

Legal Reform in Settlement of Land and Housing Disputes in Urban Areas to Achieve Legal Certainty

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ABSTRACT

Legal disputes related to land and housing in urban areas have become increasingly complex due to the growing demand for land and rapid urbanization. These disputes often involve issues of ownership, use, and control, which require effective mechanisms for resolution to ensure legal stability and protect community rights. The aim of this research is to explore the mechanisms for resolving legal disputes over land and housing in urban areas using a normative legal approach. This study examines relevant laws and regulations, legal doctrines, and pertinent literature to understand the concepts, principles, and regulations governing the resolution of such disputes. The research utilizes primary legal materials, including the Basic Agrarian Law, housing and residential regulations, and other laws pertaining to land and housing conflicts. In addition, secondary legal documents such as books, scientific journals, and expert opinions are incorporated to support the study. A qualitative normative analysis is employed to examine how existing regulations address land and housing disputes and to identify obstacles in their implementation. This research aims to contribute to the strengthening of regulations and policies in the land and housing sector, offering valuable insights for policymakers, academics, and legal practitioners in developing more effective solutions to the challenges of land and housing disputes in urban settings. The findings are expected to serve as a reference in improving legal frameworks and dispute resolution mechanisms in this area.

INTRODUCTION

Land and housing disputes in urban areas are one of the legal issues that require serious attention, considering the rapid urbanization and increasing need for land and housing (Anisyaturrobiah, 2021). Rapid urban development often gives rise to various conflicts related to land ownership, use, and control (Astriani, 2024). Therefore, resolving land and housing disputes is very urgent to ensure legal certainty for the community. The existence of an explicit and effective legal system in handling land disputes is crucial to protecting individual rights and ensuring stability in urban development.

The complexity of land law is increasingly apparent in the context of growing urbanization. The increasing population in big cities has resulted in an increasing need for land and housing, which ultimately gives rise to various ownership claims, overlapping land rights, and differences in interpretation of applicable regulations (Al'Alim, 2023). In situations like this, the role of law is vital in regulating fair and effective dispute resolution mechanisms. The law must protect land and housing rights, both for individuals, communities, and developers, so that there is no uncertainty in the use of urban land (Sutedi, 2023).

Land and housing legal disputes can be understood through basic concepts that include their definitions and characteristics. Land and housing disputes are legal conflicts that arise due to differences in claims or interests over land and the buildings on it (Santoso, 2016). The main characteristic of this dispute is a conflict between parties who have an interest in a land or housing object, either in the form of ownership, control, or use of land (Permadi, 2023). In addition, this dispute can involve various parties, including individuals, development companies, governments, and banking institutions related to property financing (Hasbi, 2019).

Some of the main factors that cause land and housing disputes in urban areas include overlapping land certificates, land control without rights, and inconsistencies between applicable regulations and practices in the field (Djajaputra, 2022). In addition, rapid economic growth often encourages land speculation practices, where land is traded regardless of legal certainty. The imbalance between supply and demand for housing also contributes to the emergence of conflicts, especially when the licensing and land management processes are not carried out transparently and in accordance with applicable laws (Anastasia, 2024).

In resolving land and housing disputes, several legal principles serve as the main foundation. One of the fundamental principles is the principle of legal certainty, which aims to provide clarity regarding the status of ownership and use of land and housing. This principle ensures that every individual or legal entity that has rights to land and housing can obtain protection from the state and has a strong legal basis in defending their rights. With legal certainty, the risk of disputes can be minimized because there are regulations that govern the rights and obligations of each party related to land and housing (Ramadhani, 2021).

In addition to legal certainty, the principle of justice is also an important factor in resolving land and housing disputes. This principle emphasizes that every dispute resolution must be carried out by considering the interests of all parties involved proportionally. Justice in land and housing law not only covers formal legal aspects but also social and economic aspects related to the community's rights to decent housing. By implementing good principles of justice, it is hoped that dispute resolution can be carried out fairly, not only for parties who have greater legal and economic power but also for people who need legal protection to obtain land and housing rights (Pamungkas, 2025).

Land and housing disputes in urban areas have become increasingly complex due to rapid urbanization and the growing demand for land and housing. Data shows that the population growth in major cities in Indonesia, such as Jakarta, is projected to reach over 11 million people by 2025 (BPS, 2023). This has led to an increase in ownership claims, overlapping land rights, and differences in the interpretation of existing regulations (Astriani, 2024). Resolving land and housing disputes is crucial to ensure legal certainty, as legal uncertainty in land ownership can hinder sustainable development and create social tensions. Previous research has mainly focused on issues such as overlapping land certificates and

unclear land status in urban areas (Djajaputra, 2022). However, few studies have explored the effectiveness of existing dispute resolution mechanisms in-depth, particularly regarding the harmonization of regulations between central and regional authorities.

The urgency of this research lies in the growing need for legal reform in resolving land and housing disputes in urban areas. While litigation and non-litigation dispute resolution methods are widely used, they often face obstacles due to inconsistent regulations and a lack of coordination between relevant institutions, resulting in slow and inefficient dispute resolution. This research aims to fill the gap by assessing the effectiveness of existing regulations and identifying solutions to improve the land and housing dispute resolution system.

The novelty of this study lies in its focus on not only identifying the problem of overlapping regulations but also proposing comprehensive recommendations for harmonizing laws, particularly between the *Undang-Undang Pokok Agraria (UUPA)*, the *Undang-Undang Perumahan dan Kawasan Permukiman*, and other related regulations. Additionally, this research will explore the role of land dispute resolution institutions, such as the *Badan Pertanahan Nasional (BPN)*, and the potential for mediation and arbitration as faster and more efficient alternatives to traditional dispute resolution methods.

METHOD

The normative juridical technique, or legal research that concentrates on the examination of laws and regulations, is employed in this work, along with legal doctrines and relevant literature related to the resolution of land and housing disputes in urban areas. This method was chosen because this study aims to examine the legal norms that regulate the dispute resolution mechanism without conducting case studies or direct interviews. The data used in this study consists of primary legal materials, such as the *Undang-Undang Pokok Agraria (UUPA)*, regulations on housing and residential areas, and other regulations related to land and housing disputes. In addition, the study of relevant legal provisions is supported by secondary legal materials, including books, scholarly publications, and the opinions of legal professionals. Both the legal approach and the conceptual approach were employed in this investigation. In order to comprehend how current positive law regulates the resolution mechanism, the statutory method is carried out by looking at numerous rules governing the resolution of land and housing disputes. In the meantime, pertinent legal issues are investigated using the conceptual approach, including theories and principles in resolving land and housing disputes, so that a deeper understanding of the effectiveness of existing regulations can be obtained.

The data selection for this study was conducted using specific inclusion and exclusion criteria to ensure the relevance and applicability of the sources used. The inclusion criteria were as follows: legal documents directly related to land and housing disputes, including the *Undang-Undang Pokok Agraria (UUPA)*, *Undang-Undang Perumahan dan Kawasan Permukiman*, and other related regulations; scholarly books, journals, and expert opinions published within the last 10 years that address the resolution mechanisms of land and housing disputes; legal provisions governing mediation, arbitration, and court procedures for resolving land and housing disputes; and documents and regulations within Indonesian law that discuss urbanization and housing needs. On the other hand, the exclusion criteria involved excluding legal materials or scholarly articles that did not directly address the resolution mechanisms of

land and housing disputes, sources older than 10 years, and documents related to international law that did not pertain specifically to Indonesian land and housing law. These criteria ensured that the study focused on the most relevant and up-to-date information pertaining to land and housing dispute resolution in Indonesia.

Qualitative normative analysis is the data analysis method employed in this study, namely analyzing the contents of existing legal regulations and doctrines by interpreting and examining the relationship between applicable legal norms. This analysis aims to identify the clarity of regulations, weaknesses in the implementation of the law, and provide solutions that can improve the mechanism for resolving land and housing disputes. Thus, this study is expected to contribute to the development of land and housing law, especially in creating a more effective and equitable dispute resolution system.

RESULT AND DISCUSSION

A. Land and Housing Legal Dispute Resolution Mechanism

Land and housing dispute resolution in Indonesia is based on various regulations governing ownership, management, and conflict resolution mechanisms arising in the land and housing sectors. The cornerstone of Indonesia's land law system is the Basic Agrarian Law (UUPA) Number 5 of 1960. The fundamental concepts of land rights, such as ownership rights, business use rights, building use rights, and usage rights, are governed by UUPA and serve as the foundation for establishing who owns a piece of land and its legal status (Sari, 2020). Government Regulation (PP) Number 24 of 1997 concerning Land Registration is one of the derivative rules that, in addition to UUPA, govern the land registration procedures in order to provide landowners with legal certainty. This regulation plays an important role in preventing and resolving disputes by providing clarity regarding the ownership status and boundaries of the land.

In addition to land law, regulations related to housing are also an important factor in dispute resolution. Law Number 1 of 2011 concerning Housing and Residential Areas provides a legal basis for the management of residential areas and the rights and obligations of the community in the ownership and use of housing. This regulation aims to create a well-organized housing system and provide protection for the community in obtaining the right to a place to live (Heriyanti, 2019). In addition, Law Number 20 of 2011 concerning Flats also regulates the ownership and management rights of flats to avoid conflicts that often occur between residents, managers, and developers (Rondonuwu, 2016).

In resolving land and housing disputes, two main routes can be taken, namely the non-litigation route and the litigation route. The non-litigation route is an attempt to settle conflicts outside of the legal system by giving the parties' discussion and agreement top priority. According to the Supreme Court Regulation (Perma) Number 1 of 2016 about Mediation Procedures in Court, mediation is one frequently utilized non-litigation settlement method. An impartial mediator helps the opposing parties come to a mutually beneficial agreement during mediation (Hajati, 2014). In addition, the National Land Agency (BPN) plays a significant role in settling land disputes outside of court. BPN has the power to manage land cases using a variety of administrative procedures in accordance with Regulation Number 11 of 2016 of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN about Settlement of Land Cases., such as clarification of land data,

reconciliation of ownership documents, and issuance of administrative decisions that can end disputes before they continue to court (Wowor, 2014). In addition, arbitration can also be used as an alternative to resolving land and housing disputes, especially in cases involving private parties or business entities. Law Number 30 of 1999 regulating Arbitration and Alternative conflict Resolution regulates arbitration as a conflict resolution process, which provides a fast and effective mechanism for handling conflicts related to land and housing ownership and management (Kurniati, 2016).

If the settlement through non-litigation channels does not reach an agreement, then the dispute can be resolved through litigation or the judicial process. Land and housing disputes of a civil nature are generally resolved through general courts, as regulated in Law Number 48 of 2009 concerning Judicial Power and the Civil Code (KUHPer). In general courts, judges will examine, try, and decide cases based on evidence submitted by the parties. The decisions made in general courts are binding and can be a strong legal basis in resolving disputes over land ownership or housing rights (Sarah DL, 2013).

The State Administrative Court (PTUN), in addition to normal courts, may hear cases involving administrative land decisions. The Second Amendment to Law Number 5 of 1986 respecting State Administrative Courts is the basis for Law Number 51 of 2009, PTUN has the authority to try disputes arising from administrative decisions issued by officials or state institutions in the field of land and housing. If there is a government decision that is considered detrimental to a person's rights to land or housing, then the injured party can file a lawsuit with the PTUN to obtain justice. Court decisions, from general courts and PTUN, have a significant consequence in providing legal certainty regarding land and housing ownership, so that they can end disputes legally and bindingly for the disputing parties.

B. Analysis of Constraints in the Implementation of Land and Housing Dispute Resolution Regulations and Their Solutions

In the implementation of land and housing dispute resolution regulations, there are various obstacles faced, one of which is in the regulatory aspect. One of the main problems is the overlapping of rules and laws pertaining to housing and land. For instance, the primary legal foundation for land laws is Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA); yet, in reality, other rules, such as Law Number 1 of 2011 concerning Housing and Residential Areas and Law Number 20 of 2011 concerning Flats, are in place which have provisions that are sometimes not in sync with UUPA. Besides, statutes at the central level are often not in line with regional regulations, causing disharmony in the implementation of land and housing policies in various regions. Legal harmonization between central and regional regulations is important so that applicable regulations can be applied consistently without causing administrative conflicts.

From an institutional aspect, the limited role and authority of land dispute resolution institutions also become obstacles to the effectiveness of dispute resolution. The National Land Agency (BPN), for example, has the authority to resolve administrative disputes through clarification and mediation, as stipulated in the Regulation of the Minister of ATR/BPN Number 11 of 2016 concerning the Settlement of Land Cases. However, in practice, limited resources and administrative authority often make BPN unable to resolve

disputes comprehensively. In addition, weak coordination between related agencies, such as local governments, courts, and ministries that handle housing, also hampers the dispute-resolution process. The imbalance between the authority of dispute resolution institutions at the national and regional levels often results in slow and protracted resolution (Sandika, 2023).

Other obstacles arise in the social and economic aspects, especially in inequality of access to legal aid for people involved in land and housing disputes. Law Number 16 of 2011 concerning Legal Aid should guarantee the rights of the underprivileged to obtain legal aid in land cases. However, in reality, access to legal aid is still limited, especially for groups of people who have less understanding of the law and financial constraints. In addition, the economic and social impacts of the slow resolution of land and housing disputes can cause social instability, hinder investment, and harm the communities directly affected. Legal uncertainty in land ownership can also cause stagnation in the development of sustainable residential areas.

To overcome regulatory constraints, it is necessary to strengthen regulations and harmonize regulations that are clearer and more comprehensive regarding the resolution of land and housing disputes. One step that can be taken is the preparation of regulations that are more integrated between the UUPA and other regulations, such as the Housing and Residential Areas Law. In addition, simplification of land dispute resolution procedures needs to be carried out to increase the effectiveness of the law. A more systematic land registration process, as regulated in Government Regulation Number 24 of 1997 concerning Land Registration, needs to be strengthened so that every land right has clear legal certainty so that it can reduce the potential for disputes in the future (Adila, 2025).

In addition to strengthening regulations, increasing the role of dispute-resolution institutions is also an important solution. Capacity and coordination between related institutions, such as the BPN, courts, and arbitration institutions, need to be improved to handle land disputes more effectively. Optimizing the role of arbitration institutions, as regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, can be one of the faster and more efficient alternatives for resolving land conflicts, especially in disputes involving private parties or property developers. Improving coordination between institutions is also important so that there is no overlapping authority in handling land and housing disputes.

Finally, increasing access to justice for the community must be a priority in efforts to resolve land and housing disputes. The provision of legal aid for communities affected by disputes must be expanded so that the community can obtain adequate legal protection. The government can also strengthen the mediation mechanism and alternative quicker and less expensive dispute resolution, as stipulated in Supreme Court Regulation (Perma) Number 1 of 2016 about Court Mediation Procedures. It is intended that these initiatives would make the process of settling land and housing conflicts more efficient, effective, and equitable for all parties.

CONCLUSION

The mechanism for resolving land and housing disputes in urban areas can be carried out through non-litigation channels, such as mediation and arbitration, or litigation channels

through general courts and the *PTUN*. Applicable regulations, such as the *UUPA*, the *Undang-Undang Perumahan dan Kawasan Permukiman*, and their derivative regulations, provide a legal foundation for dispute resolution. However, in its implementation, there are still various challenges, such as overlapping regulations, weak coordination between institutions, and limited access to justice for the less fortunate. These obstacles often cause dispute resolution to be slow and do not provide optimal legal certainty. As a recommendation, regulatory harmonization is needed to avoid norm conflicts and simplify dispute resolution procedures to be more effective. Strengthening the role of dispute resolution institutions, such as the *BPN*, courts, and arbitration institutions, also ought to be done to boost the efficiency of case handling. Additionally, increasing coordination between related agencies and supplying legal assistance to affected communities is significant to ensure justice and legal certainty. The government should encourage the use of mediation and arbitration as faster and more economical alternatives for resolving land and housing disputes in urban areas.

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