

Establishment of Special Land Courts as an Effort to Settlement of Land Cases

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Abstract

This paper is aimed to see whether the government's discourse to form a special land court is the only way to answer the problem of resolving land cases in Indonesia. The settlement of land cases in Indonesia often experiences obstacles, this has led to the government's discourse to form a special court to handle land cases that occur. Conducting this research is crucial to ensure that complicated land problems are promptly resolved without further increasing the losses that the involved parties have to endure. This research was conducted using a normative juridical method by conducting studies on legislation, expert opinions and decisions on cases that have occurred in Indonesia. This research has novel value in offering other solutions than establishing land courts, namely by strengthening existing courts so that land cases can be resolved thoroughly and maximally without the need to go through two courts. The discourse on the establishment of a land court becomes a problem that needs to be observed considering that the establishment of a special land court may not necessarily be able to completely resolve land cases. From this research, it will be shown that there are other solutions in simplifying and handling land cases other than the establishment of a special land court.

Keywords: *Administrative Court; Land Case; Land Court*

1. INTRODUCTION

Land issues are complicated because of the multidimensional nature of the land, which its control, utilization, and management involves many different legal aspects, including administration, general civil law, and criminal law.¹ When a court makes a decision about these problems, it can be hard to make that decision happen in real life. This happens because people see the rules differently, and there can be mistakes in choosing which court should deal with a land problem. Sometimes, a land problem has to go to more than one court at the same time, and they might make different decisions about it. This can lead to disagreements about what's the right decision.

As a legal country, Indonesia has laws for everything, and that includes how land is handled. If there's a problem with an error regarding the land title certificate and land-related permits as a State Administrative Decisions (KTUN), a court called administrative court (PTUN) can help fix it. Also, when it comes to land and the rules, it's all about who owns it, how it's used, and if you can sell it to someone else. To explain further, if you do something legal on a piece of land, like selling it to someone and making it official with a written agreement, but there's a mistake in the paperwork, the District Court can help fix it. This court also handles any legal problems related to that paperwork. And if a land issue is a big deal for the public or breaks the law, the District Court takes care of it.

When we look at all the different legal rules about land, we need to consider the entire land law system. Land problems always end up in front of courts, and each court specializes in certain types of problems. But here's the tricky part: sometimes, it's not clear which court should handle a particular land problem. This can create confusion, with different people thinking different courts should handle it. So, when a land problem gets all mixed up with lots of legal stuff, we really need to focus on solving it as soon as possible. That means we should sort out the legal issues at the core of the problem. Because of this, the idea came up to create a special court just for land problems, to help people get fair and clear solutions when land issues get tricky.² However, creating a special court for land issues has both good and bad points, and people have different opinions about it.

Several studies related to this research include Panjaitan (2020), who studied the establishment of land courts to resolve land disputes. The research shows that land courts can help fix land problems, but they can only handle appeals, not the initial

¹ Shenny R Moidady, "Penyelesaian Sengketa Pertanahan Melalui Jalur Pengadilan" (Surabaya, Universitas Surabaya, 2020).

² Achmadudin Rajab, "Tinjauan Yuridis Pentingnya Pembentukan Pengadilan Khusus Pertanahan," *Jurnal Legilasi Indonesia* 13, no. 1 (2016): 33–40.

issues. To make this work, we need clear rules about land and other natural resources, so there are no conflicts or confusion between different rules.³

Meanwhile, Saraswati (2021) research examined how District Courts and PTUN deal with land issues in Indonesia and why it's important to create agrarian courts. The results of the research state that the current courts can't always solve land problems very well. So, it suggests we need special land courts with experts who really understand land issues to sort out these problems. The judges in these special courts should know a lot about land and related matters.

Finally, research by Bilaldzy (2022) examines at the necessity of establishing a dedicated court specifically for land-related matters, in addition to the existing courts such as PTUN and standard courts.. It also checks how much power agrarian court should have based on the rules from the Supreme Court. The research shows that, based on what's happening in real life, we should make this special land court and update the rules that support it. We also need skilled people to work there who really understand land problems. This court's job is to solve land problems, and it has one full-time judge and two part-time judges to do that.⁴

This research examines the government's discourse in establishing special land courts to produce appropriate solutions for resolving land cases. This research is different from previous studies because it tries to find other ways to fix land problems, instead of only making these special courts. The goal of this research is to find answers for land problems by having ad hoc judges who are experts in certain cases. The amendments to the 1945 Constitution strictly define the existence of four judicial environments in Indonesia so that various forms, types, and variants of special courts must be in one of the judicial environments mentioned in the Constitution.⁵ Creating a special court just for land issues should be part of one of the court systems in Indonesia, and this might make it unclear which court has the most power. This paper is aimed to see whether the government's discourse to form a special land court is the only way to answer the problem of resolving land cases in Indonesia.

³ Budi Sastra Panjaitan, "Pembentukan Pengadilan Pertanahan Sebagai Solusi Penyelesaian Sengketa Pertanahan," *Bina Hukum Lingkungan* 4, no. 2 (April 26, 2020): 264–78, <https://doi.org/10.24970/bhl.v4i2.130>.

⁴ Ahmad Bilaldzy and Relys Sandi Ariani, "Tinjauan Kritis Urgensi Pembentukan Pengadilan Agraria : Upaya Menangani Inefektivitas Penyelesaian Konflik Agraria pada Peradilan Tata Usaha Negara dan Peradilan Umum," *Jurnal Hukum Lex Generalis* 3, no. 9 (September 24, 2022): 688–711, <https://doi.org/10.56370/jhlg.v3i9.311>.

⁵ Hamdan Zoelva, *Putih Hitam Pengadilan Khusus: Aspek Konstitusionalitas Pengadilan Khusus Di Indonesia* (Jakarta, 2013), 178.

2. METHOD

This research was conducted using a normative juridical method, namely by conducting a literature study on legal materials obtained in the study. The problem approach used in this research is the statutory approach, the conceptual approach, and the case approach.⁶ The statutory approach in this research is carried out by examining all existing statutory regulations relating to the issues raised, including Law Number 5 of 1960 concerning Basic Agrarian Regulations and Law Number 5 of 1986 concerning Administrative Courts. State Enterprises, Minister of Agrarian Regulation number 11 of 2016, and other relevant laws and regulations. The conceptual approach is carried out by studying experts' opinions and previous studies on the issues raised. In contrast, the case approach examines cases related to the issues at hand, which have become court decisions with permanent legal force.⁷ Finally, a case approach is also carried out by analyzing the judge's considerations in case register number 83/Pdt.G/2000/PN-Dps.

3. RESULTS AND DISCUSSION

3.1 Problems of Settlement of Land Cases

Land is a factor that plays an essential role in people's lives, especially in the Indonesian nation, where most of the population depends on land.⁸ From the land, humans carry out all activities related to survival. From the land, humans obtain resources as a source of livelihood.⁹ Not only that, the land is a state asset with a huge amount, where most of the sources of state income are from taxes and one of them is taxes from land, both building taxes and other taxes such as rent, usufructuary rights, and others.¹⁰ This is in line with the philosophy of the Indonesian people who want to achieve an ideal, namely the exploitation of land to acquire the greatest prosperity for the people fairly and equitably.¹¹ The significant role of land in human life has become necessary for today's society, making the human relationship with land irreplaceable.¹² Besides helping people do well, land

⁶ Peter Mahmud Marzuki, *Penelitian Hukum*, 1st ed. (Jakarta: Kencana Prenada Media Group, 2005), 134.

⁷ Marzuki, 134.

⁸ Teddy Chandra, "Non-Litigation Process Land Dispute Settlement For Legal Certainty," *Substantive Justice International Journal of Law* 2, no. 2 (December 29, 2019): 177, <https://doi.org/10.33096/substantivejustice.v2i2.49>.

⁹ Embun Sari et al., "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja," *Jurnal Ius Constituendum* 7, no. 1 (April 16, 2022): 51, <https://doi.org/10.26623/jic.v7i1.4390>.

¹⁰ Ali Achmad, *Hukum Agraria (Pertanahan Indonesia)* (Jakarta: Prestasi Pustaka, 2004), 4.

¹¹ Boedi Harsono, *Menuju Penyempurnaan Hukum Tanah Nasional dalam Hubungannya dengan TAP MPR IX/MPR/2001*, 1st ed. (Jakarta: Universitas Trisakti, 2002), 4.

¹² Iwan Permadi, "Peralihan Hak Atas Tanah Warisan Terhadap Ahli Waris Beda Agama Dalam Perspektif Hukum Positif Dan Hukum Islam," *Jurnal Ius Constituendum* 8, no. 1 (March 19, 2023): 153, <https://doi.org/10.26623/jic.v8i1.6254>.

can also lead to land problems because it's so important in our lives. From 2015 to 2017, the number of land cases reported by the National Land Agency (BPN) of the Republic of Indonesia increased by five thousand.¹³ In this situation, there are some rules that help with solving land problems. One of these rules is the "Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases." But it was replaced by the "Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases".

Breaking the law or not following the land regulation can lead to land disputes and conflict. If you break these rules, you can be prosecuted or sued from civil, administrative and even criminal aspects. These disputes and conflict that carried through the judiciary are called land cases. The courts that handle these cases depend on which rules were broken. It could be general judiciary, state administrative courts, or religious courts, depending on the situation. Land cases can contain 3 (three) legal aspects, as already mentioned, namely civil, administrative, and criminal aspects, each of which has a different settlement method. In general, the settlement of land disputes consists of 2 (two) ways, namely through events outside the judiciary (non-litigation) and through events in the judiciary (litigation). Non-litigation resolution of land disputes or conflicts in civil law can be made through mediation and arbitration. In contrast, non-litigation resolution of land disputes or administrative law conflicts can be resolved through objections.

When justice seekers are not or are not satisfied with the settlement method, either through civil or administrative efforts, another way to be taken is to file a lawsuit in court. If there are criminal aspects, they can also report to the police. In a state of law, the central pillar to realizing the principle of the rule of law is the existence of an independent judiciary. The embodiment of the rule of law in the constitution outlines that judicial power is an independent power, independence of the judiciary and freedom of judges.¹⁴ Article 24 paragraph (1) of the 1945 Constitution states that judicial power is independent to administer justice to uphold law and justice.¹⁵ The executor of judicial power is the Supreme Court and

¹³ Darwis Anatami, "Tanggung Jawab Siapa, Bila Terjadi Sertifikat Ganda atas Sebidang Tanah," *Jurnal Hukum Samudra Keadilan* 12, no. 1 (2017): 7.

¹⁴ Ibnu Subarkah et al., "Arah Campur Tangan Urusan Peradilan Pasal 3 Ayat (2) UU No. 48 Tahun 2009 Tentang Kekuasaan Kehakiman Sebagai Kebijakan Hukum Pidana," *Jurnal USM Law Review* 4, no. 2 (December 1, 2021): 863, <https://doi.org/10.26623/julr.v4i2.4188>.

¹⁵ Muh Ridha Hakim, "Tafsir Independensi Kekuasaan Kehakiman dalam Putusan Mahkamah Konstitusi," *Jurnal Hukum dan Peradilan* 7, no. 2 (July 29, 2018): 282, <https://doi.org/10.25216/jhp.7.2.2018.279-296>.

the Judicial Body under it in the general court environment, the religious court environment, the military court environment, the state administrative court environment, and the Constitutional Court. The four levels of courts, ending with the Supreme Court, each have their own special areas of authority. This means they can look at different types of cases and make decisions based on the rules. In simple terms, it's like each court has its own job to handle specific kinds of problems according to the object of the dispute by the parties.¹⁶ The judicial environment must have its absolute competence so that the implementation of judicial power becomes orderly and provides legal certainty for justice seekers.

Land deals with various aspects of law, namely administrative, civil, criminal, and Islamic religious law. This then causes land disputes that occur will also be related to these legal aspects, so that settlement through the judiciary must be adjusted to the absolute competence of each judicial institution. Land disputes containing two or three legal aspects can be submitted to two or even three courts with different procedures. This can cause a problem when land arguments go to more than one court, and each court makes different decisions. It makes it hard to make those decisions happen in real life. An example of a discrepancy in inter-court decisions can be seen in the civil dispute between the Plaintiffs. Namely, I Wayan Tama, I Ketut Sudia, I Wayang Nambreg, I Nyoman Rukeg, I Wayan Sinter, I Wayan Ketut Radio, and I Nyoman Sirda Als. Tengkel and his Defendants are the Bali Province BPN Regional Office and the Badung Regency Land Office. In this case, the Plaintiffs are the owners of the land of Persil Number 40 Class II, covering an area of ±23.5 Ha, located in Klasiran Tengah, Ungasan Village, Kuta District, Badung Regency. At first, the Plaintiffs filed a lawsuit to the Denpasar District Court with Case Register Number 83/Pdt.G/2000/PN-Dps for unlawful acts committed by the Defendants as the party issuing the Right to Use Certificate Number 9 Ungasan Village, Picture of the situation Number 7145 /1991 without the knowledge and permission of the Plaintiffs. In this case, it was the Plaintiffs who won. Then, in this case, at the Administrative Court, after going through a review process, the opposite happened where the Supreme Court won the Defendants. Furthermore, on February 1, 2006, the Bali Provincial BPN Regional Office reported I Wayan Tama and the other Defendants to the police on charges of having committed criminal acts of Using False Letters, Providing False Information and Crimes of Coercion (Article 263, Article 266 and Article 335 of the Indonesian Criminal Code). -Criminal Law). In the end, it was proven that the proof of ownership of I Wayan Tama and the other Defendants was genuine and not falsified. On this basis, the Supreme Court finally won I Wayan Tama and the

¹⁶ Budi Aspani, "Kompetensi Absolut dan relative Peradilan Tata Usaha Negara Menurut Undang-Undang Nomor 5 Tahun 1986 Jo. Undang-Undang Nomor 9 Tahun 2004," *Solusi* 16, no. 3 (September 1, 2018): 345, <https://doi.org/10.36546/solusi.v16i3.142>.

other Defendants. Thus, it can be seen that land disputes or conflicts resolved through the judiciary can be submitted to two courts with three different judicial proceedings and produce three different decisions.

If we take a closer look at the problem, we can see it happens because people see things differently, and this leads to disagreements. Sometimes, people also pick the wrong court to solve their land problems right from the start. This can make it really tough to completely fix the problem. In real life, when it comes to land arguments, there's a situation involving different courts and what they can decide. The reason it gets tricky is because it's not always clear which court should handle certain land problems. The authority each court has right now is pretty broad. On the other hand, when land problems involve more than one court type, like the Administrative Court, the District Court, and the Religious Courts, we need to make sure things need to be interpreted clearly.

3.2 Integrating Land Case Settlement

Everyone is aware of land issues, specifically disputes over land, which are typically managed and resolved through the legal system. These disputes usually revolve around two key elements: certificates and other evidence of ownership. Certificates serve as legal evidence of a person's right to own a piece of land, and they are official documents generated as a result of the initial land registration process, which is conducted by the Regency/City Land Office.¹⁷ As regulated in Article 32 paragraph (1) of Government Regulation Number 24 of 1997 concerning Government Registration (from now on referred to as "PP No. 24/1997"), which reads:

"Certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data follow the data contained in the letter; of measurement and the relevant land book."

Providing a certificates as a proof and ownership of an authentic deed as a proof of land rights is a form of legal transfer of ownership of a land right.¹⁸ Certificates are not just a way to show that you own a piece of land; they're also powerful and legal evidence that the government accepts. However, in some situations, people may have land, but they don't have a certificate to prove it. In this context, ownership evidence for people who have land but don't have a certificate is important due to the requirements for land rights registration outlined in UUPA

¹⁷ Ilyas Ismail, "Sertifikat sebagai Alat Bukti Hak Atas Tanah dalam Proses Peradilan," *Kanun Jurnal Ilmu Hukum* 13, no. 1 (2011): 24.

¹⁸ Vania Digna Anggita and Mohamad Fajri Mekka Putra, "Implikasi Hak Atas Tanah yang Diperoleh Secara Melawan Hukum" 5, no. 2 (2022): 790, <http://dx.doi.org/10.26623/julr.v5i2.5724>.

before its enactment. The relevant evidence, as described in Article 24 paragraph (1) of PP No. 24/1997, consists of written records, statements from witnesses, and/or relevant testimonies. The accuracy of these pieces of evidence is determined either by the Adjudication Committee during systematic land registration or by the Head of the Land Office during sporadic land registration. When this evidence is deemed trustworthy, it is sufficient to register the rights, rights holders, and any other parties with a legal stake in the land. Written evidence referred to in Article 24 paragraph (1) PP No. 24/1997, among others, are:¹⁹ a) Grosse deed of eigendom rights issued under the Overschrijvings Ordonnantie (Staatsblad 1834-27), which has been affixed with a note that the eigendom rights in question are converted into property rights; b) Grosse deed of eigendom rights issued under the Overschrijvings Ordonnantie (Staatsblad 1834-27) since the enactment of the UUPA until the date of land registration is carried out according to Government Regulation no. 10 of 1961 in the area concerned; c) Proof of ownership rights issued based on the relevant Swapraja Regulation; d) Certificate of ownership issued based on Minister of Agrarian Regulation No. 9 of 1959; e) Decree on the granting of property rights from an authorized official, either before or since the enactment of the UUPA, which is not accompanied by an obligation to register the rights granted but has fulfilled all the obligations stated therein; f) Deed of transfer of rights made under the hand which is affixed with a testimony by the Customary Head/Village/Kelurahan Head made before the enactment of Government Regulation no. 24 of 1997; g) Deed of transfer of land rights made by PPAT, whose land has not been recorded; h) Waqf pledge deed/waqf pledge letter made before or since the implementation of Government Regulation No. 28 of 1977; i) Minutes of the auction made by the authorized auction official, whose land has not been recorded; j) Letter of appointment or purchase of land plots instead of land taken by the Government or Regional Government; k) Petuk Land/Landreth, girik, pipil, ketitir, and Indonesian Verponding taxes before the enactment of Government Regulation No. 10 of 1961; l) Certificate of land history ever made by the Land and Building Tax Service Office; or m) Other forms of written evidence under any name as referred to in Article II, Article VI, and Article VII of the provisions of the UUPA Conversion. If you don't have all the right paperwork or proof that you own a piece of land, you can still make your case. According to Article 24 paragraph (2) of Regulation No. 24/1997, you can show that you've been physically using the land and your family has done so for 20 years or more. However, with the introduction of the UUPA, the evidence of land ownership must be clear, legally sound, and accepted by the government.

¹⁹ Urip Santoso, *Pendaftaran Tanah dan Peralihan Hak Atas Tanah*, 1st ed. (Jakarta: Prenada Media Group, 2019), 39–42.

The foundation for acquiring land rights certificates is the process of land registration. A thorough, effective, prompt, and transparent land registration system can establish legal clarity regarding land ownership. This, in turn, simplifies all legal matters concerning land.²⁰ Ensuring that land rights are legally certain provides protection for those who own these rights and gives them assurance in their properties.²¹ Land registration begins with the provisions of Article 33, paragraph (3) of the 1945 Constitution, which gives the state the right to control the earth, water, and all the wealth contained therein. The general rules are made more specific in the UUPA as mentioned in Article 2, paragraph (2) of the UUPA. This part of the UUPA says that the government has the power to make rules and manage land in a way that benefits the people the most. In this situation, the government's role in managing and organizing land involves a process known as land registration, as outlined in Article 19 of the UUPA. This process aims to guarantee legal certainty, and it's carried out all over Indonesia, following the rules specified in a Government Regulation. The provisions in Article 19 of the UUPA become an order for the government to carry out land registration in Indonesia which focuses on *recht cadastral*, which can be interpreted as providing and guaranteeing legal certainty.²² In line with the purpose of land registration, which is to provide legal certainty, land registration is required for every holder of land rights.²³

Land registration involves two main tasks: the first-time registration and keeping the records updated.²⁴ The initial registration is done for land that has never been officially registered before, as per Government Regulations No. 10 of 1961 and No. 24/1997. On the other hand, maintaining land registration data means making sure that the information on maps, land registers, name lists, measuring documents, land books, and certificates stays accurate and up to date when there are changes.²⁵ When land is registered for the first time, a document called a "certificate of land rights" is created. This certificate is also known as a KTUN. Article 1 point 9 of Law Number 51 of 2009 concerning the Second

²⁰ Muhammad Aziz Zaelani, Wahyu Beny Mukti Setiyawan, and Fery Dona, "Mewujudkan Pendaftaran Tanah Yang Responsif Pada Era Disrupsi Sebagai Penunjang Kesejahteraan Rakyat," *Jurnal USM Law Review* 5, no. 1 (May 25, 2022): 343, <https://doi.org/10.26623/julr.v5i1.4877>.

²¹ Klaudius Ilkam Hulu, "Kekuatan Alat Bukti Sertifikat Hak Milik Atas Tanah dalam Bukti Kepemilikan Hak," *Jurnal Panah Keadilan* 1, no. 1 (2021): 28.

²² Bhim Prakoso, "Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah," *Journal of Private and Economic Law* 1, no. 1 (2021): 67, <https://doi.org/10.19184/jpel.v1i1.23859>.

²³ Zaidar, *Dasar Filosofi Hukum Agraria Indonesia* (Medan: Pustaka Bangsa Press, 2014), 62.

²⁴ Harris Yonatan Parmahan Sibuea, "Arti Penting Pendaftaran Tanah Untuk Pertama Kali," *Jurnal Negara Hukum* 2, no. 2 (2011): 294, <https://doi.org/10.22212/jnh.v2i2.218>.

²⁵ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Djambatan, 1997), 427–29.

Amendment to Law Number 5 of 1986 concerning State Administrative Courts defines KTUN as a written determination issued by a state administrative body or official containing legal actions for state administration that are based on the prevailing laws and regulations, which are concrete, individual and final, which have legal consequences for a person or civil legal entity. To confirm the authenticity of land rights certificates known as KTUN, we should consider the elements laid out in the definition above. Firstly, a land rights certificate is a written statement, typically in the form of an official letter issued by a government agency known as the Regency/City Land Office. In this context, the National Land Agency (BPN) is an organization entrusted by the government with the authority to issue these land rights certificates through the Regency/City Land Office.²⁶ Secondly, the issuance of land rights certificates is governed by specific laws and regulations, namely Government Regulation No. 24 of 1997 and Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997. These rules outline how land registration is carried out and certificates are provided. Third, the land rights certificate is specific because it assigns particular land rights to the person whose name appears on the certificate, is individual because the certificate is addressed to certain legal subjects, and is final because of the issuance of a certificate of land rights by the Land Office. Regencies/Cities do not require approval from superior agencies or other agencies and have direct legal consequences. Finally, it's important to note that land rights certificates have legal implications. When these certificates are issued, they also come with rights and responsibilities for the people whose names are on them.

The land registration publication system in Indonesia is a negative publication system with positive elements.²⁷ This means that the physical data and juridical data written in the certificate about the land is considered true and official by the law unless there's some other clear evidence that shows it's not²⁸ Hence, in cases where there is a conflict regarding land ownership, and the main issue is linked to the land rights certificate, which holds legal significance, it often involves matters like having two certificates for the same land (overlapping land rights) or mistakes made by government officials or agencies during the administrative process. In the government's work connected to land, it's evident that land disputes are considered

²⁶ Fani Martiawan Kumara Putra, "Pembatalan Sertipikat Hak Atas Tanah karena Cacat Administratif Serta Implikasinya Apabila Hak Atas Tanah Sedang Dijaminkan," *Jurnal Perspektif* 20, no. 2 (May 27, 2015): 108, <https://doi.org/10.30742/perspektif.v20i2.152>.

²⁷ I Dewa Ayu Widyani, "Kepastian Hukum Sistem Publikasi Dalam Pendaftaran Tanah Di Indonesia Menurut UU RI Nomor 5 Tahun 1960 Tentang Pokok-pokok Agraria," *Jurnal to-ra* 1, no. 3 (September 20, 2019): 205, <https://doi.org/10.33541/tora.v1i3.1147>.

²⁸ Hj Suryani Mursalim, Muhammad Akbal, and Tika Nurjannah, "Penyelesaian Sengketa Sertifikat Ganda Hak Atas Tanah (Studi Kasus pada Pengadilan Tata Usaha Negara Makassar)," *Jurnal Supremasi* 11, no. 1 (2016): 50.

administrative issues of the state. When state administrative bodies or officials take actions or decisions related to issuing KTUN, it falls under the responsibility of the State Administrative Court (PTUN).²⁹ PTUN is an organization with the power to look into, make judgments on, and settle problems or cases related to government matters, particularly when it comes to land problems, which often revolve around land certificates.³⁰ The reason for disputes in the PTUN is usually linked to the KTUN by administrative body or official, in this case, the BPN. The BPN is seen as having the authority to take legal actions that can affect individuals or organizations, like when there's a problem with land ownership certificates that harm one of the parties involved.³¹

Considering the complexity of land cases, the government is considering the creation of a special court dedicated to land issues. In 2018, one important topic in the discussion of the DPR initiative draft was the proposal to set up a Special Land Court within the regular court system.³² The idea of creating a special court is rooted in the legal framework of Article 1 point 8 and Article 27 of Law Number 48 of 2009 concerning Judicial Power. This law states that a specialized court can be established within the framework of the judicial system through legal regulations. x The proposal to create a unique land court is part of the Land Bill, which was made public on November 3, 2017. The written content of the Land Bill explains why they want to set up a special land court. It's because people feel that the current courts don't always bring justice, so they believe it's time to think about it again. The concept of creating a unique court system for land reform issues dates back to the 1964 Land Reform Court Law, which was later discontinued in 1970. The Land Reform Court was established with the specific purpose of resolving all disputes associated with land reform, primarily focusing on matters related to land. This court had the authority to address disputes related to land in civil, criminal, and administrative cases.³³

However, the establishment of a particular land court is not something that can be realized instantly, but there are many pros and cons and other things that must be

²⁹ Hj Suryani Mursalim, Muhammad Akbal, and Tika Nurjannah, "Penyelesaian Sengketa Sertifikat Ganda Hak Atas Tanah (Studi Kasus pada Pengadilan Tata Usaha Negara Makassar)," *Jurnal Supremasi* 11, no. 1 (2016): 53.

³⁰ A.A. Gede Aditya Kusuma, I Wayan Parsa, and Nengah Suharta, "Kewenangan Badan Pertanahan Nasional Terhadap Keputusan Pengadilan Tata Usaha Negara Yang Membatalkan Sertifikat Hak Atas Tanah," *Kertha Negara: Jurnal Ilmu Hukum* 5, no. 5 (2017): 6.

³¹ Harahap Zairin, *Hukum Acara Peradilan Tata Usaha Negara* (Jakarta: PT Rajawali Grafindo, 2005), 74.

³² Enrico Simanjuntak, "Pembentukan Pengadilan Pertanahan," *Tempo.Com*, 2018.

³³ Budi Sastra Panjaitan, "Pembentukan Pengadilan Pertanahan sebagai Solusi Penyelesaian Sengketa Pertanahan," *Jurnal Bina Hukum Lingkungan* 4, no. 2 (April 26, 2020): 273, <https://doi.org/10.24970/bhl.v4i2.130>.

considered in this discourse.³⁴ The creation of a land court comes with several challenges, particularly concerning the credibility of the judges involved. Land disputes are quite unique, requiring specific expertise. Consequently, it's important to have judges who are knowledgeable about agrarian law when these disputes are brought to court for examination and resolution to ensure fairness.³⁵ On August 27, 2015, the Indonesian Judges Association (Ikahi) expressed their opposition to the idea of creating a specific court for land issues. They cited challenges in finding judges with expertise in land matters as a reason for their stance. Additionally, Maria S.W. Sumardjono, a legal expert in land matters, as quoted by Enrico Simanjuntak, argued that there's no necessity to establish a dedicated land court because regular courts already handle civil disputes related to land. On the other hand, if people or organizations have a disagreement about land with the government, it's dealt with in the state administrative court.³⁶ Furthermore, there's another issue concerning the creation of a dedicated land court, and that's the matter of expenses. Setting up a specialized court for land matters demands a higher budget. Additionally, the exact nature of this proposed land court is unclear. It's uncertain whether it will be a temporary, case-specific court (known as ad hoc) or a permanent court with a specific focus, similar to the Commercial Court that operates within the District Court.

Hence, creating a special court isn't the sole approach to ensure expertise and efficiency in dealing with cases. An alternative solution lies in making clear rules about which court can handle land cases. Currently, land cases are resolved in two judicial institutions: the Administrative Court and the District Court. To ensure that courts can effectively deal with land disputes without any confusion or overlap, it is important to establish clear and distinct boundaries for each court's authority when it comes to land cases. Land issues that arise from problems with the land rights certificate, a KTUN issued by the Regency/City Land Office, will be handled by the PTUN. The PTUN is responsible for dealing with land issues and can change the decision stated in the certificate. Among other things, the land cases referred to are: a) Overlapping of land rights certificates; b) Procedural error in the registration process for affirmation and/or recognition of rights to land that was formerly owned by adat; c) Procedural error in the process of determining and/or registering land rights; d) Procedural errors in maintaining land registration data; e) Other errors in the application of laws and regulations; or f) Government

³⁴ Endah Sulatri and Teguh Triesna Dewa, "Urgensi Pembentukan Pengadilan Khusus Agraria," *Jurnal Cita Hukum* 3, no. 2 (January 18, 2016): 306, <https://doi.org/10.15408/jch.v2i2.2321>.

³⁵ M Aulia Reza Utama, "Peranan Peradilan Pertanahan dalam Penyelesaian Sengketa Pertanahan," *Badamai Law Journal* 2, no. 1 (April 7, 2017): 143, <https://doi.org/10.32801/damai.v2i1.3391>.

³⁶ Enrico Simanjuntak, "Rekonseptualisasi Pengadilan Pertanahan," *Jurnal Hukum dan Peradilan* 3, no. 3 (November 28, 2014): 255, <https://doi.org/10.25216/jhp.3.3.2014.253-268>.

action that violates the law (onrechtmatige overheidsdaad). It's a well-known fact that when we register land, it leads to the creation of a land ownership certificate. When someone changes the ownership of the land, it also means changing the information on the certificate. This connection between land ownership transfer and the land registration process is so strong that when there's a land issue related to changing or updating the certificate information, the Administrative Court is the right place to handle it. This is in line with the PTUN's power, according to Article 116, paragraph (2) of Law Number 51 of 2009. This allows the PTUN to make government agencies follow its decisions. It means that cases that ultimately aim to change land certificates can be resolved by the PTUN alone, without involving other institutions. On the other hand, when disputes arise within communities because of legal issues, like regular people or businesses taking actions against lands in the civil sector, such as defaults and wrongful acts where the goal is to seek compensation or cancel agreements that don't change the land certificate, or in criminal matters like taking someone else's land and forging land documents, these matters fall under the responsibility of the District Court, following general court procedures. So, the regular courts can only handle cases that don't impact the land certificate or allow for its cancellation. In conclusion, the most effective approach to address this issue is to enhance the capabilities of the current courts. This way, land problems can be resolved completely and effectively, eliminating the need for cases to go through two separate courts.

4. CONCLUSION

The idea of creating a special land court has led to a discussion in the community, and there are both pros and cons to think about. Some people who don't like the idea say that this kind of court might have a lot of problems. They're worried about whether the judges can be trusted, if there are enough judges, if there's enough money to run it, what exactly this special court would do, and if it can really fix all kinds of land arguments. As a result, creating a special land court is regarded as a potential solution. However, the most effective approach to tackle this problem is to define the distinct responsibilities of the Administrative Court and the District Court when handling land disputes. This can be done by setting clear boundaries based on what the case is trying to achieve. When it comes to problems related to changing land certificates, the Administrative Court (PTUN) is responsible for handling them. The District Court, on the other hand, deals with issues that go beyond just changing certificates. This approach is designed to clear up the confusion caused by courts sometimes having overlapping responsibilities. It makes it simpler for people to solve land disputes. By removing these gray areas, we can make sure land problems get solved more efficiently and effectively through a single court.

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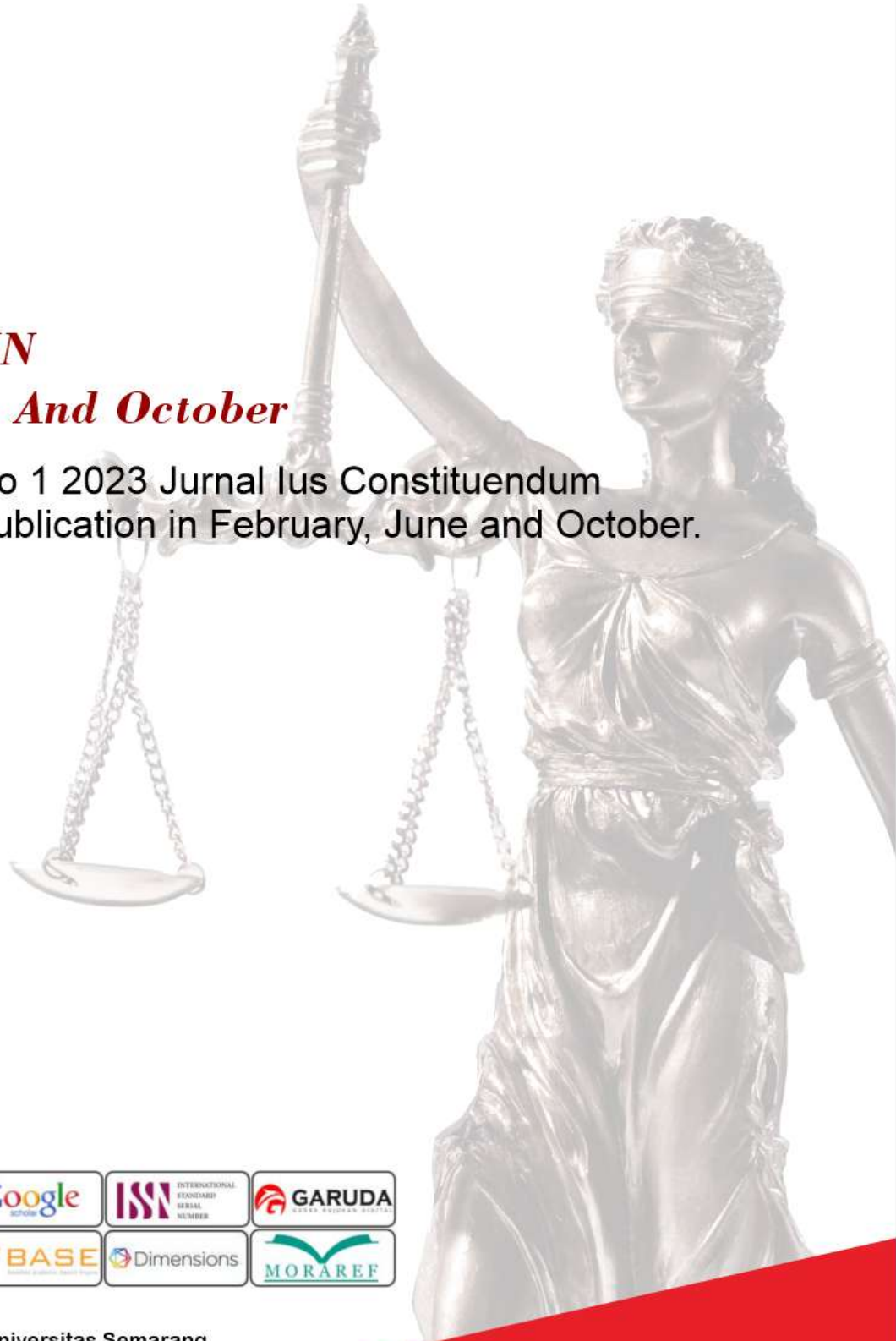
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