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Land Law Conceptualization: Realizing an Effective Dispute Resolution Model in Indonesia

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ABSTRACT

Land dispute resolution in Indonesia is often complex due to procedural inefficiencies and overlapping jurisdictions. Currently, the National Land agency (BPN) functions as a mediator, providing clarifications to the included parties. Dispute resolution by the parties in litigation results in unresolved disputes, resulting in a backlog of cases in court. Therefore, this research aims to re-evaluate the role of the BPN as a mediator and to propose a conceptual framework for an effective resolution model for land disputes. This research uses a juridical-normative process of finding a legal rule to answer the legal issue being researched. The results show that BPN mediation efforts have not sufficiently addressed land disputes due to the non-binding nature. The role of the BPN should be enhanced as an arbitration body under the regulations governing Arbitration and Alternative Dispute Resolution. By serving as arbitrator, the Land Agency can render final and binding decisions without the necessity of undergoing the stages of appeal, cassation, or judicial review, particularly in civil and administrative disputes. Furthermore, this research advocates for the revision of the Notarial Sale and Purchase Agreement to incorporate arbitration provisions and recommends establishing specialized land courts, drawing lessons from existing models in Australia and South Africa.

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1. Introduction

Land is a state's wealth, administered by the government and allocated to the community in promoting social welfare.[1] Article 33, paragraph (3) of the Indonesian 1945 Constitution asserts that "The land, water, and natural resources shall be under state control and shall be used for the

[1] Yuanzhi Guo and Yansui Liu, 'Poverty Alleviation through Land Assetization and Its Implications for Rural Revitalization in China', *Land Use Policy*, 105. October 2020 (2021), 105418. https://doi.org/10.1016/j.landusepol.2021.105418

maximum benefit of the populace".[2] This shows that land is regulated by the state for the benefit and prosperity of Indonesian inhabitants.[3] Therefore, the state established an institution tasked with the organization of governmental affairs pertaining to the land sector. These matters include the preparation, formulation, and establishment of policies, land measurement, mapping, registration, and the determination of rights.[4]

According to Mira Nivana Ardani, the establishment of National Land Agency (BPN) directly establishes various regulations, specifically derivative regulations that are *administratiefrechtelijk* based on the orders relating to land sector.[5] The purpose of these regulations is to make further arrangements to implement the law by not deviating from the regulated material.

The establishment of various regulations is to fill the legal vacuum in land sector, which emphasizes disputes. In many countries, land conflicts are the most frequent issues burdening the District and Administrative Courts.[6] Particularly in Indonesia, the current data shows that the number of registered land disputes is 90 million parcels, with 30,817 cases reported throughout Indonesia.[7] In more detail, the Agrarian Reform Consortium (KPA) has reported a rise in agrarian conflict incidents over the last five years. The year 2024 recorded the highest incidence of conflicts, totaling 295 cases, which represents a 21.9 percent increase compared to the preceding year. This rise also encompasses instances of violence and criminal activities in areas affected by conflict. The data is predicted to continue to grow when BPN does not take preventive, repressive, and rehabilitative steps. BPN institutionally has a central role in making various legal breakthroughs in the form of regulations or reconstructing the settlement of land disputes.

Endah Sulatri and Teguh Triesna Dewa stated that the urgency of establishing a special agrarian court was addressed immediately. This is because Indonesia is a large agricultural country experiencing agrarian conflicts. The Special Land Court can be established as a judicial body under the Supreme Court, which is regulated by law. Article 1 point (8) of Law No. 48 of 2009 serves as a consideration for the creation of Special Courts based on Agrarian Affairs under the Supreme Court.[8] The author asserts that, besides the creation of the agrarian court, land disputes or conflicts arise from the lack of a thorough regulatory framework held by the National Land Agency (BPN), which is deemed to play a crucial role in the examining, adjudication, and deciding of land conflicts. Furthermore, the current function of the BPN is solely as a mediator, as outlined in the Regulation of the Minister of Agrarian Affairs and Spatial Planning, along with Regulation of the Head of BPN Number 21 of 2020 regarding the Management and Resolution of Land Disputes. Consequently, the BPN's involvement in addressing land conflicts has not succeeded in ensuring legal certainty. BPN can handle land conflicts as a mediator and has not assumed the role of arbitrator. This role as arbitrator is what the author wants to construct as a solution to address the

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[2] Muh. Afif Mahfud, 'Fungsi Hukum Dan Legal Pluralism Di Bidang Agraria', *Mimbar Hukum*, 35.2 (2023), 220–44. https://doi.org/10.21143/jhp.vol42.no1.284.2

[3] Setiyo Utomo, 'Perjalanan Reforma Agraria Bagian Dari Amanah Konstitusi Negara', *Veritas et Justitia*, 7.1 (2021), 115–38. https://doi.org/10.25123/vej.v7i1.3935

[4] Hizkia Hutabarat, Erita Sitohang, and Tulus Siambaton, 'Peran Badan Pertanahan Nasional Dalam Penyelesaian Sengketa Kepemilikan Tanah', *Jurnal Hukum PATIK*, 10.1 (2021), 61–68. https://doi.org/10.51622/patik.v10i1.223

[5] Mira Novana Ardani, 'Peran Kantor Pertanahan Dalam Kegiatan Pendaftaran Tanah Sistematis Lengkap', *Gema Keadilan*, 6.1 (2019), 44. https://doi.org/10.14710/gk.6.1.44-62

[6] Abdul-Salam Ibrahim and others, 'Land Disputes And Conflicting Land-Court Judgement In Ghana', *Land Use Policy*, 120 (2022), 106272. https://doi.org/10.1016/j.landusepol.2022.106272

[7] Adeka Andari Pernia Deka, 'Peralihan Hak Atas Tanah Yang Menjadi Objek Sengketa Dalam Perspektif Penegakan Hukum', *Recital Review*, 3.2 (2021), 190–215. https://doi.org/10.22437/rr.v3i2.12833

[8] Endah Sulatri and Teguh Triesna Dewa, 'Urgensi Pembentukan Pengadilan Khusus Agraria', *Jurnal Cita Hukum*, 3.2 (2015), 303–12. https://doi.org/10.15408/jch.v2i2.2321

existing gap, so that the BPN, within the civil law realm, can decide land disputes with final and binding decisions. Consequently, this restricted function fails to offer a thorough resolution and may indeed impose additional burdens on other institutions, while also giving rise to new justice challenges stemming from various interpretations associated with land disputes. Moreover, it is essential to revise the structure of the sale and purchase deed, as part of the necessary administrative completeness, which will subsequently enable it to act as a preliminary agreement for the involved parties to outline the method of dispute resolution should a conflict occur.[9]

Land conflicts represent a multifaceted issue that has historically garnered significant attention within legal and interdisciplinary research. Numerous prior investigations have identified various factors contributing to these disputes, such as overlapping ownership rights, a convoluted land registration system, an extended conflict resolution process, diverse judicial institutions capable of addressing land disputes, and outdated land regulations.[10] This research aims to enhance the understanding that regulations surrounding land conflicts are not solely technical, thereby necessitating a reflective and contextual approach to reimagine the function of the National Land Agency (BPN). This includes its role as an arbitrator, the modernization of land sale and purchase deed formats, and the creation of a specialized land court. It is anticipated that this framework will offer solutions to the land conflicts that have persisted to date.

The National Land Agency (BPN) needs to implement progressive legal principles, which place justice, benefit, and certainty in parallel. This method must adhere to bureaucratic procedural formalities and optimize material-substantive matters. Satijpto Rahardjo stated that progressive law enforcement includes implementing the law in accordance with the formulation, spirit, and deepest meaning of the laws and regulations. Law enforcement is to ensure that regulations are implemented and obeyed by all parties to guarantee justice, benefit, and legal certainty. This concept must be implemented with determination, empathy, dedication, and a commitment to the nation's suffering and to seek alternatives beyond conventional practices.[11] Based on the background of the problem, several problem formulations were determined, namely 1) How is the reconstruction of BPN as arbitrator in handling land disputes and 2) What is the legal force of land arbitration decisions in realizing an ideal alternative resolution of land disputes?.[12]

2. Research Method

This study employs a normative legal research methodology, focusing on the analysis of legal norms, doctrines, and principles as a means of understanding and evaluating the current dispute resolution framework within the Indonesian land law system. To achieve this, three key approaches are utilized: the conceptual approach, the statutory approach, and the comparative approach. The conceptual approach allows for the exploration and clarification of fundamental legal concepts related to land disputes and dispute resolution. The statutory approach involves a

[9] Fajri Lio Sandika, Tofik Yanuar Chandra, and Erny Kencanawati, 'Peran Badan Pertanahan Nasional Dalam Penyelesaian Sengketa Tumpang Tindih Pertanahan Melalui Mediasi', *Blantika : Multidisciplinary Jornal*, 1.3 (2023), 240–251. https://doi.org/10.57096/blantika.v2i2.30

[10] Setiawan Wicaksono, Bintang Bagas, and Agung Reyhansyah, 'Penyelesaian Sengketa Dan Konflik Pertanahan Di Indonesia: Kajian Politik Hukum', *Dialogia Iuridica*, 16.1 (2024), 068–095 https://doi.org/10.28932/di.v16i1.9993.

[11] Muhammad Harun, 'Philosophical Study of Hans Kelsen's Thoughts on Law and Satjipto Rahardjo's Ideas on Progressive Law', *Walisongo Law Review (Walrev)*, 1.2 (2019), 199. https://doi.org/10.21580/walrev.2019.1.2.4815

[12] Aksar Aksar and others, 'Rekonstruksi Penyelesaian Sengketa Sertifikat Ganda Pada Badan Pertanahan Nasional', *Jurnal Pembangunan Hukum Indonesia*, 5.3 (2023), 537–49. https://doi.org/10.14710/jphi.v5i3.537-549

detailed examination of Indonesian legislation, particularly the Basic Agrarian Law and related land administration regulations. These methods aim to trace the normative basis and development of dispute resolution models in land law.

In selecting legal sources, the study relies on both primary and secondary legal materials. Primary legal materials include statutory regulations such as the Arbitration and Alternative Dispute Resolution Law, as well as institutional regulations from the National Land Agency (BPN), Supreme Court, and Regulation of the Minister of Agrarian Affairs and Spatial Planning. These sources were chosen based on their direct relevance to the research questions, legal authority, and currency, emphasizing the most recent and applicable laws and decisions. Secondary legal materials include academic journals, legal commentaries, expert opinions, and comparative law texts. These were selected based on topical relevance, scholarly credibility, and their contribution to understanding both domestic and international legal perspectives on land dispute resolution. Materials were systematized in accordance with the formulation of research problems, allowing for a coherent structure in the analysis phase.[13]

The comparative approach is particularly instrumental in this study. Australia and South Africa were deliberately chosen as comparative jurisdictions due to their shared post-colonial legal backgrounds, robust land registration systems, and their institutional frameworks for resolving land disputes, factors that mirror challenges found in Indonesia. Both countries also serve as reference models in previous land law reform studies, particularly in relation to specialized land tribunals and administrative adjudication mechanisms. The criteria for selecting these jurisdictions include: (1) similarity in policy challenges regarding customary land claims and state authority, (2) existence of specialized land courts or tribunals, and (3) accessibility of legal data and scholarly analysis for comparative study.

Legal materials are analyzed using a combination of qualitative analysis techniques, including legal interpretation, legal argumentation, and comparative legal reasoning. The study does not merely describe laws but engages in prescriptive analysis aimed at formulating normative legal recommendations. Legal reasoning is used to test the internal consistency of legal norms and their applicability to contemporary land disputes. The comparative analysis explores how similar legal problems are approached in other jurisdictions and draws lessons that could be adapted to the Indonesian context. The goal is to align the identified legal issues with appropriate legal norms and ultimately propose a more effective dispute resolution framework.

To assess the effectiveness of the existing and proposed dispute resolution models, particularly the role of the BPN, this research adopts a clear evaluative framework. Effectiveness is measured by several indicators, including the extent of BPN's legal authority, the procedural accessibility of dispute resolution mechanisms, the type and legal force of decisions issued, and the institutional coordination between administrative and judicial bodies. This includes examining whether BPN's decisions are binding, whether they resolve disputes substantively or procedurally, and how frequently they are upheld or overturned in judicial review. By establishing these criteria, the research is able to critically evaluate not only the theoretical soundness but also the practical outcomes of the current dispute resolution practices in Indonesia.

[13] Yordan Gunawan and Mohammad Hazyar Arumbinang, 'The Climate Change Litigation Based Human Rights Approach in Corporations: Prospects and Challenges', *Journal of Human Rights, Culture and Legal System*, 3.2 (2023), 288–307. https://doi.org/10.53955/jhcls.v3i2.116.

3. Result and Discussion

3.1. Reconstructing the Role of the National Land Agency (BPN) as Arbitrator in Handling Land Disputes

The Regulation of the Minister of Agrarian Affairs and Spatial Planning, issued by the Head of BPN of Indonesia, No. 21 of 2020, does not explicitly delineate the role of BPN as an institution capable of resolving land disputes. However, this Ministerial Regulation designates BPN as a mediator.[14] BPN is responsible for formulating, determining, and implementing policies related to spatial planning, agrarian infrastructure, land legal relations, management, acquisition, spatial use regulation, and control. Therefore, BPN is considered essential for implementing agrarian reform as a governmental authority overseeing land matters, as well as serving administrative and institutional purposes for adjudicating land disputes.[15]

Table 1. Differences in the Roles of Mediator, Arbitrator, and Conciliator

Indicators	Mediator	Arbitrator	Conciliator
Legal Basis	Supreme Court Regulation No. 1 of 2016 on court mediation methods	Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution	Law No. 2 of 2004 on the Resolution of Industrial Relations Disputes
Definition	A third party that facilitates dispute resolution by negotiating an agreement between different parties through mediation	A third party that facilitates the resolution of a civil dispute outside of court, according to the arbitration agreement	A third party that facilitates the resolution of conflicts outside of court via conciliation or discussion
Role	Resolving disputes "without deciding" and only helping the parties	Resolving disputes "by deciding"	Resolve disputes and issue "written recommendations" when an agreement is not reached
Characteristic	Passive	Active	Active
Legal force of settlement	Non-Binding	"Binding"	Non-Binding

From a theoretical perspective, dispute settlement occurs in two ways. The initial method for resolving disagreements was litigation in court, followed by a cooperative dispute settlement mechanism outside the judicial system.[16] The recognized non-litigation dispute resolution methods in Indonesia are Negotiation, Mediation, Conciliation, and Arbitration. Negotiation is a process conducted between two opposing parties to engage in dialogue aimed at achieving a

[14] Rahmatsyah, 'The Effectiveness Of Arbitration As An Expensive Alternative', *Pena Justisia: Media Komunikasi dan Kajian Hukum*, 22.3 (2023), 342-349. https://doi.org/10.31941/pj.v22i2.3796

[15] Siti Rahmah and others, 'Resolution of Land Disputes Through Mediation', *Mahadi: Indonesia Journal of Law*, 3.01 (2024), 51–62. https://doi.org/10.32734/mah.v3i01.15763.

[16] Muhammad Winata and Zaka Aditya, 'Characteristic and Legality of Non-Litigation Regulatory Dispute Resolution Based on Constitutional Interpretation', *Brawijaya Law Journal*, 6.2 (2019), 170–88. https://doi.org/10.21776/ub.blj.2019.006.02.04

mutually advantageous agreement collaboratively and transparently. This process of deliberation or bargaining is aimed at achieving consensus on certain topics between different parties.[17] Based on the definition, role, nature, and legal power of settlement, there are specific differences regarding mediator, arbitrator, and conciliator, as reported in Table 1.

The National Land Agency (BPN) serves as an arbitrator, engaging with existing judicial authorities through the framework and institutional design of the arbitration body. The present arbitration mechanism will be effectively enacted if the arbitration agreement is incorporated within the mutually accepted deed of engagement. By including an arbitration agreement, the interaction with the district court will be enhanced, especially on the acknowledgment and enforcement of arbitration awards. The legal framework will not supplant the court's role but will instead serve to complement it, particularly in civil land disputes that the parties have consented to in the arbitration agreement. meanwhile, in the realm of administrative land disputes, the current legal framework is governed by the jurisdiction of the State Administrative Court, as these involve decisions made by state officials. Nevertheless, the BPN retains a preventative function in revising these decisions and in averting the emergence of administrative disputes.

The role of BPN is to resolve disputes "without deciding" and assist the parties. This certainly does not provide distributive justice for the parties because BPN has a more complete understanding of land minutes data until the certificate is issued. Therefore, BPN needs to use legal instruments as the principle of contrarius actus since canceled administrative legal action must be followed by administrative action by the same official to restore the land problem.

Philipus M. Hadjon and Tatiek Sri Djatmiati stated the principle of contrarius actus, where the State Administrative Body or Official possessed an annulling right.[18] Both individuals reported that this principle was applicable despite the absence of a security clause in the State Administrative Decree. In this context, *contrarius actus* is regarded as an inherent authority of administrative officers. Based on the description, this research adheres to contrarius actus, where the agency or administrative person who renders a decision possesses revocation rights.[19]

The application of the principles of *contrarius actus* by officials in the annulment of land title certificates must be executed effectively and judiciously under the Regulation of the Minister of Agrarian Affairs and Spatial Planning/BPN No. 21 of 2020 on the Management and Resolution of Land Cases. A fundamental contradictory act evolves into a specialized principle applicable and beneficial for land officials and the included parties in instances of title certificate cancellation.[20] Based on the principle of *contrarius actus*, BPN may serve as an arbitrator, particularly where there are overlapping certificates. The mechanism for executing this principle does not include the disputing parties or the State Administrative Court, given the considerable duration. The principles of *contrarius actus* actualize the progressive regulations implemented by BPN.

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[17] Jafar Sidik and others, 'The Implementation Of Intellectual Property Dispute', *Masalah-Masalah Hukum*, 52.3 (2023), 237–48. https://doi.org/10.14710/mmh.52.3.2023.237-248.

[18] Firman Freaddy Busroh, Fatria Khairo, and Putri Difa Zhafirah, 'Implementation Of The Contrarius Actus Principle In Revocation Of Land Certificate Without A Court', *Pena Justisia: Media Kothmunikasi Dan Kajian Hukum*, 22.1 (2023), 345–53. https://doi.org/10.31941/pj.v22i1.2512

[19] Kiki Nur Qomarih Kaimuddin, Iwan Permadi, and Suharingsih Suharingsih, 'Contrarius Actus Principle as BPN's Basis in Settlement of Dual Certificate Disputes (Case Study of Maluku BPN Dispute No. Reg. Case: 02/SKP/2018)', *International Journal of Multicultural and Multireligious Understanding*, 8.7 (2021), 427. https://doi.org/10.18415/ijmmu.v8i7.2870

[20] Adhinda Putri Syara L.S, Antarin Prasanthi Sigit and Enny Koeswarni, 'Analisis Hukum Penyelesaian Sengketa Sertifikat Ganda Berdasarkan Hukum Pendaftaran Tanah', Syntax Literate: Jurnal Ilmiah Indonesia, 6.2 (2021), 1551-1557 https://doi.org/10.36418/syntax-literate.v6i2.5362

3.2. Update of Notarial Sale and Purchase Agreement (AJB) Concept with Arbitration Agreement Mechanism

A notarial AJB is a letter or document legally issued by Land Deed Making Officials (PPAT) which contains information regarding the ownership of new land rights and an agreement to transfer ownership between the parties concerned.[21] AJB is certainly very important to avoid legal problems when buying and selling land. In purchasing land or buildings, AJB becomes a mandatory document and legal requirement for protection when a party commits a violation resulting in a loss.[22] The author asserts that the AJB constitutes a genuine document and thus acts as legitimate proof for transactions involving the sale and purchase of land. As it evolves, the AJB format requires reform to tackle recurring land-related issues. These modifications will be integrated into the regulatory framework via ministerial regulations on land registration. Furthermore, the AJB format should incorporate a dispute resolution clause, similar to that found in most contracts, to offer options for the resolution of land disputes.

AJB requires modernization as a requisite document and evidence of the legal relationship between the parties.[23] The previous framework is predicated on Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flats, and Land Registration, which relies on contract law as delineated in the Civil Code. In instances of deviation, the recourse available is a lawsuit for breach of contract or an unlawful act through the General Court.[24] AJB model requires revision under the stipulations of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. BPN must establish cross-sectoral regulations in collaboration with the Indonesian Notary Association (INI) and the Indonesian National Arbitration Board (BANI), necessitating the inclusion of an arbitration clause.[25] This establishes a novel form of dispute resolution, reducing the strain on the general court institution, which retains the capacity to analyze, judge, and resolve other matters. Arbitration is perceived to offer several advantages, including reduced costs, flexibility, expedited timelines, preserved confidentiality, and streamlined procedures.[26] However, the ability of the state to present BANI in every province is considered.

The function of BPN in adjudicating land disputes as a mediator commences with the stipulation in Regulation No. 2, Section II of the Classification of Technical Instructions No. 05/Juknis/D.V/2007 regarding the Mechanisms for Implementing Mediation as outlined in the Decree of the Head of BPN No. 34 of 2007 on Technical Guidelines for Addressing and Resolving Land Issues. Mediation with BPN serving as a mediator can reduce expenses while ensuring legal

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[21] Ana Silviana, Khairul Anami, and Handojo Djoko Waloejo, 'Memahami Pentingnya Akta Jual Beli (AJB) Dalam Transaksi Pemindahan Hak Atas Tanah Karena Jual Beli Tanah', *Law, Development and Justice Review*, 3.2 (2020), 191–95. https://doi.org/10.14710/ldjr.v3i2.9523

[22] Fatoni Winahyu and Sri Kusriyah, 'The Role of PPAT in the Registration Process for the Transfer of Land Rights Based on Buying and Selling Transaction', *Sultan Agung Notary Law Review*, 4.2 (2022), 331. https://doi.org/10.30659/sanlar.4.2.331-340

[23] Putu Arya Bagus Utama, I Nyoman Sumardika, and Ni Gusti Ketut Sri Astiti, 'Perjanjian Pengikatan Jual Beli Hak Atas Tanah Sebagai Dasar Pembuatan Akta Jual Beli Dihadapan PPAT', *Jurnal Preferensi Hukum*, 2.1 (2021), 177–81. https://doi.org/10.22225/jph.2.1.3064.177-181

[24] Fadhli Nur Pratama and Ana Silviana, 'Studi Komparatif Peran Notaris Dan Pejabat Pembuat Akta Tanah (PPAT) Dalam Pembuatan Akta Jual Beli', 7.1 (2024), 626–34. https://doi.org/10.31933/unesrev.v7i1.2131

[25] Heru Suyanto, Heru Sugiyono, and Ilvana Oktalia, 'Implementasi Eksekusi Putusan Bani Dalam Penyelesaian Sengketa Perdata', *Jurnal Yuridis*, 7.2 (2020), 307. https://doi.org/10.35586/jyur.v7i2.2101

[26] Bakhodir Mirzaraimov, 'Effective Measures Of Preventing Due Process Paranoia In International Arbitration', *The American Journal of Political Science Law and Criminology*, 02.11 (2020), 72–80. https://doi.org/10.37547/tajpslc/volume02issue11-13

certainty. Furthermore, legal certainty can be assured when the parties consent to address the issue. The peace achieved through mediation is documented in a written deed or letter. The deed or written letter is registered with the District Court, which has jurisdiction over the location of the disputed land, to secure a resolution. This provision derives from Article 44, paragraph 5 of the Regulation issued by the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 21 of 2020 about the Management and Resolution of Land Disputes. The role of mediator in handling and resolving land cases currently needs to be changed to that of an arbitrator so that the final decision produced is binding on the parties.[27]

3.3. Legal Strength of Decisions and Alternative Land Dispute Resolution Solutions

The legal validity of mediation outcomes conducted by BPN, as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/BPN No. 21 of 2020 regarding the Management and Resolution of Land Disputes, is not conclusive and binding. The mediation results serve as new evidence in court only when a party defaults on the implementation of the agreement. Due to mediation possessing the legal status of a "non-binding" settlement, the function of BPN is perceived as non-exhaustive.[28]

According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, arbitration awards possess a "binding" legal force. Therefore, the role of BPN should be reformed in resolving land disputes, with a potential solution being the incorporation of the law.[29] Arbitration institutions have existed and been operational for many years, originating with the Greek community before Christ. In Indonesia, arbitration is predominantly recognized by the public as a non-litigious alternative dispute resolution option. Discrepancies persist on the precise definition of arbitration. However, these divergent perspectives do not negate the significance of arbitration as an alternative dispute resolution mechanism, offering different interpretations. In this context, arbitration is the method for resolving conflicts in line with the requirements of the business sector.[30] The present function of the National Land Agency (BPN) is limited to that of a mediator, which restricts its power to make decisions and confines it to offering recommendations on land disputes. This arbitration process has the potential to enhance the BPN's position as an institution capable of making determinations about land conflicts, particularly those involving civil law interests, thereby ensuring that such decisions are binding on the involved parties. Transforming this role would lead to a more efficient mechanism for resolving land disputes, as it would prevent overlapping jurisdictions and the backlog of cases in the judicial system. District courts have jurisdiction to examine, try, and resolve conflicts related to the public legal sphere.

Arbitration fundamentally represents a method of resolving disputes outside the judicial system (non-litigation). Its legitimacy is acknowledged by legal statutes, which govern the resolution of conflicts between parties engaged in a defined legal relationship as outlined in an arbitration agreement. An arbitrator functions as a judge in an arbitration tribunal for issues addressed temporarily. Frank Elkoury and Etna Elkoury asserted that arbitration was a flexible, straightforward, and uncomplicated method willingly selected by parties desiring a neutral

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[27] Fokky Fuad and others, 'Ownership of Land: Legal Philosophy and Culture Analysis of Land Property Rights', *Jurnal Media Hukum*, 30.2 (2023), 98–116. https://doi.org/10.18196/jmh.v30i2.18264

[28] Novira Br Sembiring, 'Land Case Mediation at BPN as a Form of National Land Law Development', *Jurnal Smart Hukum (JSH),* 3.2 (2025), 206–215. https://doi.org/10.55299/jsh.v3i2.1186

[29] Rahmat Kurnia Pulungan And Yasarman, 'Arbitrase Nasional Indonesia (Bani) Dan Sistem Arbitrase Di Masa Depan', *Iblam Law Review*, 4.3 (2024), 303–15. https://doi.org/https://doi.org/10.52249/ilr.v4i3.452

[30] Maskun and others, 'Arbitration: Understanding It in Theory and Indonesian Practice', *Hasanuddin Law Review*, 5.2 (2019), 220–34. https://doi.org/10.20956/HALREV.V5I2.1945.

arbitrator, with the judgment derived from the case's arguments. The parties initially concurred to regard the ruling as final and binding. In the context of land conflicts, the arbitration mechanism is poised to facilitate an efficient process for dispute resolution. This process will specifically address land conflicts within the framework of civil and administrative law. For instance, land disputes arising from inheritance issues can be adjudicated by the National Sharia Arbitration Board (BASYARNAS-MUI), which operates under the MUI Fatwa as a means of resolving Islamic civil disputes in Indonesia. This approach is expected to alleviate the workload of Religious Courts in handling inheritance disputes related to land, as well as that of district courts. Regarding the issue of duplicate certificates, the BPN's function as an arbitrator will enable it to directly address conflicts on its own products. The PTSL (Complete Systematic Land Registration) system will provide immediate access to certificate data, indicating which was issued first and which was issued subsequently. This will undoubtedly lessen the burden on the State Administrative Court, allowing for the swift resolution of land conflicts without complicated processes.

In the present context, the Peace Agreement derived from mediation by BPN as a Mediator does not function identically to a court mediator. The decision of the court is conclusive and obligatory for the participating parties. Article 41 elucidates that when mediation yields an agreement, a Peace Agreement is established and registered with the local District Court Registrar, acquiring binding legal authority. In BPN, the situation differs since an agreement exists to resolve the dispute, and the outcomes are valid.[31] The term arbitration is synonymous with *discretion*, suggesting that the arbitral tribunal is not bound to consider the law in resolving disputes between parties. This view is wrong because an arbitrator also applies the law as applied in the court. In examining and deciding a dispute, the arbitration panel is based on the law.[32]

At the parties' request, the arbitrator may adjudicate based on fairness and equity (*ex aequo et bono*). The Explanation of Law No. 30 of 1999 indicates that when an arbitrator is permitted to render verdicts based on equity and fairness, legislative requirements may be superseded. In specific instances, mandatory legal provisions must be enforced and cannot be altered by the arbitrator. Determinations are made based on substantive legal principles when the arbitrator lacks the authority to render a conclusion grounded in fairness and appropriateness. The advantages and disadvantages of arbitration are outlined in the resolution of land disputes.

Based on Table 2, the form and placement of the basis of authority, as well as the credibility of the arbitrator, to the expansion of arbitration decisions must be considered. The execution of arbitration awards is carried out through the mechanism of procedural law provisions applicable in court. Arbitration awards have permanent legal force and are binding on the parties. In this context, an award cannot be submitted for appeal, cassation, or judicial review.[33] The implementation of an award shall occur in a maximum of 30 days from the date of issuance, during which the original or authentic copy is submitted and registered by arbitrator or the representative with the district court clerk to provide a registration deed as a record. The enforcement of the arbitration award will occur in line with the agreement and stipulations of Law No. 30 of 1999 without contravening public morality or order.

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[31] Awang Hardian Sadono, 'Penanganan Masalah Pertanahan Berdasarkan Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 21 Tahun 2020 Tentang Penanganan Dan Penyelesaian Kasus Pertanahan', *Rampai Jurnal Hukum (RJH)*, 2.1 (2023), 12–27. https://doi.org/10.35473/rjh.v2i1.2255

[32] Firda Ainun Fadillah and Saskia Amalia Putri, 'Alternatif Penyelesaian Sengketa Dan Arbitrase (Literature Review Etika)', *Jurnal Ilmu Manajemen Terapan*, 2.6 (2021), 744–56. https://doi.org/10.31933/jimt.v2i6.486

[33] Mosgan Situmorang, 'Pembatalan Putusan Arbitrase', *Jurnal Penelitian Hukum De Jure*, 20.4 (2020), 573-585. http://dx.doi.org/10.30641/dejure.2020.V20.573-586.

Table 2. Advantages and Disadvantages of Arbitration in Resolving Land Disputes

No	Advantages	Disadvantages
1	The procedure is not complicated, and a decision is reached in a relatively short time.	Lack of power to present evidence and witnesses.
2	Lower Cost.	Lack of power for law enforcement and the execution of decisions.
3	Can avoid exposure of decisions in public.	Cannot produce preventative solutions.
4	The law on procedures and evidence is more family-friendly.	Intervention from others.
5	The parties may choose which law will be applied by arbitration.	The possibility of conflicting decisions arising because there is no "precedent" system for previous decisions, and also because of the element of flexibility of the arbitrator. Therefore, arbitration decisions are not predictive.
6	The parties can select an arbitrator.	The quality of the decision depends heavily on the quality of the arbitrator himself, without sufficient norms to maintain the quality standards of arbitral decisions.
7	An arbitrator can be selected among experts in the field.	
8	Decisions can be relevant to the situation and conditions.	
9	The arbitration decision is final and binding (without the need for appeal or cassation).	
10	Arbitration awards can generally be enforced and executed by a court.	

An arbitration award may be annulled by petitioning the District Court for the annulment of part or all of the decision's contents based on the presence of specific factors in the process.

a) Letters or papers submitted during the examination process after the issuance of the decision are fraudulent by a party.

b) After the decision, critical papers concealed by a party were uncovered.

c) This decision was made due to the fraud perpetrated during the dispute inquiry procedure.

The reasons for applying to annul an arbitration award are alternative in nature. This mechanism is an alternative solution in resolving land disputes where a National Land Arbitration Body is needed as ad hoc or permanently attached to the Indonesian National Arbitration Body.

3.4. Alternative Land Dispute Resolution: Establishing an Agrarian Court

Several forms of land dispute resolution cannot provide a sense of distributive justice for the parties to the dispute. In litigation, several judicial institutions can resolve land disputes under the legal context of the problem. General courts have the authority to examine, adjudicate, and decide

land disputes when the legal context is a civil lawsuit or criminal report.[34] The judicial power is exercised by the State Administrative Court ("PTUN") and the State Administrative High Court ("PT TUN"). The Supreme Court is the highest state court, while the Religious Court is an inheritance object in the context of land disputes.[35] Jurisdiction lies with the District Court, authorized to examine, adjudicate, and render a decision when the matter pertains to a land dispute, including the ownership of rights.[36]

The judicial institutions are very difficult and experience many protracted obstacles in examining various disputes, conflicts, and land cases. For more than 60 years, the resolution of land cases has been protracted in the courts. The protracted resolution is because each judicial agency has absolute competence in deciding a case.

In civil disputes, the Court has the competence to adjudicate disputes over ownership rights, and the State Administrative Court has the competence to validate land certificates due to decisions issued by state officials. The Religious Courts also have the competence to adjudicate disputes based on inheritance conflicts.[37] Each of these competencies becomes increasingly complicated when a dispute reaches a conclusion. However, the concept is different following the equal position of the judiciary.[38]

Several judicial institutions have the authority to examine, adjudicate, and decide on various land issues. The handling process is chaotic, and land issues are considered to be customary conflicts.[39] The urgency of establishing a special land judicial body needs to be realized.[40] According to Muhammad Bari, a special Land Court is an important solution. Furthermore, endless land disputes with unclear solutions lead to legal uncertainty and need to be ended immediately. Indonesia must address issues that consume significant time, energy, and financial resources. In the future, the state can provide justice, benefits, and legal certainty.[41] There are several legal bases for establishing an agrarian court.

a) Article 24, paragraph 3 of the 1945 Constitution states that "Other bodies with functions relating to judicial power are regulated by law".

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[34] Rindu Audrye, Salma Rizqila, and Taupiqqurrahman Taupiqqurrahman, 'Optimalisasi Reforma Agraria Melalui Pembentukan Pengadilan Khusus Pertanahan Optimizing Agrarian Reform Through the Establishment of Special Land Courts', 7.1 (2024), 84–99. https://doi.org/10.26623/julr.v7i1.7904

[35] Cindy Nabila Saraswati and Atik Winanti, 'Pembentukan Pengadilan Agraria Dalam Penyelesaian Sengketa Pertanahan Di Indonesia', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 8.1 (2021), 237–50. https://doi.org/10.15408/sjsbs.v8i1.19475

[36] Indra Utama Tj, Muhammad Azhali Siregar, and Muhammad Juang Rambe, 'Problematika Kewenangan Penyelesaian Sengketa Pertanahan Berupa Sertifikat Hak Milik (SHM) Atas Tanah (Studi Di Pengadilan Tata Usaha Negara Medan)', *CERMIN: Jurnal Penelitian*, 6.1 (2022), 193 <https://doi.org/10.36841/cermin_unars.v6i1.1708>. https://doi.org/10.36841/cermin_unars.v6i1.1708

[37] Laurens Bakker, 'Custom and Violence in Indonesia's Protracted Land Conflict', *Social Sciences and Humanities Open*, 8.1 (2023), 100624. https://doi.org/10.1016/j.ssaho.2023.100624

[38] Teddy Chandra, 'Non-Litigation Process Land Dispute Settlement For Legal Certainty', *Substantive Justice International Journal of Law*, 2.2 (2019), 177. https://doi.org/10.33096/substantivejustice.v2i2.49

[39] Safrin Salam, 'Penguasaan Fisik Tanah Sebagai Alat Bukti Kepemilikan Tanah Ulayat Di Pengadilan', *Crepido*, 5.1 (2023), 1–14. https://doi.org/10.14710/crepido.5.1.1-14

[40] Imam Koeswahyono and Diah Maharani, 'Rasionalisasi Pengadilan Agraria Di Indonesia Sebagai Solusi Penyelesaian Sengketa Agraria Berkeadilan', *Arena Hukum*, 15.1 (2022), 1–19. https://doi.org/10.21776/ub.arenahukum.2022.01501.1

[41] Muhammad Bari, 'Eksistensi Pengadilan Khusus Pertanahan Guna Mewujudkan Pengarusutamaan Land Rights Sebagai Hak Asasi Manusia', *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria*, 3.1 (2023), 37–55. https://doi.org/10.23920/litra.v3i1.1478.

b) Article 27 of Law No. 48 of 2009 on Judicial Power states that special courts can only be formed in a judicial environment under the Supreme Court.

c) Amendment to the 5th of the 1945 Constitution.

The legal basis can be used as a reference for establishing a special land court in responding to paradigm changes and realizing distributive justice for society. The author suggests that the future agrarian court's institutional legal framework will focus solely on civil and administrative land disputes, which encompass customary land disputes. The dispute resolution mechanism is founded on a social justice paradigm, aligning with the constitutional spirit and the fundamental agrarian law. It is essential that the agrarian court is staffed by judges possessing specialized knowledge in land matters, whether they are career judges or ad hoc judges. The proceedings within the agrarian court will be based on the principle of simple, quick, and low-cost justice, leading to binding decisions that ensure both procedural and substantive justice.[42]

3.5. Establishment of Special Land Courts as in Australia and South Africa

Indonesia should learn from other countries, such as Australia and South Africa, with experience in running special land justice institutions. In Australia, there is a Land Court located in the state of New South Wales, while in South Africa, there is a Land Claims Court. The essence of these two institutions is different in principle, but there are elements of similarity. The main objective of establishing the Land and Environment Court in New South Wales is to provide facilities for resolving disputes in court. The formation was based on the Land and Environment Court Act 1979 No. 204. Meanwhile, the Land Claims Court in South Africa was formed to resolve issues resulting from the long-standing apartheid policy.[43]

Discrimination by white immigrants has been going on for a long time in South Africa. In 1948, de Boer's National Party won the elections and included the apartheid policy in the regulations. In 1961, South Africa was declared a republic after elections that included only whites. Subsequently, a grand apartheid policy occurred and was slowly abolished after Nelson Mandela was released from prison. In 1994, free elections took place, and Mandela was elected as the first black president. The settlement of land disputes due to apartheid politics became an important agenda for the government. A Claims Court was formed to restore lands lost due to discrimination and racism since 19 June 1913. The position of the court is similar to the Land and Environment Court of New South Wales. The appeals of the Land and Environment Court of New South Wales and the Land Claims Court are directed to the Criminal Appeal and the Supreme Court, respectively.[44]

The state governor has the authority to appoint a chief judge and several others to the Land and Environment Court of New South Wales. Qualified people are also appointed to be court commissioners. Meanwhile, the appointment of clerks and the assistant, as well as other staff, must be in line with the Public Service Act of 1979. The president of the Land Claims Court is appointed by the courts of the Republic of South Africa under the supervision of the Judicial Service Commission. Other judges may be appointed by the President of the Republic of South Africa in consultation with the Judicial Service Commission. In this court, there are also clerks, referees who

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[42] Yordan Gunawan, M. Fabian Akbar, and Eva Ferrer Corral, 'WTO Trade War Resolution for Japan's Chemical Export Restrictions to South Korea', *Padjadjaran Jurnal Ilmu Hukum*, 9.3 (2022), 408–31. https://doi.org/10.22304/pjih.v9n3.a6.

[43] Rene Woods, Ian Woods, and James A. Fitzsimons, 'Water and Land Justice for Indigenous Communities in the Lowbidgee Floodplain of the Murray–Darling Basin, Australia', *International Journal of Water Resources Development*, 38.1 (2022), 64–79. https://doi.org/10.1080/07900627.2020.1867520.

[44] Ibrahim Bidemi Abdullateef, 'Land Question in Post-Apartheid South Africa', *African Journal of Political Science*, 12.1 (2024), 65–79. https://doi.org/10.36615/skhrfw68.

function as case investigators, and commissioners tasked with summoning individuals to attend after the judge receives the results of the interrogation used as evidence. At the South African Land Claims Court, there is a trial conference to examine the problem and identify the evidence needed for the judicial process. Only a legal remedy is reported for an appeal to make the dispute resolution process shorter. The Land and Environment Court of New South Wales has a one-stop shop concept. Therefore, disputes over land, water, buildings, compensation, environmental pollution, and other matters related to land are handled internally. The scope of the South African Land Claims Tribunal is limited to the restoration of land and rights belonging to individuals or groups lost during the apartheid era.[45]

Based on that, the author aims to reinforce earlier studies indicating the immediate necessity for the establishment of a specialized land court. Drawing from the historical context of special land courts in Africa and Australia, which were created in response to discrimination against specific groups, it is evident that Indonesia shares a comparable history. Vulnerable populations, including indigenous communities and the economically disadvantaged, face significant barriers to accessing justice within the land sector. Factors such as the uncertainty and protracted nature of dispute resolution processes by judicial authorities, the coexistence of customary law and state law, and the absence of dedicated land judges underscore the pressing need for the creation of a specialized land court.

According to this explanation, the regulations that form the fundamental basis for agrarian reform in the two countries under comparison both incorporate clear mechanisms for dispute resolution grounded in the principles of fairness, expediency, and cost-effectiveness. In contrast, Indonesia's Law No. 5 of 1960 on Basic Agrarian Regulations, which serves as the main foundation for agrarian reform, currently lacks provisions for land conflict resolution mechanisms. Instead, conflict resolution is addressed in various other regulations, resulting in overlapping cross-sectoral provisions. The author suggests that this situation arises because the UUPA is no longer aligned with the evolving developments of contemporary society. It is anticipated that the future UUPA will embody the essence of agrarian reform, emphasizing both procedural and substantive justice, thereby facilitating the establishment of contextually relevant land regulations.

there are several alternative solutions for reforming national agrarian law to realize distributive justice regarding the fulfillment of constitutional rights in the land sector. The first solution is to strengthen the role of BPN as a mediator and arbitrator inherent in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. This provision can provide a new role for the BPN in resolving land conflicts quickly, as arbitration decisions are final and binding on the parties. Furthermore, the second solution is to update the AJB concept by making cross-sectoral regulations to include agreements and resolve land disputes through arbitration. The third solution is to form a special Land or Agrarian Court.

4. Conclusion

In conclusion, the function of BPN as a mediator was perceived as ineffective in adequately resolving land disputes due to the non-binding nature of the decisions. Therefore, this role necessitated enhancement through a progressive legal method, advocating for BPN to assume the role of arbitration body, as stipulated by Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. The legal authority of decisions rendered by BPN as arbitrator would be final and binding on the parties, thereby more effectively. An alternate method was to amend the

[45] Siyabulela Manona and Thembela Kepe, 'The High Court Ruling Against Ingonyama Trust: Implications for South Africa's Land Governance Policy', *African Studies*, 83.2 (2023), 181–99. https://doi.org/10.1080/00020184.2023.2261386

Notarial AJB by incorporating arbitration clauses and emphasizing the necessity for the establishment of a specialized land court. Australia and South Africa have both set up specialized land courts that serve distinct purposes yet share a common essence: they provide a fair, swift, and cost-effective mechanism for resolving land disputes.

In response to these systemic challenges, it is advised that the National Land Agency (BPN) to revise Regulation No. 21 of 2020 issued by the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia on the Management and Resolution of Land Disputes. Additionally, it is suggested to create cross-sectoral regulations in partnership with pertinent institutions to strengthen the BPN's role as an arbitration entity. Moreover, it is proposed that all land agreements be settled through arbitration particularly land disputes falling within the realm of civil and administrative law, as such decisions hold final and binding authority (assuming that an agrarian court has not yet been established). Furthermore, the state is urged to promptly enact agrarian law reform, which includes a draft land law, one component of which is the creation of a specialized land court (agrarian court). This model aligns with the primary goals of agrarian reform and facilitates the implementation of optimal land regulation provisions that are integral to the continuously developing Indonesian legal framework.

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