

The Application of the Principle of Prudence in the Issuance of Replacement Certificates: A Perspective on Adat and Positive Law

Stefanus Sianturi¹, Asmarani Ramli²

Fakultas Hukum Universitas Negeri Semarang, Indonesia

¹stefanussianturi123@students.unnes.ac.id

²asmararamli@mail.unnes.ac.id

Abstract

This study aims to analyse the application of the principle of prudence in issuing replacement land certificates from both positive and customary law perspectives. It addresses the increasing land conflicts caused by duplicate certificates and administrative negligence in Indonesia's land administration system. The research contributes a novel dual-legal approach by integrating statutory procedures and indigenous legal norms into a coherent framework to enhance legal certainty. Employing a normative juridical method, the study uses document analysis, statutory interpretation, and interviews with land officials. The primary data sources include Government Regulation No. 24 of 1997 and Decision No. 59/Pdt.G/2022/PN Unr. Findings reveal systemic weaknesses in verification procedures and a lack of institutional coordination, resulting in the fraudulent reissuance of certificates. Additionally, the neglect of adat-based verification undermines social legitimacy in customary regions. This research concludes that the current formal procedures are insufficient to prevent forgery and land conflicts. It recommends regulatory reform and the incorporation of community-based verification mechanisms as part of a precautionary legal standard. The study provides a critical foundation for integrating legal pluralism into national land governance.

Keywords: *Principle of Prudence, Replacement Certificate, Adat Law, Legal Certainty, Land Administration*

Introduction

The development of Indonesian land law began during the pre-colonial period, when landholding systems were communal and based on customary law (hukum adat) by area. Land rights, in this context, were unknown in the sense of single individual proprietorship as under contemporary property regimes; land was held in common, governed by uncoded communal customs.¹ The customary land law

¹ Sean Scannell and Vincent Tawiah, "A Thematic Literature Review on International Public Sector Accounting Standards (IPSAS)," *Public Organization Review* 24, no. 3 (September 2024): 1053–75, <https://doi.org/10.1007/s11115-024-00773-1>.

viewed the land as an integral part of the social and religious life of the people, rather than an economic commodity, but rather as a sacred thing inherited from generation to generation.²

With independence, power was exercised by a national consciousness to reform the system of land tenure based on social justice, leading to the enactment of Law No. 5 of 1960 on Basic Agrarian Principles (Undang-Undang Pokok Agraria or UUPA). The UUPA reiterated the nationalisation of land rights, the recognition of customary rights, and the state's priority in regulating the utilisation and distribution of land. One of the fundamental principles established in the UUPA is the safeguarding of rights holders through law, which has evolved into the foundation for implementing the principle of prudence (prinsip kehati-hatian) in Indonesia's land administration system.³

In response to the growing need for legal certainty in land issues, the Indonesian government promulgated Government Regulation No. 24 of 1997 on Land Registration. This regulation provides that registration of land is intended to create legal certainty and secure land rights through a system of certification. Certificates of land are intended to serve as irrefutable evidence of rights under the law. Errors or administrative misconduct in issuing certificates would result in significant legal disputes, thereby making prudence a mandatory requirement for land administration officials.⁴ The application of the doctrine of prudence in land administration is primarily intended to ensure that physical and juridical information entered on certificates is accurate and credible. The issuance of any new

² Vijesh V. Krishna, Christoph Kubitz, Unai Pascual, dan Matin Qaim, "Land Markets, Property Rights, and Deforestation: Insights from Indonesia," *World Development* 99 (November 2017): 335–349, <https://doi.org/10.1016/j.worlddev.2017.05.018>.

³ Eric Mensah Kumeh et al., "Customary Power, Farmer Strategies and the Dynamics of Access to Protected Forestlands for Farming: Implications for Ghana's Forest Bioeconomy," *Forest Policy and Economics* 133 (December 2021): 102597, <https://doi.org/10.1016/j.forpol.2021.102597>.

⁴ Tyas Ismi Trialfhianty, Claire Helen Quinn, and Maria Beger, "Engaging Customary Law to Improve the Effectiveness of Marine Protected Areas in Indonesia," *Ocean & Coastal Management* 261 (February 2025): 107543, <https://doi.org/10.1016/j.ocecoaman.2025.107543>.

or replacement certificate must always precede intensive examination, documentary verification, ground surveying, and notification to third parties.⁵

Legal issues related to the loss of land certificates and the issuance of duplicate certificates are emerging as critical concerns in Indonesia's land administration system. Dishonest individuals often exploit the loss of land certificates to produce fake documents, thereby resulting in legal disputes between third parties and the rightful owners of the land. The scarcity of data and information on land holdings can sometimes lead to a lack of transparency in land ownership and control. Furthermore, the poor dissemination of information to the public can also trigger land conflicts.⁶ Ownership of a certificate of land now does not, in and of itself, assure absolute title in land since, practically speaking, the certificate, even when it is taken to be the best evidence, is not viewed as absolute. This would mean that the validity of the certificate could still be challenged if the other party presents counter-evidence.⁷

Previous studies have made significant contributions to understanding how the precautionary principle is applied in the issuance of land double certificates; however, each leaves specific gaps that merit further investigation within a more comprehensive legal framework. Hendrikus Krisanto Mario Djawa Tay and colleagues (2024) highlight the ineffective application of the precautionary principle despite its legal foundation in National Land Agency Regulation No. 1 of 2010, focusing on procedural inefficiencies at the Nagekeo Regency Land Office. They propose a dual-legal mechanism that integrates state law and customary law

⁵ Samuli Haataja, "Cyber Operations and Automatic Hack Backs under International Law on Necessity," *Computer Law & Security Review* 53 (July 2024): 105992, <https://doi.org/10.1016/j.clsr.2024.105992>.

⁶ Tupalishe Mulwafu and Garton Kamchedzera, "Land Degradation Neutrality and the Weak Avoid, Reduce and Reverse Priorities in Malawi's Soil Laws," *Soil Security* 14 (March 2024): 100134, <https://doi.org/10.1016/j.soisec.2024.100134>.

⁷ Pierri, Francesco Maria, Ward Anseeuw, dan Adriano Campolina. "Land Tenure for Resilient and Inclusive Rural Transformation." *Global Food Security* 44 (2025): 100835. <https://doi.org/10.1016/j.gfs.2025.100835>.

to reinforce prudence as both a constitutional and cultural commitment.⁸ Tasya Aisyah Putri Saleh (2023) analyses precaution in the context of the PTSL program, uncovering administrative lapses but pointing out the absence of normative pluralism and the integration of local legal knowledge, thus suggesting the need for a twin-legal approach recognising the precautionary principle as both an administrative requirement and a communal safeguard.⁹

Panji Karya Pramana and Masyhur (2024) expose the negligence of a Land Office in issuing a certificate of ownership over land still subject to Building Use Rights (HGB), leading to overlapping claims and administrative injustice. Their research does not offer systemic reforms or a community-based legal model.¹⁰ Ayi Vevi Resvina (2024) emphasises the legal duty of and Deed Officials (PPATs) to verify the authenticity of documents and identities in land sale transactions; however, she does not explore the potential collaboration between PPATs and Land Offices to uphold precautionary checks systematically.¹¹ Anjar Alatas Sasmita (2022) identifies the root causes of duplicate land certificates, including inaccurate land measurements, unverified databases, and poor coordination among local governments.¹²

⁸ Hendrikus Krisanto Mario Djawa Tay, Agustinus Hedewata, dan Yossie M. Y. Jacob, "Penerapan Prinsip Kehati-Hatian dan Kepastian Hukum dalam Penerbitan Sertifikat Hak Atas Tanah oleh Kantor Pertanahan Kabupaten Nagekeo," *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 2, no. 1 (Januari 2024): 38–49, <https://doi.org/10.51903/jaksa.v2i1.1474..>

⁹ Tasya Aisyah Putri Saleh, "Prinsip Kehati-hatian dalam Penerbitan Sertifikat Hak Atas Tanah yang Sedang dalam Sengketa Pada Program PTSL," *UNES Law Review* 6, no. 1 (September 2023): 3560–3571, <https://doi.org/10.31933/unesrev.v6i1>.

¹⁰ Panji Karya Pramana, "Perinsip Kehati-Hatian Dalam Proses Penerbitan Sertifikat Hak Atas Tanah Oleh Kantor Badan Pertanahan Nasional (BPN) Di Kabupaten Lombok Timur," *JURIDICA: Jurnal Fakultas Hukum Universitas Gunung Rinjani* 5, no. 2 (May 31, 2024): 63–80, <https://doi.org/10.46601/juridicaugr.v5i2.295>.

¹¹ Ayi Vevi Resvina, "Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Pembuatan Akta Jual Beli Berkaitan dengan Alas Hak dan Keterangan Palsu," *Jurnal Cahaya Mandalika* 6, no. 2 (2024): 1858–1864, <https://doi.org/10.55812/jcm.v6i2.2982>.

¹² Anjar Alatas Sasmita, Ma'ruf Hafidz, and Hasbuddin Khalid, "Penerapan Prinsip Kehati-Hatian terhadap Pendaftaran Hak Milik atas Tanah sebagai Upaya Mencegah Terbitnya Sertipikat Ganda," *Journal of Lex Generalis* 3, no. 5 (2022): 1139–1146, <https://pasca-umi.ac.id/index.php/jlg/article/view/895>

Previous studies have addressed issues related to land administration and the application of prudential standards; however, these studies primarily deal with technical administrative concerns without thoroughly analyzing the legal implications of substandard prudential practices in the issuance of replacement certificates. It is intriguing to observe that, based on previous practice, ownership of a land certificate is not a guarantee of title security because its evidentiary value can be overcome by countervailing evidence. The urgency of this study stems from the increasing number of land disputes in Indonesia caused by the careless issuance of replacement certificates, particularly in rural and indigenous regions.¹³ The lack of concrete prudential procedures in existing regulations, such as Government Regulation No. 24 of 1997 and BPN's internal technical guidelines, further underscores the urgent need for reform. This research thus aims to fill the critical vacuum by proposing a normative model of precaution rooted in both positive law and customary legal values, contributing not only to academic discourse but also to policy-making and regulatory refinement in Indonesia's agrarian sector.

Government Regulation No. 24 of 1997 on Land Registration is a primary legal instrument provided by the government, as evidenced by Article 57 paragraph (1) which stipulates: "At the request of the rights holder, a new certificate shall be issued in lieu of a certificate which is damaged, lost, printed on forms no longer usable, or not received by the purchaser at an execution auction.", the regulatory framework is also detailed in the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997 on the Implementation Provisions of Government Regulation No. 24 of 1997 on the Registration of Land. This research proposes an integrated approach by juxtaposing a legal analysis of the doctrine of prudence in issuing land certificates with an evaluation of the implementation of digitalization in land administration. This study will critically examine how the

¹³ Rebecca Meckelburg and Agung Wardana, *"The Political Economy of Land Acquisition for Development in the Public Interest: The Case of Indonesia,"* Land Use Policy 137 (February 2024): 107017, <https://doi.org/10.1016/j.landusepol.2023.107017>.

maladies in the application of the principle of prudence can lead to the issuance of duplicate certificates and how digitalization can serve as a preemptive measure to such issues.

Methods

The research employs a normative juridical method, utilizing the study of documents, enactment law, and court decisions regarding issues of replacement certificates and document forgery. The methods used are a statutory method and a conceptual method. The primary sources of data are Government Regulation No. 24 of 1997 on Land Registration and Decision No. 59/Pdt.G/2022/PN Unr. Secondary sources of data include legal reference books and academic journals. Data were gathered through interviews, document studies, and literature reviews. The respondents in this study were one official from the Dispute Control and Handling Section and one official from the Rights Determination and Registration Section of the Semarang Regency Land Office.

Research objects include the doctrine of prudence, the issue of substitute certificates, document forgery, judicial decisions, and the land administration system. Data analysis methods include determining and classifying data, analysing statutory regulations, assessing judicial decisions, sketching legal recommendations, and data triangulation to test the research findings.

Discussion

Legal Dispute Concerning Replacement Certificate: An Analysis of Decision No. 59/Pdt.G/2022/PN UNR

The conflict regarding the replacement land certificate took place in Semarang Regency, with the Semarang Regency National Land Agency (Badan Pertanahan Nasional/BPN) as the authorised agency in charge of land affairs in the area. The chronology of events that led to the disputed replacement certificate in Decision No. 59/Pdt.G/2022/PN UNR is as follows:

Table 1. Chronology of Land Certificate Replacement in Semarang Regency

No	Date / Time	Event / Document	Parties Involved	Remarks
1	Before 1995	Rachmat Krestiano Terta leased residential building on HM No. 1389/Bandungan	Rachmat Krestiano Terta	Property located at Jl. Raya Bintungan Bandungan
2	Before 1995	Rachmat held original certificate under Soeharso Terta's name (Survey No. 00033/Bandungan/2008)	Soeharso Terta, Rachmat Krestiano Terta	Land area: 1,531 m ² ; under Rachmat's control
3	Before Feb 1995	Loan Settlement Agreement signed in front of Notary Subiyanto Putro, S.H.	Soeharso & Rachmat Terta	Rachmat repaid Soeharso's bank debt
4	28 February 1995	Deeds signed before Notary Subiyanto Putro, S.H. (No. 122–126)	Soeharso Terta, Mrs. Linty, Rachmat Terta	Including powers of attorney & mortgage authorization
5	28 February 1995	Soeharso and Mrs. Linty signed the deeds voluntarily	Soeharso & Mrs. Linty	Entrusted Rachmat to settle the debt
6	14 September 2002	Soeharso Terta passed away	Survived by wife & 5 children	Heirs: Sandra, Hartanto, Soegiarto, Denny, Lindawati
7	2002–2021	Rachmat retained original certificate & continued occupying land	Rachmat Krestiano Terta	Physical possession & legal documents remained with Rachmat
8	November 2021	Rachmat discovered certificate copy had been legalized by heirs	Mrs. Linty and children	Based on police loss report and KTPs
9	18 December 2018	Police report filed on certificate loss	Mrs. Linty	Allegedly contained false information
10	6 February 2019	BPN Semarang conducted a re-survey (Survey No. 00185/Bandungan/2019)	BPN Kab. Semarang	Result used as basis for reissuance

No	Date / Time	Event / Document	Parties Involved	Remarks
11	15 February 2019	BPN issued the second certificate for HM No. 1389	BPN, heirs of Soeharso	Led to a legal dispute over dual certificate issuance

Source: Compiled by the author based on several references

The Defendants in the case argued that, under Supreme Court Circular Letter (SEMA) No. 10 of 2020, under Section B, Paragraph 4 of the Civil Chamber Legal Formulation, ownership of land is vested in a party whose name is inscribed in the certificate. However, the land was obtained using another party's money. Therefore, upon Soeharso Terta's death, the Defendants claimed the land as inheritance, and the court ultimately ruled in favour of the Defendants. Notary Subiyanto Putro, S.H., testified that on 28 February 1995, there was a signed Statement and Agreement with the confirmation that Soeharso Terta and Mrs. Linty had bought the land using money belonging to Rachmat Krestiano Terta and another brother, Bambang Hartono Terta. The Deed expressly banned Soeharso Terta from selling, donating, transferring, or leasing the land without consent. The SHGB Certificate No. 34 was also moved to Rachmat Krestiano Terta in the presence of the witnesses and Mrs. Linty. It was then altered to HM No. 1389.

In its judicial deliberations, the court ruled that the Plaintiff's documentary and oral evidence were consistent and credible, establishing that the Plaintiff had settled the debts incurred in the purchase of the land, and that Mrs. Linty had given false information in her police loss report and in her BPN application which led to the issuance of the second, unlawful certificate.¹⁴

The Court, in its decision on the convention, rendered a structured ruling that addressed both preliminary objections and substantive issues. In terms of exceptions, the Court declared the objections raised by Defendants I, II, V, and VI

¹⁴ Barid Hardiyanto, "Politics of Land Policies in Indonesia in the Era of President Susilo Bambang Yudhoyono," *Land Use Policy* 101 (February 2021): 105134, <https://doi.org/10.1016/j.landusepol.2020.105134>.

inadmissible, thereby allowing the case to proceed to examination on the merits. On the substance of the case, the Court decided to grant the Plaintiff's claims partially. It found that Defendants I through VI had committed acts deemed unlawful (*perbuatan melawan hukum*). Notably, the Court held that the second land certificate issued on 15 February 2019 lacked legal validity, and reaffirmed the legitimacy of the original certificate (HM No. 1389/Kelurahan Bandungan) as the rightful and legal proof of ownership. All remaining claims beyond these points were rejected by the Court.

The ruling in the dispute unequivocally declared the Plaintiff's legitimate ownership of the original certificate of HM No. 1389. Further, the verdict unequivocally proclaimed that the second certificate drawn up in the name of the late Soeharso Terta was legally invalid. Thus, the National Land Agency of Semarang Regency, as the institution vested with this authority, was obligated to cancel the second certificate that had been granted illegally. Such cancellation is within BPN's legal function as a non-ministerial government department responsible for regulating, administering, and managing Indonesia's land resources, particularly regarding the granting and cancellation of certificates. This page describes the exploration of the literature review and the scientific findings of the study, followed by a clear and concise scientific discussion. It provides suggestions for future research directions.

Certificates issued with administrative or legal errors are not uncommon, as seen in the controversy addressed in Decision No. 59/Pdt.G/2022/PN UNR. The National Land Agency (BPN) can revoke certificates which have been determined to be defective. Revocation can be performed in cases of procedural errors, improper application of statutory provisions, or defects in deciding the correct subject or object of rights. The annulment process is governed by various statutory instruments in order to ensure that all cancellation activities are conducted within the jurisdiction of the respective legal provisions. Deciding cases of land rights resolved by a court inherently falls under its authority, to be executed within the

scope of the procedural law that has evolved. All parties involved are obligated to act by the processes and laws presented to them.

The Defendant averred in their Answer that the Plaintiff's action related to the grant of a certificate of land which was individual, final, and concrete in nature. Hence, in the view of the Defendant, issues like this were the exclusive prerogative of the Administrative Court and asserted that an action to delete or cancel a duplicate certificate was an administrative act outside the realm of authority of the General Court (Pengadilan Negeri), but falling squarely within PTUN's jurisdiction, the District Court indeed has jurisdiction to order the National Land Agency (BPN) to cancel a land certificate by way of a judgment that the certificate is legally null and void. This is in civil proceedings concerning ownership disputes or claims of unlawful acts (*perbuatan melawan hukum*) related to the issuance of the certificate. Although the District Court itself does not perform the physical annulment, its judgment provides a legal basis for the administrative cancellation of the disputed certificate by BPN.

A District Court ruling that declares a land certificate to be null and void may serve as the basis for the law of the National Land Agency (BPN) to annul the said certificate administratively. However, in the enforcement in reality of such cancellations by BPN, it often runs into obstacles, exceptionally if coordination between the judiciary and the authority on land is not executed correctly, an unequivocal and firm mechanism needs to be enforced to impose court judgments concerning the cancellation of land certificates to promote legal certainty and protect the rights of the parties involved.¹⁵

The sole jurisdiction to adjudicate land disputes between the General Court and the Administrative Court is determined based on the *objectum litis* (object of the dispute) and the *fundamentum petendi* (the legal basis for the action). This

¹⁵ Wyda Lusiana et al., "Sertifikat Elektronik sebagai Jaminan Kepastian Hukum Kepemilikan Hak Atas Tanah di Desa Mojowatesrejo, Kecamatan Kemlagi, Kabupaten Mojokerto," *Cakrawala: Jurnal Pengabdian Masyarakat Global* 4, no. 1 (January 9, 2025): 47-55, <https://doi.org/10.30640/cakrawala.v4i1.3762>.

result is applied in identifying the forum which is authorised to nullify administrative decisions in terms of granting rights over land, issuing land certificates, or approving or rejecting applications for certificates of land issued by the Head of the Regional Office of the National Land Agency or the Head of the Land Office of the Regency/Municipal.

The subject matter and object of the dispute, the legal basis of the claim, and the relief sought in the action also affect the court's jurisdiction.¹⁶ If the dispute concerns administrative defects or the validity of physical and juridical facts in the process of issuing land certificates matters that are under the ambit of state administrative decisions — then the Administrative Court has jurisdiction, as a land certificate is considered an administrative decision by a state administrative organ or official that constitutes a constitutive decision (*beschikking*), if the disagreement is about land ownership (*bezit*), the case is under the jurisdiction of the District Court.

It was appropriate that the Ungaran District Court was entitled to hear the case, as the root issue in dispute was the actual ownership of the land. The National Land Agency of Semarang Regency (BPN), which was a Co-Defendant, was ordered to prohibit and cancel the issuance of the second Freehold Title Certificate (Sertifikat Hak Milik) No. 1389/Kelurahan Bandungan, Kecamatan Bandungan, dated 15 February 2019, from the land public register (buku tanah). This case serves as a wake-up call to the Semarang Regency Land Office, and indeed, to land offices across the country, that the validity of data should always take precedence. The loss report submitted by Defendant I to the police should have gone through a proper verification process by BPN Semarang in coordination with relevant institutions, particularly the police department, which submitted the loss report, to verify the

¹⁶ Diego Buitrago-Mora and Miquel-Àngel Garcia-López, “Real Estate Prices and Land Use Regulations: Evidence from the Law of Heights in Bogotá,” *Regional Science and Urban Economics* 101 (July 2023): 103914, <https://doi.org/10.1016/j.regsciurbeco.2023.103914>.

validity and authenticity of the report; not doing so can have profound legal implications for the parties.

A Legal Analysis of the Application of the Principle of Prudence

The doctrine of prudence is a fundamental pillar in the land administration system, ensuring that all decisions are based on prudent consideration and accurate factual information.¹⁷ By and large, the doctrine of prudence may be read as a basis in truth, as a precept of prudent thought and conduct. The doctrine is a development of what is widely known as the sensible principle; precision in prevention and unbiased evaluation are fundamental components reflected in acts of diligence or care. The level of such care necessarily requires an element of urgency or, in other instances, a state that demands training and professional capability.¹⁸

As previously mentioned, the term "prudent" is a word originally familiar in banking law, having been used intensively since the 1980s. The principle of prudence is closely tied to the functions of bank management and supervision. "Prudent" in Bahasa Indonesia is "bijak" or "waspada." In banking, its application is most applicable, particularly to notaries who, as public officials, are required to uphold the principle of prudence to prevent legal issues arising from the genuineness and validity of acts they may conduct in the future.¹⁹

Under the land administration system, the application of this principle is crucial, as land affairs are a significant concern in Indonesia. Indonesian land disputes often persist for a prolonged period, particularly when neither the government nor the people take proactive steps to resolve land administration

¹⁷ Daly, Christine A., et al. "Reclaiming Homeland - An Evaluation of Traditional Land Use Planning in Oils Sands Mine Closure and Reclamation Plans." *Resources Policy* 103 (2025): 105552. <https://doi.org/10.1016/j.resourpol.2025.105552>

¹⁸ Simon Manda and Lizzy Banda, "Seeing like the State? Customary Land Pressures and Fracturing Tenure Systems in Rural Zambia," *Land Use Policy* 132 (September 2023): 106833, <https://doi.org/10.1016/j.landusepol.2023.106833>.

¹⁹ Cristenia Gracia Theis and Walid Jumlad, "The Role of the Class I Immigration Office of TPI Yogyakarta in Preventing Illegal Indonesian Migrant Workers Based on Law Number 6 of 2011," *IJRAEL: International Journal of Religion Education and Law* 1, no. 1 (2022): 19–29, <https://doi.org/10.57235/ijrael.v1i1.39>.

issues.²⁰ Registration of land allows the allocation of rights of land by legitimate owners, who, through that, attain a right which the law gives to possess land concerning their specified usage. Everything related to land registration must uphold the principle of prudence, ensuring legal certainty for every subject regarding ownership and use of land.²¹

The application of the prudence principle in the issuance of land title certificates by the BPN is a necessary measure to give legal certainty and prevent land disputes, this principle emphasizes the requirement of care and accuracy in the administrative procedure, for instance, verification of documents and juridical and physical data concerning the land before the issuance of the certificate, the necessity of adhering to the principle of prudence is also reflected in the desire to provide legal protection for legitimate rights holders, land certificates that are issued without rigorous verification can result in harm to innocent parties and trigger prolonged legal disputes. BPN is to verify that every replacement certificate issued has passed through a process in total adherence to the applicable legal stipulations and operational standards.²²

BPN of Semarang Regency did not apply the principle of prudence in issuing a substitute certificate for Freehold Title (HM) No. 1389/Kelurahan Bandungan. Instead of conducting substantive verification, BPN relied solely on a loss report from the police, submitted by Defendant I, Mrs. Linty (Unty Sastro Dihadjo), without verifying the truthfulness of the claim. As BPN's processes were revealed through stakeholder interviews and witness interviews, the standard method for obtaining replacement certificates begins with directing the applicant to report the

²⁰ M Getzner, Michael, et al. "Socio-Economic, Political and Fiscal Drivers of Unsustainable Local Land Use Decisions." *Land Use Policy* 153 (2025): 107537. <https://doi.org/10.1016/j.landusepol.2025.107537>.

²¹ Louis De Redon and Camille Mialot, "Soil Protection and Land Property Law in France: On the Way to a Functional Approach to Soil?," *Soil Security* 16 (September 2024): 100165, <https://doi.org/10.1016/j.soisec.2024.100165>.

²² Lenny Maulani Maulani, "Perlindungan Hukum Terhadap Pemegang Sertipikat Tanah Pengganti Karena Hilang," *Indonesian State Law Review (ISLRev)* 4, no. 1 (2021): 1–6, <https://doi.org/10.15294/islrev.v4i1.46807>.

loss to the police, followed by an application to BPN, an oath-taking process, and publication of the loss in the mass media. The study uncovers a lethal flaw in this chain: the promise taken by the applicant—either "By Allah" or "By God Almighty," depending on their religious affiliation—is relied upon as the final assurance against falsehood. However, no objective verification process follows this oath, rendering the process susceptible to exploitation.²³

The fact that the certificate was still with and safeguarded by Rachmat Krestiano Terta, the Plaintiff, the fraudulent representation allowed the heirs of the late Soeharso Terta, Mrs. Linty and her children—to initiate a replacement process behind the back, or without the information and consent of Rachmat, who had been keeping the original title and had settled the underlying debt as evidenced by five notarized deeds that were executed in 1995. Suprihanto, S.S.T., Chief of Rights Determination and Registration at BPN Semarang, admitted that while BPN followed its formalities under Government Regulation No. 24 of 1997, no effort was ever undertaken to independently confirm the claim of loss, Agung Risdiyanto, S.H., M.H., Head of Dispute Control, conceded in an interview that the problem was not a result of procedural gaps, but a result of dishonesty in the applicant's filing, and this was not cross-checked by BPN beyond formal documentation.

BPN procedurally followed technical requirements, the failure to exercise due diligence was an act of administrative negligence. This institutional failure is especially grave considering that the act led to the issuing of a second certificate of the identical parcel of land an act which was subsequently held illegal by the District Court. The case illustrates that formal legality is no substitute for substantive wisdom, and that administrative authorities are under a higher duty of care, especially when rights to immovable property are under consideration, and the legal consequences of error are drastic and typically irreversible.

²³ Admos Chimhowu, "The 'New' African Customary Land Tenure. Characteristic, Features and Policy Implications of a New Paradigm," *Land Use Policy* 81 (February 2021): 897–903, <https://doi.org/10.1016/j.landusepol.2018.04.014>.

The absence of institutional coordination between the National Land Agency (BPN) and the Indonesian National Police in cross-verifying the genuineness of reports of lost land certificates has been a major procedural weakness in the land administration system. The absence of synergy is typically based on differences in work procedures, bureaucratic fragmentation, and jurisdictional differences between the two agencies, land cases are generally afflicted with delay in their handling, judicial uncertainty, and more opportunities for agrarian conflicts, particularly in cases involving replacement certificates, fact that the issuance of a substitute certificate is much reliant on the loss report coming from the police, and unless verified via inter-agency communication, it can cause the risk of document forgery, abuse of process, and duplicate certificates.²⁴ The Semarang Regency instance of the disputed certificate is an example of this risk, whereby BPN issued a substitute certificate without verifying the conditions of the reported loss through the police or other agencies.

The release and implementation of the Cooperation Guidelines No. 26/SKB-900/VI/2017—a joint regulation of the Ministry of Agrarian Affairs/BPN and the Indonesian National Police—are a watershed event.²⁵ The guidelines aim to facilitate effective coordination, particularly in law enforcement, data verification, and preventive measures against land fraud. However, despite the existence of this framework, the study finds that its operationalisation remains inconsistent, and the rule of prudence has not yet been applied with the stringency it requires to safeguard land rights

²⁴ Raharja Sasmita, Randikha Prabu, Sigid Suseno, dan Patris Yusrian Jaya. “The Concept of Reasons for Eliminating Corporate Crime in Criminal Law in Indonesia.” *Heliyon* 9 (2023): e21602. <https://doi.org/10.1016/j.heliyon.2023.e21602>

²⁵ Han, Phyu Phyu, et al. “The Evolution of Land Governance in Myanmar: A Historical Analysis of the People-Land Nexus in the Konbaung Dynasty and British Colonial Eras.” *Forest Policy and Economics* 172 (2025): 103446. <https://doi.org/10.1016/j.forpol.2025.103446>.

Adat Law Perspective on the Principle of Prudence in Issuing Replacement Certificates

In Indonesia, land ownership has been around longer than the current legal codes and originates from the adat law of the native people. Customary law does not view land as a commodity but as an ancestral heritage that ties the living to their ancestors and the spiritual realm. In adat language, land is an inalienable shared heritage that may not be sold or exchanged without the consent of the clan or community, typically through adat elders (tokoh adat) or traditional institutions. This normative and cultural setting produces an indigenous prudence doctrine that emphasises collective assent, verbal lineage authentication, and spiritual legitimacy as conditions precedent to any change in land ownership.

In adat cultures, rights over land are generally granted or acknowledged after customary rites and based on local institutions of authority. Oral evidence, genealogy, and symbolic rituals sustain the continuity of land claims as opposed to a lack of written records, which is not deemed a shortcoming. The modern land certificate regime, however, operates through bureaucratic rationality and written formalism, which prefers to ignore or even replace such indigenous validating frameworks. Such a disconnect creates normative dissonance when replacement certificates are issued with no regard for local adat structures.

Omission in incorporating adat-based verification before a replacement certificate can cause severe social dislocation. In adat societies, unlawful possession or alienation of land by a member of a family, even if corroborated by a certificate from the state, can be void in customary law and may trigger intra-communal strife or religious punishment, the doctrine of prudence from an adat perspective, requires not merely administrative severity but also cultural empathy and engagement with the living customary law in effect.²⁶

²⁶ Ward Berenschot, Ahmad Dhiaulhaq, Otto Hospes, Afrizal, and Daniel Pranajaya, "Corporate Contentious Politics: Palm Oil Companies and Land Conflicts in Indonesia," *Political Geography* 114 (October 2024): 103166, <https://doi.org/10.1016/j.polgeo.2024.103166>

The historic theory of prudence is preventive, grounded in restorative justice and promoting long-term community peace. In contrast to the state model of legal evidence, customary adjudication relies on conversation, consensus, and reparation. Had such a process been employed in the case before Decision No. 59/Pdt.G/2020/PN Unr, the conflict would likely have been avoided or resolved peacefully within the community before it escalated into a judicial conflict. In adat law, a fraudulent or unapproved land title obtained by an individual is not just illegal but spiritually invalid. Such an act would be *merampas hak leluhur* (taking away ancestral rights) for the community, and it is not merely illegal but also an offence against the culture. The issuance of the second certificate in the aforementioned case, based on a questionable police report and without communal acceptance, would accordingly be a deviation from customary protocols.

The adat tenure security principle is closely related to the principle of legal certainty. Instead, it relies on a paradigm of legitimacy that is different: one of social acceptance and historical continuity. The principle of prudence in contemporary land law must then be redefined to include adat-based checks on tenure, especially where customary rights are still alive and actively followed. The Agrarian Law of 1960, which recognises customary rights (*hak ulayat*), has led to bureaucratic application issues, particularly in replacement certificate procedures. Government Regulation No. 24 of 1997 governing land registration does not require consultation and verification of ancestral claims with the affected community before replacing a lost or destroyed certificate, thus permitting unilateral applications that can prevail over such communal consensus.²⁷

The issuance of duplicate certificates in adat zones—without recording lineage, communal rights, or customary lore—is structurally vulnerable to injustice. The absence of adat verification processes in land replacement programmes

²⁷ Bambang Hermiyanto, Cindia Mawarni, Sugeng Winarso, and Subhan Arief Budiman, "Soil Quality Assessment and Land Capability Evaluation for Determining Integrated Watershed Management Model through SWOT Analysis and AHP Method in Arjasa Sub-Watershed, Indonesia," *Watershed Ecology and the Environment* 7 (2025): 104–118, <https://doi.org/10.1016/j.wsee.2025.02.001>.

amounts to a form of erasure of indigenous rights under the law, which may be unconstitutional under Article 18B of the Indonesian Constitution, which honours and protects customary law communities and customary rights. The judicious granting of certificates in adat areas needs more than administrative compliance; it requires an integrated legal pluralism that entails customary consent as a necessary procedural process. This would not only be consonant with Indonesia's constitutional organisation but would realise the UUPA's recognition of customary tenure in adequate administrative protection.

In customary terms, the legitimacy of land rights is most frequently reaffirmed through seasonal ceremonies, harvest blessings, and ancestor offerings. These are societal affirmations of land ownership. The state must then craft enabling mechanisms that recognise these cultural affirmations and integrate them into the system of land registration and certification, particularly in the issuance of new certificates to replace expiring ones.²⁸

The disregard for traditional procedures in issuing alternative certificates is a violation of local moral order. Lack of careful cross-verifications with adat authorities creates an accountability gap. In this case under examination, not being able to consult the original land custodian, Rachmat Krestiano Terta—who possessed the original title and had fulfilled financial obligations—resulted in a flagrant miscarriage of justice that could have been averted through adat consultation, the release of a second certificate without communal notice or adjudication violates the adat principle of *musyawarah* (deliberation), which is central to conflict resolution. Customary communities typically resolve disputes over land through dialogical forums between elders and affected individuals—a practice that ensures substantive and procedural fairness. This principle aligns with

²⁸ Juliani Tanner, Hendrik Salmon, and Yohanes Pattinasarany, “Pertanggungjawaban Hukum Badan Pertanahan Nasional Terhadap Keberadaan Sertifikat Ganda,” *CAPITAN: Constitutional Law & Administrative Law Review* 1, no. 1 (July 27, 2023): 23–32, <https://doi.org/10.47268/capitan.v1i1.9905>.

international human rights standards on the free, prior, and informed consent (FPIC) of indigenous peoples.²⁹

In the majority of regions, customary law requires a periodic moratorium before claims of redistribution or replacement of land are made, so that sensitisation of the community and protests can be included. State proceedings do not entail any such cautious buffer time, resulting in unexpected administrative pronouncements that are insensitive to local sentiments. Including traditional verification would involve determining the will of communal elders, whose authority land claim verification falls under, as well as communal hearings and the official ratification of adat decisions through the bureaucratic system of the BPN. Such actions would maximise the legitimacy and reduce the likelihood of counterfeit or controversial certifications.

Adat law does not preclude individual rights but places them within collective obligations. Any claim to land—particularly where loss or destruction of certificates is at stake—must therefore be reconciled with the collective memory and social contract of the community. The procedural emphasis of the state on documentary completeness must be complemented by recognition of bukti sosial (social evidence), i.e., evidence from venerated elders and customary leaders. The interplay of adat-based prudence and positive law mechanisms would provide a more comprehensive protection of land rights, particularly against abuse of power by the administration. Such an interplay is needed especially in regions like Kalimantan, Papua, and Nusa Tenggara where customary land tenure is the predominant mode of land control and assertion of identity.³⁰

²⁹ Euthalia H. Sittadewi, Iwan G. Tejakusuma, Asep Mulyono, Titin Handayani, Adrin Tohari, dan Zufaldi Zakaria, "Post-Landslide Restoration through Multistrata Agroforestry-Based Land Management in the West Bogor Area of Indonesia," *Trees, Forests and People* 16 (June 2024): 100593, <https://doi.org/10.1016/j.tfp.2024.100593>.

³⁰ Afrizal dan Ward Berenschot, "Resolving Land Conflicts in Indonesia," *Bijdragen tot de Taal-, Land- en Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 176, no. 4 (6 November 2020): 561–574, <https://doi.org/10.1163/22134379-17604002>.

To safeguard against misuse of the replacement certificate system, the precautionary principle must evolve into a dual-legal standard involving both formal substantiation and customary recognition. The process of issuance can only sufficiently reflect the plural legal reality of Indonesia if it does so. Such an integrative model would not only eschew duplicity and forgery but also make restorative justice more effective through the foundation of land administration, both on statutory legitimacy and cultural legitimacy. Adopting this model would reconstitute prudence from a formality of the bureaucracy to an n-dimensional legal ethic founded upon both state sovereignty and indigenous autonomy, recognising customary law as an equally binding source of juridical insight in issuing substitute certificates, which is the determining factor to secure justice, legality, and peace in the pluralist government structures in Indonesia.

Legal Solutions to Strengthen the Application of the Principle of Prudence: Strengthening the Regulatory Framework

The findings of this study underscore the urgent need to amend Government Regulation No. 24 of 1997 to strengthen the mechanism for issuing substitute or replacement land certificates. According to the current regulatory framework, the process under which Land Offices can issue substitute certificates remains too lax, allowing for the reissuance of certificates with insufficient protection, even for the parcels that already have active titles. This laxity in regulation significantly increases the stakes for duplicate certificates, thereby increasing the likelihood of land disputes and judicial confusion.³¹ While current procedures involve site verification (*verlap*) and re-surveying to equate land information with entries in the

³¹ Nyamhanga, Pius John, Emmanuel Timothy Malisa, dan Samwel J. Kabote. *"Village Land Governance: Compliance with Village Land-Use Planning in Selected Communities in Tanzania."* *Heliyon* 11 (2025): e42827. <https://doi.org/10.1016/j.heliyon.2025.e42827>.

land book and any available photocopies of the original certificate, these in themselves have been found insufficient to protect against abuse.³²

The reliance on affidavits by applicants, which are increasingly accepted at face value without proper corroboration.³³ While the regulation requires applicants to swear under oath to the truth of their facts, there are still cases of false affidavits being submitted, which suggests that the formality of an oath, in its current form, is insufficient to act as a deterrent. Therefore, the verification process needs to be multi-level, encompassing not just technical verifications by BPN officials but also cross-agency verification, particularly with the Indonesian National Police, whose reports of loss most frequently underpin replacement claims.³⁴ The new regulatory amendment must provide for mandatory inter-agency coordination and field-level verification mechanisms to confirm that the issuance of alternative certificates is based on a systematic, transparent, and verifiable procedure that prioritises legal certainty and the integrity of land administration.³⁵

Given the continued threat of tampered papers in land certification, this research highly suggests that the nation uphold severe criminal penalties against criminals who tamper with land documents, particularly the issuance and utilisation of falsified or duplicate land certificates. Under Indonesia's positive criminal law, the crime of document forgery is regulated in Chapter XII, Book II of the Indonesian

³² Otelemate Ibim Dokubo, Maria Alina Radulescu, and Lorenzo Squintani, "What Law Does Not Understand about Public Participation," *Heliyon* 10, no. 11 (June 2024): e32001, <https://doi.org/10.1016/j.heliyon.2024.e32001>.

³³ Sindy Salsabila Saifuddin and Yulia Qamariyanti, "Kepastian Hukum Sertifikat Hak Milik Atas Tanah atas Terbitnya Surat Keterangan Tanah pada Objek Tanah yang sama," *Notary Law Journal* 1, no. 1 (February 8, 2022): 31–48, <https://doi.org/10.32801/nolaj.v1i1.2>.

³⁴ Takashi Kurosaki, Saumik Paul, dan Firman Witoelar, "In Pursuit of Power: Land Tenancy Contracts and Local Political Business Cycles in Indonesia," *Journal of Economic Behavior & Organization* 227 (November 2024): 106764. <https://doi.org/10.1016/j.jebo.2024.106764>

³⁵ Annabel Dulhunty, "When Extractive and Racial Capitalism Combine – Indigenous and Caste Based Struggles with Land, Labour and Law in India," *Geoforum* 147 (December 2023): 103887, <https://doi.org/10.1016/j.geoforum.2023.103887>.

Criminal Code (KUHP), and Articles 263 to 276 serve as the statute of prosecution.³⁶ Specifically, article 263 KUHP provides two primary provisions: First, every person who makes a forged document with knowledge and or falsely signs an instrument capable of producing rights, obligations, discharge of debts, or legal evidence with the intention that it should be dealt with as authentic can be punished with up to six years' imprisonment, especially if this utilization results in loss. Second, the same penalty is imposed on those knowingly using forged documents as if they were authentic, provided the use injures or could injure.

Despite the existence of these provisions, enforcement has been lacking and the punishments not an effective deterrent—particularly within the framework of land law, where economic and legal value attached to a false land certificate can cause irreparable harm to innocent landowners and trigger protracted legal disputes. In cases like HM No. 1389/Bandungan, where forged affidavits and pretended declarations led to the wrongful issuance of a second certificate, available criminal sanctions were insufficient to deter the fraud or to sanction the perpetrators meaningfully. This study thus invites the amendment of sentencing laws, the strengthening of prosecutorial efforts, and increased judicial awareness of the gravity of land-related falsifications. Through the upgrading of the law enforcement priority of Articles 263 and 264 of the KUHP and their consistent application in land conflict cases, Indonesia can solidify the public's trust in its land administration system and prevent future criminal exploitation of crucial property documents.

Conclusion

The dispute analysed in Decision No. 59/Pdt.G/2022/PN Unr emphasises the flagrant procedural flaws in the release of duplicate land certificates by the National

³⁶ Novri Susan, *Scenario Building on Law No. 7 of 2012 about Social Conflict Intervention: The Possible Future of Land Conflict Management in Indonesia*, *Procedia Environmental Sciences* 17 (2013): 870–879. <https://doi.org/10.1016/j.proenv.2013.02.105>.

Land Agency (BPN). Although formally adhering to administrative procedures, such as obtaining statements under oath and re-executing surveys, the agency failed to verify the factual veracity of the basis loss report, thereby resulting in the unlawful issuance of a duplicate certificate. This failure led to prolonged legal contention and judicial revocation of the second certificate. The case illustrates that minimal formal adherence is inadequate for safeguarding property rights, and it highlights the requirement for BPN to apply a higher standard of care and independent verification in all processes concerning replacement certificates.

In the broader analysis of the principle of prudence, the research demonstrates how this doctrine—crafted initially as a safeguard against administrative abuse—has been reduced to a procedural formality with little substantive enforcement. The absence of coordinated verification mechanisms, particularly between BPN and law enforcement agencies, increases the vulnerability of the land registration system to fraud and document forgery. The study highlights the need to redefine the principle of prudence as a substantive legal and ethical standard, requiring not only administrative discipline in the narrow sense but also institutional integration, transparency, and legal accountability to restore public trust and ensure land tenure security.

From a customary law perspective, the omission of indigenous verification procedures in the issuance of replacement certificates is a fundamental disconnect between state land administration and local cultural values. In customary legal orders, land ownership is vested in ancestral heritage, spiritual significance, and communal validity, rather than in a documentary form. The disregard of these norms not only generates legal uncertainty but also violates cultural integrity. Therefore, the principle of prudence must be operationalised through a double-legal framework that necessitates both statutory compliance and data-based validation, thus rendering land administration practices both legally valid and socially legitimate in Indonesia's plural legal order.

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