



# Legal Review Concerning Uncertified Land Rights in Bandung District

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## Abstract

The legal process carried out by the community in case of a dispute by using mediation to resolve the problem in order to reach an agreement that is beneficial for both parties through negotiation. In the development of dispute resolution, the term Alternative Dispute Resolution (ADR) or Alternative Dispute Resolution Mechanism (MAPS) was used in Law Number 30 of 1999 concerning procedures for resolving disputes through ADR, namely as an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties. with out-of-court settlements, one of which is through mediation, especially disputes over uncertified land rights. The objectives of the study are as follows: To find out the legal protection for uncertified land owners in Purwakarta Regency related to Government Regulation Number 24 of 1997 concerning Land Registration. To find out the settlement of disputes regarding ownership of land that has not been certified according to Government Regulation Number 24 of 1997 concerning Land Registration. The approach method is normative juridical, namely legal research conducted by reviewing and testing secondary data in the form of positive law. Specifications The research used is descriptive analytical, which systematically describes the facts and problems related to the legal aspects of land dispute resolution on uncertified land rights in Purwakarta Regency associated with PP. 24 of 1997 concerning Land Registration. The data obtained will then be analyzed in a qualitative normative manner. The legal protection of the parties for uncertified land rights in Purwakarta Regency is linked to PP No. 24 of 1997 concerning land registration is Article 32 paragraph (1) of Government Regulation Number 24 of 1997, that the certificate is a proof of rights that applies as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. Settlement of land disputes over uncertified land rights in Purwakarta Regency is linked to PP No. 24 of 1997 concerning Land Registration. Land Dispute Settlement Solutions can be reached through the National Land Agency and solutions through the Judicial Body. Completion of the provisions of laws and regulations in the field of land, is not solely based on its juridical suitability but is also equipped with sociological, economic and political considerations.

**Keywords:** Legal review, Land rights, Bandung Regency

## A. Introduction

Indonesia is a law-abiding and law-abiding country, so everything related to public welfare has been regulated in laws and regulations. In this way a legal certainty

for the welfare of a person is essentially guaranteed by the existing constitution in Indonesia. Law in Indonesia cannot stand neutrally, there must be some interests involved in it such as the interests of the State. That way, politics for law can be said as a tool or means and steps that can be used by the government to create a national legal system in order to achieve the ideals of the nation and the goals of the state (Istiqamah, 2018).

Law is so important for our country, namely to regulate in order to achieve the ideals of the nation and the goals of the state, to carry out this requires a clarity or legal certainty in it. Someone who already has legal certainty will definitely find it easier to carry out legal traffic or legal activities, for example in land ownership. Land is a very large state asset, the source of state income is also mostly from taxes and one of the taxes, namely taxes from land, both building taxes and other taxes, for example, such as rental rights, usufructuary rights, and so on. So we need an appropriate rule or rule of law, namely the rules of social life that are regulating and coercive to ensure order in society. The law must be a clear law in order to provide legal certainty for the legal owners of certain lands. That way is one way to minimize some conflicts from the community and from the government which are motivated by land disputes.

Humans live and carry out activities on the ground so that every time humans are always in contact with the land, it can be said that almost all activities of human life either directly or indirectly always require land, so with this it can cause a land dispute in a community environment. The emergence of the dispute arises as a result of an agreement between 2 or more parties and one of the parties is in default. Land has a big role in the dynamics of development, so in the 1945 Constitution Article 33 paragraph (3) it is stated that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people (Mahrus, 2019).

The provisions regarding land can also be seen in the Law of the Republic of Indonesia Number 5 of 1960 concerning the Basic Regulations on Agrarian Principles or what we usually call the LoGA. The emergence of legal disputes that originate from complaints from a party (person/entity) containing objections and demands for land rights, both on land status, priority, and ownership in the hope of obtaining an administrative settlement in accordance with applicable regulations. The emergence of cases of land disputes in Indonesia in recent times seems to reaffirm the fact that during the 72 years of Indonesia's independence, the State has not been able to guarantee land rights to its people. Law Number 5 of 1960 concerning the Basic Agrarian Law (UU PA) is only limited to marking the start of a new era of land ownership which initially was communal in nature and developed into individual ownership.

Related to the emergence of this land dispute case, there are at least 2,810 cases of land disputes on a national scale. Land dispute cases totaling 2,810 cases spread throughout Indonesia on a large and small scale. Of the cases involving the land, especially in terms of land disputes that may occur, it can be said that it never subsides, this is due to the increasing number of human activities and the increasingly complex problems that occur between each other so that it can lead to a tendency for conflict and land disputes due to increased the number of people who are contrary to the condition of the land because the land area is unlikely to increase or expand, this

contradiction often triggers the emergence of frictions of interest related to the use and utilization of land (Mengga, 2020).

The right of control over land contains a series of powers, obligations and or prohibitions for the holder of the right to act or act on the land to which he is entitled. The legal relationship between the State and land gives birth to the right to control land by the State, the relationship between customary law communities and their ulayat lands gives birth to customary rights and the relationship between individuals and land gives birth to individual rights to land and the three rights are harmoniously and in balance so that they are equal in position and strength and do not harm each other. Land disputes that occur are also inseparable from differences in interpretation of public rights and individual rights regulated in the Basic Agrarian Law. The public rights contain the authority to issue certificates by the National Land Agency, while those concerning individual rights are in the process of transferring their rights.

Land as the economic right of everyone, is prone to individual conflicts between each other, especially in terms of different interests, these things are what cause and have an impact both economically, socially and environmentally. Economically, land disputes that arise have forced the parties involved to incur costs where the longer the dispute/conflict resolution process, the greater the costs incurred. In this case, the continuation impact that has the potential to occur is a decrease in work or business productivity because during the dispute, the disputing parties must devote their energy and thoughts and spend their time specifically (Muhasan, 2018).

The seal or proof of sale and purchase from the seller to the buyer of the land is still a sign of the validity of the sale and purchase between interested parties, but this proof does not have strong legal force if a land certificate is not issued which is a form of official ownership letter from the government that the land the land has been registered and registered at the local land office where the land is located. This often causes conflict in Indonesian society that the land they own from their purchase of the land has been usurped by other parties who also have an interest in the land. is a land conflict/dispute regarding the struggle for legal ownership status of the land, especially land that is not certified.

To avoid a dispute over a transfer of land rights in the event of a sale and purchase, formal and material requirements must be met, namely (1) Formal requirements must be followed in accordance with the procedures and conditions stipulated, namely made by/in front of PPAT as an appointed public official and must also be fulfilled. also other administrative requirements such as the submission of original certificates for those who have been certified or other evidence such as seals and other evidence. The high court also has the duty and authority to adjudicate at the first and final level disputes over authority between district courts in their jurisdiction. This is a way to reach a settlement through litigation which takes a long time and is also expensive and is an obstacle for parties who want to seek justice, especially for people who are in the middle to lower economic class who unable to pay court fees. So, land disputes that occur should be resolved in a comprehensive and integrated manner by prioritizing the principle of win-win solutions through non-litigation channels (RATIH et al., 2013).

Likewise, in dispute resolution through deliberation and consensus, which is better known and has rooted in Indonesian society as a form of settlement that has

lived and is respected in social interactions, the consideration of dispute resolution in traditional societies through deliberation and consensus is more emphasized on maintaining group harmony or national unity and integrity, this dispute resolution has various forms such as mediation or arbitration, mediation is seen as more effective as an alternative dispute resolution that can satisfy the parties. This awareness gives birth to a legal process carried out by the community in the event of a dispute by using mediation to resolve the problem in order to reach an agreement that is beneficial to both parties through negotiation. So based on the description of the background above, the researcher is interested in analyzing the legal protection for uncertified land owners in Bandung Regency related to government regulation number 24 of 1997 concerning land registration.

## **B. Method**

The method used in this research is descriptive analytical, namely describing and analyzing the facts as they are in accordance with the problem that is the object of the research study, namely the legislation in force in Indonesia associated with legal theories concerning the problems faced to describe and analyze the facts systematically, factually, logically, and have a clear rationale and source of work so that alternative solutions are obtained in accordance with applicable legal provisions or principles. The approach used by the researcher is the normative juridical method, namely legal research carried out by researching and reviewing secondary data in the form of positive law, especially the settlement of land disputes against uncertified land rights. Meanwhile, the existing research data collected by researchers was carried out using document study techniques, namely conducting research on documents that are closely related to the research focus in order to obtain a theoretical basis and obtain information in the form of formal provisions and data through existing official texts (Soendari, 2012 ).

## **C. Results and Discussion**

### **1. Legal Protection of Parties in Land Dispute Settlement Against Uncertified Land Rights in Bandung Regency linked to PP No. 24 of 1997 concerning Land Registration**

In the case of land disputes that often occur in Indonesia, usually many are influenced by complaints from the public (individuals/legal entities) that contain the truth and demands of a State Administrative decision in the land sector that has been determined by the State Administration Officer within the Agency. National Land Affairs, as well as the official's decision, are felt to be detrimental to the rights to a plot of land. With this recognition, they want to get an administrative settlement with what is called an immediate correction from the authorized official for that the authority to make corrections to a state administrative decision in the land sector (certificate/Decree on Granting Land Rights) rests with the Head National Land Agency. The land cases include several kinds of them, namely, regarding the issue of land status, then the issue of ownership, and the problem of evidence of acquisition which is the basis for granting rights and so on (Rejekiningsih, 2016).

After receiving the complaint file from the community, the official authorized to resolve this problem will conduct research and collect data on the complaint file. From the results of the study, it can be concluded temporarily whether the complaint can be processed further or not. If the data is submitted directly to the National Land Agency, it will ask for an explanation accompanied by data and suggestions to the Head of the Regional Office of the Provincial National Land Agency and the Head of the local Regency / City Land Office where the disputed land is. If the completeness of the data has been met, then a review is carried out on the proposed problem which includes the terms of procedure, authority and application of the law. In order for the interests of the community (individuals or legal entities) who are entitled to the claimed plot of land to be protected by law, if it is deemed necessary after the Head of the local Pre-Land Office conducts research and if from his belief it must be in a status quo, he can block the disputed land. This policy is stated in the Circular of the Head of the National Land Agency dated 14-1-1992 No. 110-150 regarding the Revocation of the Instruction of the Minister of Home Affairs No. 16 of 1984.

With the revocation of the Instruction of the Minister of Home Affairs No. 16/1984, attention is requested from the officials of the National Land Agency in the regions, namely the Heads of the Regional Offices of the Provincial National Land Agency and the Heads of the Regency/City Land Offices, so that further determination of the status quo or blocking is only carried out if there is a confiscation of guarantee (CB) from the Court. Therefore, it can be concluded that if the Head of the local Land Office wants to take status quo action against a State Administrative Decree in the Land sector (certificate/Decree on the Granting of Land Rights), he must act carefully and pay attention to the general principles of the Government which good, including the principles of accuracy, thoroughness, openness, and the principle of equality in serving the interests of the community and paying attention to the disputing parties (Saisab, 2020).

After the two disputing parties are brought together, it is very good if the process can be resolved through deliberation, often parties from the National Land Agency are asked to act as mediators in resolving land rights disputes peacefully with mutual respect for the disputing parties. In this regard, if the settlement by deliberation reaches consensus, it must also be accompanied by written evidence, namely from a notification letter to the parties, minutes of the meeting and furthermore as evidence of the existence of peace, it is stated in a deed which, if necessary, is made before a notary so that it has perfect proving power.

There are at least three main things that cause land disputes, including (1) The issue of land certification administration is not clear, the result is that there is land owned by two people with their respective certificates (2) Uneven distribution of land ownership. This imbalance in the distribution of land ownership for both agricultural and non-agricultural lands has created inequality both economically, politically and sociologically. In this case, the community, especially farmers/land cultivators, bear the heaviest burden. Inequality of land distribution is inseparable from economic policies that tend to be capitalistic and liberal. In the name of development of lands cultivated by farmers or land belonging to indigenous peoples are taken over by investors at low prices (3) Legality of land ownership based solely on formal evidence (certificates), without paying attention to land productivity. As a result, legally (de



jure), it is possible that a lot of certified land is owned by companies or big investors, because they have bought it from the farmers/land owners, but the land has been neglected for a long time. Maybe some people take it lightly by looking down on this land dispute issue, even though this problem is a problem that must be immediately found a solution (Saranani, 2022).

The provision of legal certainty in the land sector requires the availability of written, complete and clear legal instruments that are carried out consistently in accordance with the spirit and content of the provisions. In addition, in the context of dealing with various real cases, it is also necessary to carry out land registration activities that make it possible for land rights holders to easily prove their rights to the land they control, and for interested parties, such as prospective buyers and potential creditors to obtain relevant information. It is necessary regarding the land that is the object of the legal action to be carried out, as well as for the government to implement land policies.

In this regard, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, in Article 19 orders the holding of land registration in order to ensure legal certainty in question. The implementation of land registration is then regulated in Government Regulation Number 10 of 1961 concerning Land Registration. Meanwhile, the legal provisions contained in Government Regulation Number 10 of 1961 concerning Land Registration. Meanwhile, the legal provisions contained in Government Regulation Number 10 of 1961 for the basis of its implementation are felt to be insufficient to provide the possibility for the implementation of land registration in an immediate time with more satisfactory results, then Government Regulation Number 10 of 1961 has been refined into Government Regulation Number 24 of 1997 concerning Land Registration (Setyani & Suwondo, 2021).

In the Government Regulation Number 24 of 1997, the purpose and system used are maintained, which in essence have been stipulated in the Basic Agrarian Law, namely that land registration is carried out in order to guarantee legal certainty in the land sector and that the publication system is a negative system, but contains a positive element, because it will produce letters of proof of rights that apply as strong evidence, as stated in Article 19 paragraph (2) letter c, Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) UUPA.

In relation to the civil court case that was examined and tried at the Bandung District Court regarding land disputes arising from certificates, it raises the question, namely to what extent the legal protection can be given by the State to land rights holders. As it is understood that the right to obtain legal protection concerns the duties, roles and responsibilities that must be carried out by the power of the state identity. As citizens who gather in a state identity, of course, they have basic rights, namely the right to safety, security and legal protection. As a consequence of the recognition of these rights, it is not allowed for any member of the community as citizens to receive unfair shipping from state power. However, in terms of obtaining legal protection from state power through the judicial process from the first level, the appeal to the cassation level takes a long time, about 10 (ten) years. Chronologically, it appears that the lawsuit filed by the Plaintiff in 1997 only received a court decision that has permanent legal force in 2013. Thus, it can be summarized that the aspect of legal protection for holders of land rights certificates can be said to be relatively low.

## **2. Legal Arrangements Regarding Settlement of Land Disputes on Uncertified Land Rights in Bandung Regency. 24 of 1997 concerning Land Registration**

In essence, a land case is a conflict of interest that often involves an individual with another individual, or an individual with a legal entity and a legal entity with a legal entity. In connection with the foregoing, in order to ensure legal certainty as mandated by the BAL, the response/reaction/settlement to the interested parties (community and government) can be given to the interested parties (community and government), in the form of solutions through the National Land Agency and solutions through the Judiciary. The land case arises because of complaints or objections from the public (individuals / legal entities) containing the truth and demands of a State Administrative decision in the land sector that has been determined by the State Administration Officer within the National Land Agency, as well as the decision of the official. perceived to be detrimental to their rights to a plot of land (Simbolon, 2016).

With this claim, they want to get an administrative settlement with what is called an immediate correction from the authorized official for that. The authority to make corrections to a decision on State Administration in the land sector (certificate/Decree on Granting Land Rights), rests with the head of the National Defense Agency. Land cases include several kinds, including issues regarding land status, ownership issues, problems with evidence of acquisition which are the basis for granting rights and so on. After receiving the complaint file from the community mentioned above, the official who is authorized to resolve this problem will conduct research and collect data on the file that is complained of. From the results of this study, it can be concluded temporarily whether the complaint can be processed further or not. If the data submitted directly to the National Land Agency is still unclear or incomplete, the National Land Agency will ask for an explanation accompanied by data and suggestions to the Head of the Regional Office of the Provincial National Land Agency and the Head of the local Regency / City Land Office where the disputed land is located. .

If the completeness of the data has been met, then a re-examination of the proposed problem will be carried out which includes the terms of procedure, authority and application of the law. In order for the interests of the community (individuals or legal entities) who are entitled to the claimed plot of land to be protected by law, then if deemed necessary after the Head of the local Land Office has conducted research and if from his belief it must have a quokan status, the disputed land can be blocked. This policy is stated in the Circular of the Head of the National Land Agency dated 14-1-1992 No. 110-150 regarding the Revocation of the Instruction of the Minister of Home Affairs No. 16 1984 (Suryaningtyas, 2018).

With the revocation of the Instruction of the Minister of Home Affairs No. 16/1984, attention is requested from the officials of the National Land Agency in the regions, namely the Heads of the Regional Offices of the Provincial National Land Agency and the Heads of the Regency/City Land Offices, so that furthermore, in determining the status quo or blocking, it is only carried out if there is a confiscation of guarantee (CB) from the court. If a settlement of a land dispute cannot be resolved through deliberation between the disputing parties, it is also the case if the unilateral settlement of the Head of the National Land Agency cannot be accepted by the disputing parties, then the settlement must go through the courts. After going through

the research, it turns out that the State Administrative Decree issued by the National Land Agency Official is correct according to law and in accordance with the applicable procedures, the Head of the National Land Agency may also issue a decision which contains rejecting the claims of third parties who object to the State Administrative Decree that has been issued by the official of the National Land Agency. As a consequence of the refusal, it means that the State Administrative Decision that has been issued is still correct and valid even though there are other parties who submit it to the local Court.

The administrative authority of the application for cancellation of a Decree on the Granting of Land Rights or Certificates of Land Rights is the authority of the Head of the National Land Agency including policy steps that will be taken regarding the existence of a judge's decision that cannot be implemented. All this must be submitted to the Head of the National Land Agency for further consideration and decision making. In the land sector, there is no statutory regulation that explicitly provides the legal basis for implementing the Alternative Dispute Resolution (ADR). However, this cannot be used as a reason not to use the ADR institution in the land sector based on two reasons, namely, in every civil dispute that is brought before the court, the judge always proposes a peaceful settlement by the parties (Article 130 HIR) and second, explicitly the way of solving problems regarding the form and amount of compensation in land acquisition activities is sought through deliberation (Susanto, 2021).

The existence of Presidential Decree No. 55 of 1993 concerning Land Procurement for the Implementation of Development in the Public Interest, ("Keppres No. 53 of 1993") and Regulation of the Minister of State for Agrarian Affairs / Head of the National Land Agency Number 1 of 1994 which is the implementing regulation of Presidential Decree No. 55 1993, regulates the procedures for conducting deliberation in quite detail. In its development, this is contained in Presidential Regulation Number 36 of 2005 concerning Land Acquisition for the Implementation of Development in the Public Interest. With the passage of time, dispute resolution through ADR is implicitly contained in Presidential Regulation no. 10 of 2006 concerning the National Land Agency ("BPN"). Within the organizational structure of BPN, one deputy was formed, namely the Deputy for the Assessment and Handling of Land Disputes and Conflicts ("Deputies"). BPN has also issued Technical Instructions for Handling and Settlement of Land Problems through the Decree of the Head of BPN RI No. 34 of 2007. In carrying out its duties to handle land disputes, BPN makes efforts through mediation as an alternative dispute resolution method.

The formation of the Deputy implies two things, namely that the resolution of various conflicts and land disputes is a very urgent matter so that efforts are made to form a deputy to handle them. Second, there is a belief that not all disputes must be resolved through the courts. The number of civil cases related to the ownership of land rights that occurred in the Bandung Regency area amounted to eight cases, where the process had been handled and all of them had not resulted in a peace agreement between the parties, so the Camat gave suggestions and recommendations to be clearer about the legal certainty that applies then brought this case to BPN Bandung. The number of civil cases that enter and in our society is small because according to the Camat, the people of Bandung Regency have understood the importance of law by using a Notary / PPAT (Land Deed Making Official) facility which is stronger in position than



using an underhand agreement which has many legal weaknesses. . It includes the settlement of civil legal relations between individuals (Tumbal, 2019).

According to the Bandung Regency National Land Agency Office, cases of land disputes that occurred in Bandung Regency increased in 2013 with a total of twenty-five cases and all of these cases only four cases were successfully reconciled with the mediation method, this is due to land disputes that occurred in On average, people find it difficult to find a middle ground due to the absence of one of the parties, even though they have been called many times, so mediation often fails. The mediation that has been carried out both in the community and at the positive legal level has not been realized properly and has not yet achieved what the government aspires to, so that cases are still happening in our judicial institutions, besides that there is still a lack of understanding of the meaning of mediation as a middle way. which is actually the best alternative for those in dispute (Sari, 2020).

From a procedural point of view, mediation is considered simpler than other dispute resolutions, for example through the judiciary. This is because the parties do not only seek refuge with evidence but also seek solutions to the problems faced by bringing together differences of opinion so that the real root of the problem can be explored. It is not impossible that a dispute appears to be very large, in fact it originates from very simple problems, for example the emergence of land boundary disputes between neighbors which seems so complicated, when in fact it starts from a feeling of offense by one party only (Sutedi, 2007).

Things like this are impossible to find in dispute resolution before the court because there the dispute resolution decision is based on an assessment of the truth of the evidence which is often only seen from a formal perspective and in terms of the time of dispute resolution and not material truth, from a private aspect, land rights contain the authority for the right holder to use the land and perform legal actions. So the control, ownership, use and utilization of land by the right holder is limited by laws and regulations with the settlement of land disputes through mediation by the National Land Agency based on legal authorities based on the laws and regulations, Decree of the Indonesian National Land Agency Number 34 of 2007 namely Technical Instructions Number 01/JUKNIS/DV/2007 concerning technical instructions for handling and resolving land issues, which mediation at BPN is more appropriate and more effective in its resolution than mediation in the community or mediation in court because the National Land Agency (BPN) has the authority to land administrative matters so that they know more before land problems and disputes occur.

#### **D. Conclusion**

Based on the discussion that has been carried out by the researcher on the focus of the problem regarding the legal review of uncertified land rights in the Bandung Regency area, the results of this study explain that, the legal protection of the parties in the settlement of land disputes against uncertified land rights in Bandung Regency is related to with PP No. 24 of 1997 concerning land registration is Article 32 paragraph (1) of Government Regulation Number 24 of 1997 which states that a certificate is a proof of right that applies as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with what is

in the letter of measurement and the land book concerned. This provision implies that as long as the contrary has not been proven, physical data and juridical data included in the certificate must be accepted as correct data, both in daily legal actions and in disputes in court, as long as the data is in accordance with what is stated in the letter. measuring and land books concerned. The legal arrangement regarding the settlement of land disputes on uncertified land rights in Bandung Regency is linked to PP No. 24 of 1997 concerning land registration is Article 32 (2) of Government Regulation Number 24 of 1997, that in the event that a parcel of land has been legally issued in the name of the person or legal entity that acquires the land in good faith and actually controls it, then the Others who feel they have land rights no longer demand the implementation of said rights if within 5 (five) years from the issuance of the certificate they have not submitted a written objection to the certificate holder and the Head of the Land Office concerned or have not filed a lawsuit with the Court regarding land tenure. or issuance of the certificate.

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