

## THE URGENCY OF LAND ADMINISTRATION ACCURACY BY THE NATIONAL LAND AGENCY TO MINIMIZE LAND DISPUTES

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### Abstract

As the agency authorized to issue State Administrative Decisions (TUN) in the land sector, the National Land Agency (BPN) has a legal obligation to ensure that all administrative processes are carried out meticulously, accurately, and in accordance with the General Principles of Good Governance (AUPB). This research aims to analyze the application of the principle of prudence by BPN officials in the process of issuing land certificates and to examine the form of state responsibility when there is a violation of this principle. This research employs a normative legal research method with a legislative and conceptual approach, supplemented by an analysis of several relevant State Administrative Court (PTUN) decisions. The research findings indicate that the negligence of BPN officials in verifying legal data and conducting physical inspections of land can be categorized as a violation of the principle of diligence, which has implications for the cancelation of land administration decisions and the emergence of state liability. Therefore, the application of the principles of prudence and transparency in every stage of land administration needs to be strengthened so that public trust in the agrarian legal system and the protection of land rights in Indonesia remains protected.

**Keywords:** Land Administration, Land Disputes, National Land Agency, Principle of Prudence, State Responsibility

## INTRODUCTION

The purpose of enacting Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) to create a legal basis that guarantees certainty of land rights for all Indonesian people is to lay the foundations for providing legal certainty regarding land rights for all Indonesian people. As for the constitutional basis for land development policies, it has been codified in the constitution in Article 33 paragraph (3) of the 1945 Constitution, which states: "The land and water and the natural resources contained therein are controlled by the State and used for the greatest possible prosperity of the people." Based on this constitutional basis, with the enactment of the UUPA on September 24, 1960, the foundation for the implementation of Land Administration was laid.

Land holds economic and strategic value in the lives of Indonesian society, serving not only as an economic means but also as a social symbol and cultural identity. Therefore, the state, thru the National Land Agency (BPN), is granted administrative authority to regulate, manage, and provide legal certainty regarding land rights as mandated in the UUPA. However, in practice, land disputes often arise from administrative negligence or violations of the principle of due diligence by certain officials and/or land officers in issuing land ownership certificates.

Land disputes are one of the complex cases to reach a quick resolution. Resolving land disputes thru the courts can even involve more than one court, including the General Court, the State Administrative Court, and the Religious Court. This is because these three judicial institutions each have different absolute competencies in resolving land disputes, but they can lead to a point of overlapping case resolution (Pujiningrum, 2020).

Land disputes in Indonesia are caused by several factors, divided into objective and subjective factors. Objective factors include overlapping regulations governing land issues in Indonesia, incomplete and inaccurate data, and natural disasters that damage proof of land ownership. Subjective factors include limited human resources for land certificate registration, errors by right holders, parties seeking to control land with the intention of harming certain parties, and the public's failure to comply with government regulations (Antari et al., 2023).

The phenomenon of overlapping certificates or the issuance of land rights on the same plot indicates a fundamental problem in the process of verifying physical and legal data within the National Land Agency (BPN). In fact, according to the General Principles of Good Governance (AUPB), every public official is obliged to carry out their duties carefully, diligently, and without arbitrariness (Antari et al., 2023). Violations of this principle not only result in the cancelation of administrative decisions but also give rise to legal liability for the state because the actions of officials represent the state's power in carrying out its administrative functions.

Civil matters like this land case are cases involving disputes between legal subjects due to the violation of certain rights and/or obligations by one party bound to another. In a civil case, there is also a form of civil case called a Lawsuit. A Lawsuit is a letter submitted by a person to the President of the Court, containing information about specific events and/or facts that have occurred, along with claims for rights regarding actions that the Defendant must or must not take. Additionally, there are other rights claims that contain a request for the creation of a new legal relationship and/or the elimination of an existing legal relationship (Asnawi, 2016).

In civil cases, a judge has the duty to assist those seeking justice who come thru the courts and works hard to overcome various obstacles that may arise, so that simple, fast, and low-cost justice can be achieved. To resolve a civil case presented to him in court, a judge must strictly adhere to the rules of civil procedure. In civil procedure, principles can be found that are intended to guaranty legal protection, transparency, and justice for the parties involved in the case before the court. One of these principles is the principle of judicial passivity (*ultra petita non cognoscitur*), which means that a court judge must be passive when examining a civil case, meaning that the scope or extent of the subject matter in dispute is determined by the parties involved in the case, not by the judge (LBH "Pengayoman" UNPAR, n.d). In its proceedings, evidence is a very important aspect of the court process because evidence itself holds a very important and complex position. Proof is the presentation or introduction of legally valid evidence by the parties involved in a case to the judge during court proceedings. To reach a decision, the judge must receive materials regarding the facts (Pitlo, 1978). These facts are obtained thru the process of evidence presentation in court proceedings. The evidence presentation stage itself is a means used by the judge to investigate whether a legal relationship used as the basis for the lawsuit truly exists or not (Sutanto & Oeripkartawinata, 1985). R. Subekti states that evidence presentation is an effort to convince the judge of the truth of the arguments presented in a dispute (Subekti, 1975).

One of them is that the State Administrative Court (PTUN) has become an important forum for resolving the dispute. Many PTUN decisions affirm that BPN's errors in examining documents, land boundaries, and ownership history constitute a violation of the principle of accuracy as stipulated in

Article 10 paragraph (1) letter c of Law Number 30 of 2014 concerning Government Administration. Thus, the principle of prudence is not only ethical but also has a legal-normative dimension that determines the validity of an administrative decision.

Based on this, the researcher attempts to analyze the application of the principle of prudence in land administration by the National Land Agency (BPN) and to examine the form of state responsibility if this principle is violated. Thru a normative study, this research is expected to contribute to strengthening a transparent, accountable, and just land administration system.

## RESEARCH METHOD

This research uses a normative juridical method (doctrinal legal research), which is legal research that focuses on the positive norms in force and the legal principles relevant to the study object (Pujiningrum, 2020). The normative juridical approach was chosen because this research analyzes how the principle of prudence is applied by officials of the National Land Agency (BPN) office in land administration, and how state responsibility arises from violations of this principle.

To strengthen the analysis, this study also employs a conceptual approach and a case approach. The conceptual approach is used to trace theoretical ideas regarding the principle of prudence and state responsibility in administrative law, while the case approach is conducted thru an examination of relevant decisions from the State Administrative Court (PTUN) and the Supreme Court concerning land disputes resulting from administrative negligence by the National Land Agency (BPN).

The nature of this research is descriptive-analytical, which means research that aims to describe and analyze the application of positive law to phenomena occurring in society, in this case, land administration practices by the National Land Agency (BPN) and the enforcement of state responsibility thru administrative court mechanisms.

The descriptive-analytical approach allows researchers to explain the relationship between administrative law theory, the principle of prudence, and the practice of issuing land certificates, while also identifying gaps between legal norms (*das sollen*) and their implementation (*das sein*).

## RESULTS AND DISCUSSION

### How does the National Land Agency (BPN) apply the principle of prudence in the land administration process, particularly in issuing land ownership certificates?

The principle of prudence is a fundamental principle in land administration governance, requiring the National Land Agency (BPN) to carry out its duties with utmost care, thoroughness, and vigilance at every stage of the administrative process, particularly when issuing land ownership certificates. The application of this principle has a strategic goal of reducing the risk of administrative errors that could lead to land conflicts or disputes, while also ensuring legal certainty for land rights holders. Thus, the principle of prudence becomes an important foundation in maintaining the integrity and reliability of the land administration system in Indonesia (Suhendar, 2018). This principle of prudence is a fundamental principle in land administration, especially in the issuance of land ownership certificates. The application of this principle aims to minimize administrative errors, prevent land disputes, and provide legal certainty to land rights holders (Hidayat, 2020).

In the context of issuing land ownership certificates, the principle of diligence is manifested in a series of administrative actions that include :

1. **Legal Document Examination:** The National Land Agency (BPN) is required to verify the validity and authenticity of documents that serve as the basis for land rights applications, such as sale and purchase deeds, gift deeds, inheritance letters, and other documents. This examination is conducted to ensure that the transfer of land rights is done legally and that no other parties are harmed (Government of the Republic of Indonesia, 1997).
2. **Measurement and Mapping:** The National Land Agency (BPN) accurately measures and maps land parcels to ensure that land boundaries align with submitted documents and do not overlap with other land parcels. This measurement is carried out by licensed surveyors, and the results are documented on land parcel maps (Government of the Republic of Indonesia, 1997).
3. **Announcement and Clarification:** Before issuing a land title certificate, the National Land Agency (BPN) is required to announce the application to the public thru notice boards at the BPN office and/or other media. The purpose is to provide an opportunity for interested parties to raise objections or rebuttals against the application (Government of the Republic of Indonesia, 1997).
4. **Field Inspection:** BPN can conduct field inspections to verify the physical condition of the land and ensure there are no issues that could hinder the issuance of land ownership certificates, such as the presence of illegal buildings, boundary disputes, or claims from other parties (National Land Agency of the Republic of Indonesia, 2010).
5. **Issuance of Decree:** After completing all the above stages and finding no issues, BPN issues a Decree granting land rights

as the basis for issuing the land ownership certificate. This Decree must contain complete and accurate information regarding the identity of the right holder, location, area, and land boundaries (Government of the Republic of Indonesia, 1997).

A careful and thorough verification process, and equally important, the consistency of formal data and factual findings during field inspections by the adjudication committee, can reduce the potential for land disputes caused by administrative errors or the carelessness of BPN officials. Therefore, the principle of accuracy in land administration is very important to ensure that decisions made by BPN officials are valid and accountable. However, despite the principle of accuracy being regulated in laws and regulations, its application is still often hampered by weaknesses in procedures, limited human resources, or unclear existing data. This shows that in practice, the application of the principle of accuracy by BPN officials is often less than optimal, thus potentially leading to land disputes.

### **What are the legal consequences if the principle of accuracy is violated in the issuance of land title certificates by the National Land Agency (BPN)?**

Inaccuracy in the application of the principle of prudence by officials of the National Land Agency (BPN) can trigger significant legal consequences, not only for the individuals or entities harmed, but also for BPN itself as the state's representative in land management. Failure to uphold this principle can erode public trust in the land administration system, trigger prolonged disputes, and open the door to lawsuits that are detrimental to the country. Furthermore, carelessness in the land administration process can lead to the issuance of legally flawed land ownership certificates. Certificates issued without comprehensive and accurate verification have the potential to contain invalid data or contradict field facts. As a result, the certificate can be challenged and canceled by the court, creating legal uncertainty for the rights holder and related parties (Supreme Court of the Republic of Indonesia, 2018). Additionally, the National Land Agency (BPN), as the institution that issues the certificates, can be held accountable for losses arising from defective certificates, either thru civil lawsuits or criminal charges against negligent officials (Government of the Republic of Indonesia, 2014).

Beside potentially causing financial losses for the country, violating the principle of prudence can also damage the image of the National Land Agency (BPN) as a professional and trustworthy institution. Society will lose confidence in BPN's ability to guaranty legal certainty in the field of land, which in turn could hinder investment and economic development (Wiradi, 2000). Therefore, it is important for the National Land Agency (BPN) to continue improving the quality of human resources, strengthening the internal oversight system, and implementing the principles of good governance in every land administration process.

Violations of the principle of prudence by the National Land Agency (BPN) in the land administration process can lead to various legal consequences, including :

1. The cancelation of the Land Certificate issued is due to the Land Title Certificate being legally defective: Violations of the principle of due diligence can result in the cancelation of the issued certificate. If a party files a lawsuit with the State Administrative Court (PTUN) and it is proven that BPN officials did not verify the data carefully enough or did not conduct a thorough field inspection, then the BPN's administrative decision can be canceled. Inaccuracy in the performance of duties by BPN officials can cause a certificate that has been issued to be declared null and void by law. If there is a lawsuit filed with the PTUN and negligence is proven in the examination of data or field observation, the BPN's administrative decision has the potential to be canceled by the court. Therefore, if a land title certificate is issued based on incorrect or incomplete data or information, the certificate can be declared legally defective and canceled by the court (Supreme Court of the Republic of Indonesia, 2015). Parties who feel aggrieved by the issuance of a legally defective certificate due to BPN's negligence can file a civil lawsuit for damages against BPN or the responsible officials. This lawsuit is based on unlawful acts (*onrechtmatige daad*) as regulated in Article 1365 of the Civil Code.
2. BPN's Responsibilities and Lawsuits Against BPN's Administrative Decisions: The National Land Agency (BPN) can be held legally accountable for losses arising from errors or negligence in the land administration process. This responsibility can take the form of compensation to the injured party or administrative sanctions for BPN officials who violate Supreme Court Decision Number 234 K/TUN/2015. If a land certificate is issued thru improper procedures, the aggrieved party—for example, someone with overlapping land rights—can sue the BPN's administrative decision thru the Administrative Court. This lawsuit can lead to the suspension or cancelation of the issued land certificate, resulting in legal uncertainty regarding land ownership status. BPN officials proven to have violated the principle of prudence and committed negligence in their duties may be subject to administrative and disciplinary sanctions in accordance with applicable civil service

regulations. These sanctions can range from reprimands, delayed promotions, demotions, to dishonorable discharge (Government of the Republic of Indonesia, 2014).

3. **Social and Economic Impact:** Inaccuracy in land administration not only has legal consequences but also affects society at large. For example, land disputes involving overlapping certificates can disrupt social stability, cause conflict between residents, and hinder economic development. Therefore, applying the principle of accuracy in land administration is also crucial for creating healthy social and economic stability.
4. **Legal Uncertainty:** Violations of the basic principle of due diligence can damage public trust in the land administration system and create legal uncertainty in the field of land. This can hinder investment and economic development (Santoso, 2010).
5. **Loss of Public Trust:** Repeated violations of the basic principle of due diligence will erode public trust in the BPN institution and the land registration system as a whole. This can hinder investment, trigger agrarian conflict, and create social instability.

#### **Case Study of Decision Number: 121/G/2023/PTUN.BDG J.o 229/B/2024/PT.TUN.JKT J.o 265 K/TUN/2024**

The dispute over the issuance of the Building Use Rights Certificate (HGB) between the Plaintiff and the Second Defendant in Decision Number 121/G/2023/PTUN-BDG can be comprehensively analyzed from the aspects of land administration law, the general principles of good governance, and the principles of evidence and court authority.

This case highlights potential injustices in the process of issuing SHGB and evaluating evidence. The plaintiff possesses valid ownership documents and has been harmed by overlapping land claims. However, this evidence was not considered fairly, and the SHGB was still issued in the defendant's name despite unclear legal basis. This indicates an imbalance in the assessment of evidence and the potential violation of the general principles of good governance.

#### **Land Administration Law and the Application of the Principle of Diligence**

In the context of land administration, the issuance of certificates must comply with the provisions of applicable laws and regulations, including the Basic Agrarian Law No. 5 of 1960, Government Regulation No. 24 of 1997 concerning Land Registration, and Agrarian Minister/Head of BPN Regulation No. 9 of 1999 concerning Procedures for Granting and Revoking Rights to State Land and Management Rights. The issuance of the HGB by the Head of the Bogor Regency Land Office to Defendant II (Bandung Administrative Court, 2023) must be based on a careful and thorough examination of legal and physical data (the principle of accuracy). However, the Plaintiff believes that the Defendant did not conduct adequate re-checking, data verification at the village and sub-district levels, and re-measurement, resulting in overlapping certificates that are detrimental to the Plaintiff. This indicates the potential violation of the principles of prudence and legal certainty in land administration, which are regulated in the general principles of good governance (AAUPB) (Government of the Republic of Indonesia, 1997).

Within the framework of legitimate land administration, the process of issuing land ownership certificates must align with the hierarchy of applicable laws and regulations. This includes the Basic Agrarian Law No. 5 of 1960 as the main foundation, Government Regulation No. 24 of 1997 which details land registration, and Minister of Agrarian Affairs/Head of BPN Regulation No. 9 of 1999 which establishes the procedures for granting and revoking rights to state land and management rights.

Therefore, the issuance of the Building Use Right (HGB) by the Head of the Bogor Regency Land Office to Defendant II should have been based on a comprehensive and meticulous process of verifying legal and physical data, reflecting the application of the principle of accuracy. This principle mandates that every land administration action must be carried out with high care, diligence, and accuracy to avoid errors and potential disputes later on.

However, in this case, the Plaintiff argues that the Defendant (Head of the Land Office) was negligent in performing their duties. The plaintiff alleges that the defendant did not adequately recheck the existing data, did not carefully verify the data at the village and district levels, and did not conduct accurate remeasurements in the field. As a result, there was an overlap of certificates that was detrimental to the interests of the Plaintiff as the rightful landowner.

According to the Plaintiff, the Defendant's actions indicate a potential violation of the principles of accuracy and legal certainty, which are integral parts of the principles of good governance (AAUPB). The principle of legal certainty requires that every government action be predictable and provide legal protection guarantees for citizens. Meanwhile, the principle of accuracy requires the government to act cautiously and meticulously in every decision-making process to avoid causing harm to the public.

Violations of these two principles can damage public trust in the land administration system and create legal uncertainty that can hinder investment and economic development. Therefore, it is important for the court to carefully examine whether the Defendant acted in accordance with the AAUPB in issuing the HGB to the Second Defendant. If a violation is proven, the court must cancel the certificate and order the Defendant to correct the administrative errors that have been made. Thus, it is hoped that justice can be upheld and legal certainty in the field of land can be realized.

### **Imbalance in the Assessment of Evidence and Title Documents**

The principle of proof in land disputes demands a fair and balanced assessment of all evidence presented. The plaintiff has submitted proof of ownership in the form of a HGB certificate and a Deed of Release (SPH) from the local community, which has been verified and recorded at the village level (physical and legal evidence) (Bandung State Administrative Court, 2023), as well as valid location permits from the Regent of Bogor (Bogor Regency Government, 2018). However, based on mediation and statements from village and sub-district officials, the defendant's land title archives were not found at the village level, raising doubts about the legality of the defendant's land title (Bandung State Administrative Court, 2023). On the other hand, the defendant claims to have earlier location permits and land releases (in 1994 and 1996) compared to the plaintiff (in 2018), as well as evidence of certificates issued by the National Land Agency (BPN) that are considered procedurally valid (Bandung State Administrative Court, 2023). This imbalance indicates a conflict between the administrative evidence issued by land officials and the physical evidence and local documents questioned by the Plaintiff, which is a classic issue in land disputes in Indonesia.

In the context of land disputes, the principle of proof underscores the importance of an impartial and proportional evaluation of all evidence presented by the disputing parties. The plaintiff in this case has included proof of ownership consisting of a Building Use Rights Certificate (SHGB) and a Release of Rights Letter (SPH) obtained from the local community, which have been verified and recorded at the village level, thus possessing physical and legal validity. Additionally, the Plaintiff also attached a location permit legally issued by the Regent of Bogor.

However, doubts arose regarding the legality of the defendant II's land title because, based on the results of mediation and statements from village and district officials, no archives were found at the village level to support the defendant II's claim of ownership. This raises serious questions about the legal basis underlying the Second Defendant's claim of ownership over the disputed land.

On the other hand, the Second Defendant claims to have obtained a location permit and proof of land acquisition earlier than the Plaintiff, namely in 1994 and 1996, while the Plaintiff only obtained a location permit in 2018. Defendant II also included a certificate issued by the National Land Agency (BPN) as evidence, which is considered procedurally valid.

This situation creates an imbalance in the evaluation of evidence. There is a conflict between the administrative evidence issued by the land officials, namely the certificate held by Defendant II, and the physical evidence and local documents questioned by the Plaintiff, namely the absence of Defendant II's land title records at the village level. This kind of conflict is a classic issue in land disputes in Indonesia, where there is often a discrepancy between administratively recorded data and the facts on the ground.

In this context, it is important for the court to conduct a careful and comprehensive assessment of all evidence presented, considering the validity, relevance, and probative value of each piece of evidence. The court also needs to consider relevant legal principles, such as the principle of legal certainty, the principle of justice, and the principle of balance, when making decisions. Thus, it is hoped that the court's decision can provide justice for all parties involved in the dispute and create legal certainty in the field of land.

### **Formal and Substantive Aspects of Certificate Issuance**

The decision states that the issuance of the certificate by the Head of the Land Office met the aspects of authority, formal procedure (Bandung Administrative Court, 2023), and substance in accordance with the law. However, from a formal perspective, the application of formal procedures does not always guaranty substantive validity if there are unresolved ownership conflicts under civil law. Additionally, the reports and mediation indicating the lack of clarity regarding the defendant II's land title archives at the village level raise questions about the integrity of the legal data used as the basis for the land office's issuance of the certificate (Bandung Administrative Court, 2023). Therefore, the application of the principles of legal certainty and justice demands a comprehensive resolution between administrative and civil aspects.

In analyzing the issuance of certificates by the Head of the Land Office, the court decision emphasized the fulfillment of aspects of authority, formal procedures, and substance in accordance with applicable laws and regulations. However, from a deeper legal perspective, mere compliance with formal procedures does not automatically guaranty the substantive validity of the certificate, especially when there are unresolved ownership conflicts thru civil legal processes. This indicates potential disharmony between formal legal certainty, as embodied in the issuance of certificates, and substantive justice, which is supposed to protect the rights of interested parties.

Furthermore, the reports and mediation that revealed the ambiguity of the Defendant II's land title archives at the village level raised serious doubts about the integrity of the legal data that served as the basis for the Land Office in issuing the certificate. The existence of clear and verified land title archives is an important foundation in the land registration process, as it provides assurance that the land rights being registered truly exist and are valid. The lack of clarity in these archives opens the door to administrative errors, abuse of authority, or even illegal practices that can harm other parties with claims to the same land.

In this context, the application of the principles of legal certainty and justice demands a comprehensive and integrated resolution between administrative and civil aspects. The principle of legal certainty requires that every administrative action of the government, including the issuance of certificates, be based on clear and predictable laws and regulations. However, formal legal certainty should not disregard substantive justice, which is the protection of the rights of those who are truly entitled to the land.

Therefore, the Land Office cannot simply adhere to fulfilling formal procedures when issuing certificates, but must also be proactive in resolving existing ownership conflicts. This can be done thru mediation, facilitation, or even filing a lawsuit in civil court to obtain stronger legal certainty. In addition, the Land Office also needs to improve coordination with village and sub-district governments in order to verify and validate the legal data that serves as the basis for issuing certificates.

A comprehensive solution between administrative and civil aspects will create stronger legal certainty and protect the rights of interested parties fairly. This will also increase public trust in the land registration system and reduce the potential for future land disputes. Thus, issuing certificates is not only a formal administrative act, but also an instrument for realizing social justice and community welfare. Within this framework, court decisions that only emphasize the fulfillment of formal aspects in issuing certificates need to be critically reviewed. The court should have paid more attention to the facts revealed during the trial, including the ambiguity of the Defendant II's land title records, and considered their implications for the substantive validity of the certificate issued. Thus, court decisions can contribute more significantly to achieving legal certainty and justice in land disputes.

## CONCLUSION

Based on the discussion results, it can be concluded that the principle of accuracy holds a very important position in the administration of land by the National Land Agency (BPN). The application of this principle is not only a form of compliance with the principles of good governance, but also a preventive measure to avoid land disputes arising from administrative errors, data inaccuracies, or negligence in the verification process. With the consistent application of the principle of prudence, legal certainty and the protection of land rights for the community can be guaranteed.

Conversely, violations of the principle of due diligence can lead to serious legal consequences, such as administrative defects in land certificates, cancelation by the courts, and even legal liability for the relevant officials. This condition also has the potential to erode public trust in the integrity of the land administration system and hinder the investment climate and economic development.

Thru the case study of Decision Number 121/G/2023/PTUN-BDG jo. 229/B/2024/PT.TUN.JKT jo. 265 K/TUN/2024, it is evident that resolving land disputes requires a comprehensive approach, encompassing administrative law aspects, the principles of good governance, and the principle of justice in evidence. Thus, the consistent application of the principle of prudence is the key to creating transparent, accountable, and just land governance.

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