

LAND PROBLEMS AND LEGAL IMPACT FOR AGRARIAN AND SPATIAL PLANNING OFFICERS

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Abstract

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) is a government institution with the authority to carry out duties and functions of public services in agrarian, spatial planning and land. The development of land law issues in society has involved many officials from the Ministry of ATR/BPN as implementers of agrarian and land sector functions. The impact is the emergence of a sense of anxiety and worry felt by the Ministry of ATR/BPN officials when carrying out their duties. It is because if the

land administration services provided by the Ministry of ATR/BPN are not thorough and careful, there are many gaps in legal violations, not only administrative and civil but also criminal. If the implementer of agrarian and land functions is a Civil Servant (PNS) and becomes a suspect in a legal case, he will be temporarily dismissed. He will not receive income from the Government Regulation on Civil Servant Management. Therefore, the problem that will be studied in this paper is the legal impact of land problems on the implementers of agrarian functions. This study explores the potential legal risks that implementers of agrarian functions can experience amidst the development of problematic land issues. The method used in this study is qualitative with a normative juridical approach. A normative juridical approach examines the legal rules and regulations that apply to answer legal problems. The results are that the administrative services carried out by the Ministry of ATR/BPN cannot be seen solely as part of administrative law. This is because the administrative services carried out can impact a person's legal ownership/civil status. Existing law enforcement instruments differentiate the judicial process for administrative, civil, and criminal violations.

Keywords: agrarian, civil servant, land, law, legal, violation

Introduction

Land is an immovable asset that is always in demand by many people. Individual needs for space availability amid limited availability of existing land give the land a selling value that can increase the purchase price many times. The increase in selling prices in a short time is what makes land a *prima donna* asset for many people. The Ministry of Agrarian and Spatial Planning / National Land Agency carries out public services for land administration through its representative offices spread throughout Indonesia. It is explained in the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 16 of 2020 on Organization and Work Procedures of the Ministry of Agrarian and Spatial Planning / National Land Agency. Article 2 of the regulation states that the Ministry of Agrarian and Spatial Planning / National Land Agency has the task of carrying out government affairs in the agrarian / land sector.

As a government agency that carries out public services in the land sector, the Ministry of ATR / BPN must also apply the principles of *good governance* in each of its services. The principles of *good governance* include transparency, participation, rule of law, and accountability. The community can realize these four principles through clear and easy-to-understand work procedures and by utilizing digital technology to improve performance and service quality in land offices. Work procedures or SOPs supported by the use of excellent and robust information and technology (IT) in each service can be an effort to prevent negligence or carelessness that can cause legal cases for each resource apparatus of the Ministry of ATR / BPN.

During 2019-2020, to improve the quality of land services, the Ministry of ATR / BPN digitalized land services by optimizing the use of information and communication technology. Four electronic-based land services have been integrated, namely: Electronic Right of Liability (HT-el), Land Registration Certificate (SKPT), Land Certificate Check (PST), and Land Value Zone Information (ZNT). The enactment of ATR/BPN Ministerial Regulation No. 1 of 2021 on Electronic Certificates is expected to improve the ease of doing business and protect the community and landowners from spatial uncertainty, forgery, and other crimes.¹

In carrying out these services, the Ministry of ATR / BPN is supported by human resources from ASN elements to provide public services. The Ministry of ATR / BPN apparatus, an ASN in carrying out its duties, is subject to Law Number 5 of 2014 on State Civil Apparatus and Government Regulation 11 of 2017 on Civil Service Management. Then, regarding providing government services to the public, the Ministry of ATR / BPN refers to Law Number 30 of 2014 on Government Administration. These two laws became the primary legal basis for issuing other derivative regulations relating to personnel and organizational management in the Ministry of ATR/BPN.

In practice, land services in the Ministry of ATR/BPN cannot be separated from many problems. Problems that arise can range from administrative to technical issues. Administrative problems can result from procedural errors in land services, such as the issuance of

¹ Junimart Girsang, "Report on the Results of the Working Visit of Commission II of the House of Representatives of the Republic of Indonesia to Riau Province" (Jakarta, 2021).

certificates. Then, technical issues can arise from obstacles in the field, which can be in the form of differences in regional boundaries, land area, and other things. The government has also tried to provide a legal framework in the land sector to reduce the potential for conflicts through Presidential Regulation Number 86 of 2018 on Agrarian Reform. As a manifestation of the commitment of the Ministry of Agrarian and Spatial Planning / National Land Agency in handling possible land conflicts that will arise, the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 21 of 2020 on the Handling and Settlement of Land Cases was issued. Then, the Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency Number 13 of 2022 on Legal Advocacy Services in the Environment of the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency was issued.

Civil Servants at the Ministry of ATR/BPN risk legal liability in terms of employee discipline, criminal and civil.² The enforcement of criminal discipline and accountability is determined through different mechanisms, namely administratively for discipline and applicable criminal law. Usually, criminal liability can occur while carrying out public service duties related to civil liability. However, not all administrative errors reflect criminal offenses. A civil servant can be said to have committed a criminal act if he abuses authority against the public. A civil servant who abuses authority will hurt public trust.

On the working papers ³ If a public servant commits a criminal offense outside his official duties, his legal proceedings will be treated like any other citizen. In the event of such a thing, the public servant shall be dismissed or suspended from duty and salary during the sentence served based on the facts proved by the judgment of the criminal court. The working paper ⁴ Also exemplifies criminal proceedings and enforcement of discipline for civil servants in the United States, explaining that Federal employees who commit felonies or misdemeanor disciplinary offenses may be tried through criminal courts. Then, evidence resulting from criminal investigations can be

² F Cardona, "Liabilities And Discipline of Civil Servants," 2003.

³ Cardona.

⁴ Cardona.

grounds for taking administrative action if it concerns the efficiency of the Federal Service.

Another example is a study.⁵ That discusses the legal liability of a civil servant in the Republic of Moldova. The results of his research stated that a civil servant must be responsible for criminal acts while carrying out his duties. The responsibility for these criminal acts is based on the Criminal Code relating to criminal acts in service performance, such as accepting bribes, trading positions, abuse of authority, and negligence in services. Then in the country, Afghanistan has its laws related to criminal laws on civil servant crimes and crimes against public welfare and security.⁶ Chapter II of the law explains the types of mistakes and crimes of civil servants that fall into the criminal realm. The criminal acts of the law include 1) abuse of authority and coercion against someone, 2) bribery, 3) forgery, 4) embezzlement and fraud, and 5) removal of official seals and hiding official documents.

The Ministry of ATR / BPN has several policies to deal with conflicts or disputes in terms of land, as described above. The problems faced by many officials of the Ministry of ATR / BPN in running the government by providing land services are related to abuse of authority, for example, in issuing certificates. The problem of issuing certificates is when forest areas are claimed as property rights. In fact, in Law Number 41 of 1999 on Forestry, there has been a ban on issuing certificates in forest areas.⁷

Thus, abuse of authority in issuing this certificate can be associated with criminal acts of corruption. In Law Number 30 of 2014 on State Administration, abuse of authority can be resolved in the state administrative court. Article 20 of the law explains that the Government Internal Supervision Apparatus (APIP) supervises the prohibition of abuse of authority. Then, in Article 21, the court is authorized to accept, examine, and decide whether there is an element of abuse of authority by government officials in the State Administrative Court. Thus, based on the Government Administration law, all matters of alleged abuse of

⁵ Diana-mihaela Malinche, "The Liability of Public Servants," *Bucharest: The Society of Juridical and Administrative Sciences* 7, no. 1 (2018): 67–71.

⁶ "Penal Law For Crimes of Civil Servants and Crimes Against Public Welfare and Security" (n.d.).

⁷ Sabrina Hidayat and George Khafri, "Proof of Crime Against Issuance of Certificates of Rights to Land Located in Forest Areas," *Halu Oleo Legal Research* 4, No. 2 (2022): 114–27.

authority by government officials fall into the category of civil domain in the State Administrative Court.

Suppose allegations of abuse of authority by government officials fall into the criminal realm, and it turns out that it is not proven in the process. In that case, it will cause significant harm to the government officials concerned. Based on Article 88 of Law Number 5 of 2014 on the State Civil Apparatus, the disadvantage is that civil servants can be temporarily dismissed when detained for being suspects of criminal acts. Based on Government Regulation 11 of 2017 on Civil Service Management, article 281 explains that civil servants who are temporarily dismissed for being suspects of criminal acts will have an impact on not providing income to the civil servants concerned. However, paragraph 2 of article 281 states that civil servants who are temporarily dismissed for being criminal suspects will be given temporary termination money, which in paragraph 3 is 50% of the income of the last position as a civil servant before being dismissed. In addition to impacting the salary and benefits received, the social impact experienced will be pretty significant because of the damage to a person's good name and image in society if he once held suspect status even though he was later proven innocent by the court.

Seeing the amount of risk that will be borne by the Ministry of ATR / BPN officials in exercising their authority, it is necessary to pay attention and find policy solutions to avoid misinterpretation between abuse of authority in the context of government administration and criminal acts so that errors do not occur in the legal process. The form of legal protection that the Ministry of ATR / BPN can carry out can be started by exploring the context of the interpretation of the concept of abuse of authority based on Law Number 30 of 2014 on Government Administration and the interpretation of abuse of authority based on Law Number 31 of 1999 on the Eradication of Criminal Acts of corruption from the point of view of law enforcement officials from the elements of prosecutors, as well as judges and then continued with equalization of perceptions between the Ministry of ATR / BPN and law enforcement agencies to be able to guarantee fair legal processes for civil servants in the Ministry of ATR who carry out administrative duties.

As described above, efforts to guarantee legal protection for ATR/BPN ministry officials involved in land issues must be carried out. This is because every institution/institution must provide social protection to its human resources to fulfill human rights in terms of work safety and security from potential conflicts. The study⁸ states that employees have an important role in carrying out the main activities of the organization in the state government. The results of the study said that if employees have high productivity and work motivation, organizational performance and achievement will also improve. Legal and social protection of employee rights is needed to create healthy and prosperous working conditions and environments.⁹. The research¹⁰ Also explains that when a civil servant is involved in legal problems while carrying out his duties, the state must be present to defend by considering the principle of presumption of innocence. When associated with the study, the Ministry of ATR / BPN acts as a state representative who assists the president as head of state in organizing the government.

Thus, this study is essential to be carried out because there is no certainty of legal protection in criminal cases that can have a social impact on the declining performance of the Ministry of ATR / BPN officials in providing land services to the community. The prolonged impact and the declining performance of the Ministry of ATR / BPN apparatus will reduce public trust in the land institution itself. A government agency that does not gain public trust will not be able to achieve its organizational goal of assisting the president in organizing the government of a country.

Problems with ATR/BPN employees who face the law, especially those related to abuse of authority by public officials, still raise

⁸ Sumadi, Gus Andri, and Sepri Yonaldi, "The Influence of Job Design and Organizational Commitment on Employee Job Satisfaction at the Padang State Treasury Service Office," *Journal of Management and Entrepreneurship* 4, no. 2 (2013): 40–56, <https://ojs.unitas-pdg.ac.id/index.php/manajemen/article/view/143>.

⁹ Valen Hadi Putri, Siti Kunarti, and Kadar Pamuji, "Protection of Workers' Rights in the Implementation of Occupational Safety and Health (Study at PT PLN (Persero) Purwokerto Area)," *Soedirman Law Review* 3, no. 3 (2021): 449–62.

¹⁰ Aridal Nova Daltim, "Legal Protection for the State Civil Apparatus for Public Services at the ATR/BPN Regional Office of West Sumatra Province," *Suara Justisia* 5, No. 1 (2021): 8–18.

differences in interpretation between the Government Internal Supervision Apparatus at the Ministry of ATR/BPN and law enforcement officials. Two legal bases between Law Number 30 of 2014 on Government Administration and Law Number 31 of 1999 on the Eradication of Corruption Crime give rise to different interpretations in solving land administration cases at the Ministry of ATR / BPN.

Therefore, the problem to be studied is how the interpretation of law enforcement officials on cases involving the Ministry of ATR / BPN officials is related to Law Number 30 of 2014 on Government Administration and Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption. Then, how are the efforts of the Ministry of ATR / BPN to equalize the perception of interpretation between APIP and law enforcement officials to realize a fair legal process?

This study uses a normative juridical type of research. Normative juridical research is used for legal studies based on norms and rules in applicable regulations to answer legal problems. The purpose of this legal research is to produce new arguments, theories, or concepts as prescriptions for solving the issues faced¹¹. The data to be sought is primary data, which is essential information obtained from interviews with informants. Then, it is supported by secondary data in the form of reports and data related to land problems that have occurred. These data are supported by primary material from several laws and regulations that form the juridical basis for the study.

The Impact of Personnel on Implementers Involved in Land Law Issues

The problem arises due to the involvement of the Ministry of ATR / BPN apparatus in a legal case is the employment status of a civil servant involved. Based on Government Regulation 11 of 2017 on Civil Service Management, article 281 explains that civil servants who are temporarily dismissed for being suspects of criminal acts will have an impact on not providing income to the civil servants concerned. However, paragraph 2 of article 281 states that civil servants who are

¹¹ Nicken Sarwo Rini, "Abuse of Administrative Authority in the Corruption Act," *Journal of Legal Research: De Jure* 18, no. 2 (2018): 257–74.

temporarily dismissed for being criminal suspects will be given temporary termination money, which in paragraph 3 is 50% of the income of the last position as a civil servant before being dismissed.

The problem in the field today is when the result of the verdict in the first instance of the Ministry of ATR / BPN apparatus is not proven guilty or declared free or released. Still, the prosecutor makes a legal remedy of cassation. This impacts the employment status of the person who does not get income while waiting for the cassation process because his status as a suspect cannot be revoked because he is waiting for a cassation decision. As we know, the cassation process takes a long time and can only be ascertained for a short time. If this is left as it is, then what is the fate of the apparatus who have been found not guilty but still have to wait for the cassation results, which are not clear in time. Of course, this hangs one's fate without clarity and no income. Even though the apparatus involved must also undergo a cassation procedure to prove his innocence. Table 1 below shows some cases that are in the process of cassation.

Table 1. Types of Cases and Status of Legal Proceedings

| No | Case Type | Year | Status |
|----|---|------|---|
| 1 | Complete Systematic Land Registration Activities (PTSL) | 2022 | - First-degree free verdict - Waiting for the cassation decision |
| 2 | Certificate issuance | 2022 | - First-degree free verdict - Waiting for the cassation decision |
| 3 | Land production | 2022 | - First-degree free verdict - Waiting for the cassation decision |
| 4 | Certificate issuance in forest areas | 2022 | - First-degree free verdict - Waiting for the cassation decision |
| 5 | Certificate issuance in forest areas | 2021 | - The first degree of the loose verdict - Waiting for the cassation decision |

| | | | |
|---|------------------|------|--|
| 6 | Land Preparation | 2021 | - First-degree free verdict |
| | | | - Cassation rejected |
| | | | - Waiting for a copy of the cassation decree |

Source: Report of Legal Bureau of the Ministry of ATR/BPN (2023)

From table 1 above, it can be seen that in 2021 and 2022, there are still several cases that, in the first instance, are declared free/released, still waiting for resolution at the cassation level. Some have been completed at the cassation level but still have to wait for a copy of the verdict. The long cassation process caused uncertainty about the fate of the apparatus involved in terms of non-income as civil servants and status *non-job* in his duties. Seeing this, there needs to be a policy to bridge when a civil servant has been terminated free / released and is undergoing the cessation process. Therefore, the Ministry of ATR / BPN needs to discuss with the State Civil Service Agency to produce a policy in the form of a circular or implementation guidelines related to the possibility of providing a certain percentage of income for civil servants who already have a not guilty/free / released verdict in the first instance and are in the process of cassation. This policy manifests the institution's responsibility to its apparatus, which is involved in legal problems while carrying out its duties.

Ministry of ATR/BPN Perspective on Land Law Issues

Regulation of the Minister of ATR/BPN No. 21 of 2020 on the Handling and Settlement of Land Cases is considered sufficient to accommodate the broad authority of ATR/BPN. However, internal mechanisms cannot guarantee that the process is carried out correctly and is interest-free. In line with that, the opportunity for criminalization is still open with no guarantee of the supervisory function on performance and evaluation. The enforceability of the Minister of ATR/BPN Regulation No. 13 of 2022 on Legal Advocacy Services in the Environment of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency needs to be evaluated. Regulation of ATR/BPN 13/2022 regulates various legal aid services and their stage mechanisms. However, Regulation 13/2022 has yet to regulate the character and typological projections of cases that receive legal

protection. Table 2 below shows typological data of legal cases often involving the Ministry of ATR/BPN apparatus.

Table 2. Typology data of cases involving the Ministry of ATR / BPN apparatus in 2016-2022

| No | Case Typology | Number Involved |
|-------|--|-----------------|
| 1. | Land Preparation | 28 people |
| 2. | Publication of the Certificate in the forest area | 43 people |
| 3. | Transfer of Assets | 5 persons |
| 4. | First-time Land Registration | 77 people |
| 5. | Procurement of Goods | 2 persons |
| 6. | Inventory of Land Tenure, Ownership, Use and Utilization | 4 persons |
| 7. | Forgery | 38 people |
| 8. | Embezzlement | 9 persons |
| 9 | Deceit | 6 persons |
| 10 | Hand Capture Operation (OTT) | 39 people |
| Total | | 251 people |

Source: Report of Legal Bureau of the Ministry of ATR/BPN (2023)

Table 2 above shows that most cases involving the Ministry of ATR/BPN apparatus are in terms of first-time land registration in the form of National Priority (Prona) and Complete Systematic Land Registration (PTSL). The second most common cases are cases of certificate issuance in forest areas, followed by cases of hand-catching operations and forgery. Looking at these data, it is necessary to closely examine work procedures and risks that can arise in implementing the first land registration service and issuing land certificates related to forest areas. Care and accuracy are needed, as well as coordination with the Ministry of Environment and Forestry in determining the boundaries of forest areas so there is no overlap. Some efforts that can be done are to examine the risks of work procedures and use data on one map in the Information and Geospatial Agency as an initial reference to see the boundaries of forest area maps with other use areas (APL).

In addition to the data above, based on the results of interviews with the Inspectorate of the Ministry of ATR / BPN, information was obtained that the forms of construction of criminal law cases that often involve the apparatus of the Ministry of ATR / BPN are in terms of 1) forgery of letters; 2) enter someone else's yard/land; 3) corruption. Some of these cases are constructed as such because, in APH's view, there are violations of SOPs containing *elements of mens rea*.¹² On the other hand, Regulation 13/2022 regulates various legal protection mechanisms but does not involve supervision and performance evaluation in the implementation of functions and duties. So, the need to map the authority, responsibilities, and functions to be adjusted to legal protection based on performance evaluation and supervision is essential. It is corroborated by the results of an interview with the Inspectorate Investigation Team of the Ministry of ATR / BPN, who said that the investigation work procedure begins with a letter of application, complaint, or assignment, and there have been no regularly scheduled supervisory activities in each regional land office.¹³

In addition, to optimize the function of the Minister of ATR/BPN 13/2022, competence in terms of litigation capabilities needs to be strengthened. This information was obtained from an interview at the Regional Office of the Ministry of ATR / BPN, which stated that there needs to be a provision of litigation capabilities that must be possessed by the apparatus appointed to be part of the advocacy team based on the regulation.¹⁴ This is because there is no specific training related to litigation. Understanding litigation is essential because the advocacy team is expected to provide legal advice about technical work procedures based on the primary duties and functions and other legal elements related to the judicial process. Even though, in practice, it needs to be a benchmark for holding the position. This was also conveyed in the West Sulawesi Regional Office interview, which showed that APH would provide questions broadly, even though the apparatus involved in the case generally only understood its

¹² Results of an interview at the Inspectorate of the Ministry of ATR/BPN on June 6, 2023

¹³ Results of an interview at the Inspectorate of the Ministry of ATR/BPN on June 6, 2023

¹⁴ Results of an interview with the Regional Office of West Sulawesi on June 13, 2023

duties and functions. It can cause a difference in perspective between APH and the Ministry of ATR / BPN apparatus. In this case, APH uses its understanding of the law as a whole, not only on a technical level. At the same time, the Ministry of ATR / BPN apparatus generally only understands the duties and functions and needs to understand its relationship with other legal elements.

Another data obtained is a precedent in Mamuju, showing that corruption charges that happened through the formal ATR/BPN mechanism must be appropriately responded to and anticipated. The potential for criminalization of authority remains open, in line with the legal dynamics of society. For this reason, implementing the mechanism of duties and functions of ATR / BPN needs to have a mechanism of protection and restoration of employee rights from executing their duties and functions. Furthermore, it is also essential to be able to separate between the proper exercise of public power and its misuse in anticipation of the repression of criminalization.¹⁵

At the practical level, land cases in forest areas revolve around and circumvent administrative actions and acts of corruption. However, in the Mamuju case, state losses could not be proven. The patterns and cognitive-interpretive actions carried out by Law Enforcement Officers on cases involving Ministry of ATR/BPN officials associated with Law Number 30 of 2014 on Government Administration and Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption will always experience a throwback (*gowerfen-sein*) into the Lex Specialist Systematic Principle which is constructed to ignore Law Number 30 of 2014 on Government Administration. Simultaneously, Law Enforcers also ignored Article 14 of Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption.¹⁶

The factors causing the emergence of land cases in forest areas, according to ¹⁷ Are caused by the following:¹⁸

¹⁵ Hun Joon Kim and J.C. Sharman, "Accounts and Accountability: Corruption, Human Rights, and Individual Accountability Norms," *International Organization* 68, no. 2 (2014): 417–48.

¹⁶ Rocky Marbun, "Epistemological Fallacy in the Criminal Law Enforcement Process on the Trinity of Power Concept as a Fallacy Through the Relationship Trichotomy Approach," 2023.

¹⁷ Ade Irman Susanto, "The Case of Land in Forest Areas" (Jakarta, 2023).

¹⁸ Presentation of Resource Persons at the expert FGD on June 28, 2023

- a) In the past, it did not apply strict SOPs, so it was necessary to ensure the implementation of SOPs from derivatives of ATR/BPN Regulation No. 18 of 2021 on Procedures for Determining Management Rights and Land Rights.
- b) Do not know the details of forest area boundaries due to limited map access in the past.
- c) Not consulting and asking for recommendations from the Environment and Forestry Service or the Forest Area Stabilization Agency (BPKH)
- d) Not yet integrated coordinate points of forest areas with Other Use Areas (APL)
- e) MoEF determination map with a minimum of 1:100,000 and ATR/BPN at 1:500 relate to land pegs.
- f) The community has physical control and evidence of past land ownership (an unresolved MoEF issue), and BPN receives the physical and juridical evidence directly.

The control and use of land rights must have a legal basis to ensure legal certainty and provide legal protection for land rights holders through the issuance of certificates. As stated in Article 3 of Government Regulation Number 24 of 1997 on Land Registration, "to provide legal certainty and legal protection to holders of rights to a plot of land, units of flats and other registered rights to easily prove themselves as the holder of the rights concerned." Even though it has received recognition in the land and agrarian law, the land title certificate does not fully guarantee legal certainty because, basically the land and agrarian law states that if other parties feel they own land, they can sue the party whose name is listed in the certificate civilly to the General Court or sue the Head of the Land Office concerned¹⁹.

Law Enforcement Officers' Perspectives on Land Law Issues

The modus operandi of crimes in the land sector involving BPN employees include forgery of letters, bribery, extortion, fraud, embezzlement, abuse of authority resulting in state financial losses, and gratuities. When viewed from the point of view of state administrative

¹⁹ Susanto, "The Case of Land in Forest Areas."

law, all these criminal acts must be administrative violations, namely abuse of authority. There is no distinction between the doctrine of abuse of authority in the administrative and criminal fields because of the doctrine.

Abuse of authority in the administrative field is used in the criminal field. However, if an administrative offense satisfies all the elements of a criminal offense, then an administrative offense is an act that can be criminally prosecuted. In short, administrative handling does not prevent the public prosecutor from prosecuting.²⁰

The results of interviews with prosecutors at the Bekasi Regency District Attorney's Office conveyed that in handling a case involving public administration, the prosecutor will first conduct an in-depth review of the procedures or SOPs applicable in the relevant government office.²¹ This in-depth study often shows differences in views between prosecutors and apparatuses involved in understanding the technical steps arising from a work procedure. This data aligns with information obtained from the West Sulawesi Regional Office that the Ministry of ATR/BPN apparatus only understands the duties and functions. At the same time, APH will expand its views by applicable legal norms. This difference needs to be bridged by the socialization process or discussion of the duties and functions of the Ministry of ATR / BPN technically to APH. For the Ministry of ATR / BPN apparatus, there needs to be socialization/education about legal understanding related to implementing their duties and positions.

Similar information was also obtained from an interview with the Mamuju District Attorney's Office, who said the prosecutor was looking for procedural irregularity.²² Thus, the prosecutor does not merely construct the law of criminal offenses but first goes through a review process to look for possible procedural irregularities. The results of the interview with the West Sulawesi Regional Police also said that a case whose formal requirements have been met, will be followed by examination and requests for information from relevant officials and

²⁰ Yep. Ibnu Fajar Rahim, "Opportunities for cooperation between the Ministry of ATR/BPN and the Prosecutor's Office through a memo of understanding as a preventive measure against indications of administrative abuse of authority" (Jakarta, 2023).

²¹ Results of an interview with the Bekasi Regency District Attorney's Office on June 7, 2023

²² Results of an interview with the Mamuju District Attorney's Office on June 14, 2023

officials to see if there is an element of *mens rea* in terms of intentionality or certain motives, and then transferred to the prosecutor's office.²³

From the results of interviews with judges in the Supreme Court, he also said that what can be the cause of the Ministry of ATR / BPN apparatus often involved in legal cases is a lack of awareness and understanding that the administrative procedures carried out can have an impact on a person's civil law so that they are often less careful and thorough in carrying them out.²⁴ Especially when it comes to land ownership rights, it is commonly known that land is one form of valuable wealth asset. The opinion of this element of the judge is also in line with what was conveyed by prosecutors at the Bekasi Regency District Attorney and Mamuju District Attorney's Office, that the Ministry of ATR / BPN apparatus needs to see its duties and positions broadly about applicable legal norms so that it no longer understands it only as its duties and functions technically.

Thus, it can be said that the administrative accountability of the Ministry of ATR / BPN in carrying out its duties and functions is still weak to accommodate the breadth of its primary responsibilities and functions. Therefore, there needs to be an understanding between APH and the Ministry of ATR / BPN to fill the empty space. Meanwhile, the Supreme Court has a discourse to prepare land courts to certify land judges. It is to respond to the dynamics of land cases. Response to dynamic patterns is an attempt to examine long-term developments and explore close commonalities between parallel individual accountability norms to provide a comprehensive picture.²⁵ In addition, it is necessary to look at the linkage of accountability between individuals and the (institutional) structures that form them, which are prevalent in corruption and human rights violations.

Ministry of Environment and Forestry (MoEF) Perspective on Land Law Issues

²³ Results of an interview with the West Sulawesi Regional Police on June 14, 2023

²⁴ Results of an interview with the Judicial Judge of the Criminal Chamber of the Supreme Court of the Republic of Indonesia on June 8, 2023

²⁵ Kim and Sharman, "Accounts and Accountability: Corruption, Human Rights, and Individual Accountability Norms."

One of the criminal cases against the ATR/BPN apparatus is related to issuing certificates of land rights included in forest areas. Referring to the provisions of Article 3 of the Forestry Law, a Forest Area is "a certain area designated and designated by the Government to maintain its existence as a permanent forest." The provision was later amended based on Constitutional Court Decision Number 45/PUU-IX/2011, which removed the phrase "appointed" as a reference to forest area coverage.²⁶

Before the designation of an area as a forest area, it first goes through a series of stages, including a. designation of forest areas; b. arrangement of forest area boundaries; c. mapping forest areas; and d. determination of forest areas.²⁷ The process of confirming forest areas is sourced from data from forest inventories by considering regional spatial plans.²⁸ The provisions regarding forest areas as certain areas determined by the government to maintain their existence as permanent forests, based on Constitutional Court Decision Number 45/PUU-IX/2011, stated that it is not binding on the designation of forest areas that existed before the ruling.²⁹ So, the designated forest area must still

²⁶ Amar Constitutional Court Decision Number states that: "The phrase "appointed and or" in Article 1 number 3 of Law Number 41 of 1999 concerning Forestry as amended by Law Number 19 of 2004 concerning the Stipulation of Government Regulations instead of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law (State Gazette of the Republic of Indonesia of 2004 Number 86, Supplement to the State Gazette of the Republic of Indonesia Number 4412) is contrary to the Constitution of the Republic of Indonesia Year 1945 and is not binding."

²⁷ Article 15 (1) of Law of the Republic of Indonesia Number 41 of 1999 concerning Forestry

<https://www.krjogja.com/peristiwa/read/489339/4-proses-harus-dilewati-untuk-pengukuhan-kawasan-hutan>

<https://apps.worldagroforestry.org/downloads/Publications/PDFS/RP04357.pdf>

<https://sippn.menpan.go.id/berita/36448/dinas-lingkungan-hidup/rapat-penetapan-kawasan-hutan-100-23>

<http://ppid.menlhk.go.id/berita/siaran-pers/7017/menteri-lhk-tata-batas-kawasan-hutan-selesai-tahun-ini>

²⁸ Pasal 15 Ayat 2

²⁹ Article 35 (1) If a particular area has been designated as a Forest Area, the reference to the Forest Area shall use the Ministerial Decree on the Designation of Forest Area. (2) If the designated Forest Area, as referred to in paragraph (1),

be interpreted as a forest area even though it has yet to reach the final stage, namely the determination of forest areas by the Minister of Forestry and Environment before the issuance of the Constitutional Court decision. It is one of the reasons for reading forest area data for the ATR / BPN apparatus because some are applied by referring to the Forest Area Designation Decree and, on the other hand, to the Forest Area Designation Decree.

In addition, the Ministry of Environment and Forestry also considers that the Ministry of ATR / BPN has yet to be fully open regarding transparency in the map of Other Use Areas (APL) that can be used for Business Use Rights or other uses.³⁰ Thus, APL area certificates often overlap with forest areas due to differences in maps owned by the Ministry of Environment and Forestry and the Ministry of ATR / BPN. The KLHK forest area is confirmed by utilizing geographical coordinates or satellite images. After the imagery, a tighter Temporary Boundary Mark was erected, and boundary passages and ditches were in areas adjacent to densely populated settlements and a high potential for encroachment on Forest Areas. Until finally announced, the Forest Area boundary plan was depicted digitally on the Forest Area Designation Map, especially in locations bordering the land rights.

has been carried out following the provisions of laws and regulations, the reference to the Forest Area shall use the Minutes of Boundary Planning signed by the Forest Area Boundary Planning Committee. (3) In the event that the Forest Area that has been delimited following the Minutes of Boundary Planning as referred to in paragraph (2) has been ratified by the Minister, the reference to the Forest Area shall use the Minutes of Boundary Planning that the Minister has ratified. (4) If the Forest Area has been Delimited following the Minutes of Forest Area Boundary Planning approved by the Minister as referred to in paragraph (3) and has been determined, the reference to the Forest Area shall use the Ministerial decree on the determination of Forest Areas. (5) The designation of Forest Areas, as referred to in paragraph (1), and the process of confirming Forest Areas, as referred to in paragraph (2) and paragraph (3), shall apply to designated Forest Areas before the enactment of Constitutional Court Decision Number 45/PUU-IX/2011.

³⁰ Results of Discussion with Representatives of the Ministry of Environment and Forestry at the Seminar on the Results of the Study of the Urgency of Legal Protection Guarantees for Apparatus of the Ministry of ATR / BPN on August 24, 2023

In the case that occurred against the issuance of land certificates by ATR/BPN Mamuju Regency, which resulted in a criminal case in court with case numbers 22/Pid.Sus-TPK/2022/Pn. Mam and 23/Pid.Sus-TPK/2022/PN. Mam has yet to fulfill several things that indicate the location as a forest area, such as the existence of tighter Temporary Boundary Marks and, making boundary passages and ditches and announcing Forest Area boundary plans drawn on the Forest Area Designation Map digitally.

Strengthening forest areas is one of the priority work targets of the MoEF that must be completed by 2024. There are remaining designated forest areas that still need to reach the stage of determination by the Minister due to limited human resources and budget, especially at the stages of setting forest area boundaries and mapping forest areas.³¹ It means that of the 125,795,306 Ha of forest area as of December 2022, only 99,659,195 Ha have been determined, leaving 26,136,111 Ha that still needs to be determined.³² Forest area determination is the determination of forest areas resulting from forest area boundary planning activities that have met bracelets containing the location, boundaries, area, certain functions, and coordinate points of forest area boundaries as outlined in the form of a map of forest areas of a particular scale or at least a scale of 1: 100,000. The existence of this determination is expected to provide legal certainty for forest areas to create a stable forest area, which has a clear, firm status, and its existence is recognized by the community and free from all rights of other parties.

Alternative Work Program Addition at the Ministry of ATR/BPN

The Ministry of ATR/BPN needs to update the work program, especially in optimizing the role of APIP. The existing internal auditors need a regular supervision schedule for each representative office of the Ministry of ATR/BPN in provinces and districts. The role of APIP is expected to wait based on incoming reports and actively go directly to the field periodically. The regular supervision schedule is expected to identify early if there is a potential for a legal case. Through this early identification, potential legal cases can be processed internally to see whether the matter falls into the administrative or criminal realm.

³¹ MoEF interview results on June 26, 2023

³² https://kukuh.menlhk.go.id/kawasan_hutan retrieved July 21, 2023

Another form of supervision that can be done is *Aposteriori* supervision, which can be included in clump *executive review*. Examination activities at the Ministry of ATR / BPN are a necessity because every decision of government administration is possible not to be separated from mistakes and mistakes.³³.

Another work program update that can be done is to hold regular joint discussion activities with law enforcement officials to review cases with permanent legal force. The goal is to share an understanding of how a case should be handled according to the topic of discussion. So, when one day handling a case that is the same or has similarities, law enforcement officials and the Ministry of ATR / BPN already have the same perception.

In addition, there also needs to be education in the form of socialization about the impact of administrative services on a person's legal status. It is important to provide understanding to be careful and careful in carrying out SOPs in the Ministry of ATR / BPN because if it is wrong or inappropriate, it will have an impact on a person's civil status. It is what often happens, where the Ministry of ATR / BPN apparatus is often blamed for issuing problematic certificates due to needing to be more careful in carrying out existing SOPs. Indeed, the problem is that administrative services are required to be fast, even though checking every administrative document requires accuracy and caution. Therefore, administrative services at the Ministry of ATR/BPN need to be strengthened by digital technology, which must also be built firmly to ensure its security and eliminate the possibilities of fraud in providing administrative services.

Another program that can be done is to provide training on procedures for legal assistance and consultation in the judicial litigation process. It is necessary to optimize the function of the advocacy field to provide legal advice and consultation by the existing judicial process. Many legal cases have involved the Ministry of ATR / BPN apparatus with various types of cases so the implementation of the advocacy function needs to be developed the competence constantly to

³³ Enrico Simanjuntak, "Comparison of the Definition of Examination (Review) in the Context of Justice with Government Administration" (Jakarta, 2023).

understand the development of legal issues that occur and how the judicial mechanism is.

Conclusion

Based on the explanation above, it can be concluded that to provide legal protection to the Ministry of ATR / BPN apparatus that carries out their duties, it is necessary to carry out several policies in terms of internal updates both in work procedures, work programs, and regulations. These three things are essential to provide a legal protection framework to prevent, advocate, and recover in the face of the emergence of land law cases. Preventive policies need to provide legal certainty and eliminate the anxiety and worry of employees when carrying out their duties. Then, advocacy policies must ensure that institutions are responsible for providing intensive legal assistance and consultation when there are apparatuses involved in legal cases after it needs to be supported by corrective or remedial recovery policies as a tangible manifestation of the Ministry of ATR / BPN in responding to and following up on legally binding decisions if corrections or cancellations are needed. The three forms of policy are expected to be a framework that can protect the apparatus of the Ministry of ATR / BPN to carry out their duties optimally.

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