶ This includes individuals' rights to be heard, to receive adequate defense, and to know the reasons behind decisions made by competent authorities. Procedural justice also emphasizes the importance of effective oversight of law enforcement processes to prevent abuses of power and corruption. The 1945 Constitution of the Republic of Indonesia establishes that the state has the authority to regulate all aspects related to the interests and welfare of society. The Constitution guarantees the basic rights of citizens, including rights to social welfare, education, and employment. The state also has the

²³ Ahzaza Fahrani, Benny Djaja, and Maman Sudirman, "Kepastian Hukum Terhadap Pemegang Hak Milik Atas Tanah Atas Penerbitan Sertifikat Ganda," *UNES Law Review* 6, no. 1 (September 2023).

²⁴ Indri Hadisiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah," *Ahkam: Jurnal Hukum Islam* 2, no. 1 (July 1, 2014), <https://doi.org/10.21274/ahkam.2014.2.1.118-146>.

²⁵ Iwan Permadi, "Perlindungan Hukum Terhadap Pembeli Tanah Bersertifikat Ganda Dengan Cara Itikad Baik Demi Kepastian Hukum," *Yustisia Jurnal Hukum* 95 (August 1, 2016), <https://doi.org/10.20961/yustisia.v95i0.2824>.

²⁶ S Sahabuddin, "Tipologi Hukum Di Indonesia (Melihat Penggunaan Hukum Prosedural Pada Sistem Peradilan Pidana)," *Wajah Hukum* 2, no. 1 (May 31, 2018): 114, <https://doi.org/10.33087/wjh.v2i1.31>.

obligation to create conditions that enable every citizen to achieve decent welfare. One important aspect regulated by the state is agrarian affairs, which encompass everything related to land, water, and other natural resources therein. In Indonesia, agrarian issues are governed by Law No. 5/1960. Law No. 5/1960 serves as the legal basis regulating rights to land, ownership, use, and management of natural resources. The aim of Law No. 5/1960 is to achieve social justice in the control, ownership, use, and utilization of land and other natural resources.

Procedural justice principles in the context of agrarian affairs are crucial to ensure that all procedures related to the regulation, utilization, and management of land are conducted transparently, fairly, and in accordance with applicable law. This encompasses administrative steps such as land registration, issuance of ownership certificates, and regulation of land use for public and private interests. These procedures must be conducted impartially, providing opportunities for all stakeholders to express their views, and ensuring that decisions are based on fair and rational considerations. Land conflicts are a frequent issue in Indonesia. Factors such as limited available land, high economic value of land, and legal uncertainty often serve as primary triggers for land disputes. Land holds significant economic and social value, making disputes over land rights unavoidable. Unclear land ownership status, lack of valid documentation, and corrupt practices in land administration further complicate these issues. Land registration and issuance of land ownership certificates are government efforts to provide legal certainty to landowners. Land registration aims to officially document land ownership, followed by the issuance of certificates as valid proof of ownership. These land certificates are crucial to protect landowners' rights, prevent disputes, and provide the legal certainty necessary for various land-related transactions. Through transparent and accountable processes, the government aims to reduce prolonged land conflicts. Legal certainty obtained through land registration and certificate issuance can enhance public trust in the agrarian legal system.²⁷ The importance of procedural justice is evident in the land registration process in Indonesia. This process serves as a crucial foundation in the agrarian legal system governed by legislation, including Article 1 of PP No. 24/1997. This article stipulates that land registration involves the collection, processing, recording, and maintenance of physical and legal data related to land. The process entails various complex administrative steps that require precision and compliance with applicable laws. The primary goal of land registration is to provide legal certainty through land certificates officially recognized by the state.²⁸ These land certificates serve as valid proof of ownership acknowledged and protected by the law, ensuring guarantees for landowners' rights. With land certificates, owners can feel more secure and protected from potential disputes or illegitimate claims from other parties.²⁹ These certificates are also crucial in various land transactions such as sales, leases, or inheritances, providing certainty and confidence to all involved parties.

However, in practice, various issues arise, such as dual certificates often caused by a lack of valid data at the BPN and procedures that do not adhere to stringent standards. These dual certificates can lead to prolonged land disputes and legal uncertainty for landowners. This problem highlights weaknesses in procedural justice within the land registration process, which should ensure transparency and accuracy at every stage of registration. Dispute

²⁷ Endang Suparsetyani, "Penerapan Asas Kepastian Hukum Dalam Pendaftaran Tanah Dan Asas Keadilan Dalam Putusan No. 103/ PID.B/2014/PN.PBG.," *Hukum Pidana Dan Pembangunan Hukum* 1, no. 2 (April 1, 2019), <https://doi.org/10.25105/hpph.v1i2.5460>.

²⁸ Hadiswati, "Kepastian Hukum Dan Perlindungan Hukum Hak Atas Tanah."

²⁹ Muthallib, "Pengaruh Sertifikat Hak Atas Tanah Sebagai Alat Bukti Dalam Mencapai Kepastian Hukum."

resolution in land disputes must adhere to the principles of procedural justice to ensure that all involved parties are treated fairly and receive their rights properly. Resolution through the courts should be conducted fairly, transparently, and in accordance with applicable law. This means that every step in the judicial process must be carried out with integrity, from evidence gathering to decision-making by the judge. The judge should carefully examine the case and ensure that all arguments and evidence presented are fairly considered. However, litigation processes often take a long time and involve high costs, which can be barriers for many individuals seeking justice. The high legal costs and complex procedures often deter people from bringing their cases to court. Moreover, the prolonged time required to resolve disputes in court can lead to prolonged uncertainty and stress for the parties involved. This contradicts the principle of procedural justice, which aims for efficiency and accessibility in dispute resolution.

Alternative dispute resolution methods such as mediation or arbitration can be more efficient and fair solutions. Mediation involves a neutral third party who assists the parties in reaching a peaceful agreement. This process tends to be quicker and less expensive than litigation, and it provides an opportunity for the parties to find mutually beneficial solutions. Mediation also allows the parties to have greater control over the outcome, as decisions are made based on mutual agreement. Arbitration, on the other hand, involves one or more arbitrators appointed to hear the case and make binding decisions. The arbitration process is usually faster than litigation and offers higher confidentiality, which can be advantageous for parties seeking a more private dispute resolution. Although there are costs associated with arbitration, these costs are typically lower than litigation costs in court. Considering these alternatives, land dispute resolution can be carried out more efficiently and fairly, in line with the principles of procedural justice. Governments and relevant institutions should encourage the use of these alternative dispute-resolution methods to reduce the burden on courts and provide broader access to justice for the public.

4. Conclusions

Land dispute resolution in Indonesia involves processes outside of court between the parties or through court channels if negotiations fail. Although resolution in state courts is a common option, this process often consumes significant time and costs. Legal certainty regarding land rights is crucial in modern legal contexts, where certificates serve as strong evidence to provide rightful protection to landowners. Cases involving dual certificates often include more than two parties, necessitating the determination of winners and losers. Therefore, land dispute resolution should be based on dignified principles of justice. Issues with dual certificates create legal uncertainty for landholders, necessitating revisions to existing regulations so that certificates have absolute authority as evidence of valid ownership. Additionally, agrarian reforms, recognition of customary communities, and social forestry are crucial steps in resolving land disputes and ensuring legal certainty over land. Efforts to enhance legal certainty and resolve land disputes require cooperation among various parties and improvements in existing regulations.

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