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**LEGAL PROTECTION FOR BUILDING RIGHTS TITLE**

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***Abstract***

Disputes, conflicts, and land issues continue to increase in both intensity and diversity, as it becomes increasingly difficult to access land and increase the bargaining position of the government, private and public to gain land. The type of research is normative research that is analytical descriptive. Data collection techniques used are literature study. Legal materials used include (1) the 1945 Constitution, Law No. 5 of 1960, Law No. 40 of 1996, Government Regulation No. 24 of 1997 and; (2) Secondary legal materials. Due to the various obstacles experienced by the justice seekers in court, it is time to take a relatively simple alternative (not litigation) dispute resolution, or with Alternative Dispute Resolution (ADR) models such as mediation, arbitration, conciliation, and negotiation, it can be applied to land cases is a method of mediation. In addition, Indonesia upholds the principle of deliberation to reach the consensus of this institution seems familiar.

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## 1. Introduction

In Indonesia, land ownership is divided into two broad categories, namely traditional land rights (Customary Rights), and certified title. So, what distinguishes, on traditional land is not registered in the land agency and is considered to have a lower level of ownership. It is usually owned by inheritance or in its terminology is “girik”. However, it is considered as land ownership and can be a transaction base and can be converted into the certified title. By buying traditional land has more risks than with certified title.

While certification programs have been and continue to be applied in developing countries around the world, empirical research that relatively little has been done to its impact in urban areas (Payne, Durand-lasserve, & Rakodi, 2009) and Reerink & van Gelder (2010) present evidence that Certification does contribute - albeit modestly - to people's perceptions of secure tenure, and that land tenure certification and tenure enhances housing consolidation. Meanwhile, the legality and assurance of ownership are closely related to implying a higher ownership tenure (Van Gelder, 2009). The effects of ownership of the land will be able to relieve feelings of fear of eviction (Van Gelder, 2013).

Durand-Lasserve, Fernandes, Payne, & Rakodi (2007) has extensive land certification programs as a means of enhancing land tenure security, improving access to formal credit and reducing poverty provided by international donors and national governments. Land tenure formalization has a series of economic, social and political effects (Durand-Lasserve & Selod, 2009). First, from the economic side, the Land is a production tool that can bring prosperity. Second, politically, the land can determine the position of a person within the community's decision-making. Third, as a cultural capital can determine the high level of social status of the owner. Fourth, the land is sacred, because at the end of life everyone will return to the land.

In recent years, empirical testing of the relationship between land-use regulation and the housing market has not rejected the hypothesis that cities with strict regulation of land use and development have a lower supply elasticity and higher prices (Saiz, 2010; Glaeser & Ward, 2009; Kok, Monkkonen, Quigley, 2010; Hilber & Vermeulen, 2010; Jaeger, Plantinga, Grout, 2012; Monkkonen, 2013).

The attachment between the person and the land they possess, becomes very complex with various dimensions, so the process of taking the land without the “willingness” of the right holder will cause many problems. Issues of land procurement, deprivation of rights or disposal of rights or any of its names always involves two dimensions that must be placed in a balanced way that is the interests of “Government” and interests “Citizens of society”. The two parties involved are the “Rulers” and the “People” must both observe and comply with the applicable provisions on the matter. When it is ignored will arise problems that can trigger a dispute.

Disputes over land can be prevented, at least minimized if attempted to avoid the cause, the disputes are legal events, and so the causes can be known and recognized by re-looking through existing legal ground views. The government represented by the agency authorized to establish and administer the land administration when performing its duties properly and correctly and to the best possible minimize the occurrence of things that can trigger the occurrence of disputes, the things that cause the occurrence of land disputes can be avoided.

## 2. Problem Statement

In 1981, the Government of Indonesia initiated the National Agrarian Operations Project (“Proyek Operasi Agraria Nasional or PRONA”). This is a certification program, both in rural and urban areas that aim to improve the security of ownership for economically vulnerable populations by allocating property rights and land dispute settlement (Reerink & van Gelder, 2010). The government also believes that this action will be done to contribute to the socio-political stabilization of Indonesian society (Decree of the Minister of Home Affairs No.189 / 1981).

The land law foundation in Indonesia uses the Basic Agrarian Law No. 5/1960 and established the National Land Agency to manage all grants, renewals, renewal of certified certificates and enforce the land registration system. The Basic Agrarian Law abolished colonial regulations relating to land contained in Agrarische Wet and Domeinverklaring in 1870 and the Civil Code (Law 4/1996; Slaats, Rajagukguk, Elmiyah, & Safik 2009). This put an end to the colonial dualism and the distinction between 'Western' lands that are subject to civil law and customary land because of the customs of the Law, and replace the colonial provisions with a set of unity legal rules ('the principle of land law') inspired by customary law concepts, principles and institutions Reflects the original characteristics and needs of Indonesia.

Under Basic Agrarian Law, the existing land rights are converted into six types of land right: Right of Ownership, Right of Building, Right of Strata Title Ownership on Multi-storey Building Units, Rights to Use, Right to Manage and Rights to Exploit. Yet, the conversion process encountered immense obstacles, such as weak legal framework and limited bureaucratic capacity (Adianto, Okabe, Ellisa, & Shima, 2016).

The appointment of a Legal Entity which may own ownership land is regulated in Government Regulation No. 38/1963 which includes: a) Banks established by the State; B) Agricultural Cooperative Societies established under Law No. 79 of 1958; And c) Religious bodies appointed by the Minister of Agriculture/Agrarian after hearing the Minister of Religious Affairs. In addition to these legal entities, it is covered in land ownership by “freehold title”. The legal consequences that may occur when a Legal Entity (Limited Liability Company, CV, Firm, BUMN etc.) own/acquire land with Property Right shall be “null and void”, its right to abolish and its land becomes the State Land.

The legal certainty of land ownership data will be achieved if Land Registration has been done for Land Registration is to provide legal certainty and legal protection to the holder of land rights. Good certainty about the subject (i.e. what is his right, who is the owner, there is / not the burden above it) and the certainty about the object, that is its location, its boundaries and the extent and the presence/absence of buildings/plants on it. Given that Indonesia has one of the most stringent land registration and construction permit systems in Asia, we expect the housing market to be tight and expensive housing (Monkkonen, 2013).

Issuance of certificates and granted to the rightful, intended that the right holder can easily prove ownership of the land. The certificate serves as a strong evidence of physical data (object: location, boundary, extent and presence/absence of a building or plant thereon) and juridical data (right, whose right holder, any presence or absence of loads on it) contained therein Insofar as the physical data and

juridical data are consistent with the data contained in the Measurement Statement and the Land Rights Book concerned. It is said to be true data if there is no other evidence to prove its unrighteousness and need not be supplemented with additional evidence. A good land administration system will be able to guarantee the security of use for its owner. It can encourage or increase tax collection, increase usage as credit guarantee, improve surveillance of the land market, protect state land, reduce land disputes.

### **3. Research Questions**

Land registration is a series of administrative activities undertaken by a government agency to publish its title of proof and maintain its recordings. This activity is manifested in the fostering of the land status of the land. So that the land agency that gives the right to land there is only one (monopoly function). Although there is a body that conducts land registration such as the tax office, the tax office cannot grant the right to ownership.

Registration is only done to facilitate the recording so that tax collection can be done regularly (fiscal cadastre). Generally, these are lands that are subject to customary law, such as foundation land or “gogolan” land. The point is to determine who is obliged to pay the tax on the land and to the taxpayer is given evidence in the form of “pipil/girik/petok”. Registered not to provide legal certainty.

The sequence of land registration processes, including behind the names made on re-registration (continuous recording) is an activity carried out regularly step by step. These stages include measurement, cadastral mapping, the recommendation of their rights (Certificate of Land Registration) to the provision of the right token (certificate) and the maintenance of registration data.

1. What is the legal protection of the owner of a disputed land title?
2. How to settle the dispute over the land?

### **4. Purpose of the Study**

The results of this study are expected to contribute thoughts to the development of the law especially concerning the field of law related to land. For universities, it is expected to be used to increase the wealth of literature in the field of land. As for researchers, it can be used to broaden real insight and experience in the field of law:

1. To contribute knowledge both directly and indirectly to the community regarding land, especially land disputes.
2. As reference material for subsequent research relating to legal issues.

### **5. Research Methods**

The nature of the research to be conducted is descriptive analytical. This research is a qualitative research. This study always refers to the principles of law, legislation, jurisprudence and legal doctrines. In this research, case approach is used, the main study in the case approach is the ratio of decided that is the judgment of the court up to a decision. The legal material used in this study is the Criminal Code; Decision of Central Jakarta District Court No. 449 / Pdt.G / 2011 / PN.JKT.PST; Law of the Republic of Indonesia No 5/1960 on Basic Agrarian Law; Government Regulation No. 40/1996 on leasehold, Broking and Right of Use of Land; Government Regulation No. 24/1997 on Land Registration. The results of this

study are expected to obtain a comprehensive and systematic description of the problem under study, namely the legal protection of owners of land disputes and analysed according to legislation and opinions of experts in accordance with the problems under study.

## **6. Findings**

### **6.1. Settlement of Land Disputes in Indonesia**

Every land case submitted to the National Land Agency of the Republic of Indonesia (Badan Pertanahan Nasional Republic Indonesia or BPN RI) is carried out the management of the assessment and handling of land cases because it is one of the functions of BPN RI to overcome disputes, conflicts, and land issues to realize the land policy for justice and welfare of the community.

Land Cases are disputes, conflicts, or land affairs submitted to the National Land Agency of the Republic of Indonesia to obtain settlement measures in accordance with the provisions of national legislation and/or land policies. A land dispute is a land dispute between an individual, a legal entity, or an institution that has no widespread socio-political impact. Land Conflict is a land dispute between an individual, group, group, organization, legal entity, or institution that has a tendency or has a broad socio-political impact. Land Case is a land dispute whose settlement is carried out by a judicial institution or a judicial decree still pending the handling of its dispute with the National Land Agency of the Republic of Indonesia.

#### **6.1.1. Complaints Service and Land Case Information.**

Complaints and Information Services Land Cases at BPN RI are implemented and coordinated by the Deputy, for the Regional Office of the National Land Agency implemented by the Head and coordinated by the Head of the regional office and for the Land Office carried out by the Head of Section and coordinated by the Head of the Land Office. Complaints of land affairs cases shall be submitted to the Head of BPN RI, Kakanwil and/or Head of Land Office either orally or in writing or through [www.bpn.go.id](http://www.bpn.go.id). Complaints made verbally or through [www.bpn.go.id](http://www.bpn.go.id) should be followed up with the written application.

The land complaint letter shall at least contain the identity of the complainant, the disputed object, the legal standing position and the purpose of the complaint with the accompanying photocopy of the identity of the complainant and the supporting data relating to the complaint. A complaint letter received through the counter is recorded in the Complaint Receipt Register and to the Complainant is given a Complaint Receipt Letter and then forwarded to an organizational unit whose duties and functions deal with disputes, conflicts, and land issues.

The applicant/complainant and the requested party may inquire about the progress of the handling of land cases to the BPN RI office that handles the case. Information on the progress of the handling of land cases given in writing is presented in the form of Letter of Information on the Development of Land Case Handling containing the explanation of the subject matter, the position of the case and the actions that have been implemented. Letter of Information on Land Procurement Handling is submitted no later than 30 (thirty) days after receipt of the request. Information on land cases requested by government agencies or relevant agencies authorized to request land title information granted BPN RI, Regional

Office of the National Land Agency and/or Land Office no later than 14 (fourteen) days after receipt of the request.

Provision of information on land affairs cases shall be in the form of answers to the principal cases and problems, or a complete explanation in accordance with the data contained in BPN RI, the Regional Office of the National Land Agency and/or Land Affairs Office and the results of its handling. In the case of great need, officials from the agency requesting an explanation of land cases may be invited to attend the Case Degree to obtain clearer information.

Head of Land Office, Head of Regional Office and/or Deputy either jointly or individually carry out a systematic review of the root and history of land cases. The results of the review are outlined in the Land Case Map which forms the basis for formulating general policies and/or technical policies for handling land cases with reference to being vulnerable, strategic, or having a broad impact. Data administration is carried out through recording, processing, and presentation of data held with Information System in the Field of Assessment and Handling of Land Cases built integrated with BPN RI, Regional Office of National Land Agency and Land Office.

Assessment of roots and history of disputes is conducted to determine the potential causes and potential for dispute resolution by researching and analyzing disputed data. The results of research and data analysis resulted in the subject of dispute and potential dispute resolution. The subject matter of land affairs is conducted by legal examination based on juridical data, physical data and/or other supporting data where the result of the study is done the law enforcement review which then produces the recommendation of the handling of land disputes.

### **6.1.2. Handling of Land Cases**

The handling of land cases is intended to provide legal certainty over tenure, ownership, use, and utilization of land to ensure there is no overlapping of utilization, overlapping of use, overlapping of tenure and overlapping of land ownership. The handling of land cases to ensure the utilization, control, use, and ownership in accordance with the provisions of legislation and proof of land ownership is single for each disputed plot of land.

### **6.1.3. Implementation of Court Decisions**

BPN RI must implement a court decision that has obtained permanent legal force unless there is a valid reason for not implementing it. Legal reasons include:

- a. Against the object of the verdict there are other contradictory decisions;
- b. Against the object of the verdict is being placed seizure of collateral;
- c. Against the object of the verdict being the object of the lawsuit in another case;
- d. Another reason set forth in the legislation.

Actions to enforce a court decision that has obtained permanent legal force may be: (a) Implementation of all decisions; (b) Partial implementation of the ruling; and/or; (c) Only carry out orders expressly written on the verdict.

The ruling of the court who has obtained permanent legal force, relating to the issuance, transfer and/or cancellation of land rights, among others:

- a. Orders to cancel land rights;
- b. To declare null and void / have no legal force over land rights;
- c. To declare a proof of illegal/unlawful right;
- d. The order to do the recording or deletion in a book of land;
- e. Order to issue land rights; and
- f. A meaningful ruling creates a legal consequence of the publication, the transfer or cancellation of rights.

The act of land law in the form of issuance, transition and/or cancellation of land rights to carry out the court decision shall be conducted by the decision of the competent authority. The process of data processing in the framework of issuance of the decree shall be implemented after the receipt of the court decision by BPN RI, in the form of:

- a. Official copy of a court decision authorized by the competent authority;
- b. A letter from the competent authority of the court of justice which states that the decision has obtained a permanent legal force (inkracht van gewijsde); and
- c. News of the execution event for the decision of the case requiring the execution.

Decisions of the court that have obtained permanent legal force concerning the issuance, transfer and/or cancellation of land rights shall be executed by BPN RI not later than 2 (two) months after the receipt of a copy of the Court Decision by the competent authority. In the case of a court decision that has the permanent legal force and its implementation is expected to lead to a broader land case or concerning the interests of the Government, prior to the act of execution of a court decision, an External or Special Degree is presented which presents the parties and/or related institutions.

Head of BPN RI issues decisions, transfers and/or cancellation of land rights to implement court decisions that have obtained permanent legal force. Issuing decisions may be delegated to the Deputy or Head of the regional office. The process of issuance, transition and/or cancellation of land rights to carry out court decisions that have permanent legal force, is conducted based on complaints/requests of interested parties.

Letter of application for the issuance, transition and/or cancellation of land rights in order to carry out court decisions that have permanent legal liability, shall be submitted to the Head of the regional office or Head of BPN RI with the completion of:

- a. Judgment of courts adjudicating land cases;
- b. Minutes of execution proceedings for case decisions requiring execution;
- c. Other letters relating to the cancellation request.

The process of handling the request for the issuance, transition and/or cancellation of the land title certificate to carry out the court decision is carried out in accordance with the stages of the handling of land cases, namely:

- a. Research proposal file / proposed cancellation;
- b. Research and data processing of court decision;
- c. Field inspection in case of need;
- d. Internal/external degree and mediation degree;
- e. A privileged degree in the case of indispensable;

- f. Preparation of minutes of data processing; and
- g. Decision-making in case settlement.

#### **6.1.4. Settlement of Land Cases Outside the Court**

The settlement of land cases outside the court may be a legal act of land administration including:

- a. Cancellation of land rights due to defect of administrative law;
- b. Recording in the certificate and/or books of land as well as other public lists; and
- c. Issuance of letters or other land administration decisions due to a defect of an administrative law in its publication.

Certificates of land titles containing defects in administrative law are subject to cancellation or order of registration of changes to the maintenance of land registration data according to the laws and regulations. The administrative law defects are among others:

- a. Procedural errors in the process of establishing and/or registration of land rights;
- b. Procedural errors in the process of registration of transfer of rights and/or replacement certificates.
- c. Procedural errors in the process of confirmation of registration and/or recognition of land rights had belonged to customary;
- d. Procedural errors in the process of surveying, mapping and/or extensive calculations;
- e. Overlapping rights or titles of land rights;
- f. Error subject and/or object rights; and
- g. Another mistake in the application of legislation.

Legal acts of land administration against certificates of land rights that are defective in administrative law are carried out by (a) issuing a revocation decree; and/or (b) recording the maintenance of land registration data. The process of Legal Administration of Land Affairs of Decision/Letter of Disability of Administrative Law, application/proposal of legal action of land administration to the certificate of right over land which is flawed by administrative law can be submitted by interested party/applicant or proxy. It shall be submitted to the Land Office or Regional Office of the National Land Agency, or BPN RI. Letter of application/proposal enclosed with supporting data, among others:

- a. Certificates of land rights encountered with defects in administrative law;
- b. Results of data processing that proves the existence of defects in administrative law;
- c. A copy of the judgment or judge's judgment in deciding on the substance of declaring invalid and/or false documents used in the process of issuing a land title certificate;
- d. Other letters supporting the reasons for the cancellation request.

Legal acts of land administration against certificates of land rights with disabilities in administrative law shall be executed by a competent authority no later than 6 (six) months after the existence of a defect in the administrative law unless there is a valid reason to suspend its

implementation. Legitimate reasons for delaying or rejecting the implementation of legal Land administration law include, among others:

- a. The letter will be canceled is in blocked status, seized by an authorized officer (conservatoir beslag-CB);
- b. Land administration requested legal act is the land that is the object of a court;
- c. Implementation of cancellation is expected to lead to social turmoil/mass conflict.

In the case of one plot of land, there are several overlapping land titles, the BPN RI has conducted a land law deed in the form of cancellation and/or issuance of a land title certificate so that on the land there are only one legal title of land rights. Administrative law defect that may result in the validity of a certificate of land rights must be strengthened by evidence in the form:

- a. Judicial decisions binding; and/or
- b. The results of studies that prove the existence of defects of administrative law; and/or
- c. Description of the investigator concerning a criminal act of forgery or information used in the process of issuing, transfer or cancellation of certificate of land rights; and/or
- d. Other letters that indicate a defective administration.

## **6.2. Legal Aid and Legal Protection of Land Dispute Resolution**

Legal Assistance is conducted by Legal Aid Team consisting of BPN officer/officer from Deputy Element, Legal and Public Relations Center of BPN RI, Regional Office of National Land Agency and/or Land Office. The case of land arises because of the claims/complaints/objections from the public (individual/legal entity) containing the truth and claim to a decision of State Administration in the field of land that has been determined by the State Administrative Officer in the National Land Agency, as well as the decision of the Official Are perceived as detrimental to their rights to a plot of land.

With the claim, they want to get an administrative settlement with the so-called corrections of the Official Authority. The authority to make corrections to a State Administrative Decree on land affairs (certificates/Decree on Land Rights), shall be the Head of the National Land Agency. Land cases include several issues, such as land title, ownership issue, acquisition proof issue on which the rights are granted and so on. Upon receipt of complaints from the above-mentioned public, the competent authority resolving the matter will conduct research and data collection on the complained file. From the results of this study can be concluded while whether the complaint can be processed further or cannot. If the data submitted directly to the National Land Agency is still unclear or incomplete, then the National Land Agency will request an explanation accompanied by data and advice to the Head of Regional Office of the Provincial National Land Office and Head of the local Regency/City Land Office the location of the disputed land.

When the completeness of the data has been fulfilled, then subsequent re-examination of the proposed problem that includes aspects of procedures, authority, and application of the law. In order that the interest of the community (individual or legal entity) entitled to the claimed land area is protected by

law, it is deemed necessary after the head of the local Land Office conducts research and if from his belief the quo should be observed. This policy is put forth in the Circular Letter of Head of National Land Agency dated 14-1-1992 No. 110-150 concerning Revocation of Instruction of the Minister of Home Affairs No. 16/1984.

With the revocation of Instruction of the Minister of Home Affairs No. 16/1984, the attention of the National Land Agency Officials in the regions, namely the Heads of Regional Offices of the Provincial Land Agency and Head of the Regency/City Land Office, in order to determine the status quo or blocking, if there is a determination of Confiscation of Warranty from the Court. (Compare with Regulation of the Minister of Agrarian Affairs / Head of National Land Agency No. 3 of 1997 Article 126).

Therefore, it can be concluded that if the Head of the local Land Office wishes to take a status quo action against a State Administrative Decree on Land Affairs (certificate/Decree on Land Rights), it should act cautiously and pay attention to the general principles of the Government Good, among others, the principle of precision and thoroughness, the principle of openness (fair play), the principle of equality in serving the interests of society and pay attention to the parties to the dispute. Against land affairs submitted to the National Land Agency for the sake of resolution, if it can be met by the parties to the dispute, then it is very good if settled by way of deliberation. These settlements are often the National Land Agency requested as mediators in settling land rights disputes peacefully mutual respect for the parties to the dispute.

In this regard, if the settlement by consensus reaches the word consensus, it must also be accompanied by written evidence, namely from the notice to the parties, the minutes of the meeting and subsequent proof of peace is poured out in the deed which, if necessary, before the notary so that it has the power Perfect proof. The cancellation of state administrative decisions on land affairs by the Head of the National Land Agency based on the existence of legal/administrative flaws in its issuance.

In practice, so far there are individuals / legal entities who feel their interests are impaired to submit the objection directly to the Head of National Land Agency. Mostly submitted directly by the concerned to the Head of the National Land Agency and partly submitted through the Head of the local Regency Land Office and forwarded through the Head of the Regional Office of the National Land Agency of the Province concerned.

### **6.3.Solutions Through Mediation**

In addition to dispute resolution, conflicts and cases through courts/litigation, within the national legal system known dispute settlement through non-judicial institutions as stipulated in Law No. 30/1999 on Arbitration and Alternative Dispute Settlement. One alternative dispute resolution (land) is through mediation efforts. Mediation as an alternative dispute resolution offers a typical dispute resolution way. The Alternative Dispute Resolution (ADR) is the “non-conventional” peaceful method of resolving disputes over a conflict situation because it is least expensive methods, and can satisfy the parties, and preserve relationships after a settlement might have been reached (Best, 2006; Ugwu, Anthony, & Enna, 2015).

Mediation can be understood as a process (formal or informal) in which a third party, called a mediator, facilitates management of the conflict without having the authority to impose a solution (Yasmi Kelley, Enters, 2010; Dhiaulhaq et al., 2014). According to Dhiaulhaq et al., (2014) that the process of mediation in the two sites was complex, but can be categorized into three main phases: pre-mediation (the mediator prepares the necessary conditions to ensure the success of the subsequent phases), mediation (getting agreement on the mediation stages, agenda and ground rules in the mediation process continued by identifying and clarifying the issues and interests of the parties) and post-mediation phase (The mediation brought several positive outcomes including not only significant reduction in the tension between the parties and achievement of the agreement but also the improvement of the social relationship between plantation companies and communities, development of mutual recognition and respect, as well as empowerment of the parties to find a sustainable solution). The success of the mediation is determined by the goodwill of both parties to jointly find an agreed solution.

Efforts to achieve a win-win solution are determined by several factors including an objective approach to the source of the dispute more acceptable to the parties and providing mutually beneficial results with the notion that the approach should focus on the interests that are the source of the conflict. In addition, a balanced ability factor in the negotiation process or deliberation. Differences in bargaining ability will cause an emphasis by one party against another. The choice of dispute resolution through mediation has advantages in terms of cost, time, and mind compared to court litigation, in addition to the lack of confidence in the independence of the judiciary and the administrative constraints that surround it make the judiciary the last resort for dispute settlement.

In order for the agreement to be executed (final and binding), the parties shall include the agreement in the form of a written agreement subject to the general principles of the agreement. Given that the Indonesian nation is known for solving problems through deliberation to reach consensus, presumably, the utilization of mediation institution can be a positive alternative for the settlement of land disputes.

#### **6.4.Solutions Through Court**

Disputes to the courts are the last resort, as most are solved through various conflict resolution mechanisms (e.g. the intervention of customary authorities or local administrative authorities); in addition, some perpetual conflicts have never been taken to court due to lack of funds (Benjaminsen, Alinon, Buhaug, & Buseth, 2012). Court cases are expensive, mainly due to bribes to be paid by the parties to judges and their entourage (Benjaminsen & Ba, 2009).

In Indonesia, if dispute resolution between parties is not achieved, so if the unilateral resolution of the Head of the National Land Agency cannot be accepted by the parties to the dispute, the settlement must go through the courts. After going through the research, the State Administrative Decree issued by the National Land Agency Officer is correct according to the law and in accordance with the applicable procedure, the Head of the National Land Agency may also issue a decision which refuses the third party's claim against the State Administration Decision Has been issued by the National Land Agency Official. As a consequence of such rejection means that the said Administrative Decision is still true and valid even though there is another party who filed a local court.

While awaiting a judicial ruling with permanent legal force, it is prohibited for the relevant State Administration Officer to hold a mutation of the land concerned (*status quo*). Therefore, to avoid the occurrence of problems in the future that cause harm to the parties who litigation and third parties, then to the State Administrative Officer in the field of land associated must apply the general principles of good governance, namely to protect all parties Concerned while awaiting a verdict which has had a permanent legal force (*in kracht van gewijsde*).

Then, if there is a verdict of a judge that has a definite legal force, then the Head of the local Land Office of the Regency/City through the Head of the Regional Office of the National Land Agency of the Province concerned shall propose a request for the cancellation of a Decision of State Administration in the Land Affairs decided above. The application shall be accompanied by a report on all data concerning the subject and the burden present on the land and any problems. The administrative authority of the request for cancellation of a Letter of Land Rights or Land Rights Certificate shall be the authority of the Head of the National Land Agency, including the policy measures to be taken with regard to an unenforceable judgment. All this to be submitted to the Head of the National Land Agency to consider and make further decisions.

## **7. Conclusion**

### **7.1. Settlement of Land Disputes in Indonesia**

The cause of land disputes, usually starting from the handling of issues that are less precise or incomplete in the past. Given the rising land prices, many claims to be landowners even without the evidence of strong and clear ownership. Issues become more complicated when the intervention of a third party is not in good faith. Problems will be difficult to solve if the parties feel the right and do not want to deliberate. The disputed land issues include the object of the land, the boundaries, and the extent, the status of the land, the subject matter, the burdening rights, and the transfer of rights and so on. In relation to Government or private agencies, it is usually the case concerning the appointment of the location and the determination of its extent, disposal or exemption, land discharge, compensation or other benefits, the annulment of its rights and the revocation of its rights. If identified, land issues include problems of cultivating the people over forest areas, violation of land reform provisions, access to land for development, civil disputes and community claims on customary land rights, both custom and individual. Another cause is the lack of understanding of land laws and regulations.

### **7.2. Legal Aid and Legal Protection of Land Dispute Resolution**

Against land dispute submitted to the court, there are two things to note. First, the courts are often considered ineffective and efficient and secondly, the quality of the decisions is questionable. From court litigation experience is not simple and time-consuming. In addition to organizational constraints, non-judicial interference makes court decisions often questionable. The condition raises the idea of the need to establish a special court to examine and adjudicate land issues. In addition to civil disputes already handled by the General Court and if involving state officials have been handled by the State Administrative Court. Due to the various obstacles experienced by justice seekers in court in court, it is time to take a relatively simple alternative (not litigation) dispute resolution, shorter time and lower cost.

This model is called Alternative Dispute Resolution (ADR). The familiar forms of ADR in Indonesia include mediation, arbitration, conciliation, and negotiation. Of the various types of ADR, which is more suitable to be applied in the field of land is mediation. This choice is based on consideration because the structure and mechanism are simpler. Besides, for the Indonesian people who uphold the principle of deliberation to reach consensus, this institution feels familiar. And lately, the means used by the National Commission on Human Rights in resolving various disputes also utilize the principles of mediation.

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