

LEGAL IMPLICATIONS OF THE POLICY ON THE APPLICATION OF THE CONTRADICTOIRE DELIMITATIE PRINCIPLE IN THE REGULATION OF THE MINISTER OF ATR/BPN NO. 16 OF 2021

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ABSTRACT

The Contradictoire Delimitatie principle is a fundamental aspect of land registration that ensures legal certainty by requiring the presence and approval of adjacent landowners during boundary determination. This study examines whether there is a valid legal basis for implementing this principle under Ministerial Regulation of ATR/BPN No. 16 of 2021. Using a normative juridical approach, this research analyzes relevant laws, legal doctrines, and regulations governing land registration in Indonesia. The findings indicate that the principle is legally grounded in several key regulations, including Law No. 5 of 1960 on Basic Agrarian Law (UUPA), Government Regulation No. 24 of 1997 on Land Registration (amended by Government Regulation No. 18 of 2021), and Ministerial Regulation ATR/BPN No. 16 of 2021. These laws emphasize the importance of boundary agreement in land measurement to prevent disputes and strengthen legal certainty. Furthermore, the regulation integrates modern geospatial technologies such as photogrammetry, Real-Time Kinematic (RTK) GPS, and UAV-based mapping to enhance accuracy and efficiency in land surveying. In conclusion, Ministerial Regulation of ATR/BPN No. 16 of 2021 provides a strong legal foundation for the implementation of the Contradictoire Delimitatie principle, aligning with the legal certainty concept of Gustav Radbruch. The combination of robust legal frameworks and technological advancements ensures the principle's effective application, ultimately contributing to transparent, accurate, and dispute-free land administration in Indonesia.

Keywords: *Contradictoire Delimitatie*, Ministerial Regulation of ATR/BPN No. 16 of 2021, legal certainty

INTRODUCTION

To realize legal certainty in the field of land affairs, two key aspects must be considered: the existence of written land laws and the implementation of land registration. In other words, discussing land registration means addressing one of the efforts to ensure legal certainty in land affairs. In order to provide protection for land ownership in Indonesia, particularly for landowners, and to regulate ownership, transfer, and land use in a fair and comprehensive manner, it is essential to achieve the noble aspirations of the Indonesian nation as stated in the Preamble of the 1945 Constitution and to implement the mandate of Article 33, paragraph (3) of the 1945 Constitution, which states

"Bumi, air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan sebesar-besarnya untuk kemakmuran rakyat".

The legal regulations regarding land affairs, particularly legal certainty over specific legal actions concerning land rights that are written and enforced in Indonesia, include:

1. UUD 1945 or "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" dalam Pasal 33 ayat (3).
2. UUPA or "Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok Pokok Agraria"
3. "Peraturan Pemerintah No. 24 Tahun 1997 tentang Pendaftaran Tanah" di ubah dengan "Peraturan Pemerintah No. 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah."
4. "Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah" diubah dengan "Peraturan Pemerintah No. 24 Tahun 2016 tentang Perubahan"

Indonesia has a legal system designed to regulate land ownership and management through comprehensive land policies. One of the primary legal foundations governing land affairs is Law Number 5 of 1960 on the Basic Agrarian Law (UUPA), which

sets out fundamental principles and regulations concerning land. This law aims to provide legal certainty to all citizens regarding the land they own or manage while ensuring that land administration is conducted fairly and sustainably.

Article 19, paragraph (1) of the UUPA states that to guarantee legal certainty, the government is required to conduct land registration throughout the Republic of Indonesia in accordance with regulations set forth in government policies. This policy demonstrates the state's commitment to protecting land rights owned by individuals and groups. Then, Article 19, paragraph (2) of the UUPA further elaborates on the scope of land registration, which must be implemented. The registration process includes three main aspects:

1. Measurement, mapping, and land recording,
2. Registration of land rights and the transfer of those rights, and
3. Issuance of proof of ownership documents that have legal validity.

This process is designed to create transparency, reduce land disputes, and provide clear ownership guarantees to the public. Through land registration, landowners obtain legal documents that serve as strong evidence in resolving disputes and for other purposes, such as land transactions, inheritance, or financing.

To minimize potential issues, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) requires the implementation of regulations governing land registration as a reference for carrying out cadastral measurement and mapping. In this regard, implementation needs to be carried out for several activities outlined in Ministerial Regulation of ATR/BPN No. 16 of 2021, which is the Third Amendment to Ministerial Regulation of Agrarian Affairs and Spatial Planning/National Land Agency No. 3 of 1997 concerning the Implementation Provisions of Government Regulation No. 24 of 1997 on Land Registration. This implementation serves as a guideline for processing land parcel measurement applications at the Land Office of Bekasi Regency. The regulation introduces a new framework for the land registration process, which affects the procedures for measuring land parcels in the area. Consequently, it helps minimize issues related to registered application documents that cannot proceed further due to administrative constraints. Based on this explanation, the researcher will examine is there a valid legal basis for implementing the *contradictoire delimitatie* principle under Ministerial Regulation of ATR/BPN No. 16 of 2021?

RESEARCH METHODS

The type of research used in this writing is normative juridical research, based on the reasoning that normative juridical research is conducted by examining theoretical approaches, concepts, relevant laws and regulations, and legislative approaches. Normative juridical research is a legal study that positions law as a system of norms. The norm system in this context refers to principles, norms, and rules derived from laws and regulations, agreements, and legal doctrines (teachings). Primary legal materials include Law Number 5 of 1960 on the Basic Agrarian Law (UUPA) and Ministerial Regulation of ATR/BPN No. 16 of 2021.

RESULTS AND DISCUSSION

a. The responsibility of the Land Office regarding discrepancies in the physical data of land rights

Disputes over land boundaries often arise due to the failure to apply the *Contradictoire Delimitatie* principle, which is essential in ensuring clear and precise land boundaries. One of the main challenges in implementing land measurement and enforcing this principle is the difficulty of bringing together all neighboring landowners whose properties directly border the land being registered. The absence of these adjacent landowners disrupts the measurement process and prevents the principle from being consistently and effectively applied. As a result, legal uncertainty over the registered land becomes inevitable. This situation undoubtedly harms landowners, as weak legal certainty over land rights can diminish both the value and function of the land, ultimately undermining its role as a guarantee of ownership rights.

to regulate society's interests. According to Radbruch, the law must be followed, even if, in some situations, it may seem less fair. He emphasizes that legal certainty exists when the law provides clarity, is free from contradictions or ambiguities, and can be effectively enforced. In a juridical sense, legal certainty means that laws are absolute and must be adhered to by all parties. This certainty not only guarantees people's rights but also maintains a balance between rights and obligations, ensuring alignment with societal needs and conditions.

This technique is particularly useful for areas requiring detailed and comprehensive mapping. However, despite the increasing dominance of modern technology, terrestrial methods like total stations are still used in certain situations, especially in areas with dense vegetation or locations where satellite signals are difficult to access. By combining modern technologies like RTK and photogrammetry with conventional terrestrial methods, the land measurement process remains flexible, precise, and adaptable to real field conditions.

b. Legal basis for implementing the *contradictoire delimitatie* principle under Ministerial Regulation of ATR/BPN No. 16 of 2021

In accordance with the implementation of KBPN Regulation Number 16 of 2021, which amends the Minister of Agrarian Affairs and Spatial Planning Regulation for the third time, all land service applications related to land parcel measurements must include the following required documents:

1. A statement letter confirming the installation of boundary markers and approval from adjacent landowners.

2. A physical land ownership statement letter.
3. The applicant is required to take photographs of the installed boundary markers, complete with location coordinates and geotagging.

The photographs of the boundary markers and the statement letters mentioned above are mandatory requirements for document completeness.

In the initial stages of land registration specifically in measurement, mapping, and rights recording the boundaries of land parcels must adhere to the *Contradictoire Delimitatie* principle. Initially, Government Regulation (PP) No. 24/1997 only addressed flat or two-dimensional boundaries (length and width). However, as development progressed, parts of this regulation were revised through PP No. 18/2021 to include three-dimensional land boundaries (length, width, and height). This concept now covers both the space above and below the surface within certain limits, depending on how the land is used and utilized. However, the regulations on usage and restrictions are determined by spatial planning policies at the provincial and district/city levels.

This change naturally affects boundary determination, as it now requires the involvement of developers in the boundary-setting process under the *Contradictoire Delimitatie* principle. To ensure legal certainty, the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) issued Ministerial Regulation No. 16/2021 in the same year as the third amendment to PMNA No. 3/1997.

Furthermore, when applicants install boundary markers, the adjudication committee or the head of the land office conducts boundary determination and verification, which includes taking photographs with geotagging, recording coordinates, and documenting the process in the Surat Pemasangan Tanda Batas dan Persetujuan Pemilik yang Berbatasan (SPTBPPB) form D.I. 201A. Ministerial Regulation No. 16/2021 also encourages the use of digital technology, including augmented reality, virtual reality, video calls, and other audiovisual tools. This effectively strengthens the legal validity of electronic evidence in the land registration process.

In Ministerial Regulation ATR/BPN No. 16/2021, an additional provision states that the fundamental principle of measuring above-ground and underground space must follow the technical standards for three-dimensional (3D) surveying and mapping. Furthermore, the boundaries of above-ground and underground space, as identified on the 3D map, must be verified on-site. Land parcel measurements are tied to national geodetic reference points, the nearest Continuously Operating Reference Station (CORS), and/or other identifiable details that are easily recognized both in the field and on the map.

Additionally, since land registration has been designated as a national strategic project, the 2023 PTSL technical guidelines allow land measurement using UAV-based basemaps. There is also a provision for updating past land registration data through the block adjustment process. This ensures that land boundary data in small administrative units, such as neighborhood blocks (RT) remain up to date in terms of location, boundaries, area, and shape. To further streamline the goal of achieving full land registration by 2025, the government has also authorized the use of digital applications. With these clear regulations in place, the government aims to simplify and enhance the implementation of this key public policy.

CONCLUSION

The implementation of the *Contradictoire Delimitatie* principle in Ministerial Regulation of ATR/BPN No. 16 of 2021 aims to ensure legal certainty in Indonesia's land registration system. This principle guarantees that land boundaries are determined with the consent of adjacent landowners, thereby minimizing potential disputes in the future. From the perspective of legal certainty, this principle aligns with Gustav Radbruch's view that the law must provide clarity, be free from contradictions, and be effectively enforceable. By ensuring that all stakeholders involved in land ownership agree on boundary delineations, the principle strengthens the legitimacy and reliability of land rights.

To support the implementation of this principle, modern geospatial technologies such as photogrammetry, Real-Time Kinematic (RTK) GPS, and terrestrial methods like total stations have been incorporated into the land surveying and mapping process. These technologies enhance the accuracy and verifiability of land measurement data, ensuring that boundaries are precisely recorded and legally recognized. The integration of high-resolution aerial imagery and geospatial data allows for a more efficient, transparent, and dispute-resistant land registration process.

Furthermore, regulatory developments through Government Regulation No. 18 of 2021 introduced the three-dimensional (3D) cadastre concept, which defines land boundaries not only on the surface but also above and below the ground. This innovation increases transparency in land administration by clearly outlining ownership rights in both horizontal and vertical dimensions. In response to these advancements, the Indonesian government has also promoted the digitalization of land registration processes, leveraging Unmanned Aerial Vehicles (UAVs), drones, and geospatial mapping systems to accelerate the nationwide systematic land registration program (*Pendaftaran Tanah Sistematis Lengkap* or PTSL).

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