



# Land Dispute Prevention Model for Tourism Investment Climate Sustainability in Bali Province

Agus Apriawan

Law Study Program, Postgraduate Program, Universitas Warmadewa, Denpasar, Indonesia

dekagus@gmail.com

**ABSTRACT.** Based on data from the Regional Office of the National Land Agency of Bali Province, there are various typologies of land cases, with 261 land disputes and 493 land cases. The high number of land cases in Bali Province, both disputes, conflicts, and land cases, will have an impact on the disruption of economic, political, social and security stability conditions, which will also affect the condition of the tourism investment climate in Bali. Based on this background, it is interesting to examine: 1. What are the weaknesses of the current regulations in efforts to prevent land cases? 2. How is the land dispute prevention model that can be done to maintain the sustainability of the tourism investment climate in Bali Province? The employed research methodology is empirical legal research. The evolution of land dispute cases encompasses more than just land administration and administrative law, as it involves intricate dynamics within the realms of politics, society, culture, and intersects with matters of nationalism and human rights. Land cases can be broadly categorised into two main groups: legal considerations and non-legal issues, which serve as the general causes. In order to maintain the sustainability of the tourism investment climate in Bali Province, the mechanism for preventing land cases that can be done by involving the community through the closest government order, namely the local government, to be a good link to building system integration in efforts to prevent land disputes. The growing concept of community justice focuses on empowering the community to do various things related to handling conflicts in the land sector.

**Keywords:** Prevention, Land Disputes, Tourism Investment Climate

## 1 Introduction

Land holds significant value in the lives of individuals. The rationale behind this assertion lies in the fact that land possesses both economic significance and cosmic magical-religious connotations. According to the perspective held by the Indonesian Nation, land frequently generates peaceful vibrations, but it also has the potential to induce societal shocks and disrupt the implementation of national development [1].

© The Author(s) 2023

M. Umiyati et al. (eds.), *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Advances in Social Science, Education and Humanities Research 804,

[https://doi.org/10.2991/978-2-38476-180-7\\_6](https://doi.org/10.2991/978-2-38476-180-7_6)

This land provides a suitable habitat for human habitation and sustenance. Moreover, the availability of land is severely constrained and its replenishment is unattainable, while the global population continues to expand, hence engendering heightened competition for land resources. Particularly when associated with the advancement of tourism, which leads to the appreciation of land's economic worth, resulting in a sustained upward trajectory of its value.

The goal of economic and social transformation envisioned by Law No. 5/1960 on Basic Agrarian Principles (UUPA) has not been realized until now. During the New Order Government, land management practices have interpreted the "national interest" contained in the UUPA with different meanings and intentions. The principle of national interest, which should have aimed to create broader people's welfare, was used to serve the interests of the power elite.

The Government's land policy has not been oriented towards the ideals of realizing a just and prosperous society as contained in the UUPA. In addition, a reliable land management system that responds to the pluralism of agrarian law in the unification of land law has not yet been realized. The unrealized transformation process in the land sector has led to various land issues to date. Since the reform era, people involved in land cases have had the courage to express the sense of injustice that they had felt during the New Order Government. Demonstration movements demanding land rights emerged in various regions, supported by the freedom of local mass media to disseminate news about land conflicts. The freedom of expression that civil society began to enjoy also led to an escalation in the number of land cases in various regions [2].

Data from the Directorate General of Land Dispute and Conflict Management of the Ministry of ATR / BPN on the distribution of disputes and cases in 2015-2022 still shows that land cases are still very high throughout Indonesia, where the number of land disputes is 13,255, the number of land conflicts is 913, and the number of land cases is 26,172.

Bali Province with an area of 5,780.06 Km<sup>2</sup> or 578,000 Ha with a forest area of 136,831 Ha (24% of the area) is one of the tourism destination areas. From the area outside the forest area, there are 1,904,486 certificated land parcels (90%), this is in line with the direction of government policy where Bali Province is the first province to complete the first time or complete land registration activities. With the completion of all certificated land parcels, both lands controlled by individuals, traditional villages, legal entities and government agencies, existing and reported land cases are still very high. Data obtained related to land cases from the Control and Dispute Handling Division, Regional Office of the National Land Agency of Bali Province, the number of land disputes is 261, land cases are 493 with various typologies of land cases that have been mapped.

The high number of land cases, both disputes, conflicts and cases in Bali Province will have an impact on the disruption of economic, political, social and security stability conditions, which will also affect the conditions of tourism investment in Bali. Various steps to handle and resolve land cases continue to be carried out by the government, including continuing to improve the regulations governing the mechanism

for handling and resolving land cases, but the emergence of land cases continues to increase from year to year.

Seeing the description above, the author is interested in conducting research in the form of dissertation proposal research related to efforts to prevent the many land cases that arise with the title "Land Dispute Prevention Model for the Sustainability of the Tourism Investment Climate in Bali Province".

### **1.1 Problem Formulation**

Based on the background of the problem as above, the problems in this study can be formulated, namely:

1. What are the weaknesses of the current mechanism in preventing land cases?
2. What is the prevention model that can be done both internally and externally?

## **2 Conceptual Foundation**

The term "Land Case" refers to a dispute or conflict related to land, which is formally submitted to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office of the National Land Agency, or Land Office. These authorities have the jurisdiction to handle and resolve such cases in accordance with the relevant laws and regulations. The distinctions between disputes, conflicts, and land cases in the context of land-related matters are outlined in Article 1, points (1) to (4) of Permen ATR / Head of BPN Number 21 of 2020. This regulation establishes specific definitions for disputes, conflicts, and land cases, thereby imposing limitations on their scope. According to the provided definition, it may be stated that:

- a. The term "Land Dispute," henceforth referred to as Dispute, pertains to conflicts over land ownership or usage among individuals, legal entities, or institutions. These disputes typically lack significant ramifications beyond the immediate parties involved.
- b. Land Conflict, hereinafter referred to as Conflict, pertains to a conflict over land between persons, groups, organisations, legal bodies, or institutions that exhibits a propensity or has a significant influence.
- c. A Land Case, hereinafter referred to as Case, is a land dispute that is handled and resolved through a judicial institution.

Basically, disputes, conflicts and cases are three terms that are often used simultaneously to explain differences of opinion, disagreements, disputes, disagreements and disharmony between one party and another. Disputes and conflicts appear to be human nature, because humans are social creatures who cannot live alone, humans live in need of the help of others. It is impossible for anyone to live alone without interaction with others. In interacting with other people, there must be disputes or conflicts of interest between one person and another. Therefore, rules are needed to prevent disputes or conflicts; these rules are called laws.

Prevention refers to a comprehensive strategy, comprising many strategies, protocols, and techniques, that aims to enhance an individual's ability to engage effectively in interpersonal relationships and fulfil their roles as an individual, partner, carer, or participant in a collective, societal, or organisational setting. An alternative interpretation of prevention pertains to the proactive measures taken by individuals to avert the occurrence of undesirable events. The term "preventive" or "prevention" has its etymological roots in the Latin word "prævenire," which signifies the act of preceding, anticipating, or averting the occurrence of something. In a general context, prevention can be defined as a purposeful endeavour aimed at averting the onset of disruption, harm, or detriment to an individual. Therefore, preventative activities encompass proactive measures implemented prior to the occurrence of an incident. This action is undertaken because of the potential for adverse effects or harm caused by the aforementioned entity.

From a legal standpoint, prevention refers to the systematic approach, methodology, or action used to avert or restrict the occurrence of a particular event or action. It can also be described as a proactive measure taken before to the commission of an infraction. Crime prevention initiatives are the primary endeavours in addressing criminal activity.

### **3 Theoretical Foundation**

#### **a. Theory of Authority**

The theory of authority is consistently employed within the framework of public law. Authority, as a term within public law, encompasses a minimum of three essential elements: influence, a legal foundation, and adherence to legal norms. The element of influence pertains to the utilisation of authority with the aim of regulating the conduct of those who are bound by legal obligations. The legal foundation component pertains to the need that the authority must possess a legally appointed basis, while the legal conformance component encompasses the presence of authority standards, including general legal standards applicable to all types of authority, as well as specific requirements applicable to certain types of authority [3].

Philipus M. Hadjon states that:

All governmental actions must be grounded in legitimate power. Authority is acquired through three distinct sources: attribution, delegation, and mandate. The delineation of state power through the basic law typically establishes the authority of attribution, whereas the authority of delegation and mandate pertains to authority acquired from delegation. The user did not provide any text to rewrite" [4].

#### **b. Theory of Legal Certainty**

Certainty encompasses several connotations, stipulations, and requirements. When certainty is coupled with the term "law" to form the concept of legal certainty, it denotes the legal mechanism inside a nation that ensures the protection of the rights and

responsibilities of all individuals [5]. Legal certainty is a fundamental principle that aims to safeguard individuals from arbitrary exercise of authority by providing them with legal protection. Consequently, the state assumes the obligation of administering the law. The correlation between the matter of legal certainty and the state is evidently apparent in this particular instance [6].

#### c. Legal Protection Theory

The ideas governing legal protection for the citizens of Indonesia are rooted in Pancasila, which serves as the fundamental basis and philosophical framework of the state. The foundation of legal safeguards for individuals in Western societies is rooted in the principles of acknowledging and safeguarding human rights, as well as the notions of the rule of law and the significance of legal institutions. The idea of legal protection for the people of Indonesia is derived from Pancasila, which serves as the foundation for the Western conception framework. This principle encompasses the acknowledgment and safeguarding of human dignity, as well as the establishment of a legal state founded on Pancasila [7].

#### d. Policy Theory

A policy refers to a collection of principles and concepts that provide guidance and direction for the formulation and implementation of plans in the execution of tasks, leadership, and behavioural approaches. The word can be applied to governments, organisations in the business sector, as well as various groups and individuals. Policy is a strategic framework designed to guide and facilitate the attainment of specific objectives, values, and targeted activities. It encompasses a set of proposed measures put forth by individuals, groups, or governing bodies within a given context, with the aim of addressing challenges and opportunities associated with the proposed policy in order to achieve predetermined goals. According to Hogwood and Gunn (year), policies can be categorised into three main groups, which are:

1. The policy-making process, which is the activity of formulating until a policy is made.
2. The implementation process refers to the operationalization of formulated policy.
3. The policy assessment process entails the systematic examination of the execution of policies, seeking to ascertain the outcomes resulting from their implementation. This involves an analysis of the methodologies employed in conjunction with the attained results.
4. Policy Implementation

## **4 Discussion**

### **4.1 Weaknesses of the current mechanism in preventing land cases**

The integration of land issues into intricate societal matters necessitates the implementation of comprehensive remedies. The evolution of land dispute cases has transcended the realm of land administration and administrative law, encompassing intricate dimensions that intersect with politics, society, culture, nationalism, and human rights. Land-related matters also intersect with criminal law matters, namely instances where land conflicts are accompanied by criminal law offences, such as the commission of criminal crimes.

In order to identify the underlying causes contributing to the occurrence of recurrent land disputes, a systematic analysis is conducted on each reported land case, employing a mapping methodology to ascertain the fundamental cause and typology of the land dispute.

Several rules have been modified or substituted in an attempt to address unresolved disputes, conflicts, and land issues. However, these efforts have not yielded tangible outcomes, and the proposed concepts or ideas from experts and academics have not effectively mitigated the occurrence of disputes. One such proposal entails the establishment of a land court, a provision that is currently encompassed inside the Land Bill, although remains unrealized thus far. Therefore, it is imperative to enhance regulatory frameworks and bolster the capacity of institutions responsible for managing Dispute Resolution, Conflict, and Land Cases.

Upon examination of current land disputes, it becomes evident that the underlying reasons of such cases can be categorised as legal factors, encompassing issues such as overlapping rules, inadequate regulations, overlapping judiciary, settlement, and complicated bureaucracy. Non-legal considerations encompass various elements, such as the presence of overlapping land use, the considerable economic value associated with land, the growing public awareness of land-related issues, the limited availability of land resources, the expanding population, and the prevalence of poverty.

### **4.2 Prevention models that can be done both internally and externally**

The policy of handling problems in society is basically a choice of efforts to handle and resolve a problem or conflict that occurs in society. This choice must, of course, look at the root of the problem.

Policy theory, in a theoretical sense, refers to a deliberate decision-making process aimed at addressing challenges that develop within a certain governmental activity conducted within the framework of governance [8].

From an alternative standpoint, the field of public policy examines the actions taken by governmental entities to tackle issues that are of significance to the general public.

The government encounters various challenges that stem from the inefficiency of the bureaucracy in delivering services and addressing public issues. Hakim identifies

a range of factors contributing to these shortcomings, include information failures, complex side effects, motivation failures, rent-seeking behaviour, second-best theory, and implementation flaws. The efficacy of a policy is contingent upon its successful implementation. Hence, as posited by Ripley and Franklin, the stage of implementation holds significant importance within the policy process.

The successful execution of policy-making choices is contingent upon the presence of appropriate implementation strategies. Policy implementation is a process that occurs subsequent to the release of a legal directive, encompassing endeavours to effectively manage various inputs in order to generate desired outputs or outcomes for the broader community. The centralized pattern of policy implementation within the scope of Indonesia, which is very broad and diverse, has resulted in the burden on the government as a state organizer being too large, causing the policy objectives taken to be difficult to achieve.

Greater community involvement through the closest government order (in this case, the local government) can be a good link to build system integration in efforts to prevent land conflicts.

The emerging notion of community justice places emphasis on the empowerment of the community to engage in various activities pertaining to the resolution of land disputes. Within the framework of the community justice method, the resolution of legal matters is not approached as a competitive endeavour, but rather as a task that necessitates problem-solving. There is a significant focus on addressing public safety concerns in order to enhance the overall well-being of individuals. Problem-solving approaches diverge from the conflict paradigm in that they depend on the utilisation of information, thoughtful consideration, and the identification of shared interests as means of achieving resolution. The underlying premise of this approach posits that individuals within a society own a collective set of values and concerns. By ensuring the dissemination of accurate information and establishing a structured framework, a viable solution to the problem can be identified.

## **5 Conclusions and Suggestions**

### **5.1 Conclusions**

From the study that has been carried out, the following conclusions can be drawn:

1. From the results of the analysis of data collected through data collection, there are data on factors that reflect the existence of various types of root causes of land disputes and cases found.
2. In the factor of the existence of potential nodes of disputes, cases and land cases, factors were found that were in the internal realm of the ATR / BPN ministry and the external realm of the ministry;
3. In the internal factors of the ATR/BPN ministry that give rise to the potential for disputes, cases and land cases with regard to compliance with the operational guidelines / SOPs for services and reviews, internal file processing in the flow of

service procedures that have been established. The existing SOPs actually have many aspects of preventing the emergence of disputes, conflicts and land cases, even though they are not explicitly explained as a form of prevention;

4. External factors of the Ministry of ATR/BPN are two-way and multi-sectoral. External factors that have the potential for disputes, cases and land cases are those that can be reached by the Ministry with the Cooperation model (soft approach) or those that are more ego-sectoral in nature which require a hard approach in the form of a policy level that reaches and covers all sectors.

## 5.2 Suggestions

To prevent land disputes, cases and cases in the future the following suggestions can be made :

1. The existence of factors that trigger the emergence of land disputes, cases and cases that are found must still be followed up with an understanding and formulation of the concept of comprehensive prevention efforts;
2. The existence of internal and external factors must be followed up with a deepening of the existing/connected or unconnected nodes as the triggering character of land disputes, cases and cases (lesson learned from the rise of "land mafia" practices) and for the formulation of prevention concepts;
3. The absence of a prevention policy must be anticipated and understood as the need to formulate a policy for the prevention of land disputes, cases and cases;
4. The discovery of the character of the triggering factors of land disputes and cases that are internal and external in nature that can be sought for prevention in a soft way can be made a prevention policy made by the Ministry of ATR / BPN;
5. For external-multisectoral triggering factors that cannot be reached by the ministry's internal regulatory policies, policies at a higher level must be conceptualized regarding the prevention and handling of land disputes, cases and cases that reach all sector authorities that are in contact with land and give rise to land disputes, cases and cases.

## References

1. John Salindeho, 1998, *Masalah Tanah Dalam Pembangunan*, Sinar Grafika, Jakarta, hal. 7
2. Minako Sakai, *Solusi Sengketa Tanah di Era Reformasi Politik dan Desentralisasi Indonesia*, Jurnal Antropologi Indonesia No. 68 Tahun 2002, hlm. 40. Artikel menuliskan kasus pertanahan yang ditangani LBH Palembang meningkat tajam dari 6 kasus di tahun 1994 menjadi 81 kasus di tahun 1998.
3. Prajudi Atmosudirjo, 1994, *Hukum Administrasi Negara*, Ghalia Indonesia, Jakarta, hal. 78
4. Philipus M. Hadjon, dkk., 1997, *Pengantar Hukum Administrasi Negara Indonesia (Introduction the Indonesian Administrative Law)*, Gadjah Mada University Press, Yogyakarta, hal. 130



5. Anton M. Moeliono, dkk., 2008, *Kamus Besar Bahasa Indonesia*, Balai Pustaka, Jakarta, hal. 1.028
6. Fernando M. Manullang, E., 2007, *Menggapai Hukum Berkeadilan, Tinjauan Hukum Kodrat dan Antinimi Nilai*, Penerbit Buku Kompas, Jakarta, hal. 95
7. Philipus M. Hadjon, 2007, *Perlindungan Bagi Masyarakat di Indonesia*, Cetakan Pertama, Peradaban, Surabaya, hal. 19
8. Mustopadidjaja, *Manajemen Proses Kebijakan Publik: Formulasi, Implementasi, dan Evaluasi Kerja*, (Jakarta: Lembaga Adminstrasi Negara, 2002), hal.5.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

