

# LEGAL CERTAINTY THAT IS FAIR TO INDIVIDUAL RIGHTS IN LAND DISPUTE RESOLUTION IN REALIZING JUSTICE AND WELFARE

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## 7 LEGAL CERTAINTY THAT IS FAIR TO INDIVIDUAL RIGHTS IN LAND DISPUTE RESOLUTION IN REALIZING JUSTICE AND WELFARE

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### Abstract

Land is one of the important factors of production for human life. Land disputes can cause various negative impacts, both for the parties to the dispute and for the wider community. Efforts to resolve land disputes require equitable legal certainty. The purpose of this research is to examine the fair legal certainty of individual rights in the settlement of land disputes in realizing justice and welfare. The research method used in this research is qualitative research. The data collection technique in this research is done by reading books, articles, and other sources relevant to this research. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation and conclusion drawing. The results of the research show that equitable legal certainty is still an unattainable dream for some people, especially for those who are forced to lose their rights due to court decisions. One of the uncertainties in national land law can be seen in Article 64 paragraph (1) letter b, and paragraph (2) of Government Regulation number 18 of 2021 where the cancellation of land rights can be done through the court or because of overlapping, without recognizing the time limit. Justice and legal certainty for the community towards land rights, the role of the House of Representatives is needed as a supervisory function to facilitate meetings with relevant agencies to carry out the necessary coordination.

**Keywords:** Legal Certainty, Individual Rights, Land Disputes, Justice, Welfare

### INTRODUCTION

Land prices have risen tremendously, especially in big cities, making it impossible for people to buy land to build their homes on. The rapid increase in land prices is experienced by many countries whose economic levels are increasing, such as in Dubai. Dubai has become a reference city for countries in the world, especially in mall development (Kanjaya & Susilo, 2010). Despite being in a very hot location, the development of tourism there made the construction of malls, hotels very massive and eventually made land prices there skyrocket.

Due to the increase in land prices, in the end the land was bought in groups, and the building they occupied according to the location of the floor and unit they bought. The buildings are known as flats or apartments. So it can be said that land is a necessity for everyone. Even people who already own land to build a house, they still run the risk of losing their land because it is sued by someone else who claims to be the rightful owner of the land. This is where the person in dispute brings the matter to court in the hope that certain and beneficial justice will be upheld through the decision of the judicial body. It should be noted that within 5 years from 2015 to 2019, land cases reached an average of more than 1,000 cases that entered the Supreme Court (Salam & Dahlan, 2021).

However, there is often resistance from the people because there are many types of problems and many parties also do not accept the decisions of the judicial bodies, such as land certificates that can be more than one and land areas that can be manipulated, plus the number of land brokers and landowners can be suppressed by thugs who can be hired. People who lose their land and homes will become domestic refugees in our country. This is a very real issue, judging from the Internal Displacement Monitoring Center (IDMC) report, where 2021 is the year with the highest number of records for the number of refugees in the country, totaling 59.1 million people. In addition, in 2022, the data also shows tragic things (Welle, 2023). This latent problem in the legal field can lead to a decline in people's welfare and people's distrust of Indonesia as a state of law. We know about bribery; we know about the petty tyranny of bureaucrats. To remedy these evils, there are controls built into the system. The law, in other words, has the further task of policing the rulers themselves. This is arguably the process of overturning social control (Lawrence, 1984). The researcher will take the case of a land dispute between 1 (one) individual who claims to be the title holder of 2 attached parcels of land, and several different individuals, who also claim to own land within the parcels of land with their respective title bases, including Certificates of Ownership. The individual is William Chandra. William Chandra claims to have rights over a plot of land measuring 50,000 m<sup>2</sup> (fifty thousand square meters) based on the Decree on the Grant of Right of Use No. 34/HP/1963 dated 9 August 1963 and Right of Use No. 36/HP/1963 dated 9 August 1963 with an area of 25,000 (twenty-five thousand square meters) each. The Right of Use which has expired and has been declared canceled.

Between 2009 and 2011, William Chandra attempted to gain control of three parcels of land, which were located within the 50,000 m<sup>2</sup> (fifty thousand square meters) of land claimed to belong to William Chandra. These three parcels of land already had land title deeds. So that in the end there were several cases of land disputes in this area, where empirical data, indeed land cases in North Sumatra are one of the highest in Indonesia until President Joko Widodo requested that the resolution of agrarian conflicts in North Sumatra be accelerated. For the plan of the disputed land, it is in the following picture.

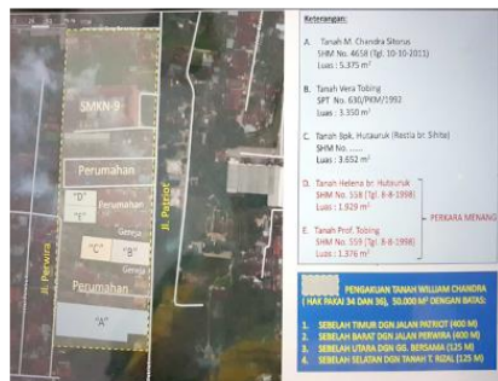


Figure 1: Plan of the disputed land

The above data on the William Chandra case shows that there was a dispute over land boundaries and ownership of land rights because of William Chandra's efforts to occupy several plots of land owned by 3 (three) different parties, which were located within the 50,000 m<sup>2</sup> (fifty thousand square meters) of land claimed to belong to William Chandra.

The Supreme Court's decision declaring invalids the certificate of ownership in the name of Ms. Catherina Sitorus, will be linked to the Law of the Republic of Indonesia No. 20/1961 on the revocation of rights to land and objects thereon. William Chandra won his case with Ms. Vera Tobing. The judge at the Medan city district court stated that William Chandra was the rightful party to the disputed land, as the holder of the right of use, and that the possession of the land by Vera's mother, who compensated the previous tenants, could not be justified by law even though the term of the right of use had expired on July 31, 1968.

The Supreme Court upheld the decision. It is easy to see that there is legal uncertainty for William Chandra, who can experience defeat and victory at the same time, even though everything is based on the same land rights, which William Chandra owns, namely Hak Pakai no. 34 and no. 36. Likewise, almost all of the individuals with whom William Chandra has disputes, because the land is declared not the rights of these individuals anymore.

In addition, there are also those related to court decisions where there are parties whose disputes with William Chandra ended with the verdict of a criminal law verdict, although accompanied by the oddity of the existence of a Sale and Purchase Deed (AJB) between Hasan Chandra, formerly Hsu Ching Ho, on land from Kasan Rawi on August 26, 1963, even though the late Kasan Rawi had died earlier, on January 8, 1961 (Inetizenews, 2022).

This snippet of information synchronizes with the statement of the coordinating minister for Political, Legal and Security Affairs, that the owner of the original certificate can be sentenced <sup>6</sup> a criminal offense (Kumparan, 2022). A law must provide an effective result to be accepted. Although the principle of legal dispute resolution in court is to be resolved quickly and at low cost, in reality it is difficult to implement (Hajati et al., 2014).

The purpose of this study is to examine the fair legal certainty of individual rights in land dispute resolution in realizing justice and welfare.

## RESEARCH METHODS

The research method used in this research is qualitative research. <sup>1</sup> According to (Moleong, 2017) qualitative research is research that intends to understand the phenomenon of what is experienced by research subjects such as behavior, perception, motivation, action and others holistically and using descriptions in the form of words and language, in a special natural context by utilizing various natural methods. Qualitative research emphasizes quality not quantity and the data collected does not come from questionnaires but comes from interviews, direct observation and other related official documents.

Qualitative research is also more concerned with the process aspect than the results obtained. This is because the relationship of the parts being studied will be much clearer if observed in the process (Majid, 2017). Data collection techniques in this study were carried out by reading books, articles, and other sources relevant to this research. The type of data in this study is secondary data. The data collected in this study were sourced from Google Scholar and the Law. The data that has been collected is then analyzed in three stages, namely data reduction, data presentation, and conclusion drawing.

## DISCUSSION

Land-related problems and land disputes on a mass scale have the potential to affect development efforts and the strengthening of the Unitary State of the Republic of Indonesia and can threaten national integrity within the framework of a State of Diversity in Diversity. In the Decree of the Head of BPN RI Number 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Problems, it is stated that land problems include technical problems, disputes, conflicts, and land cases that require solutions. The document also explains that technical problems occur in the community and/or the National Land Agency of the Republic of Indonesia, at the central or regional level, related to land laws, land administration that is not yet optimal. On the other hand, the Head of BPN RI Regulation No. 3/2011 on the Management of Land Case Assessment and Handling provides a clear definition of what is considered a land case. Article 1 point 1 of the Regulation states that a land case can be a dispute, case or land conflict reported to the National Land Agency of the Republic of Indonesia to obtain management and settlement actions in accordance with land policy.

A land dispute is a conflict or dispute arising between two or more parties relating to the ownership, rights or use of land. Such disputes can arise in a variety of contexts, including between individuals, families, businesses, or even governments and local communities or landowners. The large number of land disputes that occur is not a new phenomenon. There are several dominant factors causing them, namely:

1. It turns out to be inseparable from the aspect of the concept of administrative law, because this is not a new phenomenon, but has often appeared since the explosion of land needs.
2. The population explosion has also affected the number of land disputes that occur because it increases the need for land for many purposes, such as for housing, for business, and many more.
3. Land is used as an economic commodity which results in a very high increase in value so that every inch of land is contested by people who are not entitled and defended desperately by the owner, this is where the rise of the land mafia is used by those who are not entitled to the land.
4. Agrarian policies that were issued by the colonial government, such as the implementation of several land taxes, due to the enactment of the Agrarian Law of the Dutch East Indies government in Indonesia at that time (Agrarische Wet) in 1870 but at that time the administration carried out was less orderly.



5. The absence of a digital inventory of data which caused many documents to be lost, not saved, even forged, and the entry of the land mafia.
6. Inequality in the structure of land tenure and ownership
7. Land registration publication system
8. Overlap between laws and regulations, both horizontally and vertically.
9. Large amount of abandoned land
10. The lack of care of notaries and PPATs in making deeds, who often feel safe because they are protected by law so they are not careful and the demands of clients to get good and fast services. It is also possible that there are deliberate actions by unscrupulous notaries and PPATs who take advantage of their authority.
11. There is no common perception of law enforcers, such as the perception of judges in legislation on land, on the UUPA and others, so that there are often differences in decisions between general courts, PTUN and religious courts in dispute resolution, especially land disputes.
12. Law enforcers lack commitment to the consistent implementation of laws and regulations.
13. There are still many people who do not realize the importance of taking care of the legality of their ownership of land until a case happens to them.
14. There is a gap between the mandate and implementation of the law on land, UUPA and its derivative regulations, as well as related regulations.

Land disputes between individuals, and even communities and companies, occur so frequently that some BPN officials have declared this to be a perennial problem in Indonesian land, based on empirical data that always increases from year to year until now. Disputes that could be resolved through legal channels often lead to clashes, resulting in many injured victims and disputes leading to criminal offenses. According to President Jokowi, the dominant factor causing land disputes is the small number of land certificates issued, namely 46 million certificates in 2015, out of a supposed 126 million certificates in the country or about 63.4%. Based on this, Jokowi ordered the Ministry of Agrarian and Spatial Planning to immediately run the PTSL program, so that more people have certificates and land disputes are expected to decrease.

In a dispute, the parties involved are directly confronted in an ongoing or ongoing situation, and there is no settlement that satisfies both parties (deadlock). Given the complexity of many land disputes, their resolution cannot always be done in a short time. Therefore, the experience of the parties involved in the dispute resolution efforts should be disclosed in an open and wise manner, to find the best solution for all parties.

Problems in land law are complex, stemming from diverse sources of regulation, resulting in stagnation in land law enforcement. Law enforcement carried out by administrative parties is often not optimal, as administrative parties often shift their focus to the court settlement

process. Similarly, law enforcement related to the determination of land rights or certification is often considered more as a discretionary issue than as a criminal offense. Similarly, law enforcement related to land use and utilization is separated from law enforcement regarding land ownership rights, so the two run separately.

#### **Land Dispute Resolution for Individual Rights**

The efforts taken to resolve land disputes for individuals depend very much on the root causes, as mapped out in the previous sub-section. In general, the National Land Agency (BPN) will implement the following land dispute resolution mechanism [1]: first, if there are administrative errors in the initial data, the BPN will make administrative corrections. Second, if both parties are willing, BPN will try to mediate through deliberation. Third, if cross-sectoral agencies are involved, there will be intersectoral coordination. Finally, if all previous efforts fail, especially if the dispute relates to "rights" issues that relate to material truth, the last resort is through the courts.

Settlement efforts in the form of administrative correction by the BPN are generally carried out by canceling the land title certificate or the Decree on Granting Land Rights, either because it must implement a court decision or because there is an administrative defect in the issuance of the certificate. As a central government agency whose responsibilities include various administrative matters, BPN does not have the authority to conduct material assessments in order to determine the truth in disputes regarding the validity of juridical data and/or physical data. However, disputants often only consider the BPN to be entitled to conduct material validity, as individuals generally do not understand the difference between the BPN's authority within the scope of administrative law and the authority of judicial bodies to conduct material assessments. This misunderstanding often results in an increasing number of cases/disputes being submitted to the BPN, which upon scrutiny, turn out that the resolution is not within the BPN's authority or the expected action cannot be taken immediately by the BPN because it has already been dealt with by the court and has not yet obtained permanent legal force.

#### **Court Decisions on Land Disputes for Individual Rights**

A court ruling in a land dispute for an individual is the culmination of an often stressful legal journey, emotions and expectations. It is the moment when the final decision is made and the future of one's land ownership is determined. A transfer of land rights through sale and purchase, whether certified or uncertified, must first be proven by an authentic deed made by a Land Deed Official. As has been confirmed in Article 37 paragraph 1 of Government Regulation No. 24 of 1997, which states "The transfer of land and ownership rights to apartment units through sale and purchase, exchange, grants, inclusion in companies and other legal acts of transfer of rights, except for the transfer of rights through auctions, can only be registered if it is proven by a deed made by an authorized PPAT in accordance with the provisions of the applicable laws and regulations.

### **Case of Vera Tobing v. William Chandra**

This case was divided into 2 decisions of the Medan District Court, namely:

First: Medan District Court Decision Number 486/Pdt.G/2009/PN.Mdn. dated May 05, 2010.

Plaintiff: Vera Tobing

Defendant: Williem Chandra

Sitting of the Case: Vera owns a piece of land measuring 50 M x 67 M or 3,350 M<sup>2</sup>, formerly known as Jalan Binjai Km. 7.2 Gang Beringin (formerly Gang Pensiun), Kepenghuluan Kampung Lalang, Sunggal Subdistrict, now known as Jalan Patriot, Sunggal Village, Medan Sunggal Subdistrict, Medan City. Based on information, the plaintiff obtained the land by way of compensation from a land cultivator named T. Hutahuruk for Rp. 260,000, - as set out in a Certificate of Land Compensation dated 26 May 1973 on a sealed paper of Rp. 25.

In 1992 a portion of the aforementioned land measuring 992m<sup>2</sup> was donated for a church site, which currently stands at Ephrata Church of the Propagation of MO (GPI). On 30 May 1992 the plaintiff took care of the land title by registering it with the Medan City Defense Office in order to upgrade the land title to a certificate of ownership and this is evidenced by Land Registration Certificate No. 630.2 416/PKM: 630.2 416/PKM/1992, however due to the high cost of upgrading the land title the process could not be continued by the Plaintiff. In addition, the Plaintiff has also shown good faith as a citizen who has paid his obligation to pay Land and Building Tax (PBB) every year.

From 1973 until 2009 (36 years) the plaintiff had controlled and cultivated the land and had never experienced any interference from any party. However, around October 2009 suddenly another party, without the plaintiff's permission, seized control of the land by prohibiting and threatening the plaintiff's workers from working on the land by erecting a sign that read "No Entry / Work on Land Use Rights No. 34 and No. 36 Without the Owner's Permission WCH Article 551 of the Criminal Code", and then the defendant fenced off 34 meters of the land and erected a permanent building measuring 3 x 4 meters on the plaintiff's land. As a result of the plaintiff's rights to the land being terminated, in other words, the plaintiff can no longer control and cultivate the land which has the effect of causing harm to the plaintiff, where the plaintiff cannot enjoy the fruits of the land object.

Defendant's Arguments:

Based on the plaintiff's title, the plaintiff is not the owner or holder of the rights to the disputed land but the plaintiff is only a cultivator, and in accordance with Article 1925 of the Civil Code the plaintiff's confession is the most perfect evidence. Based on the location of the land that was cultivated by the plaintiff or his predecessor, the land was located on or part of the land of Hak Pakai No. 36/HP/1963 dated 6 August 1963 in the name of Arif Sinar Tando (formerly Tan Tjai Poh aka Tan Tjai King) with an area of + 25,000 M<sup>2</sup> and based on Deed of Grant No. 4 dated 23 July 1997 made by and before Mrs. Nursida Hasibuan, SH, Notary in Medan, the land rights were granted to the defendant.



The land was originally part of the land of Hak Pakai No.SK. 1/H.P/1/1962 in the name of the Al-Jamiatul Wasliyah Charity and Social Foundation with an area of + 97,000 m<sup>2</sup> and part of the land rights had been released or handed over to Hasan Chandra (father of the respondent) with an area of + 50,000 m<sup>2</sup>, but in the application for ownership rights over the land the name Arif Sinar Tanado (formerly Tan Tjai Poh aka Tan Tjai King) was used as a borrowed name only, so that Hak Pakai No. No. 34/HP/1963 and No. 34/HP/1963 were used by the respondent. 34/HP/1963 and No. 34/HP/1963 were used by the respondent. 34/HP/1963 and No. 36/HP/1963 dated August 6, 1963, each with an area of 25,000 M<sup>2</sup> which is temporary in nature to await the issuance of the certificate of ownership requested registered Arif Sinar Tanado.

As a cultivator, the plaintiff no longer controls the disputed land so that the plaintiff is also not a cultivator or at least the plaintiff has relinquished his cultivation rights over the disputed land, it is proven that in 2009 the defendant was handed back control of the disputed land by Tigor Hutabarat as the party who controls and cultivates the disputed land as agricultural land, and Tigor handed back control of the disputed land to the defendant because he knew that according to the origin and history of the land plot, the disputed land was the legal property of the defendant.

#### Judge's Legal Consideration:

According to the judge's consideration during the process of answering and responding in the trial of this case, the Panel concluded that there was a principle about the size of the disputed land, both from the side of the plaintiff and from the side of the defendant, therefore it was necessary to hold a local inspection to see firsthand what activities were taking place on the disputed land object. After the trial process took place, the plaintiff did not provide strong evidence to the Tribunal about the construction on the disputed land, in addition, after reviewing and inspecting the location of the disputed land, the Tribunal did not find any significant construction activities on the disputed land, which was feared would cause even greater losses as referred to by the plaintiff in his claim. Considering, that based on the above considerations, the Panel is of the opinion that the party most entitled to the disputed land is the defendant, therefore the petition of the plaintiff's claim numbers 3 and 4 must be rejected.

#### Judge's Decision:

1. Granting the plaintiff's counterclaim in part
2. Declare the counterclaim plaintiff as the rightful holder of the disputed land in this case.
3. Declare that the counterclaim defendant has committed an unlawful act by claiming to have controlled the disputed land from 1973 until 2009.
4. Reject the claim of the counterclaim plaintiff henceforth.

Furthermore, the plaintiff filed an appeal to the Medan High Court.

Second: Decision of the Medan High Court Number 220/PDT/2010/PT-MDN. Dated November 01, 2010

That the decision of the Medan District Court on May 05, 2010 was attended by the plaintiff and the defendant, then the plaintiff through his attorney filed an appeal on May 10, 2010, thus the appeal from the appellant, originally the plaintiff, was filed within the time and in the manner prescribed by law, therefore the appeal from the appellant, originally the plaintiff can be accepted.

Defendant/Appellant's Arguments:

That originally the plaintiff, now the appellant, basically owns a plot of land measuring 50 m x 67 m or an area of 3,350 m, because the plaintiff reimbursed from the cultivator T. Hutauruk on May 26, 1973, while originally the defendant, now the appellant, argues that he has obtained a grant from Tan Tjai Poh alias Tan Tjai King now Arif Sinar Tando, as the holder of the Right of Use based on the Letter of Grant of Right of Use dated August 6, 1963 Number: 36/H.P./1963.

Judge's Decision:

1. Receive an appeal from the appellant originally the plaintiff
2. Cancel the decision of the Medan District Court dated May 05, 2010, Number: 486/Pdt.G/2009/PN.Mdn. which is appealed.
3. Furthermore, the appellant proceeded to cassation at the Supreme Court

Legal Consideration of the Supreme Court Judge:

That the objections of the Cassation Petitioner can be justified, because the *Judex Facti* / Court of Appeal that overturned the decision of the Medan District Court has misapplied the law with the following considerations:

1. That the Plaintiff was unable to prove the arguments of his claim.
2. That the *Judex Facti* / Court of Appeal has erred in considering the compensation transaction for the disputed object land carried out by the Plaintiff with the party in casu T. Hutahuruk, which turns out that the land was obtained by T. Hutahuruk from an unauthorized party, namely Major Shonddin Ilyas.
3. That according to the Supreme Court, the Plaintiff is unable to prove the arguments of his claim, that the disputed object land belongs to him, while the Defendant has been able to maintain his arguments of denial and in his counterclaim the Counterclaim Plaintiff has been able to prove the arguments of his counterclaim, that the Counterclaim Plaintiff/Convention Defendant is the rightful holder of the disputed object land.

Decision of the Supreme Court Judge:

Granting the cassation petition of the cassation petitioner: Williem Chandra

1. Cancel the decision of the North Sumatra High Court in Medan, No. 220/PDT/2010/PT.MDN, dated November 1, 2010, which canceled the decision of the Medan District Court, No. 486/Pdt.G/2009/PN.Mdn, dated May 5, 2010.
2. Subsequently, the plaintiff filed a judicial review to the Supreme Court.
3. Supreme Court Judicial Review NUMBER 206 PK/Pdt/2015 dated August 11, 2015

Judge's Legal Consideration:

That against the reasons for the Judicial Review, the Supreme Court is of the opinion:

1. That the reason for the judicial review cannot be justified, because even though the land is located in one stretch, but is tried in another case, namely Case No. 643 K/Pdt/2012, it is certainly different legal issues with the case a quo, the considerations and decisions of the Judex Juris are in accordance with the law.
2. Considering, that based on the above considerations, the petition for review filed by the Petitioner for Review: Vera Tobing must be rejected.
3. Considering, that since the petition for review of the petition for review is rejected, the petitioner for review shall be ordered to pay the court costs in this review examination.
4. Considering Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009 and other relevant laws and regulations.

Decision of the Supreme Court Judge:

1. To reject the request for reconsideration from the Applicant for Reconsideration, Vera Tobing.
2. Punish the Applicant for Reconsideration/Case Petitioner/Plaintiff/Appellant to pay court costs in this review examination in the amount of Rp. 2,500,000 (two million five hundred thousand rupiahs).

#### **Analysis of the Case of Vera Tobing versus William Chandra**

The researcher noted that the judges who decided that the defendant, in this case Vera Tobing, had committed an unlawful act by controlling the disputed object from 1973 to 2009 and declaring William Chandra as the legitimate right holder of the disputed object were Sugiyanto, S.H., M.Hum. As chairman of the panel, Indrawaldi, S.H., M.H., and Achmad Guntur, S.H.

The evidence used by William Chandra was as follows:

1. Photocopy of the decree granting the Right to Use number 34/HP/1963 and 36/HP/1963, in accordance with the original.
2. Copy of Grant Deed number 3 and number 4 dated July 23, 1997, in accordance with the originals
3. Photocopy of Letter from the Directorate of Agrarian Affairs of North Sumatra Province to the Special Executive Commander of the North Sumatra Regional Security and Order Restoration Operations Command, number DA/III/3844-1991/75, without original

The legal basis used by William Chandra is as follows:

1. Article 1320 of the Criminal Code where William argued that the cultivation rights owned by Vera on the disputed object land and its predecessors and all parties who obtained rights or transferred rights to him legally contained defects, were invalid so that they were null and void.
2. Article 1925 of the Criminal Code where William answered on the subject matter that Vera was only a tenant on the disputed land, according to her confession
3. Article 24 of Government Regulation No. 24 of 1997, where William answered that Vera's control over the disputed object, whose rights were obtained in accordance with the Land Compensation Certificate dated May 26, 1973 and its derivatives, was carried out in bad faith.

The evidence used by Vera Tobing is as follows:

1. Photocopy of land compensation certificate dated May 26, 1973, in accordance with the original
2. Copy of Letter from the Directorate of Agrarian Affairs of North Sumatra Province number DA/III/3674-1271/79, in accordance with the original
3. Photocopy of Land Registration Certificate from the Medan Municipal Land Office number 630.2.416/PKM/1992, dated May 30, 1993, as per the original

There were 6 witnesses presented by Vera Tobing, namely: Harlan Sianipar, Abidin Pangaribuan, Lenny Sumanta, Helena Br Hutauruk, Restia Sihite, Tigor Hutabarat. Of the 6 witnesses presented by Vera, all of them knew that Vera had controlled the object of the dispute for a long time until the dispute finally occurred in 2009, even 2 witnesses, namely Helena and Restia, knew that Vera had controlled the object of the case since 1973. Specifically for Tigor Hutabarat, since 1990 he has worked on the disputed land, by first asking Vera Tobing for approval, but in 2009, Tigor was given money by William Chandra and left the disputed object at the end of 2009. The location of the disputed object, which is in Medan city, Medan sub-district, Lalang village, Patriot street, was not part of Medan city in the past, but in the second district of Deli Serdang, Deli Hilir municipality, Sunggal sub-district, Lalang village [6]. This indicates that this object eventually became disputed because the price of land there had



become a commodity and increased rapidly, from a village called Lalang, to being part of Medan city, the capital of North Sumatra province. The government regulates mediation in the Regulation of the Minister of Agrarian and Spatial Planning/Head of BPN Number 21 of 2020 concerning Handling and Settlement of Land Cases. In the classification of land issues, there are 7 categories consisting of 43 sub-categories, which results in more than 173 kinds of issues related to land, which makes us understand how the issue of land disputes seems to continue to increase from year to year. Land disputes in Indonesia, which are resolved in the normal way through the State Administrative Court and the General Court, often lead to suboptimal and inconclusive results. This can be caused by overlapping decisions of each judicial body, there is indecision about the most competent legislation to decide land dispute cases in Indonesia and the execution of legally enforceable decisions of judicial bodies is often difficult to carry out (Mudjiono, 2007). Therefore, it is important to explore alternatives to court settlements, which are more favorable to both parties to the dispute, such as mediation. In the legal context, some rules allow the settlement of land disputes through mediation. Law 30 of 1999 provides an opportunity for out-of-court settlement of land disputes through mediation. In addition, Supreme Court Regulation No. 2 of 2003 also requires parties involved in land disputes to try the mediation route before entering the litigation process.

In practice, mediation is an effective, efficient and legal certainty option in land dispute resolution. The mediation process emphasizes on reaching a solution that benefits all parties through deliberation. The mediator plays a passive role and directs the parties to reach an amicable agreement. Mediation can be conducted at the land office, court, or through an appointed mediator. In the mediated settlement model, civil servants from the land office can act as mediators after special training. However, the potential for dispute resolution through deliberation still has the opportunity to grow. Many people realize that the obstacle in resolving disputes through the courts is the difficulty in implementing court decisions, especially if there are decisions from the District Court/State Administrative Court that are inconsistent with each other on one dispute issue, including civil and criminal decisions, as well as state administration, up to the stage of judicial review. For this reason, it is necessary to develop various alternative solutions in a comprehensive manner.

## CONCLUSION

Just legal certainty is still an unattainable dream for some people, especially for those who are forced to lose their rights due to court decisions. One of the uncertainties in national land law can be seen in Article 64 paragraph (1) letter b, and paragraph (2) of Government Regulation number 18 of 2021 where the cancellation of land rights can be carried out through the courts or due to overlapping, without recognizing the time limit. On the other hand, justice is felt for those who win their land rights through the mechanism of judicial bodies. However, if the one who wins the dispute is the party who has a larger land area or stronger access compared to his opponent who has a much smaller land area or smaller access, then the legal certainty produced by the court is an unjust legal certainty because there is no partiality towards those who are weaker.

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