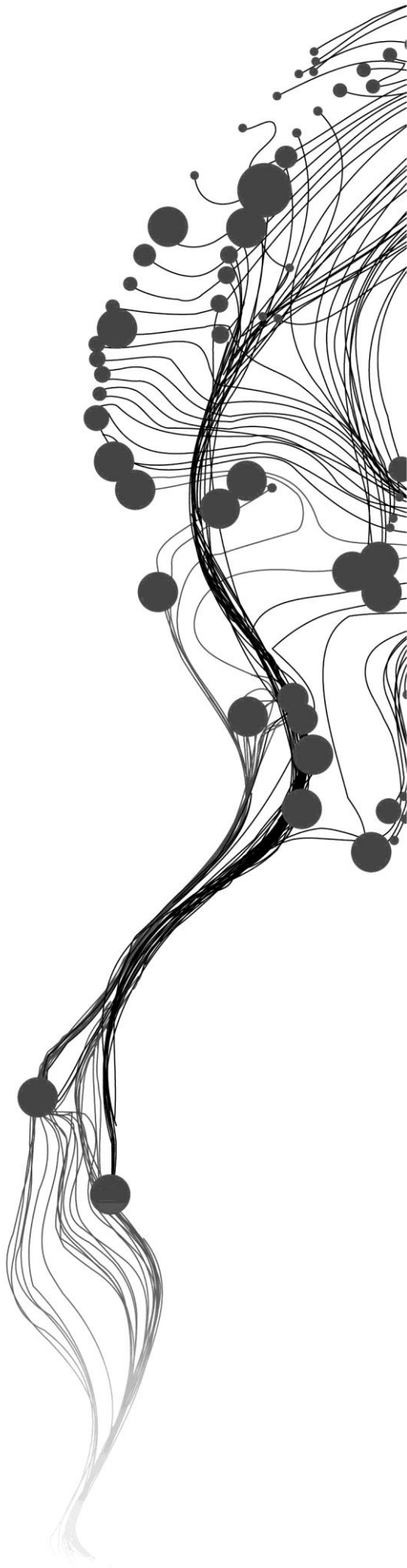


Land Dispute Resolution Mechanisms in the Perspective of Good Governance: the Case study in Indonesia

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FEBRUARY, 2011

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ABSTRACT

Land disputes have been a major problem worldwide; therefore land dispute resolution is essential in delivering secure land rights. There are various types of land dispute resolution mechanisms which are used as tools to solve land disputes. These mechanisms are the judicial system or the court, alternative dispute resolution, religious dispute resolution and customary dispute resolution. The key actors involved in these mechanisms are also differentiated. The limitations and weaknesses with these mechanisms hinder the success in reducing the land disputes according to the expectations of the people. This research focuses on the land dispute resolution mechanisms from the good governance perspective.

Desk research, a case study and including interviewing the BPN officers and BPN customers are the methods used in this research. Literature review was carried out to better understand land dispute resolution mechanisms and good governance concepts. A case study was carried out to investigate the weakness and challenges of the land dispute resolution mechanism in Indonesia. An assessment framework including the required indicators has been developed on the basis of the literature review on Equity, Efficiency, Participation, Access to Information and Organization.

The assessment of the Indonesian case study, identified gaps of performance such as: most of the people that are accessing the land dispute resolution mechanism are considered as knowledgeable people with sufficient resources and dominantly are men. The study also shows that most of the procedures are informative yet complicated and the length of time solving the cases was too long. Furthermore, it was revealed that the involvement of the people in the process of the resolution is essential, especially in the mediation approach. But yet the access to the land dispute resolution information is not sufficient, even though most of the people responded that they were satisfied. Regarding the roles of the actors involved, most of them rated their role as sufficient. Despite the number of results leading to indicators (i.e. obtaining the information, the clear procedure yet complicated) that needs to be improved, there are also satisfactions of the land dispute resolution mechanism.

Finally, this research concludes that the responsible government organization needs to improve: a) the procedures of the land dispute resolution mechanism, b) the length of time in resolving the land disputes to reach satisfaction, and c) meet the needs of the people accessing information and the land dispute mechanism.

Keywords: Land Dispute, Resolution Mechanism, Governance, Access

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Abbreviation

ADR	: Alternative Dispute Resolution
ADRM	: Alternative Dispute Resolution Mechanism
ADRS	: Alternative Dispute Resolution Systems
NLA/BPN	: National Land Agency / Badan Pertanahan Nasional

1. INTRODUCTION

1.1 Background

Land has become a major source of disputes over the past four decades (McGregor, 1997). Land disputes cause social disruption and have a negative impact on the development of land. Many conflicting interests in land and resource use give rise to multiple layers of disputes. According to Kalande (2008) land dispute is a form of conflicting claims on land ownership, land use rights, land laws and the combination of them. It has been realized that land disputes are commonly over boundaries that occur between neighbours or relatives close by, or it could occur over inheritance, which is normally between family and relatives (Yamano & Deininger, 2005). Land disputes can also be caused by land sales if the land rights over the land are not well-defined.

According to McLaughlin & Perdana (2010), land dispute in many countries is aggravated due to the lack of transparent procedures during land adjudication, ownership and land transfer. Furthermore they explained that many land disputes stand out as more highly correlated with the lack of transparency, presence of wide spread corruption and bribery than other types of disputes in the world in general and in Indonesia in particular. According to Wehrmann (2008) in many countries, when it comes to land disputes, the poor often do not have the courage to dare the powerful and do not have resources to challenge their causes in the court. Therefore, an efficient, effective and transparent system for settling land disputes is necessary. Such procedure should be a simple and affordable land dispute settlement procedure.

One of the other main factors of the increased land dispute is due to the lack of clarity concerning the role of formal and informal institutions in land administration (Deininger & Castagnini, 2006). Many cases of land disputes are brought to informal institutions as the first step. However, many informal institutions do not provide fair and speedy resolution to the matter. According to Steer & Sen (2008) informal institutions have lack of effectiveness and lack of proper procedures. If the informal institutions are not capable to resolve the disputes, and if the complainants have sufficient resources, then the cases are brought to formal institutions (Macours, 2009), such as the Court, the National Land Management Authority and the Mediation Committee. There are also local institutions that resolve the land disputes before the disputes reach the formal court system. In most cases there are significant barriers to women and vulnerable groups accessing the dispute resolution including ignorance of law, fear of physical violence, fear of community mistreatment, lack of time and lack of an advocate (ARD, 2008).

According to USAID (2005), the experiences of many countries shows that land disputes are more well managed outside the courts. This is due to the limitation court capacity in processing land claims efficiently and transparently. In this regard, it encourages the development of non-court dispute settlement mechanisms as part of the much larger task of changing attitudes about the rule of law, eliminating corruption, and making judicial systems functional. Land disputes are common in several countries in the Asia, Africa and south America region (Wehrmann, 2008). These disputes not only effect many poor communities, reduce security of tenure, and discourage long-term investment, they also congest the court system and affect the entire legal system (Childress, 2004). For that there are alternative dispute resolution processes, such as mediation, arbitration and conciliation (Wit, 2002).

In Indonesia, the land agency is responsible in resolving the land disputes under the Presidential Regulation No.10 Year 2006. One of the major roles of the land agency is land dispute resolution, which land dispute can be solved through the land agency, trial in court and mediation which could be through the land agency and other institutions. The disputes that occur are the result of a dysfunctional legal

system and also an unreliable land ownership database; the land dispute resolutions are still lack of transparency, effectiveness, and equity (Sumanto, 2008); such as complicated procedure, time consuming, lack of information, human resource, service and data. The growing need of a proper land dispute resolution mechanism through good governance principles thus is significant.

Therefore this research focuses on identifying the land disputes resolution mechanisms that exists, and the challenges that occur in Indonesia as case study if the good governance can push improvement in the land dispute resolution. According to UN (2007a), Good governance is when a state efficiently provides public goods of necessary quality to its citizen and particularly the land governance is “the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled” (Tuladhar, 2009). For that in having a good land dispute resolution would be a part of good governance. The current land dispute resolution through good governance will be the main area to be evaluated. The research finds out the most effective good governance indicators to the land dispute resolution.

1.2 Research problem

Disputes concerning land ownership or access to plots can be resolved through the land dispute resolution authority or the courts of law irrespective of the illegal status of the land concerned (Kombe & Kreibich, 2000). Rugadya (2009) found out that Government interventions in many countries that have aimed to reduce land dispute do not seem to have been effective. The government in most countries tries to adopt a problem-solving approach in its attempts to meet the goal of justice and efficiency, which creates new mechanisms (Peerenboom & He, 2009). Most of these actions improved in the land dispute resolution, but still not significant.

According to Adan & Pkalya (2006), dispute resolution through the formal institution have problems concerning lack of information in legal land rights and responsibilities, high costs and complex procedures, inadequate of human resources, manipulation and selective application of the law in certain instances. Weak legal and land dispute resolution institution leads to lack of access and rights for the people; such as they differentiate the poor and women in gender.

According to Molen & Tuladhar (2007), Corruption which indicates lack of transparency is one of the main issue in land administration including the land dispute resolution. All decisions related to access, control and management are framed within the institutional mechanisms (Upreti, et al., 2008). These actions are also inflamed by the weak dispute resolution mechanisms or justice poorly served in the formal institutions, such as the land agency and the courts. This can also be shown that in Indonesia, most of the people resolve their land disputes using informal or non-state channels, partly due to the inadequacies of the formal system and partly due to the fact that informal system has certain advantages, such as more effective, efficient and low cost than formal institutions (McLaughlin & Perdana, 2010).

In Indonesia and also many other countries, land services are being developed and improved. One of the main services is land dispute resolution. According to Winoto (2009), The Land Dispute Resolution in Indonesia is increasingly improved by having 7491 cases and 1778 of them are already resolved within the new program so called land dispute settlement operations (Operasi Tuntas Sengketa). But the significant improvement has not been shown. Therefore there is a need of evaluating the weaknesses and the challenges in the land dispute resolution through good governance principles.

Through good governance concerns in regards with the dispute over land or property rights that are due to the bribery and fraud maybe avoided as well as in delivering the land dispute resolution (Zakout, et al., 2006). According to (Bell, 2007), good governance is essential in achieving the benefits of the protection of property rights and the development of efficiency and effective land. Therefore the good governance principles are needed in order to improve the service standards of the public service.

As mentioned above, the land dispute resolution is still having weak governance. This leads to a long period of time for settlement, high cost, lack of equity and complex procedure. Under these circumstances, land dispute resolution does not deliver what the citizens need. Related to the improvement of land dispute resolution through good governance principles, there are not yet researches done. This research will critically evaluate the mechanisms of land dispute resolution through appropriate indicators of good governance.

1.3 Justification

Having good governance improves secure tenure rights and social justice (Palmer, 2007). This would increase the efforts of poverty reduction (Antonio, 2006). According to Roy & Tisdell (1998a), weak governance implicates tenure insecurity; increased administrative corruption and increased land disputes. Therefore, the functionality of good governance can play a vital role in the improvement of land dispute resolution. This would also lead to citizen satisfaction, which indicates good governance. Regarding to this, there is no significant researches that show effects of applying good governance principles on the land dispute resolution mechanisms.

This research is necessary in terms of filling the gap and adding to the existing knowledge base in the area of land dispute resolution using good governance principles. This research focuses on the effects of applying good governance principles on land dispute resolution mechanisms, and how land dispute resolution can be improved through good governance. Therefore, this research aims is to assess the weakness and challenges of land dispute resolution mechanism. It also builds good practices which can be adopted by Indonesia and similar organization in other countries.

1.4 Scope of Research

A case study approach is adopted and focused on the land dispute resolution mechanisms through good governance principles. Due to limited time, the scope of this research is restricted to equity, participation, efficiency, access to information and organization in Badan Pertanahan Nasional (BPN, National Land Agency).

1.5 Research Objective and Questions

1.5.1 Research Objective

The main objective of the research is to assess the weakness of land dispute resolution mechanisms through good governance principles.

The specific objectives are to:

1. Identify the challenges of land dispute resolution mechanisms.
2. Evaluate the land dispute resolution mechanism by using the most effective good governance indicators

1.5.2 Research Question

In order to operationalize the research objectives, the following research questions which are addressed in the research as shown in Table 1.1.

Table 1.1: Research Objectives and Research Questions

Specific Objective	Research Question
1. to identify the issues of land dispute resolution mechanisms	a) What are the types of land disputes and causes? b) What are the mechanisms of land dispute resolution and how do they work? c) Who are involved in the land dispute resolution mechanisms? d) What are the challenges/problems of solving land disputes?
2. to evaluate the land dispute resolution mechanism by using the most effective good governance indicators	a) What are the indicators of good governance principles that can be used to evaluate land dispute resolution? b) Do these principles lead to improved land dispute resolution? c) What are the expectations of the citizens to a good land dispute resolution? d) Do the principles of good governance meet the citizen expectation?

1.6 Research Approach

1.6.1 Conceptual Framework and Research Design

The general conceptual framework of this research is to assess the weaknesses of land dispute resolution mechanisms through good governance principles, which particularly in this research will look into equity, participation, efficiency, access to information and organization. In the Land Dispute Resolution Mechanism looks into four aspects, which are types of land dispute, land dispute resolution mechanism, the key players and the challenges in land dispute resolution. On the other hand, good governance principles, which are equity, participation, efficiency, access to information and organization particularly, are discussed on how the relations with land dispute resolution mechanisms, as shown as Figure 1.1below:

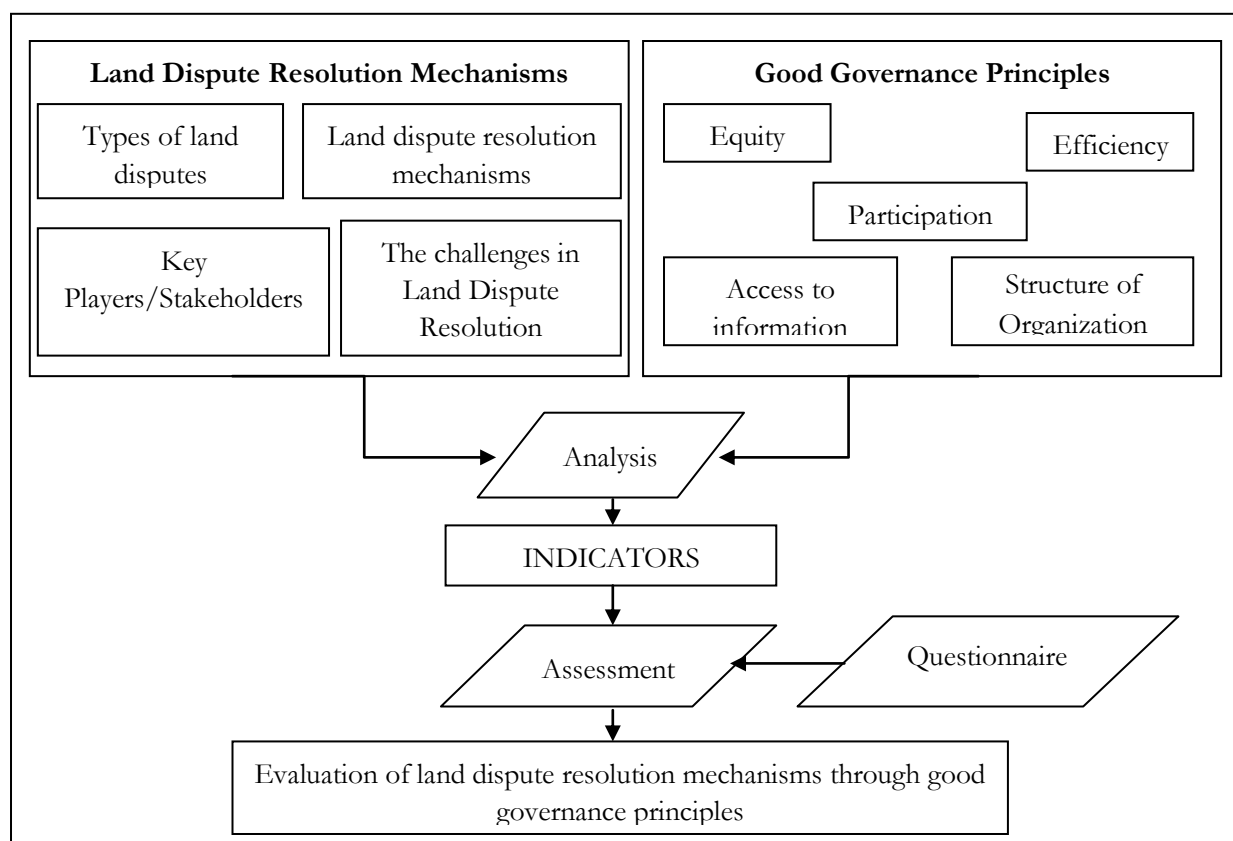


Figure 1.1: Conceptual Framework

A research design is to explain how to find the answers to the initial questions and to arrive at valid findings and drawn conclusion (Kumar, 1999). Furthermore it is a plan of the complete scheme of the research which gives an outline of the procedures that will be used and tasks that are performed in obtaining the answers to the research question.

In designing a research it is essential to ask what the research questions are and what type of evidence needed in order to answer the questions. Therefore in this research a research design has been developed, which is shown in Figure 1.2 below:

Research objective	Main Sub	to assess the weakness of land dispute resolution mechanisms through good governance principles							
		1. to identify the challenges of land dispute resolution mechanisms				2. to find out the most effective good governance indicators to the land dispute resolution			
Research Question		a. What are the types of land disputes and causes?	b. What are the mechanisms of land dispute resolution and how do they work?	c. Who are the key players in the land dispute resolution mechanisms?	d. What are the challenges of solving land disputes?	a. What are the most appropriate indicators of good governance principles that can be used in land dispute resolution?	b. Do these principles lead to improved land dispute resolution?	c. What are the expectations of the citizens to a good land dispute resolution?	d. Do the principles of good governance meet the citizen expectation?
Data Source		Literature: (Case Study: Indonesia)	Literature: (Case Study: Indonesia)	Literature: (Case Study: Indonesia)	Literature: (Case Study: Indonesia)	Secondary data: Literature (reports) Archival Records, journals, papers	Evaluate and analyze the indicators and the result of the most common of land disputes type, mechanism, actors and weaknesses.	Primary data: Questionnaire	Evaluate and analyze the expectations of the citizens and principles lead to improved land dispute resolution
Expected Output		Types of land disputes	Land dispute resolution mechanisms	Key players/stakeholders in the land dispute resolution mechanisms	The challenges in land dispute resolution mechanisms	Indicators	Principles that lead to improved land dispute resolution	Expectations of the citizens	The citizen expectations meet or not to the good governance principles

Table 1.2: Research Design

1.6.2 Research Methodology

The methodology of this research is given as follows:

- For answer 1.a), this research applies desk research to find out the concept and understanding about the types of land disputes and the causes of the land disputes in Indonesia. Then this information would be analyzed. The information is retrieved from journals, papers, reports and other documents.
- For answer 1.b), would be finding out and understanding the land dispute resolution mechanisms and the procedures by applying desk research. The information is retrieved from journals, papers, reports and other documents. Then this information is analyzed.
- For answer 1.c), applies desk research that relates to the topic “key players/stakeholders in the land dispute resolution mechanisms” then analyzed. The information is retrieved from journals, papers, reports and other documents.
- For answer 1.d) would be finding out and understanding the reasons of the challenges in land dispute resolution mechanism then analyzed. This research applies desk research and the information will be retrieved from journals, papers, reports, cases and other documents.
- For answer 2.a) applies literature reviews and analyzing the topic that relates to “land dispute resolution mechanisms” and “good governance principles”. This information is retrieved from journals, papers, reports, cases and other documents.
- For answer 2. b) would be done by evaluating the indicators from 2a) and from finding out the most common dispute, dispute resolution mechanisms and citizen expectations which then both be analyzed.
- For answer 2.c) would be done by applying questionnaire and then analyzed.
- For answer 2.d) would be done by analyzing the result of 2b) and 2c.

The details stage of the methodology diagrammatically is shown in Figure 1.2 below:

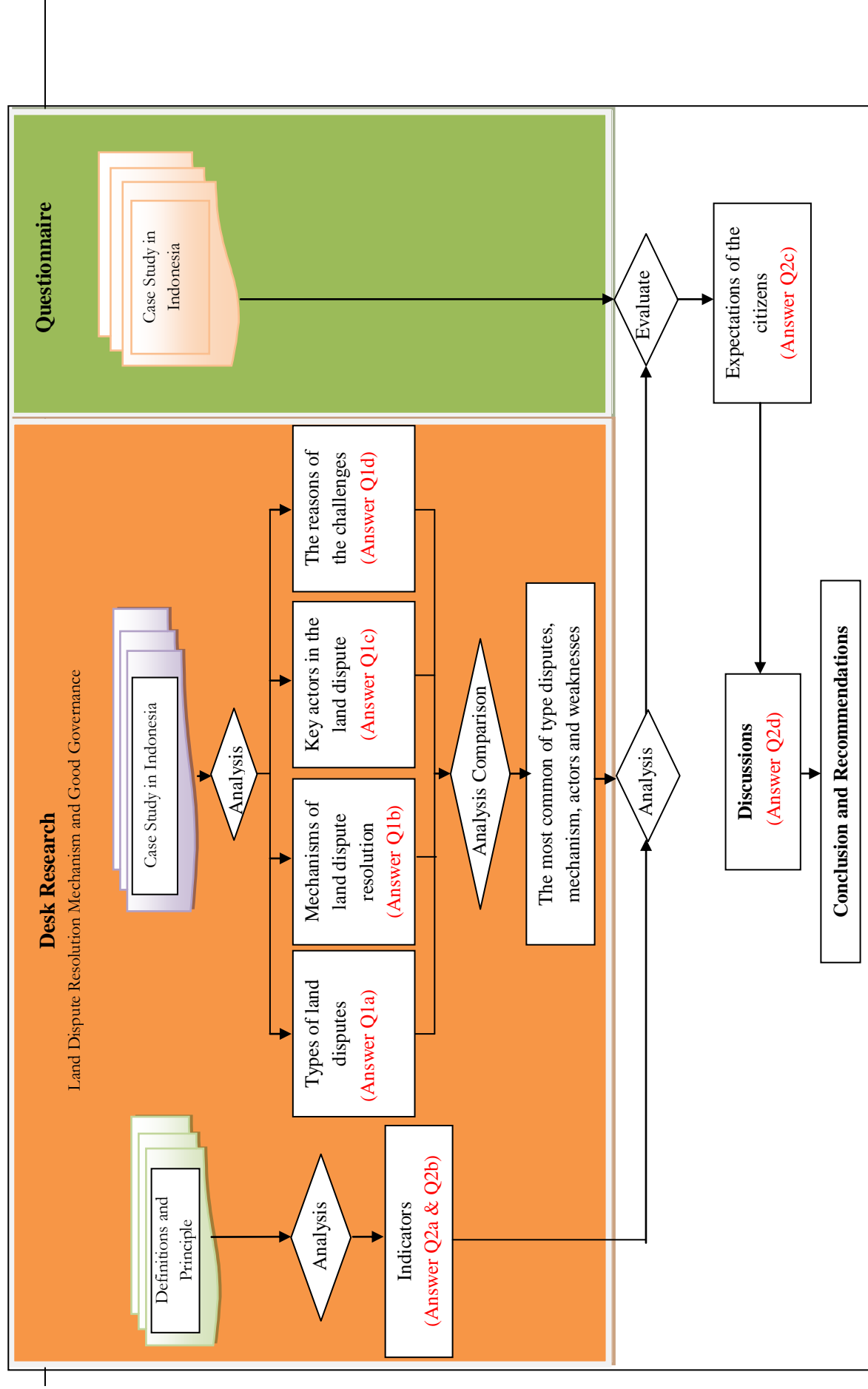


Figure 1.2: Research Methodology

1.7 Thesis Structure

Chapter 1: Introduction

This chapter captures the fundamental footings of this research. It presents the Introduction, Research problem, Justification, Research objectives, Research questions, Research design, Conceptual framework, and Methodology of the research.

Chapter 2: Land Disputes Resolution Mechanisms and Good Governance

This chapter brings the theoretical orientation of this research thesis and makes the proper extraction due to the purpose of reference in the main work. The core areas of the literature review are land disputes, types of land disputes, land dispute resolution mechanism, the key actors, the challenges in the land dispute resolution, the concept of good governance principles and its application in the land dispute resolution mechanism.

Chapter 3: Indicators and Framework of Land Dispute Resolution through Good Governance Principles

This chapter develops a framework that is applicable for the assessment of the land dispute resolution mechanism based on the principle of good governance. Thus reviewing the appropriate good governance indicators then select the appropriate indicators.

Chapter 4: Case Study and Data Collection in Indonesia

This chapter describes the land dispute resolution mechanisms in Badan Pertanahan Nasional (BPN, National Land Agency). The current land dispute resolution mechanism in Indonesia, the general overview about BPN with emphasis on the land dispute resolution and management, the legal framework and the existing land dispute resolution mechanism are discussed. Furthermore, this chapter also describes the case study area and data collection methodology.

Chapter 5: Results and Analysis

This chapter provides analyses about the results of mail survey about the land dispute resolution mechanism in Indonesia that are presented. Each indicator are explained through each dimension of the good governance principle then finally concluded with the summary.

Chapter 6: Discussion

This Chapter discuss the results as captured from the previous chapter and compare the findings arrived to the scientific literature.

Chapter 7: Conclusion and Recommendation

This chapter contains the conclusions of the main findings that have been revealed. These recommendations are given for BPN Organization and further research work in the subject area.

2. CONCEPTS OF LAND DISPUTES RESOLUTIONS MECHANISMS AND GOOD GOVERNANCE

2.1. Introduction

In alignment with the objective of the research, definitions and general concepts on land dispute resolution mechanisms are identified in this research. Types of land disputes, mechanisms of land dispute, the key actors and the challenges in the land dispute resolution mechanism are discussed and presented in section 2.2, 2.3, 2.4, and 2.5. Moreover, the concept and definition about the good governance principles and also the approach in addressing the challenges of the land dispute resolution mechanism furthermore are presented in the next sections. Both land dispute resolution mechanism and good governance principles are structured due to build the conceptual framework for this research.

2.2. Definitions of Land Dispute and Land Dispute Resolution Mechanism

2.2.1. Land Dispute

Land is considered as one of the most important economic assets, but it also has political, social and cultural dimensions. One of the main challenges in the land administration institutions nowadays is facing the growth of land disputes which are an inherent and legitimate aspect of the daily life. Land disputes can occur at all levels between relatives and neighbours concerning the field boundaries, inheritance and rights; between community which the claims are over boundaries and the respective of land rights; between pastoralists and farmers; between states and indigenous people and between companies and local populations (Cotula, et al., 2004; Odgaard, 2006).

Land dispute is a form of conflicting claims on land ownership, land use rights, land laws and the combination of them (Kalande, 2008). Therefore securing land rights is a big issue which is related to the cause of land dispute. There is a similar definition, according to FAO (2002b), land dispute is when different parties contest the same interests in the same parcel (e.g., when two parties independently claim rights to exclusive use of a parcel of agriculture land). Furthermore, land dispute can also be defined as a situation which involves competing claims to the ownership or use of the same piece of land, whether claims are grounded in formally recognized rights or in customary use (USAID, 2005). Then there is a more complete definition of land dispute, UN-HABITAT (2009) states that land dispute is competing claims over land between the state and indigenous communities over land seen as their traditional domain or land grabbing by the elites or land invasion by the poor. Land dispute involves three main dimensions which are: land administration, land tenure and ownership, and land boundaries (Fonmanu, et al., 2003).

Wehrmann (2008) definition concerning land conflict, is “a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land”. The main issue that often arises are triggered due to the disagreement of the boundaries, rights and obligations, compensation, and in which way the land should be divided and reallocated (Rognes & Sky, 2003). Their argument is that between the parties fail in having an agreement concerning the rights on the land which comes to a dispute. In this study conflict and dispute are used interchangeably.

The definition of land dispute under the Regulation Number 1 of 1999 The State Minister for Agrarian Affairs/Head of National Land Agency of the Republic of Indonesia regarding Procedure of Land Dispute Resolution, article 1 states that: “Land dispute is a difference of opinion with regards to the authentication of land rights; Grant of land rights; and the registration of land rights including conveyance

and publication of rights to title; between interested parties and between interested parties with institutions in the National land agency environment.”

2.2.2. Land Dispute Resolution Mechanism

According to Study Circle Program NDI (2003) dispute resolution is defined as a process that implies the causes of the disputes as well as the resolution of such disputes. One of the most essential issue of land is dealing with the disputes that come over ‘who’ has the rights, ‘what’ are the rights and ‘how’ are the rights to the land which are managed and enforced (Appendini, 2002). In solving land disputes, there are various land dispute resolution mechanisms among countries but also with similarities. The land disputes can be solved through formal institution and informal institution. In an effective formal dispute resolution, the procedures should differ in some way from the informal dispute resolution (Garcia, 1991). Furthermore he argued that the parameters of the procedures that differ from the informal dispute resolution include the roles of the participants, the authority, normative expectations, the procedures followed and the interactional organization.

In the formal government structures, the access to the justice system is difficult and at the lower ends is poorly equipped in delivering and enforcing justice (Rugadya, 2009). This can be shown in the high average cost of access and their more positive effect on the wealth household than the poor (Buscaglia & Stephan, 2005). Moreover, based on experience, most types of land disputes are best managed outside the court. North (1990) also gives a view that informal institutions are slow-moving, while “ formal rules may change overnight as a result of political or judicial decisions, informal constraints embodied in customs, traditions, and codes of conduct are much more impervious to deliberative policies”. In this research, the land dispute resolution mechanism will look into the formal institution in the perspective of good governance.

The concept of land dispute resolution mechanism can be looked into a conceptual map of land dispute management. Ramírez (2002) states that a conceptual map in the land conflict management is used for helping in signalling which concepts and categories that are common. Moreover Ramírez explained that with the conceptual maps, it gives the readers to locate a specific case study in the map by making the linkages across the categories. Then the conceptual map therefore is a system thinking tool that encourages the users in appreciating the dynamics across the major categories of the concepts.

According to the opinions that Ramírez has given, he provided a conceptual map in the land conflict management, emphasizing the land dispute and is shown in figure 3 below. Moreover Ramírez explained that the conceptual map was derived from a number of concepts and categories in the existing models in the literature. The reason was because there was no single map or diagram which specifically addresses the issue of land tenure and conflict management and resolution. It also shows that the process looks into the general categories that describes the nature of dispute resolution and the substance gives the explanation of a gradient of concepts that starts from the generic (top) categories and move into the more situation-specific (middle to bottom).

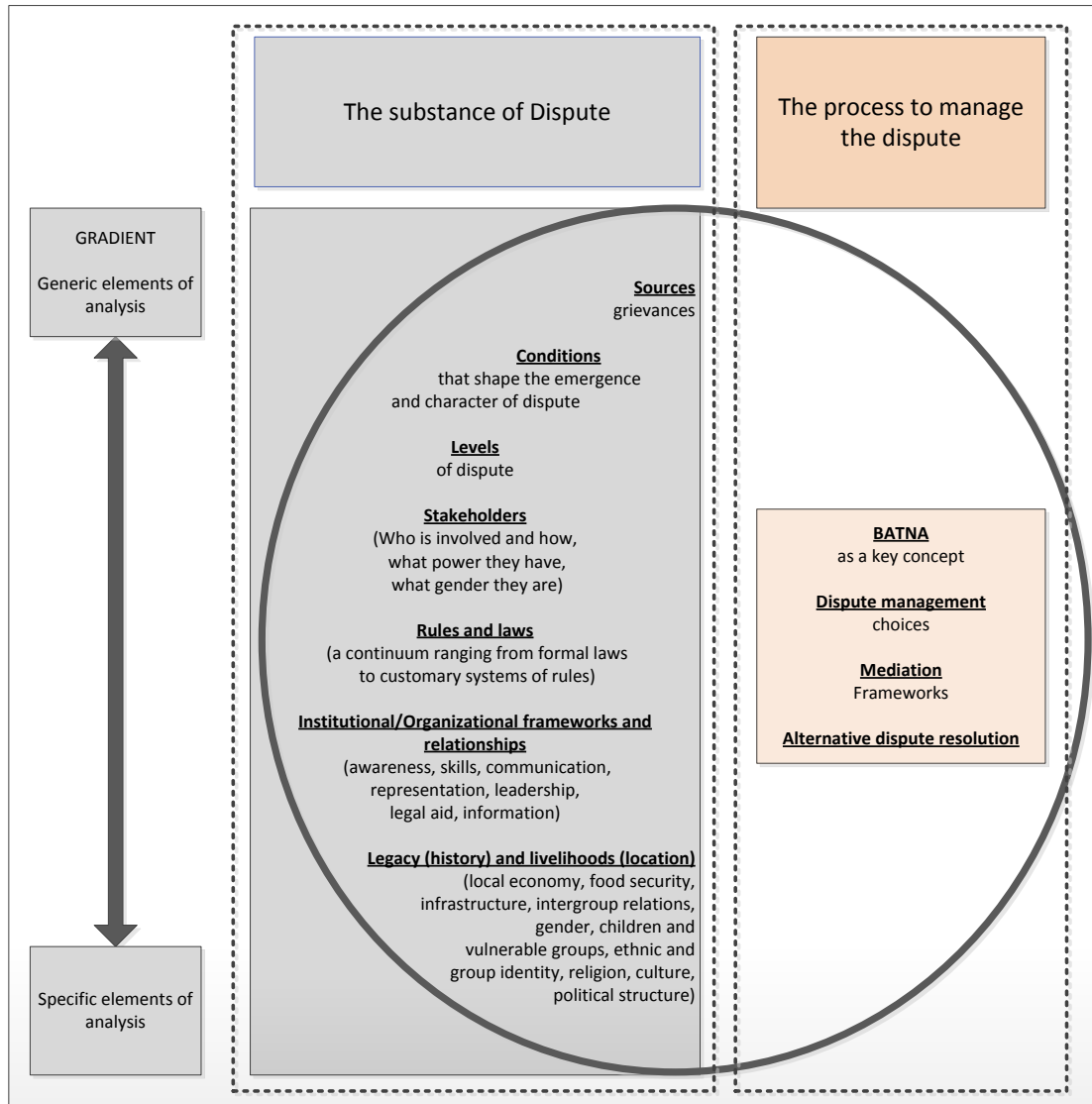


Figure 2.1: A conceptual map of dispute management (Adapted : Ramírez, 2002))

Like mentioned above, this concept is divided into two main parts; the first part is the substance of the conflict which looks into how the components interact in a system and the ongoing manner. Under this category, the concept contains, namely: the sources of grievances, the conditions and the levels of conflict, the stakeholders, the law and regulation, the institutional/organizational frameworks and the history also the location. The second category is the process, which the components interact in a system and the ongoing manner which is underlying the influence of the power and this power leads the differences among the stakeholders. Under this category, the concept contains, namely: the mediation frameworks, choices of approaches of conflict management, BATNA (Best Alternative to Negotiated Action) as a key concept and the alternative dispute resolution. This key concept, BATNA, gives a notion that the stakeholders have alternatives in choosing the best option of negotiation.

According to Spector (1997) dispute resolution mechanism is a way to achieve an agreement between the disputing parties by influencing opposing preference on the disagreeable issues. Moreover Dispute resolution mechanism can be taken on most stages in the strategic management process in order to facilitate the participation, to impede the emergence of conflicts or managing to reduce the impact of the conflicts. The society has evolved various mechanisms for resolving land disputes with varying of sanctions and levels of force. Barzel (2000) states that Individuals spend the resources in order to resolve their disputes and in the process they delineate more clearly on their rights. There are different types of

land dispute resolution mechanisms in solving the different types of land disputes, such as courts, tribunal, informal systems, alternative dispute resolution processes such as mediation and arbitration (Goodale & Sky, 2000; Rugadya, et al., 2006). In solving their disputes, when their disputes are not solved by informal means, the people look into the institutional dispute resolution.

The research is concern with land dispute and land dispute resolution from the good governance perspective. The definition of land dispute, land dispute resolution most of them does not fulfil the good governance point of view. The definition that I purpose which relates with land ownership and relates with the good governance perspective is the definition by Wehrmann : “a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land” and also the definition based on the Regulation Number 1 of 1999 The State Minister for Agrarian Affairs/Head of National Land Agency of the Republic of Indonesia: “Land dispute is a difference of opinion with regard to the authentication of land rights; Grant of land rights; and the registration of land rights including conveyance and publication of rights to title; between interested parties and between interested parties with institutions in the National land agency environment.”

2.3. Types of Land Dispute and Land Dispute Resolution Mechanism

2.3.1. Types of Land Dispute and causes

Land disputes occur in many countries with different causes and types. Ho (2003), states that land disputes in China occur with fundamental problems from the heritage of the past such as the incoherency of the legal framework and the lack of law, the national land survey absence and the state's failure in recognizing customary claims over the control and ownership of land. Kigula (1993) defines types of land disputes in Uganda are mostly into two categories which are the subject vs. subject and the family member vs. family member. According to Merlet (2007), land dispute are differentiated into 3 related types, which are unequal in land distribution, insecure land rights and access to land, claims made by the social and ethnic group. These disputes could be caused of the changed of environment which the capacities in response and confinement both formal and informal are weakened (Rugadya, 2009).

There are many aspects that influence the arising of different types of land disputes. According to Mahaphonh, et al.,(2007), the various types of land disputes are resulted due to the establishment of state projects, the increasing prevalence of privately owned land as a consequence of socio-economic changes, the acceleration of the acquisition of land for various types of concessions, the initiation of land titling, and the government policies. They also added that the land disputes can be categorized into the following types:

- i. Titled land: land disputes related with the land titling activity in both urban and rural areas.
- ii. State managed land: there are two sub-categories, which are land disputes that arise from expatriate returning to claim the land managed by the state and the land disputes which arise from individuals or officials appropriating and using state land illegally.
- iii. State project land: land disputes which arise from the construction of state projects.
- iv. Concession land: land disputes which arise from local and foreign investment.
- v. Private lands: land disputes which arise from private land use, such as sales, loans, mortgages and ownership also land boundaries.
- vi. Village lands: land disputes which arise from village farming land, village forest land and village housing land.
- vii. Inheritance: all kinds of inheritance disputes.

Wehrmann (2008) and Rugadya (2009) argues that there are four general categories of land disputes are differentiated into the following types:

- i. Disputes occurring on all types of property: The examples of this type of land disputes are: boundary disputes, inheritance disputes, ownership disputes due to the legal pluralism, ownership disputes due to the lack of land registration, ownership disputes between the state and private owners, multiple sales/allocations of lands, limited access to land due to the discrimination by the custom or practice and law, disputes over the payment for using/buying land, disputes over the value of land, etc.
- ii. Specific disputes over private property: The examples of this type of land disputes are: expropriation by the state without compensation, sales of someone else's private property, leasing/renting of someone else's private property, disputes due to land/agrarian reforms, illegitimate expropriations by bank, illegal uses of private land, intra-family disputes, especially in case of polygamy, etc.
- iii. Specific disputes over common and collective property: The examples of this type of land disputes are: competing uses/rights on common and collective land, illegal uses of common property, unauthorized sales of common or collectively owned property and disputes over the distribution of revenue from customary land.
- iv. Specific disputes over state property: The examples of this type of land disputes are: illegal uses of state land, illegal sales of state land, competing rights on state property, illegal leases of state land (including concession land, forest mines), land grabbing by high-ranking public officials, disputes over revenues from state land which are through lease, sale, or transformation of its use and the improper land privatization (such as the unfair of titling or land distribution). Moreover he explains the most common cited types of land disputes are: boundary discrepancies, land ownership disputes, inheritance and succession disputes, and illegal land occupation.

Here is a case from Norway (Goodale & Sky, 2000), where indicates that the land disputes over boundaries is one of the most highest number of land disputes type there. Moreover they argued that despite attempts to use special topographical features by officials, both the result of the land boundary description and the use of boundary markers that accompanies it are never perfect proved in preventing validly different interpretations by parties who later have the land disputes.

Wehrmann (2008) further points that the lack functional of institutions merely facilitate the land dispute but yet the behaviour of the interest individuals itself such as nepotism and corruption supports the dysfunctional of the institution. Moreover, Rugadya (2009), explains that one of the major reasons of land disputes is looking into the land tenure management and administration specifically regards to the boundaries, land ownership and its transmission, trespass, occupation, fraudulent transactions and successions wranglers. Then she emphasize that the land dispute occurred due to the changed of the environment in which the capacities of response and confinement both in formally and informally is weakened or dysfunctional.

Land administration disputes arise between customary land owners and the government and may reflect a customary anxiety concerning the legitimacy of the formal institutions, the transfer of land which often produces no-written records or other proofs which are recognized as such by the formal institutions, the lack of coordination between administrative bodies then also the expiration of statutory lease agreements (Loode, et al., 2010). Land dispute also occur in the cause of the unclear ownership between the society and the government which the state does not recognize the ownership (Abu-Ras, 2006). This leads to the pre-existing land government institutions in governing the land relations (Deininger & Castagnini, 2006). Therefore the function of the government is essential in leading to the land dispute resolution and this leads to the land dispute resolution as the machinery for the settlement of land disputes and securing the land rights.

The indication of a weak governance leads to disputes, which gives the opportunities for the powerful in claiming the land of the others, including the state land (FAO, 2007). This shows that there is a condition of an unsustainable of either practices, policy, institutional weaknesses or the combine of the three of

them. In resolving a land dispute it may have differences in between the types of land disputes and the ways they are resolved.

From above review it can be observed that the land dispute are erupted when two or more individuals claim the same parcel. Moreover the types of land disputes are determined by the tenure type, the increasing competition of land access that creates the types of land disputes and the common cause are due to the weaknesses and gaps in law and policy on land, and the non-compliance of the government. Though there are many types of land disputes, the most common type of land disputes are boundaries and ownership.

2.3.2. Types of Land Dispute Resolution Mechanism

There are various and different mechanisms in the land dispute resolution. Generally, people look into the institutional dispute resolution when their disputes are not resolved through the informal means. The approach that the people look into can be differentiated into the consensual approaches which includes the mediation, conciliation, consultation, etc and the non-consensual approach, which is through the court (Wehrmann, 2008). The essential part of dispute resolution mechanism is the capability of serving the people in redressing their conflicts, which in this study are the land disputes.

The land dispute resolution mechanisms can be described as follow:

a) Court

Jurisdiction over land disputes most of the time falls into the general courts which have been established in many countries and which are also used due to determine the other civil and criminal cases (Loode, et al., 2010). Mahaphonh, et al., (2007) are of the view that the normal way of solving the land disputes through the original jurisdiction are authorized through the local, village courts and the appeals are heard by the superior courts such as the Provincial Court, Supreme Court, High Court, Court of Appeal or Privy Council. Moreover they explained that the Constitution guarantees the rule of law, the independence of the courts and enforcements by the executive authorities which the decision must be respected by the people. In the Philippines, the court system is used as a dispute resolution mechanism where there are four levels of courts wherein judicial power is vested: first level is courts which have limited jurisdiction, second level consists of the Regional Trial Courts and the Shari'ah District Court, then there is the appellate court and the fourth one is the Supreme court, which is the only constitutional court (Disini, et al., 2002).

In the other hand in many places, the limitation of court capacity in the process of land claims efficiently and transparently is a serious constraint. For example in Ghana (Wily, 2003), there is a backlog of 26.000 land cases currently before the courts and even some of the cases have been standing for several decades and only few of them with any prospect of early resolution.

According to Rugadya (2009), there are two parallel legal and judicial systems concerning to the settlement of land issues, which are the customary tenure and the state administration. Furthermore she argued that it is also common for land dispute resolution mechanism to be undertaken by Land Affair Agency (government).

Experiences in many countries have shown that many types of land disputes are best managed outside the court or the land affairs. The limited court capacity in processing the land claims efficiently and transparently is a serious issue in many places (Rugadya, 2009). According to Wily (2003), the high cost of formal dispute resolution supports to continue into a informal dispute resolution. Plainly, that the public policy strongly considers the availability of the alternative forms of land dispute resolution regarding to the potential of effectiveness, efficiency and party satisfaction (Reuben, 1997). Therefore alternative dispute resolution processes, such as mediation and arbitration may be useful.

b) ADR (Alternative Dispute Resolution Mechanisms)

Alternative Dispute Resolution Mechanisms (ADRM) or also referred as Alternative Dispute Resolution Systems (ADRS) has been used in many countries, even in Asia countries this way of dispute resolution has increased (Pryles, 2006). Furthermore, in many developing countries such as: Argentina, Bangladesh, Bolivia, Colombia, Ecuador, the Philippines, South Africa, Sri Lanka, Ukraine and Uruguay the ADRM has been engaged (Scott Brown, et al., 1998). This way of mechanism can be considered to help people having disputes to resolve their legal problems before approaching the court. ADRM is often described as a wide variety of dispute resolution mechanisms that are alternative of the court process. The main purpose of ADRM is not addressing the dispute or the difference, but looking into the mindset of the parties to have a meeting point. More positively, rather than the time consuming, high cost, complexity and interminable process in the court system; ADRM offers an officious, faster and more accessible to the rural and urban poor due to the lack of knowledge or the awareness of the court system.

According to Mnookin (1998), Alternative dispute resolution (ADR) is defined as a set of techniques and also practices which purpose is allowing the legal disputes resolution outside the court. Furthermore, the potential benefit of this mechanism is that the ADR processes could be cheaper in the cost and also faster than the ordinary judicial proceedings. The process of ADR as an alternative in the dispute resolution can be categorized into two senses, which are caused by the parties themselves to choose to avoid the litigation process or caused due to the legal rules require the court to send the dispute elsewhere, such as a binding arbitration (Lieberman & Henry, 1986).

The land dispute resolution mechanism could involve the negotiation, mediation and arbitration (Thorson, 2009). Furthermore, the form of ADRM is distinguish into binding and non-binding, where in the non-binding process it depends on the willingness of the parties to reach a voluntary consensus and the binding process, such as in the binding arbitration, produces a third party decision which the disputants must obey even though they disagree the decision (Scott Brown, et al., 1998).

Among the numbers of different processes of the alternative dispute resolution, this study is looking more into the mediation method. When accessing the alternative dispute resolution mechanism, one of the main tasks is focusing on the effectiveness of providing a platform that is cost effective, transparent and accountable decision-making also for achieving an acceptable decision (Loode, et al., 2010). The process of improving the land dispute resolution is an ensuring the institutions that have the responsibility for the interpretation and application regarding to the law and regulation which are able in serving the people who cannot find any other way in redressing their grievances and solving their conflicts without differences (Buscaglia & Stephan, 2005).

c) The Mechanism of Negotiation

Negotiation is often the first critical step in the process of a dispute resolution in an effort to avoid the prospect of litigation and considered as an informal process. According to Mnookin (1998), Negotiation is described as a dispute resolution method that does not require the participation of a neutral third-party with decisional authority and without defined procedures governing the presentation of the arguments. Furthermore, the goal of negotiation is a mutually acceptable resolution where the parties can organize the resolution according to their needs and interests. Therefore negotiation is considered as the most simple and least interventionist dispute resolution process in terms of the disputing parties communicate due to fulfil their needs and goals (Loode, et al., 2010).

In the process of negotiation, if there is not an agreement between parties, then they must continue to another method of dispute resolution. Thus, the next method, usually will involve a neutral third party to be involved in the dispute resolution process. Therefore in a negotiation process there must have a balance power between parties.

d) The Mechanism of Mediation

Reuben (1997) defined mediation as a process where the third party is neutral and called as 'mediator', assists the parties in resolving their own dispute. This process looks into negotiating an agreement and gives the opportunities to listen and understand each other's position to promote reconciliation without handing decision-making authority over to a third party as in the claim courts (Garcia, 1991).

Mediation is defined as a mechanism that encompasses various of activities which are conducted through the intervention of the trusted and mostly the neutral third parties who facilitates a process in which the principal protagonists finds a way in resolving their differences (Loode, et al., 2010; Spector, 1997). Spector (1997), states that the third parties can be very useful due to the stimulants of the land dispute resolution mechanism, especially when the parties involved are not resulting an agreement in their differences. Moreover he explained that the third parties can be government officials who in this concern carry their authorization into a mediation effort or even they can be unofficial mediators which are the non-governmental.

According to Bingham, et al.,(2005), the state environmental agencies may have the power in the context of using mediation for particular land-use disputes. Here is a case from East Timor (Fitzpatrick, 2008), where from the 972 land disputes cases that were brought to the Land and Property Directorate (government) between December 2000 and January 2006, 314 were having mediation as the land dispute resolution and the land dispute resolution through courts are very poor. Moreover, the mediation there is as part of the land administration not in the judicial administration and the mediators itself are part of the Land and Property Directorate.

e) Neutral Fact Finding

Williams (1995) stated that Neutral Fact Finding involves a neutral third party who determines a disputed fact but does not directly participate in the negotiation process. Furthermore this process is usually used when significant factual issues are part of a larger dispute and the parties may negotiate to be bound or not. For the third party neutral, can be an expert or a representative assigned by the parties to work together. One of the issues of this method as mentioned, that the findings and recommendations are not binding but are incorporated into the negotiations between the parties and their counsel. Similar to that, Reuben (1997) defines that Fact-finding is a process where the parties (which can include the governmental bodies) have an agreement to appoint a mutually acceptable fact-finder and to determine the factual findings in a neutral way. It also involves a conduction of informal hearing, collects the evidence, and issues a decision on that evidence which the parties will use as the basis for further negotiation (Bingham, et al., 2005). More positively as a part of the arbitration or mediation, this method can remove some of the distraction of inconsequential facts and narrow the issues as to genuine factual disputes.

f) The Mechanism of Arbitration

According to Broadbent (2009), Arbitrations is conducted similarly to litigation, but there are differences, such as there are statement of case, disclosure of documents, witness and expert statements. Arbitration can be defined as a process where the parties involved agree to settle the dispute with an independent third party and also be bound by the decision made by the third party (Powell-Smith, et al., 1998). Furthermore the main elements in the arbitration process are: the existence of the dispute between the parties, an agreement between the parties to continue the resolution through arbitration, and the parties involved agree to be bound in the decision that is resulted from the process. This result may proceed to the court. In arbitration it involves the neutral third party like mentioned before, which is called arbitrator and has the expertise of the subject matter of the dispute, and furthermore this person will be responsible in the decision making of the dispute (Mnookin, 1998).

In the Arbitration process, involves a more court system than the other dispute resolution process and also as a contractual mechanism in solving disputes, the parties involved are subject to the terms of the contract that they have agreed. The qualified arbitrator that has been chosen by the parties will hear both

sides of the parties before giving out the resolution. The main difference between the arbitration process and litigation is in the arbitration process the parties can appoint whoever they view as the appropriate one and in the litigation process or in the court, the judge is the one assigned to the case of the parties (Broadbent, 2009).

The rules of evidence and procedures are more relaxed than the courts rules. In addition, Arbitration can also be ordered by a court or compelled by a statute (Powell-Smith, et al., 1998). In those cases, the arbitrator is appointed by a judge or a government official. But still an arbitrator has a limited jurisdiction which is determined by the arbitration agreement or statute.

ADRM gives a range of mechanisms in order to resolve disputes can be used to resolve cases that are excessively difficult or very costly to be solved in the court system. Furthermore according to Torell (1994) points out some advantages of ADRM in resolving land disputes which include the following:

Getting Better Decisions- In Alternative Dispute Resolution the parties that are involved are the ones to decide for their own interest which will be formed in an agreement that satisfies the real interest of the parties. This mechanism is not found through the court system, where the judge has the authority of the whole decision.

Creating a better climate for resolution- Due to the process of this mechanism is through the voluntary of the parties involved to generate a more acceptable agreement therefore the environment of better communications and information sharing is often conducted.

Expediting procedures- In order to achieve a sustainable decision, between the parties must have a trust to each other and also committed to the decision through the negotiation process. Thus, if the process between the parties does not go well, then the total time invested in the process dispute resolution is lengthened and the probability of implementing the decisions is reduced.

Reducing Costs- In the Alternative dispute resolution process there will be a third party, but it is not always necessary. Furthermore, the costs of this mechanism are much lower than the expenses in the court and with lawyers.

Enhancing Flexibility- The parties involved in this mechanism to resolve the dispute are the ones deciding how they approach to achieve the agreement between them. In addition, they may agree and also may not. This adds the substance of the flexibility in the process.

Providing more control over the outcome- The decision making are retained by the authorities involved, therefore they are the ones who have the decision, unlike in the court where the judge does.

Encouraging control by people who know the organization's need best- The Alternative Dispute resolution looks into the best people who are able to access the desire decision and giving great and creative solutions.

Increasing the probability that decisions will hold up- The process of achieving the agreement in resolving the dispute are more likely to hold up when the parties agree to have a mutual agreement.

Despite the above advantages, there in the alternative dispute resolution mechanism. Lancaster et al in 1990 pointed out the fact that the alternative dispute resolution has number of weaknesses in the land dispute resolution (Torell, 1994):

First, lack of authority in settling disputes in existing planning approaches- In the existing land planning activities typically promote positional bargaining among the opposing interests. Furthermore, it is often that agency personnel and interest group representatives that are involved in many planning process does not have the authority to settle the disputes. The agreement can only be achieved when there is an all agreement from the other side.

Second, lack of trust- the historical experiences and perception of the society influences the willingness to trust the land planning authority.

Third, lack of understanding concerning the alternative dispute resolution- Many people are still lack of knowledge concerning a dispute settlement through alternative dispute resolution. Therefore the fear of unknown can influence in implementing the alternative dispute resolution mechanism.

Fourth, giving up the ability in reaching an agreement- In some organizations there are perceptions that dispute settlement cannot be achieved out of the court. Furthermore there is a notion that the opposition can make a value through the litigation system.

g) Religious Dispute Resolution Mechanism

Each community resolves their disputes with a mechanism. Many societies reference to their religion in order to resolve a dispute. According to van Rossum (2008), religious courts is only tolerated and accepted if they respect the boundaries set by state law. In many rural and poor urban areas, people do not have the access to the state-administered justice and other formal institutions or even they choose not to use them. Instead they will rely on religious law in order to provide justice and resolve their disputes.

The Religious institutions includes various leaders, such as at the local level the Priest, the Buddhist monk, the leader (Imam) or Mosque council, the Rabbi; or, at a higher level, the Provincial Bishop. In most Muslim countries, land dispute resolution are based on the *Shari'a* as the Civil Code, which often conducted in the local level (Wehrmann, 2008). Furthermore, in the *Shari'a*, the first approach of the dispute resolution is through mediation, with the leading of the neighbours and elders and also the mosque leader.

The view of Religious Dispute Resolution Mechanism is that even though it is well respected but yet there is still an overlap authority when it meets the litigation system and for that the enforceability and lack of authority of decisions can be considered as the weakness of this mechanism.

h) Customary Dispute Resolution Mechanism

The Customary Dispute Resolution Mechanism is consider as a form of arbitration with a strong conciliatory character which makes it different from the litigation process and the alternative dispute resolution process (Wehrmann, 2008). Bailliet & i Oslo (2004) notifies that the Customary Dispute Resolution in the land disputes are characterized as the search for consensus based on the exploration of social norms regarding the proper conduct and communal values. This mechanism is rooted in the culture and history of that particular community and is in one way and another unique to each community. In addition, it also has a binding third party decision as the result and also the aim to achieve solution in harmony.

The main work of the customary institutions is at village and neighbourhood levels and may include: the Customary Chief; the Land Chief and the Council of Elders which derived from the agreements of the parties. The approach of land dispute resolution through the Customary Mechanism is seen credible looking into three aspects, namely: the procedure, the integrity of the mediators, and the decision that binds all of the parties of the dispute (Bacaron, 2009). Furthermore in this mechanism, the time factor are different in every case because the essential aim is not only the solution but in achieving a peace building process.

Despite the positive approach of this mechanism also the ability of performing a number of functions within the transitional communities, according to Quinn (2004), that the approach through customary mechanism cannot be uniformly accepted by all of the citizens in the country and also could tend to strip away from such institutions, since their “ substantive and procedural rules are imprecise, unwritten, democratic, flexible, *ad hoc*, and pluralistic”. Furthermore, the system has often seen to have lack of legal legitimacy, authority and enforceability and the accountability of the traditional authorities may be weak.

2.4. Key actors in Land Dispute Resolution

Many studies concerning the land dispute resolution are in the terms of 'formal' and 'informal'. In this study, the focuses concerning the actors are concentrating to the formal actors. In order to understand more about the institution that handles the land dispute resolution, it is necessary to know the different actors that are involved in the land dispute resolution mechanism. In resolving the land disputes, the actors involved in a formal institution are differentiated into the internal and external actors, here is a case in Mexico (Appendini, 2002), where the land dispute settlement are conducted by the external actors. Moreover, the external actors are from different institutions, such as *visatador* that is part of the agrarian authorities then there are also local leaders, other organizations and NGO's involved. In Cambodia, The NGO Forum on Cambodia (2010) states that land dispute has been an interest to all stakeholders such as the government authorities, NGO's, Development partners and also the civil society as the whole.

Furthermore, besides the government and the non-government party that are involved in the land dispute resolution, it is also essential to have the actors from the customary Institutions or the Informal Institution. According to Chirayath, et al (2006), the informal institution concerns the dispute resolution mechanisms in remote villages and communities therefore the actors involved such as the customary chief or land chief is essential in giving the information of the land history and also the settlement that has already been approached before proceeding to the formal institution.

2.5. The Challenges of Land Dispute Resolution Mechanisms

The access of the vulnerable groups in the land dispute resolution mechanism also in obtaining the information concerns various barriers, such as the ignorance of the law, fear of community mistreatment and also the perception of bias (Rural Development Institute, 2008). Moreover according Daudelin (2003), the critical issue of the land dispute resolution mechanism is the complexity and the expensive cost of court proceedings, especially to the poor people.

Furthermore, the weakness of the land dispute resolution mechanism is different in each mechanism. From all the discussion above concerning various mechanism in the land dispute resolution mechanism, such as through court system always refers to the length of the process and also the high cost; then the Alternative Dispute Resolution Mechanism which the success considers the mutual agreement between the parties and if not will seek into the litigation process; the Religious Dispute Resolution Mechanism and Customary Dispute Resolution Mechanism which both has a limitation in legal legitimacy, authority and enforceability.

In addition the one of the main concern in the weaknesses of the land dispute resolution mechanism is achieving a mechanism that is effective (Mahaphonh, et al., 2007). This also looks into the institution itself and the behaviour of the actors involved, such as mentioned by Villiers & Tuladhar (2010), that the land resettlement may improve through improving the transparency which is shown through access to information, public participation and institutional reform, while in this research is looking into the improvement of the land dispute resolution mechanism.

2.6. Good Governance Principles

Governance is an important part of the land dispute resolution. According to UN Habitat, tenure issues cannot be separated from the broader issues of governance (Palmer, 2007). Furthermore, UN Habitat governance campaign gives a definition of good governance as characterized by equity, efficiency, transparency and accountability, etc. Therefore before looking into the good governance principals, the concept of governance is explained below:

2.6.1. Governance

Governance in the context of land administration, governance is concern in the way, which the society is managed, and how the competing of priorities and interests of different groups are reconciled, where the processes by which the citizens participate in the decision-making, how the government is accountable to its citizens and how the society observes the rule and laws (FAO, 2007). This includes the formal institution of the government such as land agencies, courts and ministries which are responsible for land as well as the informal agents. Moreover, governance is defined as a “neutral concept which comprising the complex mechanisms, processes and institutions through which the citizen and the groups which enunciates their interests, exercise their legal rights and obligations, and mediate their differences (David Palmer, et al., 2009). The term governance is much broader process than government, which is a subset of governance and may involve actor state and non-state actor (Toatu, 2004). Although both government and governance share goal-oriented activities, government occurs when the legal and formal derives the authority and executing the policy power also implementing the activities; while governance looks into the creation and the implementation due to the activities that are backed by the shared goals of the organizations and the citizens with or without the authority and policy power (Bingham, et al., 2005).

According to Anthony, et al.,(2010), the discourse of governance and the accent is influenced into the context which it is applied to, such as those who looks government into the context of how the state serves its citizen and how the officials and public agencies are acquired and exercise the power and the authority in determining the public policy and the public service. Reuben (1997), further points that the citizens can and must play an important role in public policy and decision making. He also emphasizes that the citizens have the right to decide in what is important to them and how they can achieve the best in their objectives. Here it is shown that how the people articulate their interests into the institutions that are acquired and have the power in exercising it.

As explained by the Dutch governance scholar Kooiman, it presents another opinion on how governance is defined, which is the totally of interactions which the public and private actors are enrolling in order to solve societal issues, attending the institutions as contexts of the governing interactions and also establishing a normative foundation for all the activities involved (Hassall, 2005). Governance approaches therefore place emphasis on the relation to the institutions and structures which are used to exercise the power yet also that all relevant public decision-making process must be considered.

Kamarck & Nye (2002) states that governance have possible dimensions of the place of collectives activities, that why it shows that the issue could be handled not always centralized but also decentralized and the relation could also involve outside the public sector. This furthermore is shown in the Figure 2.2:

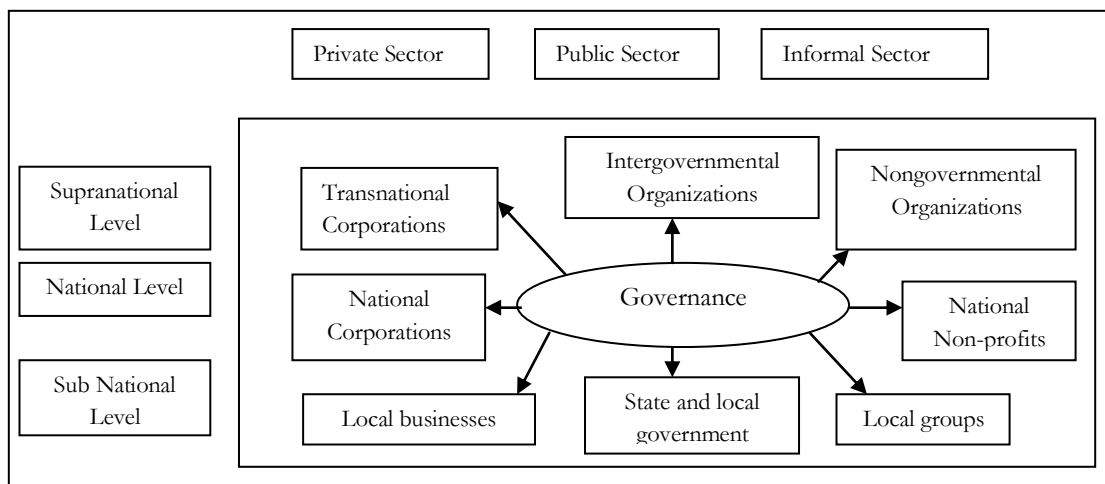


Figure 2.2: Governance Model (Adopted from Kamarck & Nye, 2002)

Based on the Figure 2.2 above, it is shown in understanding governance; there must be an understanding about the role of the humankind; such as the citizens, stakeholders, and public administrators who are the makers and also the users.

2.6.2. Good Governance Principles

Most governments nowadays present good governance as an important and primary objective due to the reform of their country. There are many ways of looking into the principle of Good governance, which are influenced through also various backgrounds such as ideological political social and also economic backgrounds. Wohlmuth (1998) looked into the good governance among others as an normative concept which involves the participation, accountability, legitimacy and transparency. There is another view about good governance, where good governance is seen through the control of government, political competence, and the relation between state and citizens, and involves the participation, government effectiveness, transparent administration, credibility, rule of law, predictability of courts and respect of the institutions (Wagener, 2004).

According to Parigi, et al., (2004) good governance is defined as “a situation in which the mechanisms, processes and instruments for decision making and action facilitate greater civic engagement through a participatory approach. Moreover good governance addresses the allocation and the management of the resources in order to respond the collective problems or challenges and it is characterized by the principles, which are participation, transparency, accountability, rule of law, equity, effectiveness, and the strategic vision (Cheema & Maguire, 2002). They also stated that this leads to transparent and accountable institutions and ensures the civil society in playing an active role with the concern of setting priorities and the needs of the vulnerable people. Similar definition which could be applied in the land dispute resolution, where governance is the ability of the government in managing, through the civil service, parliamentary functions and the electoral and other participatory processes, the affairs of a nation in manners of transparency, accountability, responsibility and effective (Kakonge, 1998).

Moreover, Good Governance therefore have a purpose in the land administration in protecting the rights of individuals, groups and state through the principles such as equity, transparency, accountability, participation, efficiency and effectiveness and the rule of law (Zakout, et al., 2006). Wohlmuth (1998), have almost similar terms in defining the good governance principles but with a difference, which is the rationality of the governmental organizational structure and also according to UNDP the major attributes of good governance are the participation of the citizens, respect for the rule of law, transparency which looks into the access to information, and accountability (Arko-Cobbah, 2007). In this research I will take 5 principles, which are the equity, efficiency, participation, access to information and organization.

One of the main lists of good governance issue is the dispute resolution, which one of the particular ones is the settlement in the land area. Grindle (2004) highlighted that public administration as an essential aspect of creating good governance, such as the merit-based civil service system. More positively the goal is to improve the government performance, which also leads to the strength of the civil service, such as in the land dispute resolution area. Therefore the good governance is giving the decision making in an equity, efficiency, participation, access to information and organization.

a) Equity

Brown & Corbera (2003) states that equity is fairness of outcomes both now and in the future which looks into who benefits and also who is included in the development actions. The context of equity in this research is looking into the fairness in all the aspects of the land dispute resolution mechanism. Furthermore Magel & Wehrmann (2001) gave a view that in the respect of guaranteeing the equity, the government should provide an adequate dispute resolution institutions due to the concern of respecting human rights and accessible by all people.

For example, in Nepal (Rahman & Robinson, 2006), where the poor people in the remote areas, perceived connection between poor services, the insecurity, and the political environment, such as the quality of the justice system and the access to an affordable justice system. Moreover, it is explained that women have the difficulties in accessing the justice system.

Discussions concerning equity are most related with the rights, such as how Curry (2001) viewed the distributional and intergenerational equity in the notion of land rights are important, due to the values of human welfare. Therefore the distribution of equity does not only seek the elite people and the influential people in the society but also ensures the minority and the vulnerable people. Furthermore, the equity should ensure that woman and men have equal access in the decision making process, resources and other basic services (Magel & Wehrmann, 2001). In this research is looking into the context of land dispute resolution mechanism service.

b) Efficiency

According to Shah (2005), Judicial efficiency improvement is recognized as a prerequisite for a country's development. Furthermore, looking into the efficiency of the institution, UN-ESCAP (2006) states that the processes and institutions gives results that meet the needs of the society by making the best use of their recourses. In addition efficiency can also be consider as looking into how fast the service is delivered while also optimizing the often constrained resources (Antonio, 2006).

This principle promotes the efficient public delivery system and also the quality of the public output (UN, 2007b). Therefore Efficiency is questioned due to prioritizing government services to correspond the citizen's needs. Thus also looks into the land dispute resolution in how it is managed, through an efficient public service.

c) Participation

Reed (2008) defined Participation as a process where individuals, groups and organizations choose to have an active involvement concerning the decision making that will affect them. Nowadays, in many countries has shown that the relationship between the government and the citizens are in a top-to-down basis. However, Richards, et al.,(2004) have a different view by recommending the bottom-up approach in the context of the decision making in the society. In the improvement of the governance, it is critical to ensure the institutions and the citizens to be more close together. This will ensure that the different voices of the society will be heard in the decision-making process.

According to Stenseke (2009), In participation, the aspect of communication is essential. This could be shown through procedures which are designed to consult, involve, and inform the society that are affected in a decision may have an input in the decision making (Rowe & Frewer, 2000). In a democratic government, the citizens can have an approach with the government with a two way interaction. One of the essential approach nowadays are in the dispute resolution, therefore the participatory approach could also be shown in the dispute resolution through a shared definition of the problem and a collective solution (Richards, et al., 2004). Furthermore Daudelin (2003), gave a view that in organization context, participation is one of the essential aspect in increasing the ability of the authorities in resolving the land disputes through compromises through individuals. Therefore the success of participatory could be shown and judged based on the improvement of the quality life of the people.

d) Access to Information

According to Van Der Molen (2007), the access of land information, which in this context is land dispute information, should be available by the authority involved without giving differences only to the elites. Furthermore, with an approach through access to information, gives the society in hold of the government and various public officials in their accountability of their activities service.

Access to information is an essential element in order to reduce corruption and establishes the trust between citizens and governments and also entails the openness in conducting the public affairs (UN, 2007b). Thus, the access can be passive and active. When it is considered passive, the public will obtain information upon the request of the government institution and when it is active, the government is obligated to share the information to the citizens. It has been argued that the government process is improved through the public involvement, which in this research is looking into the land dispute resolution process.

e) Organization

The function of governance is ensuring that the organization fulfils its whole purpose, achieves the outcomes that were intended in regards for the citizens and service users and operating in an effective, efficient and ethical way (OPM & CIPFA, 2004).

Good governance depends on appropriate institution due to the sustainable development of a government (Roy & Tisdell, 1998b). Moreover bureaucracy and the law enforcement agency are related, where the aim of the development of the institution looks into an efficient bureaucracy and also to the clarity of the roles and the responsibility of the officers.

According to Gonzalez & Mendoza (2003), Institution is the main key of good governance, which in this research is in the organization, means the information concerning the public goods and the government services, reducing disputes and enforcing the agreements through the judicial system, and providing a clear and transparent mechanisms. Furthermore, the quality of an organization's governance will rely on a large part whether its organizational structure is suitable for what the organization has set up to do (OPSSC, 2009). The organization should be reflected through the main operational that is applied, which in this research looks into the organization that settles the land dispute.

2.7. Connecting the challenges of Land Dispute resolution mechanism through Good Governance approach

Rugadya (2009), states that the deficits in the governance context are in various ways such as a weak central authority in enforcing law and order, absence of transparency in rule of law and enforcement, inadequate institutional and legal framework. Under those various ways, the land dispute resolution mechanism is one of the major potential sources. One of the weaknesses of the formal land dispute resolution mechanism is due to the excessiveness of complexity concerning the procedural formalism and administrative block (Buscaglia & Stephan, 2005).

There are not many literatures indicating how relevant the concept of Good Governance in the Land Dispute Resolution Mechanism and for that issue how the land agency in centre and regions. Furthermore, the issues that arise have their basis from some of the literatures covered already.

Different views exist on incorporating the good governance principles in the land dispute resolution mechanism. Firstly, the secure tenure and land access has been accepted as a fundamental of the socio-economic development. However, the increased demand and competition leads into the insecurity of tenure which one of the concrete result would be the land disputes. Then issues that reveal are concerning the land dispute resolution mechanism, where there are overloaded courts, dispute resolution indeterminate, the uncertainty of the organization that has the responsibility in the land dispute resolution, the bad access to the land dispute resolution organization that is empowered to manage the disputes expeditiously and transparently and also unavailability of an appeal mechanism also with a non-discriminatory manner. The main issue is how they solve the land dispute, which in many developing countries still have weak institutions on land dispute resolution and the lack of public officials leads to a weak decision-making processes. Good Governance looks into the appropriate institutions, which corruption, bureaucratic inefficiency, inefficient and corrupt law enforcement agencies undermine the

capacity of the institutions in resulting good governance due to the sustainable development (Roy & Tisdell, 1998b).

Secondly, one of the main focuses in Good Governance is the functionality of the civil service. The land administration institutions including the land dispute resolution mechanism performance has been dealing with various issues such as bribery and corruption, inaccessibility of information, bureaucratic processes, rule of law and conflicting legislation (Anthony, et al., 2010). But not on how the land dispute resolution mechanism should perform due to meet the good governance furthermore it is a reality that governance in the land administration may be accessed through various governance principles and indicators, including the land dispute resolution mechanism. According to Kaufmann, et al., (2009), whichever of governance criteria combination that are used in the assessment, they mutually reinforce each other and cannot stand alone. Therefore, it means that there is a need to develop indicators in regards to assessing the weakness of land dispute resolution mechanism through good governance principles. Furthermore it will be developed into a framework, which can be used to develop the land dispute resolution mechanism within a country and across countries.

Due to the indicators and framework that are used to assess the land dispute resolution mechanism will be described in the next chapter.

2.8. Summary

The above discussions reveal that land disputes can occur in all levels of the society. The types of land disputes are related with the tenure types and most of the disputes are related with the boundaries of the land. In this regard there is a need of machinery for the settlement of the land disputes and securing the land rights. The choice of resolving the land disputes is based on the disputants them self and the context of the dispute. Furthermore, in this regard the land dispute resolution mechanism play in an important role in solving the land disputes.

This chapter has explored the definitions of land dispute, land dispute resolution mechanism, and good governance and its relationship with the land dispute resolution mechanism. This then enables us to identify the indicators of good governance and what pertains in land dispute resolution mechanism. These indicators will be developed in the next chapter.

3. INDICATORS AND FRAMEWORK OF LAND DISPUTE RESOLUTION THROUGH GOOD GOVERNANCE

3.1. Introduction

The previous chapter has revealed the land dispute resolution mechanisms and the various dimensions concerning the good governance from global perspectives. The chapter defined land dispute and the various mechanisms in the land dispute resolution also the approaches in through the good governance, which are Equity, Efficiency, Access to information, Participation and Organization. This Chapter aim is to develop a framework for an assessment of the land dispute resolution mechanism in terms of the performance.

3.2. Framework for Assessing the Land Dispute Resolution Mechanism through the Good Governance Principles

To understand the relation between the land dispute resolution mechanism and the good governance principles in practice, a framework is required to access the weakness of the land dispute resolution mechanism. The Assessment is done by using the framework adopted from several related frameworks which were adjusted according to the purpose of this research. Some frameworks that are used and adopted due to the development of the assessment framework of this research will be explained further in the next subsection.

The framework used in this research is shown in the figure 3.1 below based on the dimensions and indicators that were adapted from several of frameworks in regards to the purpose of accessing the land dispute resolution mechanism.



Figure 3.1: The framework for assessing the land dispute resolution mechanism

3.2.1. Evaluation framework: a review

Performance measurement and analysis is a crucial due to the steering of the organization to realize its strategic and operational goals, where the relevant performance indicators and their relationships to the goals and activates that are a need to be determined and analyzed (Popova & Sharpanskykh, 2010). Therefore will lead as an essential part of an effective planning and control as well as decision-making (Lauras, et al., 2010).

In this research, as explained in chapter 2, we look into five dimension of Good Governance in assessing the land dispute resolution mechanism, which will be used in developing the framework as explained below:

a) Equity

Aday, et al., (1999), developed a framework for assessing the effectiveness, efficiency, and equity of the behavioural healthcare, which in this research I will look only into the equity and relate to the equity in the land dispute resolution mechanism. In developing the framework, they proposed four dimensions in assessing the equity, which are: deliberative justice, distributive justice, distributive and social justice and social justice. The concept of justice in this framework was based on the underlying social, economic, and environmental underpinnings of inequity. Moreover it is explained that this deliberative justice paradigm recognizes and attempts in resolving conflicts rooted in the other dominant paradigms of fairness through the needs of the affected groups and individuals. Furthermore, the indicators which are part of the distributive and social justice, namely: Age, sex, education and income.

The indicators as captured above which are under the dimension of distributive and social justice can all be seen to be reflecting varied objects of good governance.

Table 3.1: Indicators for Equity

Indicator	Approach to assessing Indicator
Sex (gender) in the Land Dispute Resolution Mechanism	The differences of number of cases of land disputes that are resolved which are owned by women and man.
Education	The differences of number of cases of land disputes that are resolved which are owned by different people of different levels of education.
Income	The differences of number of cases of land disputes that are resolved which are owned by different people of different levels of income.

b) Efficiency

Burns, et al., (2007), developed a framework for assessing the efficiency of the Land Administration system from a global perspective, which distinguishes three levels of governance:

- A top-level category that assesses the nature of the policy and legal framework that supports the land administration system, particularly the relative importance of formal and customary tenure systems;
- Where customary systems operate, a second category to assess the qualitative efficiency of these systems;
- A third category that is a set of quantitative indicators of the efficiency of the formal land administration system.

In this framework, the customary tenure indicators are assessed based on the qualitative indicators meanwhile the formal land administration system is assessed based on the quantitative indicators. Each of these indicators holds the key in determining the level of efficiency and effectiveness of the Land Administration System. The indicators for the Customary Tenure, consists of: legal recognition of customary rights, clarity in identify of customary authority, Clarity in boundaries of customary authority, and clarity in customary rights while the indicators for the Formal Land Administration System consists of ***security, clarity and simplicity, timeliness, fairness, accessibility, cost and sustainability.***

The selection of indicators for the assessment framework of the formal land administration system is influenced by the International Federation of Surveyors (FIG) criteria for a successful administration for legal rights in property. The indicators adopted for this research includes clarity and simplicity, timeliness, and cost. These indicators can all be seen to be reflecting varied objects of good governance.

Table 3.2: Indicators For Efficiency

Indicator	Approach to assessing Indicator
Clarity	The number of factors that confuse the citizens in how to process their land dispute case and how does the Land dispute resolution mechanism work.
Simplicity	The uncertainty of steps in the land dispute resolution process.
Time	The uncertainty of time in solving the land disputes.
Cost	The cohesiveness of the cost is still confusing the citizens.

c) Participation

Rowe & Frewer (2004), evaluated the public participation; they explained that public participation is perceived by organizations as potentially facilitating governance and organizational practices. The essential point that governments and their various agencies have, is increasingly sought public views on policy issues in a more direct and specific manner rather that dictated by a traditional model of governance. Furthermore it is explained that they have nine criteria in evaluating the participation, namely: task definition, representativeness, early involvement, independence, cost-effectiveness, influence, transparency, structured decision making, and resource accessibility.

The indicators as captured above through the nine criteria that they developed, can all be seen to be reflecting varied objects of good governance.

Table 3.3: Indicators for Participation

Indicator	Approach to assessing Indicator
Decision-making	The customer approach in the decision-making of the land dispute resolution.
Involvement	The involvement of the customer in the land dispute resolution process.

d) Access to Information

Chimhamhiwa, et al., (2009), developed an evaluation framework which is known as the “Cross-Organizational Business Processes Framework (CBP)”. In this framework, there are six elements which are designed into a performance measurement system for cross-organizational process, namely: cost, time, quality, technological innovation (ICT), customer satisfaction and society. This framework was developed through the evidence that reveals several quality management challenges along Land Administration CBP chains, which are: First, poor quality work lodged upstream often causes approval delays and incurs extra costs; Second, poor quality work tends to lead to process back flows, as jobs are frequently returned for corrections. These factors can be used to assess the quality.

In this framework, it is explained, that one of the element is technological innovation (ICT). The key points from the ICT are: data capture, data processing and management and data access and dissemination. The indicators of data management and access to information namely: completeness and up to date databases, openness of procedures, adequate information

The indicators as captured above through the technological element that they developed, can all be seen to be reflecting varied objects of good governance.

Table 3.4: Indicators for Access to Information

Indicator	Approach to assessing Indicator
completeness and up to date databases	The completeness and up to date databases concerning the land dispute resolution data and information.
openness of procedures	The numbers of factors that are involved in the certainty of the openness in the land dispute resolution procedures
adequate information	The level of the customers in accessing the information of the Land Dispute Resolution procedures.

e) Organization

Mitchell, et al., (2008), evaluated the land administration projects in developing countries. In this paper, there were 6 objectives used in the land administration projects in Ghana, Indonesia and Laos derived from the World Bank report. The five objectives are: Improve the security of tenure, Poverty reduction and Economic growth, Governance and effective institutions, efficient institutions, broader government revenue base to support improvement to social and economic services, and Environmental improvements.

In this research we will look into the Governance and effective institutions which I will relate to the structure of organization. The Indicators that were developed from the objective of Governance and effective institutions are: Decreased number of complaints about land registration, strengthened perception of land tenure security, reduced corruption in land administration, improved transparency checks and participatory procedures adopted by institutions, increased percentage of subsequent, transaction registered in land office decrease in informal payments in the land registration process.

In relating those indicators to my research, we adapted some indicators to fit into the research, which can all be seen to be reflecting varied objects of good governance.

Table 3.5: Indicators for Organization

Indicator	Approach to assessing Indicator
Clear job and responsibility	Clear job and responsibility of the officers in BPN.
Clear strategy	This part will be shown through the Clear strategy for long term and goals of BPN.

3.2.2. Selecting the indicators for evaluation

There are various of factors that can lead to the promotion of the Equity, Efficiency, Participation, Access to Information and the Structure of Organization which are required in a Land dispute resolution mechanism. The issues that arise from the lack of these principles are many, where the main point is to consider the way in which the land disputes are resolved.

There has been the realization that there are exist of various of factors that can lead to the implementation promotion of the Equity, Efficiency, Participation, Access to Information and the Structure of Organization that are required in the land dispute resolution mechanism. Some of the issues that are a big concern in the land dispute resolution mechanism include the work ethic of the officer concerning the service and responsibility; the professionalism of the officers, the weaknesses of the monitoring and the control handling of the land disputes and also the weaknesses of regulations that hamper the process of settlement of disputes or provide an opportunity of not completing the land dispute resolution.

In developing the indicators to the purpose of this research, there is a need of a framework. According to (Chimhamhiwa, et al., 2009), there are no international fixed frameworks in evaluating and assessing the performance of either internally or cross-organizations. However, the purpose of an evaluation should define on what and how to measure in an evaluation process. Therefore, in defining the framework for accessing the Equity, Efficiency, Participation, Access to Information and the Structure of Organization concerning the Land Dispute Resolution Mechanism, we have developed it from adopting from different perspectives. Furthermore in table 3.6 will show how the indicators are assessing the land dispute resolution mechanism.

The assessment framework has been summarized in table 3.6 with the details of the parameters as follow:

Table 3.6: The parameters in assessing the land dispute resolution

Dimension	Indicator	Parameters
Equity	Gender	This indicator is measured by looking at the percentage number of cases of land disputes that are resolved which are owned by women and by man. This means that the higher percentage of land dispute cases which are resolved owned by either of the gender gives indication that the other gender are not having equal access in the land dispute resolution in BPN.
	Education	The level of education of the customers is measured by looking into the land disputes cases that are being solved in BPN, meaning if the number of cases which are being solved in BPN are to the educated people than we assume the lower educated people are having as lack of knowledge concerning land dispute resolution in BPN, the inability to reach the office and the lack of access to information.
	Income	The income of the customers is measured by looking at the percentage of different income levels of the customers that are having land dispute cases solved in BPN, meaning if one of the level is lower than the other, indicates that there are inequality in the land dispute resolution in BPN.
Efficiency	Clarity	This indicator is measured by looking at the percentage in which way that

		the customers obtained the information regarding the procedures of the land dispute resolution mechanism in BPN and how they know where to resolve their cases in BPN, meaning that with different ways can lead to different clarity.
	Simplicity	This indicator is measured by looking into how the procedures or the steps in the land dispute resolution mechanism are implemented, how many times does the customer come to the office regarding the process this means the more complicated the mechanism and the more times the customer has to come regarding the process then shows the lack of simplicity of the mechanism.
	Time	This indicator is measured by looking into the perception of the length of time in solving a land dispute case, meaning the longer a case is solved, the more unsatisfied are the customers of the land dispute resolution mechanism in BPN.
	Cost	This indicator is measured by looking into whether there are costs involved regarding the land dispute resolution mechanism, meaning if most of the customers agree there are costs then it is a formal expense but if most of the customers agree there are no cost in the mechanism then it is assumed there are costs taken with an informal way and this shows the cohesiveness of the cost is still confused among the citizens
Participation	Decision-making	This indicator is measured by looking into what extent the customers can be involvement regarding to the decision making in land dispute resolution meaning, the more cases are resolved with the involved of the customers in the decision making the more participation of the customers.
	Involvement	The indicator is measured by looking into whether the customers are involved or not in the land dispute resolution mechanism in BPN and if they are, in which way are the customers involved, meaning the more involved in the mechanism the more the customers are being participated.
Access to information	completeness and up to date databases	This indicator is measured by looking into how the BPN officials are updating their data and how the data are being accessed, meaning the more accurate they update their data, the better information due the access of information concerning the land dispute resolution.
	openness of procedures	This indicator is measured by looking into the ability of the customers in obtaining the information with regards to the land dispute resolution mechanism, meaning the more they can obtain the information then shows the openness of procedures are well.
	adequate information	This indicator is measured by looking into how satisfied are the customers in receiving the information regarding to the land dispute resolution mechanism, meaning the more satisfied the customers leads into the better performance in the service of the information access.
Organization	Clear job and responsibility	This indicator is measured by looking into the satisfaction of the customers with regards of the land dispute resolution employee service, meaning the better satisfied are the customers, shows that the job and responsibility of the employee are clear.
	Clear strategy	This indicator is measured by looking into the satisfaction of the customers with regards to the land dispute resolution mechanism in BPN, meaning the more satisfied are the customers the more clear is the strategy of the institution in reducing the land disputes

3.3. Summary

This chapter developed a framework that is applicable for the assessment of the land dispute resolution mechanism based on the principle of good governance. After reviewing the appropriate good governance dimensions, the appropriate indicators were selected.

In total 14 indicators were the results of reviewing the five dimensions of good governance that have been selected in this research. All these indicators are used to assess the land dispute resolution mechanism from the data collected in Indonesia. The approach of the data collection and the selection of the study area is presented in the next chapter.

4. CASE STUDY AND DATA COLLECTION IN INDONESIA

4.1. Introduction

Chapter three has described an assessment framework used in this research. The aim of this chapter is to describe Indonesian case study and the methods of the data collection which is required to carry out the assessment based on the framework that was developed in previous chapter. In this research, the land dispute resolution mechanism in BPN (Indonesia) is considered as a case study.

4.2. Case Study Area in Indonesia (Historical Background)

Indonesia is an archipelago country which has a total area about 9.8 millions square kilometers of land and 7.9 millions square kilometers of sea area which also includes the Exclusive Economic Zone (Brits, et al., 2002). Moreover Indonesia has major islands which are based on the population size, namely: Java, Sumatra, Sulawesi, Kalimantan, Irian Jaya (west Papua) and besides these major islands, there are also two major archipelagic sub-groups of small islands, namely: Bali, Nusa Tenggara Barat, and Nusa Tenggara Timur islands and has more than 17000 islands, which 6000 of the islands are inhabited. The administrative are of Indonesia is divided into 33 provinces, 349 districts and 91 cities. The population itself was estimated to be 231 million in 2009, where most of the population are spread in the Java Island (58 % of population) (Winoto, 2009).

Indonesia was under some form of colonial law for a period of 350 years before the independence. The central law concerning the land rights is the Basic Agrarian Law (BAL), which was enacted on 24th September 1960. The Basic Agrarian law compromises two essential alterations of the previously valid old Netherlands Indies Agrarian Legislation of 1870 and therefore before the BAL enacted, the land law became a dualism between the western land law and the traditional land laws (Heryani & Grant, 2004). Moreover they explained that the Basic Agrarian Law ended this situation, by creating the National Land Law which is formed from the utilization of traditional concepts, principles, systems and institutions. Apart from the BAL, there are further laws and regulations which also play an important role. The particular ones are the Forestry Law and the Mining Law.

Furthermore the land dispute settlements in Indonesia have become an essential issue. According to Sumanto (2008), In 2006 BPN listed 2, 810 outstanding land disputes; which 1, 065 were still in the trial process, 1, 423 were in pending trial and 322 were considered to have potential for conflicts. Generally, land disputes can be solved through mediation by BPN or mediation through the Regional Government, even by non-government organization (NGOs).

4.2.1. The Current Land Dispute Resolution Mechanism in Indonesia

In the last four decades, Indonesia has a land dispute phenomenon which is emerged through various parties, namely: between the societies and the government, societies and investors, government and government, and societies itself (Sumanto, 2008). This situation has increased progressively. Most of the disputes are initiated by the weak dispute resolution mechanisms or the justice is served poorly, either formal or informal system. Moreover Indonesia's justice system is largely regarded as a slow, costly, and too distant in being a viable option to most of the people (McLaughlin & Perdana, 2010). Therefore most of the dispute resolution in Indonesia is primarily informal.

In Indonesia there are various of Institutions that are involved in solving the land disputes and resolutions are sought in different levels. They are mainly divided into informal and formal institution, which are described as follows (Löffler, 1996):

a) Courts

General Courts

The Judicial system in Indonesia must look into the Indonesian Constitution as the fundamental form. According to the article 24 paragraph 2 of the Indonesian Constitution, states that the judicial power is operated by two institutions, namely: Constitutional Court and Supreme Court. According to article 24C paragraph 1 and 2 of the Indonesian Constitution states that the constitutional court is a court which has competencies in adjudicating any judicial review of the legislation which is contradictory with the constitution, resolving the disputes concerning the competency among the state institution, etc. Meanwhile, according to Article 24A paragraph 1 of the Indonesian Constitution, the Supreme Court is the top of courts which has capacities in adjudicating any judicial review of the regulation which is contradictory with any legislation, and as the final appeal court.

The Supreme Court of Indonesia is supervising four different courts, which is either in the first level or in the appeal level, namely: General Court, Administrative Court, Military Court, Religion Court and some specialized courts. The Mahkamah Agung (Supreme Court), in Jakarta, is the highest court for all the divisions of the Judiciary. Then in the Province level it is known as Pengadilan Tinggi (High Courts), the Pengadilan Negeri (District Court) is at the Kabupaten level. The Pengadilan Negeri are the courts which have the authority in the district level concerning the land disputes.

In the Pengadilan Negeri, a judicial case is initiated with an oral hearing where the witnesses can be questioned and the other parties can be heard after the formal registration of the legal dispute and the perusal of the files by the judges. When it comes to an involvement of the Adat Law aspects, regarding to the land disputes, mostly the judges are having lack of knowledge concerning this issue (Löffler, 1996). Therefore, the judges try to find a solution concerning the land disputes through the informal negotiations.

Administrative Court

According to the article 47 of the Indonesian Legislation number 5 of 1986, states that the Administrative Court is a court which has the competency in adjudicating any administrative dispute between citizen and the government.

Military Court

According to the article 9 of the Indonesian Legislation number 31 of 1997, states that the Military Court has the competency in adjudicating any criminal case which is done by an army.

Religion Court (Pengadilan Agama)

According to the article 49 of the Indonesian Legislation number 3 of 2006, states that the religious courts (pengadilan agama) are under the Department of Religious Affairs which exist to resolve specific kinds of disputes between Muslims in matters of inheritance, marital, hibah, wasiat, zakat, infaq, shodaqah, and economic business which is held based on the Islamic principle. The main issue they deal is the inheritance issues. They can be asked for advice when the property is to be divided between the heirs after the death of the head of the family. Issues connected to the inheritance, which are the reason of the real land disputes, can also be brought before the Islamic courts. To be legally enforceable, however, the religion court's decisions must be approved by a corresponding secular district court. The Directorate of the Religious Justice within the Department of Religious Affairs has ultimate appellate jurisdiction.

In addition, in Aceh there is a religious court which is known as Syariah Court. Due to the affect of the tsunami in Aceh, by May 2006, the Syariah Court has verified 1922 inheritance determinations as the result of Reconstruction of Land Administration Systems in Aceh and Nias (RALAS). Most of the land disputes are handled by the general Court and the administrative court. The appeal can proceed to High Court and ultimately Supreme Courts contributing to the long delays and having very high costs (Brits, et al., 2002).

b) Government Institution***National Land Agency (BPN)***

The fundamental duty of BPN is carrying out the government duties in the area of land in national, regional and sectoral (Presiden Republik Indonesia, 2006). Furthermore, According to the Undang-Undang No.17/2007 regarding the long term development plan of the state mandated Badan Pertanahan Nasional (BPN) due to some responsibilities in the land administration at the national, regional and sectoral levels, which are to implement an efficient and effective land management; enforce law dealing with land rights through democratic, transparent and just principles; reconstruct regulations of land reform for betterment of occupation, right, use and utilization of land; identify incentives and disincentives in the tax system according to size of area, location, and land use; improve access to land by the poor; improve access to land by the poor; improve the land law system through an inventory; enhance land regulation taking into consideration adat rules; **improve resolution of land disputes through administration, justice, and alternative dispute resolution**; and develop human resources (Presiden Republik Indonesia, 2007).

c) Non-Government Institutions

There are multitude of non-governmental organizations which are involved in the land issues and the land dispute resolution. Most of the non-government institutions deals with the protection and the conservation of nature and community development which are involved in the land tenure issues, such as WALHI (Wahana Lingkungan Hidup Indonesia), also the Legal Aid Institute (Lembaga Bantuan Hukum-LBH) gives legal advices (Löffler, 1996). Moreover, Lembaga Bantuan Hukum-LBH gives legal aid free of charge to the poor; developing and promoting the understanding of the values of state law and the basic human rights in general; and also making efforts into influencing both the process of improving and innovating laws and their innovation. In addition, the non-governmental organization can play an important role as mediators, such as in a land dispute between the government and the societies since they are looked upon as the neutral party.

d) Adat Institutions

The Adat institutions contributes to the resolution regarding to the traditional conflicts between and within the various Adat communities. Moreover, the Adat institution plays an important role in taking of the Adat land for development projects and the conflicts as the the result (Löffler, 1996). However, the Adat Institutions does not have a strong bargaining position as compared to the formal institution.

In this research, I am looking into the formal institution, which is particularly BPN (National Land Agency) as the Government Institution.

4.2.2. General Overview of National Land Agency (BPN)

Badan Pertanahan Nasional (BPN) was establishes by referring to the Presidential Decree Number 26/1988 after long term of existence as Directorate General Agraria Under Ministry of Home Affair. One of the essential mandates given to BPN is reformulating land policy, which has four principles in implementing that mandate, namely:

- i. Improvement of the welfare of people;
- ii. Distributive justice;
- iii. Fostering of a just and peaceful sustainable system if the Indonesian society; and
- iv. Creation of social harmony (resolved land disputes and conflicts).

These principles further on were translated into the “eleven BPN prioritized agendas”, in which the quality of governance is critical in achieving these eleven prioritized agendas that are mentioned below:

- i. Building the public trust;
- ii. Improvement of land services and land registration;
- iii. Improvement of people’s rights on land;
- iv. Resolution of land problems in areas affected by natural disasters and ethnic conflicts;

- v. Systematic handling and settlement of land lawsuits, disputes and conflicts;
- vi. Development of a national land management information system and land document security system;
- vii. Address the corruption, collusion, nepotism and improvement of people participation and empowerment;
- viii. Establishment of large scale land mapping and a land ownership database;
- ix. Consistent implementation of all land laws and regulations;
- x. Strengthening of the NLA organization;
- xi. Development of land laws and policies.

Badan Pertanahan Nasional as a centralized organization has several regional offices and local offices. According to (Presiden Republik Indonesia, 1988), the regional offices are located at the province level meanwhile the local offices are located at the district/municipal level. One of the main duties of the regional office and the local office is resolving dispute over land.

Land disputes are a problematic issue in Indonesia (Ari Sucaya, 2009). Therefore in BPN, since 2006, there was a bureaucratic reform that has been implemented due to the needs of implementing the BPN strategic goals or as known as the BPN prioritized agendas which resulted in developing new units, which one of them was the Deputy of Land Dispute Resolution and Management.

BPN tasks and authority's specifically in the Land Dispute Resolution and Management are mentioned below (Deputy of Land Dispute Resolution and Management, 2010b):

a) Ensure the certainty of the land law with the indicators:

- Each parcel only has one valid certificate and is owned only by one legal party;
- Every legal land owner should be guaranteed on their rights in obtaining a valid certificate due to the security of his property.

b) To solve each land disputes professionally and morally with indicators:

- In the case of a parcel having two or more certificate that is overlapping, BPN is compulsory in solving the dispute so at the end there is only one valid certificate, while the unauthorized certificate should be revoked, either on the basis of the results of the court decisions or through the process of cancellation due to the disability of the administration without having to wait for a lawsuit from the court;
- Upon each land dispute, the BPN officials are responsible to make assessments concerning the legal status of the disputed objects in a professional, fair, honest and subsequent legal opinion that the parties are most entitled to the disputed land. Therefore BPN can show which party is the truest among those who claimed as the true ones and all the parties will have the clarity of the status, then furthermore can determine the best solution option for each party.

According to Article 21 (Presiden Republik Indonesia, 2006), the main duties of the Deputy of Land Dispute Resolution and Management are as following:

- Formulating the technical policy in the land dispute resolution and management;
- Assessing and Mapping systematically various land disputes and conflicts;
- Resolving land disputes and conflicts legally and non-legally;
- Resolving land cases;
- The implementation of Alternative Dispute Resolution (ADR) in land disputes and conflicts through mediation, facilitation, etc;
- The implementation of the court decisions that are related with land;
- Preparing the cancellation and termination of the legal relation between people, and/or corporation with land according to the provisions of laws and regulations that are applicable.

Besides the role as a determinant of success in the resolution of the land disputes in Indonesia, BPN on the other hand also have limitations, which are:

- BPN only has the authority in managing the land in the area of Indonesia which are not including the category of forest, because the forest area is under the Ministry of Forestry authority.
- BPN does not have the authority in collecting with force or seizing all of the illegal land documents and are out of the BPN office because the authority's efforts to force is under the authority of law enforcement officers.
- BPN does not have the authority in forcing the party or a person that is occupying land illegally, because the authority's efforts to force is carried out by the police officers.

Due to the operational purposes of solving the land disputes, the Deputy of Land Dispute Resolution and Management is divided into three directorates, which are:

- The directorate of land dispute, handles the land disputes which the parties consists of individuals or groups;
- The directorate of land conflict, handles the land disputes which involves the government, institution/organization or indigenous groups against groups of citizen in masse;
- The directorate of land case, handles the land disputes through legal process which is already handled in the court/tribunal and subsequently handled by BPN.

Nowadays, the numbers of land disputes and conflicts are still having a large number. The large numbers of land disputes and conflicts causes social unrest, security disturbances, and poverty (Winoto, 2009). Furthermore, Land disputes and conflicts also produce economic loss due to in preventing the land in being used to produce goods and services. Since 2007 The number of land disputes reaches 7491 cases covering almost 608 thousand hectare of land (Basuki, 2010). According to (Deputy of Land Dispute Resolution and Management, 2010a) the total of land disputes are increasing along with the National development as shown below:

Table 4.1: Overview of the number of cases of land disputes

Year	2006	2007	2008	2009
Total Land Disputes	2810	7941	5713	6739

The data collection of the land disputes until now is not organized well; therefore the development of the land dispute nationally is still having difficulties to be analyzed.

4.2.3. Legislative Framework

The legal framework of the land dispute resolution in Indonesia is described as follow:

a) State Constitution

The authority of the State in regards to the land is framed in the Constitution (Majelis Permusyawaratan Rakyat, 1945). Specifically article 33 Line (3) of the Constitution of 1945 brought the basic authority as stated in the National Law of Land which defines that the state controls the land (earth), water and natural richness inside and the aim of the utilization must be for the welfare of the people. The implementation is shown through the Basic Agrarian Law (BAL).

b) Basic Agrarian Law

The Basic Agrarian Law is the national law of land (Presiden Republik Indonesia, 1960) which regulates the land administration system in Indonesia. Thus, it is introduced to end the dualism of western system and the traditional (adat) law with utilizing the traditional concepts, principles system and institution and the aim is to unify and simplify the land law and also due to the tenure security to all of the citizens.

4.2.4. The Existing Challenges/Problems in the Land Dispute Resolution in BPN

This section describes the existing challenges/problems that are faced in BPN concerning the land dispute resolution mechanism. Before looking into the issues here below gives the description of aspects that are related with the challenges, such as the types of land disputes, the causes of the land disputes, the dispute resolution mechanism of the land disputes and also the key actors involved.

a) The Types of land disputes

The types of land disputes in Indonesia can be classified into:

- Disputes of physical land grabbing
- Land boundary Disputes
- Inheritance of land Disputes
- Dispute due from one land sold over and over again
- Disputes due to multiple certificates on the land
- Disputes due to certificate replacement unauthorized publication process
- Disputes due to deed of sale and purchase of land falsified
- Disputes due to error of measurement of land (plots of land)
- Disputes occurs an overlap in body piercing on one area of land ownership
- Disputes due to errors in the implementation of judicial decisions

Based on the land disputes that are handled in BPN, most of them are dealing with land boundary disputes, the inheritance of the land disputes, disputes due from one land sold over and over again, disputes due to multiple certificates on the land, disputes due to certificate replacement unauthorized publication process and disputes due to the deed of sale and purchase of land falsified. Furthermore, concerning the customary (adat) land disputes in Indonesia, according to Lucas (1992), derives from the incompatible perceptions, needs and the interest between the local community and the state concerning the existence of the customary land rights in one side and meanwhile in the other side the inadequate judiciary and legislation should be taken into effect. Furthermore, it is stated in the Basic Agrarian Law article 5, that the land tenuresystem acknowledges the existence of the customary (traditional) land tenure unless it is contrary to "national interests". These customary land disputes are more often settled through Alternative Dispute Resolution (Daryono, 2004).

b) Causes of Land Disputes

The main causes of land disputes can be attributed into some potential and factors of which the following are prominent in Indonesia.

- The Potential cause of Land Dispute:
 - The excess enforcement of BAL 1960: After the enforcement of the BAL 1960, there are still many land owners which have lands that are recognized as the state land and have not been registered by the owner. Therefore gives a result of land disputes due to the overlapping ownership. Furthermore the lack of understanding from the society concerning the BAL 1960 and the attached implementing regulations also leads to the cases of land disputes.
 - The excesses of the economic development: Increase in the economic development increases the value of the land. With the fixed supply of land and the high demands for independent use also the spectacular value in the land prices which leads to the increase of the economic crime, such as the forgery of the certificates and the increase of the land mafia practises.
 - The excesses of Reformation/Democratization: The demand of democratization with a free understanding of the society itself, the demand of giving back the people rights which before the independence were seized by the colonialist and also the vast land tenure by the Hak Guna Usaha (the right of exploitation/cultivation)/Hak Guna Bangunan (the right to use buildings) owners versus the poverty of the local people there can lead to land disputes.
- The Factors cause of Land disputes:
 - The Administration of land ownership

The land dispute due to this factor occurs because of various reasons, namely: issuing of the certificate on one parcel with different Letter of Reference (alas hak); the lack of the supporting data as the base of the issuance of the land rights such as: Girik, arable land, eigendom, mefbrief, and land maps; and the weakness of the land regulations that gives the opportunities of the falsification of the land documents or misusing the licensing rights of land.

- The issue of land compensation upon the community land to be taken over or released by the private companies, or the government projects.

Many land disputes are related due to this factor, which concerns to different reasons, such as without giving compensation (with intimidation), without discussions or manipulated by the management people and giving the compensation to the party that is not authorized.

- The land abandoned by the land owner

Land disputes which occur due to this factor are caused by not utilizing the land well by the company/ institution and also the lack of adequate safeguards therefore occupied by other party.

In addition besides the factors mentioned above, there are some others such as: the inconsistent legal framework, the exercise of discretionary control over a number of key areas by officials, BPN's preference in selling documents to confirm land rights rather than simply registering the ownership claims that derive from the customary rights and also the limited role for public participation in the land dispute resolution (USAID, 2007). Furthermore, it is explained that the insufficient mechanism of the land conflict and dispute resolution is due to the low quality of understanding of the law by the enforcement officials.

c) The mechanism of land dispute resolution in BPN:

The land disputes cases in BPN are the land claims/complaints/objections from the public society (individual/ corporate) which contains the truth and claims against the decision of the State Administration in the land sector that has been established by the Administrative officer within the National Land Agency (BPN) and those decisions prejudice their rights over their land. Regarding to this claim, they want to obtain a resolution based on the administration, which is known as the 'correction at moment's notice' from the State Administrative Official. The authority in giving the corrections to the State Administration decision in the land sector (Certificate/ Decree of Grant for land rights) is upon the Head of the National Land Agency (BPN).

After receiving the land disputes cases from the society (individual/corporate), the authority official resolving the land dispute then further will undertake research and data collection to file such complaint. From these results it can be concluded whether the complaint can be proceed further or not. If the data that is received by the National Land Agency (BPN) is still unclear or less complete, then the National Land Agency (BPN) will request an explanation along with the data and advice to the Head of Province Land Office and Head of Municipal Land Office where the land dispute is allocated. When the data is complete, then the next review will look into the terms of procedures, authority and the law enforcement aspect. The first approach from BPN is through mediation between the parties.

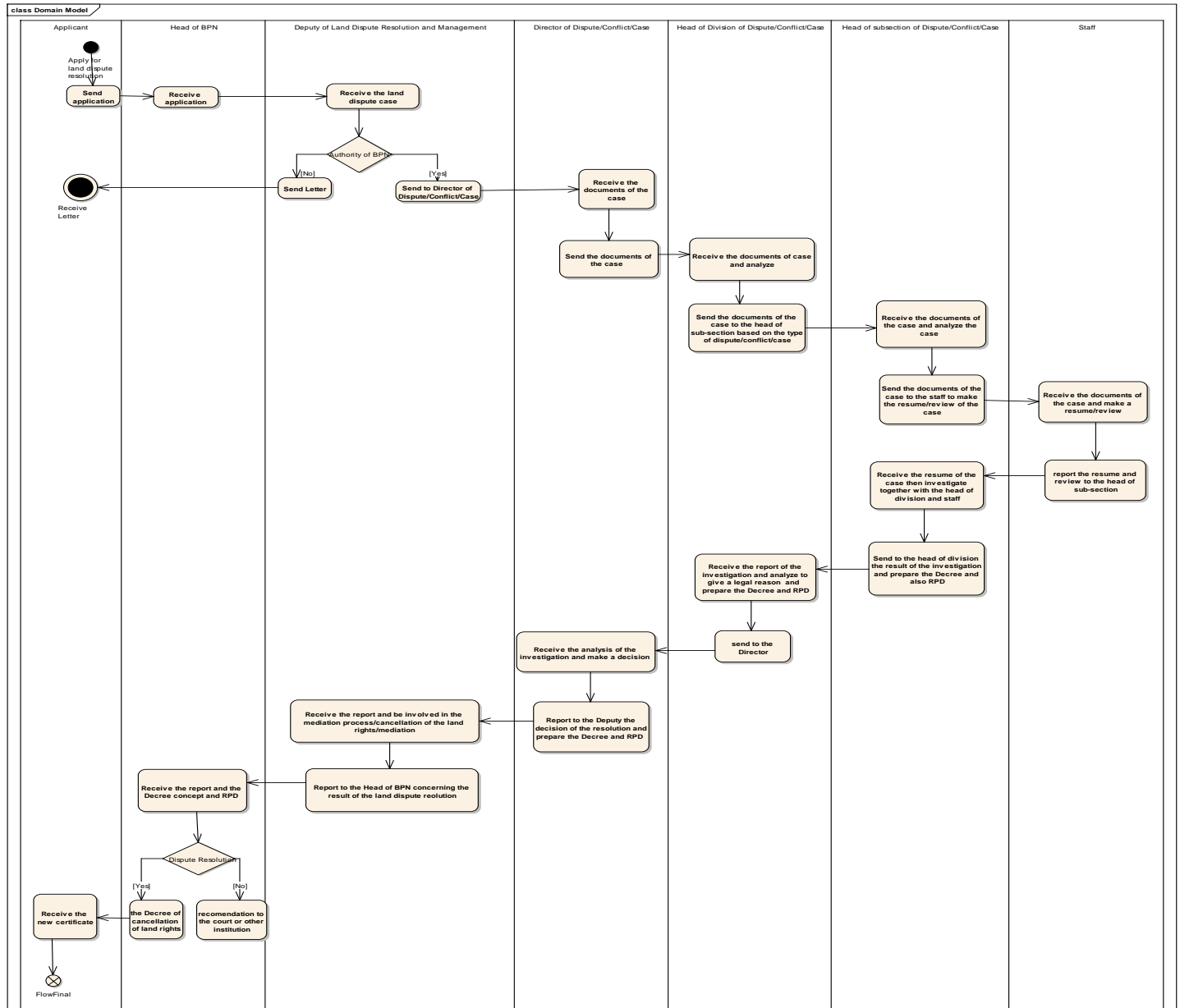
Furthermore, the condition of declaring a "status quo" or blocking a disputed land by the Head Municipal Land Office can only be done with the "Conservatoir Beslag" (CB) decree from the court. In doing this action, the official must act carefully and pay attention to the general good governance principles in the process of serving the public interest such as carefulness, openness and equity principles (Sumanto, 2008) .

The cancellation of the State Administrative Official decision can be done if there's a fault regarding the law or administration. The legal bases due to such cancellations are:

- 1) Law Number 5 Year 1960 concerning Basic Agrarian Law
- 2) Government Regulation Number 24 Year 1997 concerning Land Registration
- 3) Presidential Decree Number 34 Year 2003 concerning the National Policy of Land Sector.
- 4) Minister of State for Agrarian Affairs/Head of National Land Agency Regulation Number 3 Year 1999 concerning Authority Delegation and the Annulment of Grant of Land Rights Decree.

According to the Decree of the Head of National Land Agency No.34 Year 2007 concerning the technical guidelines of handling the land dispute resolution, the first settlement of the dispute shall be through Mediation. Furthermore, below gives the workflow of the mechanism in resolving the land disputes in the division of land dispute resolution and management in BPN:

Figure 4.1: Workflow of the land dispute resolution



Based on the workflow it is described that the steps in resolving the land disputes from the applicant until the solution are not yet sufficient and many bureaucracy to be through. The actors involved in the resolution of the land disputes in BPN are: the applicant, the Head of BPN, the Deputy of land dispute resolution and management, the Director of Dispute/Conflict/Case, the Head of Division, the head of sub-division and the staff. These actors are in the central office, the difference with the regional office are the highest level of the decision maker in the division of land dispute resolution and management is the Head of Regional (Kakanwil) then in the district level will be called the Head of District (Kakantah). Furthermore the processes are similar, the main difference is the decision making may continue to the central office and may be settled directly though the region office, this depends on the case itself.

The mediation process are offered in the process when the case is received by the division of the land disputes resolution and management. If there is no consensus between the parties, BPN will proceed in doing a legal, physically and administration investigation upon the case. In the investigation of the legal aspect are based on the court decisions that has been legalized, then the physical investigation will look upon the land itself and at the end will also look into the administration of the certificate. Furthermore, when the resolution determines which party has the right on the land, then BPN will give a cancellation of the certificate of the other party based on the Head of BPN regulation Number 3 Year 1999, where BPN has the authorization in the cancellation of land rights.

d) The key actors of the land dispute resolution:

The key actors that are involved in the land dispute resolution mechanism in BPN are not only the officials under the Deputy of Land Dispute Resolution and Management which has been described above, but also the other organizations that are involved with BPN due to the land dispute resolution; this will be described in the following:

- *The Police of the Republic of Indonesia (POLRI)*: BPN has made cooperation with the Police of the Republic of Indonesia due to the land dispute resolution towards cases that are indicated criminal through the Memorandum of Understanding (MOU), which is known as “Operasi Sidik Sengketa” (Winoto, 2009).
- *The Attorney of the Republic of Indonesia (Kejaksaan)*: Due to the investigation done by the attorney related with corruption cases in the land dispute issues.
- *House of Representative of the Republic of Indonesia (DPR RI)*: The relation between BPN and DPR RI is in serving the complaints of the society concerning the land issues and find a comprehensive solution regarding the land disputes that are public attention.
- *PPATK (Pusat Pelaporan dan Analisis Transaksi Keuangan)*: PPATK has the authority due to receive the reports of Institutions that have fund stems from a criminal activity. The investigation of financial flow that is related with money laundry and corruption related with land issues.
- *Department of Defence of the Republic of Indonesia*: The relation between BPN and the Department of Defence of the Republic of Indonesia is in order of the land dispute resolution that is related with the asset of the Department of Defence and the Indonesian Military Police.

e) The existing main issues (weakneses) of the land dispute resolution in BPN :

- The work ethic and the professionalism of the employees: This concern is looking into the discipline and the responsibility of each employee due to the service to the customers. Furthermore, the behaviour of lack confident and indecision also the lack of knowledge in the rules and regulation gives a view of unprofessionalism.
- The weakness of the control and monitoring the land dispute resolution mechanism: Until now, the land dispute resolution mechanism does not have a fix plan and time of resolving the land disputes cases. In addition, there are no sanctions for not resolving the land disputes cases.
- The weakness of the rules and regulation concerning the land dispute resolution mechanism which gives an opportunity to lead into an unsolved land dispute case, furthermore will be described in the following:
 - The overlap between the rules and regulation.
 - The overlap between the justice systems: Administration- Civil –Criminal which causes overlap on the verdict/legal decision of the judges that are contradict or a non-executable decision;
 - The overlap between the process in the litigation and in BPN. This concern looks into the court characteristic which may allow evidence which can be fake and the other hand there are many of certificates that are not valid or defective administration are still available in the society and still have not been cancelled by BPN as the authorize agency.

- The data collection system concerning the land dispute cases documents. This looks into various aspects, such as:
 - The data concerning the development of the land dispute resolution mechanism, namely: the organization structure, the personnel, facility, equipments, budget and development activity;
 - The data anatomy of the land disputes, such as: the number of the cases, the number of cases completed, the distribution of the cases, the typology of the disputes, the operational land disputes mechanism, the subject of the dispute, the timing of the land dispute resolution;
 - The data concerning the operational land dispute resolution mechanism, namely: the amount of land disputes solved, the criteria of the land dispute cases that are solved, the result of the land disputes conducted in the court, operational activity and also the supervision and control towards the land dispute resolution mechanism.

f) The approach in accelerating the land dispute resolution mechanism

Based on the problems/challenges in the land dispute resolution, BPN has conducted some several programs, which consists of three new programs due to the aim in accelerating the land dispute resolution, namely:

- Operation in solving land disputes (Operasi Tuntas Sengketa), this operation is basically the land dispute resolution that has been handled in BPN with the concern of improving the coordination with the regional and district offices and by determining the time of solving a case in 90 days, which before has not yet been determined (Deputy of Land Dispute Resolution and Management, 2010b). In this operation the main approach is through the mediation mechanism and also fact finding.
- Operation in the investigation of the land disputes (Operasi Sidik Sengketa), this operation is regards with the land disputes cases that are involving criminal actions, therefore there is a coordination with the police of Indonesia.
- Operation in land disputes of public attention (Operasi Sengketa Atensi), this operation looks into the land disputes cases that are national concern, which involves other institution in resolving the land disputes.

4.3. Data Collection Approach

This section describes the designing of the data collection which consists of primary data and secondary data. Case study is one of the options in conducting social science research. According to Yin (2003), when we consider to a research with a case study approach it is to answer “how” and “why” questions. Furthermore in order to answer the research main objective which is to assess the weakness of land dispute resolution mechanisms through good governance principles, a case study was carried out in Indonesia. Thus, to measure the ability of the land dispute resolution mechanism that is conducted by BPN in this research which is looking into 5 good governance principles, namely: Equity, Efficiency, Participation, Access to Information and Organization.

4.3.1. Study Area for the data collection

In this phase, the area of the current case study were planned to cover 33 provinces in Indonesia, which are divided into 7 islands and 1 central office. In this research, three provinces of each island are chosen to distribute the questionnaires based on the most land dispute cases (Based on the 2009 Annual report of the land disputes cases which is shown in Appendix 3 with some exceptions. The exception are for islands, such as Java which are having the economic boom regions of Indonesia (Löffler, 1996) and

meanwhile for Bali, Maluku and Papua are not more than 2 due to the amount of the province in that island.

Islands and/or areas from which administrators and customers participated in this study are listed below:

Table 4.2: Areas of Participating Administrator (Land Officer) and Customers

No.	Provinces	Respondents from land officer	Respondents from the customers	Islands
1.	Sumatera Utara	4	5	Sumatera
2.	Sumatera Barat	1	1	
3.	DIY Yogyakarta	5	3	Java
4.	Jawa Barat	4	-	
5.	Central Office (DKI Jakarta)	16	11	
6.	Bali	3	5	Bali
7.	Kalimantan Barat	2	2	Kalimantan
8.	Kalimantan Timur	5	5	
9.	Nusa Tenggara Barat	3	1	Kepulauan Nusa Tenggara
10.	Nusa Tenggara Timur	1	1	
11.	Sulawesi Selatan	4	5	Sulawesi
12.	Sulawesi Tenggara	2	4	
13.	Papua	2	2	Papua
Total		52	45	

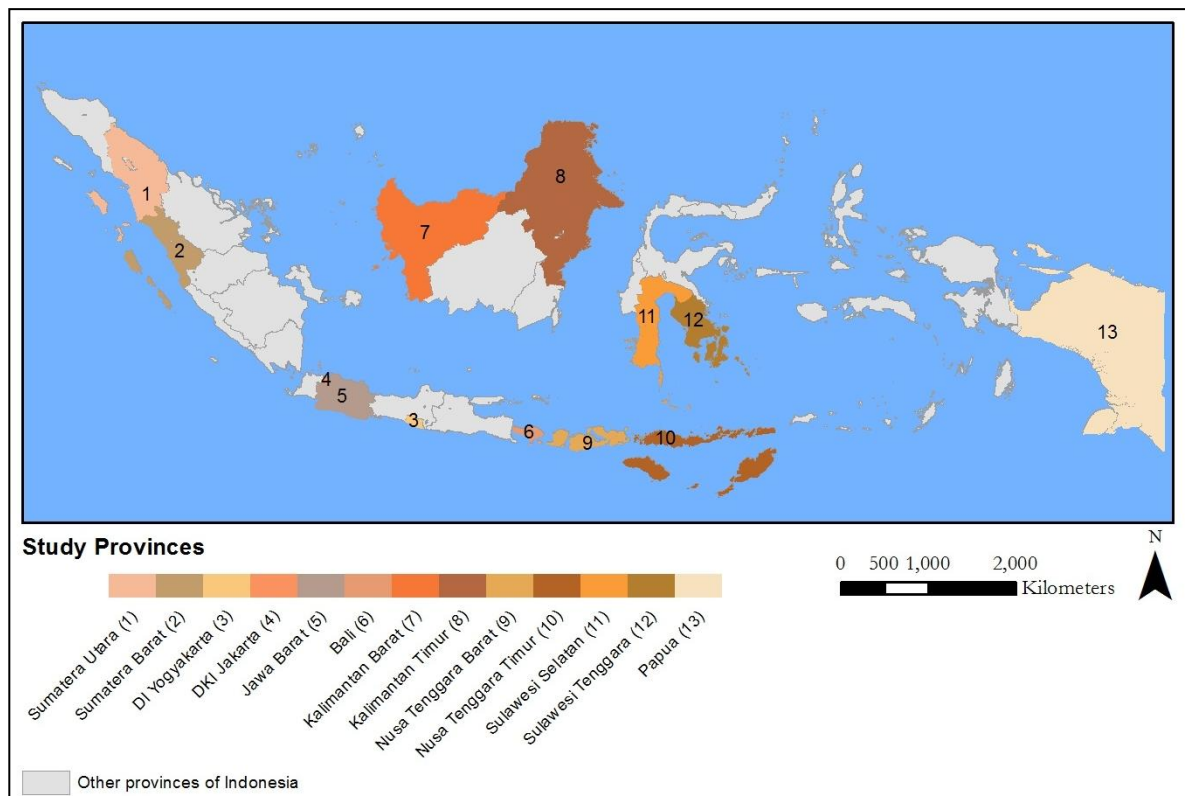


Figure 4.2: Map of Indonesia, showing study area

4.3.2. Data Collection

This research is obtaining data from both primary and secondary data. The primary data are user requirements and the real practices on the land dispute resolution mechanism and the secondary data were collected through desk research. Therefore, the description about the primary data and the secondary data are explained as follow:

Primary Data

The primary data as mentioned above are collected from the questionnaires and the interviews. The questions were developed based on the indicators in chapter 3. Furthermore, the interviews were conducted to obtain more information that was not retrieved from the questionnaire. The data obtained from the primary data are the results based on a survey conducted by (1) the responses from customers/people that have applied for a land dispute resolution processes at BPN as the representatives of the society and (2) the land officers/administrators who conducts the land dispute resolution mechanism as the representatives of the BPN officer. These data are required in order to answer the indicators that were explained in the previous chapter

Furthermore, the interviews were conducted to several BPN Officers in the central office and in the local offices due to obtain more information. The questions in the interviews were open questions, which more was related with the knowledge and the experience of the officer.

Secondary Data

The secondary data were mainly referring to the land dispute resolution in Indonesia. The resources of the secondary data were obtained from books and other library sources, government documents (Documents of BPN) and online sources.

4.3.3. The questionnaire design

In designing the questionnaire, the questions were derived from the indicators that were explained in Chapter 3. The questionnaire was divided into 2 questionnaires, which are:

1. The BPN officers (in the division of the land dispute resolution and management).
2. The customers/people (the disputants that have their cases solved in BPN).

All two sets of the questionnaire were based on these following indicators in order to be taken as an input for answering research question 3 and 4 from the second specific objective and for the assessing the land dispute resolution mechanism.

- Gender
- Education
- Income
- Clarity
- Simplicity
- Time
- Cost
- Decision-making
- Involvement
- Completeness and up to date databases
- Openness of procedures
- Adequate information
- Clear job and responsibility
- Clear strategy

4.3.4. The methodology in collecting the data

Primary Data: In collecting the primary data, which were questionnaire and interview, there were some approaches, as explained below:

- Questionnaire: The questionnaire was distributed to the selected areas through the email of each BPN Officers in each province. Then the questionnaire was printed and distributed to the BPN Officers and the customers randomly. Then each province send the results through mail to the contact person of the researcher in the central office to compiled as one with the others then after the completion, the hardcopy (documents) were send to the researcher in Netherlands.
- Interview: The interview was conducted through telephone and e-mail. The questions were opened and the time of the interview was based on the BPN officer's time.

Secondary Data: The documents in regards with the government documents were obtained through mail and from emails. Furthermore, for documents that were online, was printed by the researcher.

4.3.5. The Limitation of the Research

In conducting the research there were several of limitations, such as:

1. The time: The results from the questionnaire send to the researcher took 2 months of process. The main problem was the researcher had to always maintain communication to the BPN Officers contact through telephone in regards to the questionnaire. Then the distribution from the BPN Officers and the customers took more than 1 month. Then the sending of the documents to central office took more than 1 week, and then the complete documents to be send back to the researcher also took 1 week of time.
2. The responds: Based on the distribution of the questionnaire, which were 3 provinces of each island, could not be completed due to the limitation of the Human resources and time. Furthermore from the customers, most of them did not feel convenient to answer the questionnaire due to the fear of affecting the land disputes cases that they were solving in BPN.

Gap issues the land administration organizations and citizens have been an open issue in many years. Therefore there are some sensitive issues that could not be questioned. Thus the questions have limitations.

4.4. Summary

This Chapter gave an overview of the land dispute resolution mechanisms in Indonesia, especially by the only one government Institution that has the authorization in handling the land disputes is Badan Pertanahan Nasional (BPN). It also gave a description concerning the current weaknesses of the land dispute resolution mechanism and what weaknesses that are going to be assessed with the framework developed in Chapter 3.

The chapter also gave the outline of the data collection approach. This used methodology is the case study approach. In the context of the study area, it has been described how the area of study was selected and the limitations of the research are also explained. Furthermore the data collection approach is described in detail. Both primary data and secondary data were obtained. The results from the primary data are presented in the next chapter.

5. RESULT AND ANALYSIS

5.1. Introduction

The study is to find out the experiences and opinions from the customers who are using the land dispute resolution mechanism in BPN. This chapter presents the analysis of the data as the result of the survey in regards to the land dispute resolution mechanism in Indonesia. In section 5.2 describes the result of the survey with explanation through the indicators of the five principles that has been chosen based on the framework developed in Chapter 3 with the charts and analysis descriptions. From these analyses will lead to answer research question 2, 3 and 4 for specific objective 2. Finally the summary of this chapter is described in Section 5.2.

5.2. General Information on the Respondent (Customers)

Figure 5.1 shows the gender of the respondents of the customers only, in which more than 2/3 of the respondents are male and the rest of the respondents are female. This reflects the men are more involved in the land disputes cases resolution than the women. This may be attributed to various factors, such as most of the owners of the land dispute cases are men or the men are more active than the women in regards to the resolution of the land dispute.

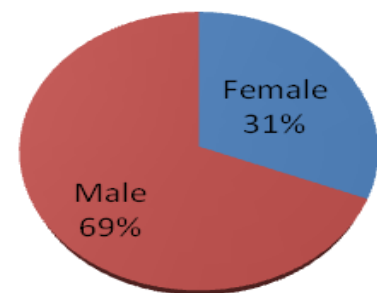


Figure 5.1: Gender of the Respondent

5.3. Result of the Survey

The general objective of this survey is to find out the expectation of the customers concerning the land dispute resolution mechanism that is conducted by BPN. In regards of the second objective, which is to evaluate the land dispute resolution mechanism by using the most effective good governance indicators, the survey about land dispute resolution mechanism, which is known as “OPTASTA” (as described in Chapter 4) is taken as a case study to evaluate the mechanism through the indicators of equity, efficiency, access to information, participation and organization relate to the land dispute resolution mechanism. Following are the results of the survey:

5.4. Indicators of the Equity in the land dispute resolution mechnasim

In this section, the result is presented due to the investigations conducted in trying to achieve whether there is the existence of some level of inequality in the land dispute resolution mechanism exhibited by BPN to the customers in terms of gender, education and income of the society.

5.4.1. Gender

The land dispute resolution and management division is established to receive and solve all land disputes cases which are under the authority of BPN. There were indications that most of the cases solved from the land dispute resolution mechanism are the cases owned by men (Figure

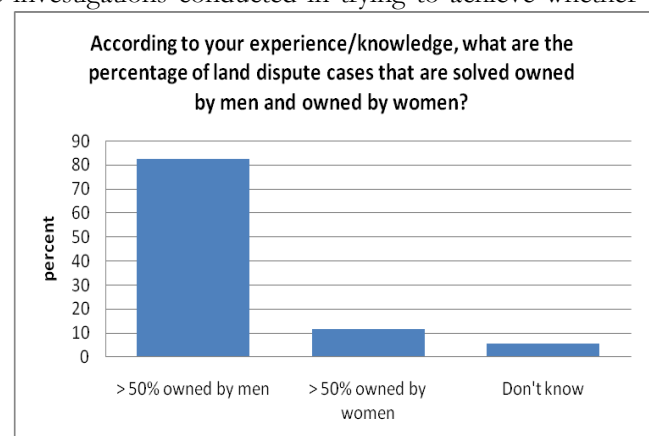


Figure 5.2: The response from the land officer as the respondent in terms of gender

5.2). In addition, according to the BPN Officials, that all the cases that are lodged in BPN, are cases that are brought based on the customers own willingness to bring the case to BPN in order to solve their disputes.

Furthermore, based on the interview with several BPN officers, they indicated that there are barriers that are the basics of the disputants to bring their case to BPN, which are the awareness of the mechanism in BPN and the trust of the disputants to solve their case in BPN. Therefore, from the Figure 5.2 depicts that majority (43 out of 52) respondents representing more than 80 percent land disputes cases are owned by men can be assumed that men are more involved and aware in the land dispute resolution mechanism.

5.4.2. Level of education of the customers

The response received from the customers that are having their land disputes solved in BPN is not that much different from the opinion of the BPN officers. The result indicates that around 60 percent of the customers already have education in the university as shown in Figure 5.3. It is assumed in this research, based on the survey that most of the customers of the land dispute resolution are the educated people. In addition, in this research it is assumed that the people with high school education are also having a quite big amount in solving their land dispute in BPN. This also shows that people who are appealing the land disputes are people with knowledge and aware about the land dispute resolution in BPN.

What are the customers level of education?

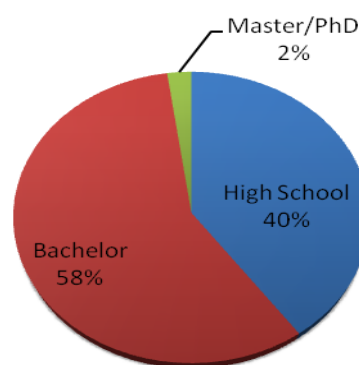


Figure 5.3: The response from the customers regarding their level of education

5.4.3. Income

From the responses of the land officers, land dispute resolution mechanism does not differentiate the people due to the wealthy or poor of the individual. According to the Bureau Statistic Report in 2008 which is shown in Appendix 3, shows the minimum salary of each province in Indonesia. The salary is given in Rp¹. In regards with the information obtained in Appendix 3, the author differentiated the level of income into 4 classes. Furthermore, the responses of the customers, shown in Figure 5.4, where more than 40 percent of the customer's level of income is at the middle level of income which is between Rp.500.000 – Rp1.500.000. From this survey, the information regarding the occupations of the customers which responded are: Business owner, private company employee, Farmer and government employee, where most of them were private companies' employees and the lease ones are the farmers. Therefore it indicates that most of the land dispute case owners are the society in the middle level of income, where the people from the level of income which is under Rp.500, 000 are not having many land disputes solved through BPN. In addition, based on the interviews with several BPN officers, there are not that much of people with the level of income under Rp.500, 000 due to the lack of resources

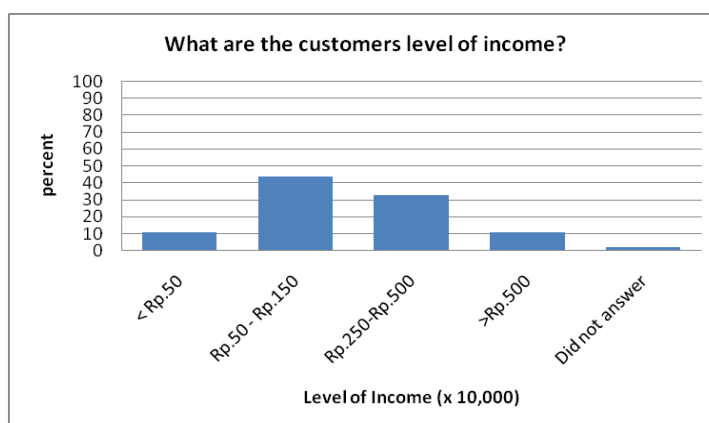


Figure 5.4: The level of income of the customers regarding with the applicants of the land dispute cases

¹ Rp (Rupiah) is the official currency of Indonesia; 1US \$ = RP 8.850

to reach the office, the lack of access of information reached by these people regarding with the land dispute resolution mechanism.

5.5. Indicators of the Efficiency in the Land Dispute Resolution Mechanism

The survey presents the efficiency looking into the clarity, simplicity, timeliness and cost of the Land Dispute Resolution Mechanism.

5.5.1. Clarity

The clarity in where the customers have to appeal their land dispute cases in BPN is showing that the first procedure in the land dispute resolution mechanism is clear. Therefore, based on the respond from the customers which is shown in Figure 5.5, where most of the customers were clear in knowing where they had to appeal and process their land dispute cases in BPN. On asking the reasons, most of them responded that the information in the offices regarding which division handles which authority is clear, and only few answered not clear, but yet they get the information after they asked the administration division.

According to your experience/knowledge, did you directly know where to resolve your land disputes in BPN?

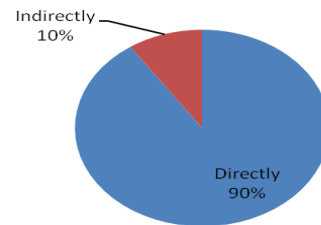


Figure 5.5: The response from the customers about knowing where to resolve the land disputes in BPN

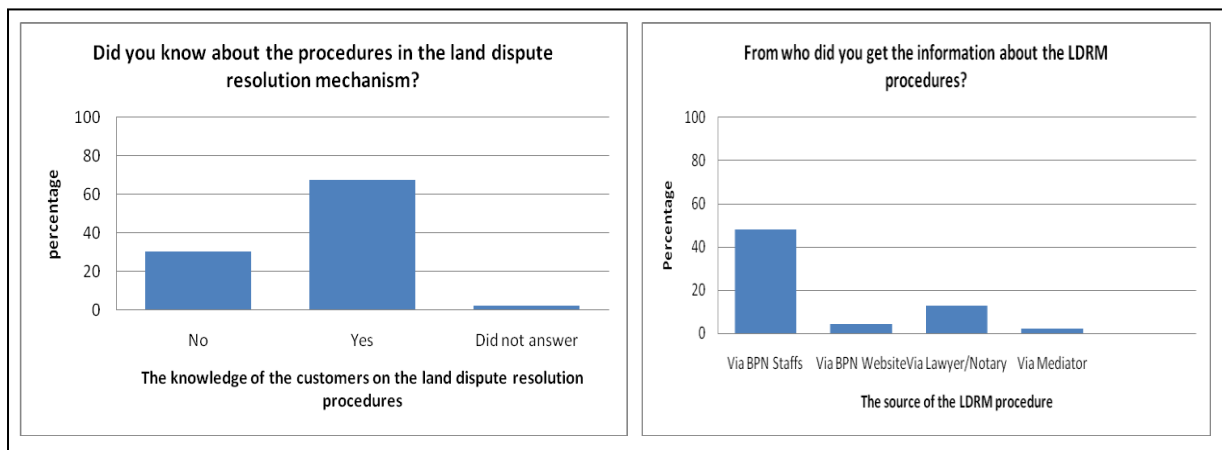


Figure 5.6: The response from the customers about knowledge on the land dispute resolution procedures

Concerning the clarity of the procedures in the land dispute resolution, based on the respond from the customers there are three classification of answers which consists of no; yes; and the ones who did not answer. Based on the Figure 5.6 there are 3/4 customers who responded that they knew the procedure of the land dispute resolution mechanism in BPN. The ways they obtained the information are through different ways such as through the BPN staffs; BPN Website; Lawyer/Notary and Mediator. This shows that most of the customers acknowledge the procedures clearly. Furthermore based on the Figure 5.6, almost 1/2 of the customers acknowledge the procedures in the land dispute resolution mechanism from the BPN staff. On asking the reasons, it was

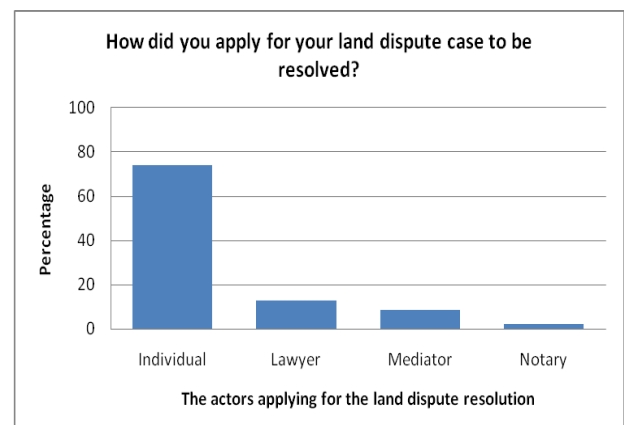


Figure 5.7: The response from the customers about how they applied their land dispute cases

found out that most of the customers feel more ensure to directly ask the BPN staffs rather looking into the website which they consider is still not clear. The respond from the BPN officials through interview about the clarity of the procedures are as the same with the customers. Therefore it can be assumed from this research that the clarity of the procedures through the BPN staffs is essential.

Furthermore, based on Figure 5.7 that more than 2/3 of the respondents applied and processed their land dispute cases by themselves and the rest are applied through representatives such as lawyer, mediator and notary. It can be assumed in this research that most of the customers are clear through the mechanism therefore they have the confident to apply by themselves.

5.5.2. The Simplicity

There are several processes that are associated with the land dispute resolution mechanism. First, according to the BPN Officers that responded, there are steps from receiving the land dispute case until its completion. This process can be divided into two based on:

- The Land Office
- The Central Office

In the land Office, the documents of the land dispute claim from an individual or corporate body will be delivered through a letter to the Head of Province Land Office or Head of Municipal Land Office which will first be accepted in the administration division then will be continued to the head of Land Dispute Resolution and Management. Further will be processed by the staff which will result in a resume of the case then the parties involved will be called due to obtain more information in the purpose of the land dispute resolution and the first approach will be through Mediation and BPN as the mediator. If it does not lead to an agreement between parties then BPN will give a recommendation to continue the dispute resolution through the judicial mechanism, the court. In the Central Office, there is only a slightly difference due to the Officers involved.

Second, concerning the procedures of the land dispute resolution mechanism, around 75 percent of the respondents agreed that the procedure was relatively complicated and need to be accelerated which is shown in Figure 5.8. Regarding to this issue, in the other hand most of the officers agree that the procedures or the steps in the land dispute resolution are already sufficient and appropriate. Furthermore, based on the Figure 5.8 shows that more than 1/2 of the respondents had to come many times due to the land dispute resolution mechanism, which can be assumed that this procedure still has many steps to follow.

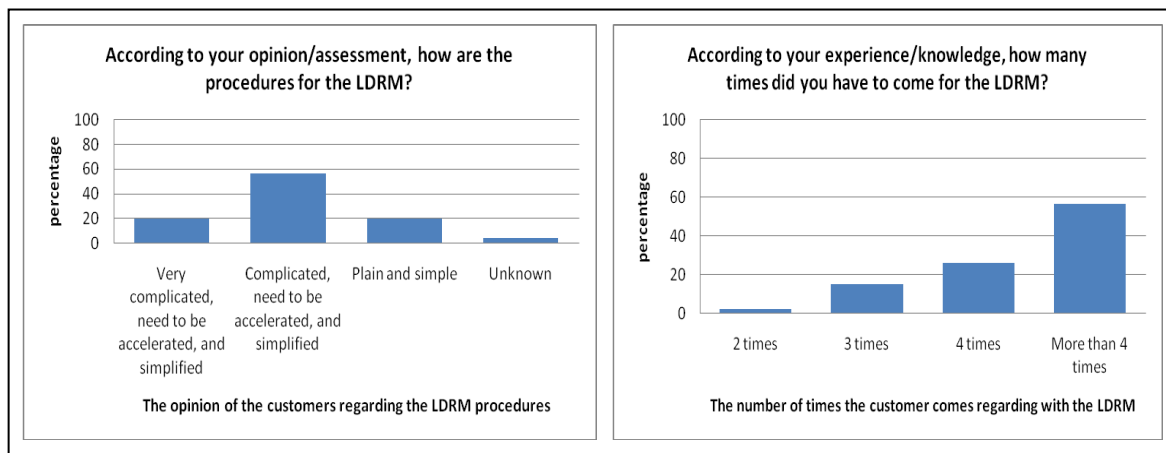


Figure 5.8: The response from the customers regarding the LDRM procedures

5.5.3. The Time

In connection with seeking for the impressions about the time the land dispute resolution mechanism, based on the Figure 5.9 shows that more than 60 percent of the customers responded the main complaint of the land dispute resolution mechanism is the length of the procedure. Then can be assumed in this research that the allocated time in the Land Dispute Resolution Mechanism was not sufficient. Furthermore from the Figure 5.9 shows that more than 80 percent of the customers responded that the allocated time in the land dispute resolution mechanism is relatively long. Therefore, it can be assumed from this research that the services in this process needs to be accelerated.

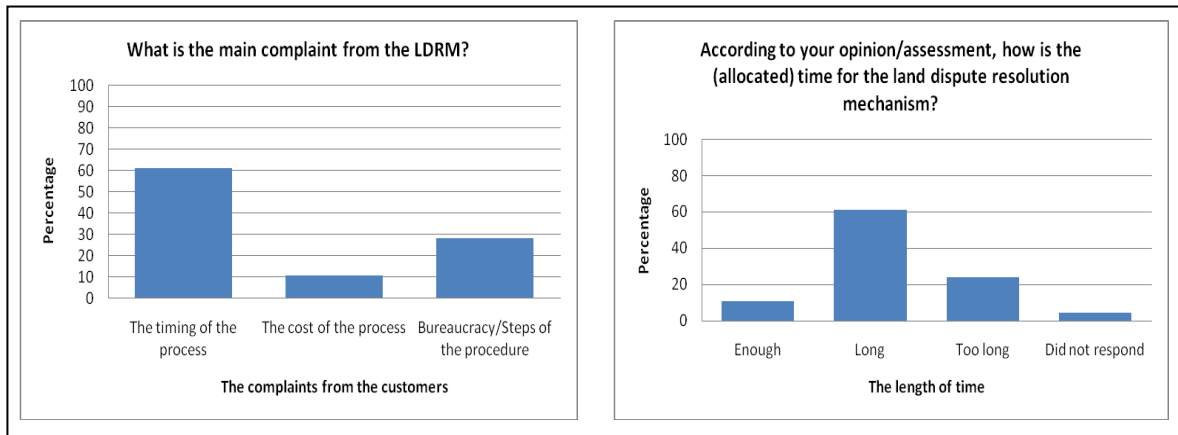


Figure 5.9: The response from the customers regarding the time for the land dispute resolution mechanism

In contrast, it was revealed from the respondents of the BPN Officials that around 70 percent of the Officials agreed that the time allocation in the land dispute resolution mechanism is enough which is shown in Figure 5.10. Therefore from this research it can be assumed that the time allocation of 90 days was sufficient for officers to solve a land dispute case.

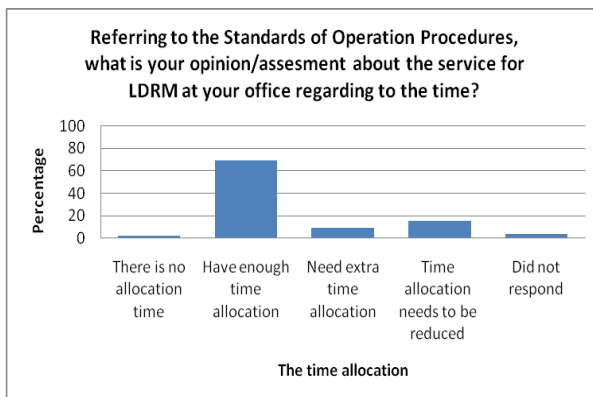


Figure 5.10: View whether the time allocation are sufficient and proper from the BPN Officials

5.5.4. The cost

There are payments that are associated with the land dispute resolution mechanisms. The Figure 5.11 below shows that more than 50 percent of the respondent from the customers agreed that there are fees in the land dispute resolution mechanism, and most of them also agreed that the fee was fair costly

In order to led us to source out to know whether such payments are made or not, the respondents from the officers, where most of the land officers perceived that there is no cost due to the land dispute resolution mechanism, several of them explained that the cost has been arranged from DIPA (The National Budget). But in contrast some of the land officers perceived that there is a fee charged based on the Government Regulation Number 13 Year 2010 concerning Types and Rates of Type of Non Tax State Applicable at The National Land Agency (BPN), where the fee is for the recording data changes based on the court decisions and also for the blocking listing.

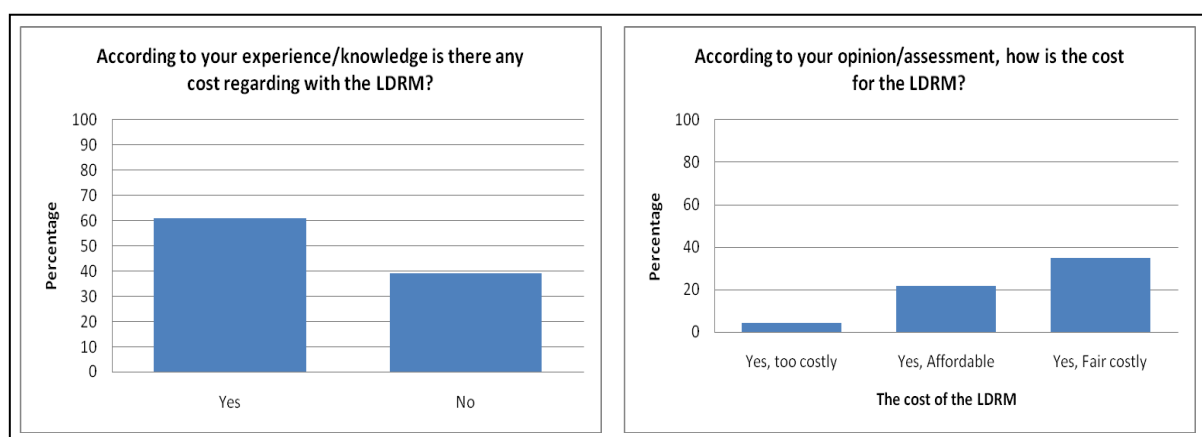


Figure 5.11: Response from the Customer regarding with the cost of the LDRM

5.6. Participation in the Land Dispute Resolution Mechanism

Participation assessment entails looking at how the society is involved in the decision making in the determination of the dispute resolution also the influence and the involvement. In this section the level of interaction of the people having the land disputes cases with the government land agency which handles the Land Dispute Resolution Mechanisms as well with other institution involved.

The respond from the customers due to the involvement in the decision making of the land disputes resolution, which is shown in Figure 5.12, more than 70 percent of the customers were participated through consultation/meeting. This indicates that the participation of the customers is an essential aspect due to the process of handling the land dispute. Furthermore, the others agreed that they were involved through Mediation, which is the first approach that will be taken by BPN in resolving a land dispute.

Regarding to the participation of the customers, based on the respondents of the Land Officers most of them perceived that the involvement of the customers is not due to the decision of the land dispute resolution mechanism but related to the mediation process and to obtain information from the parties involved in the land dispute.

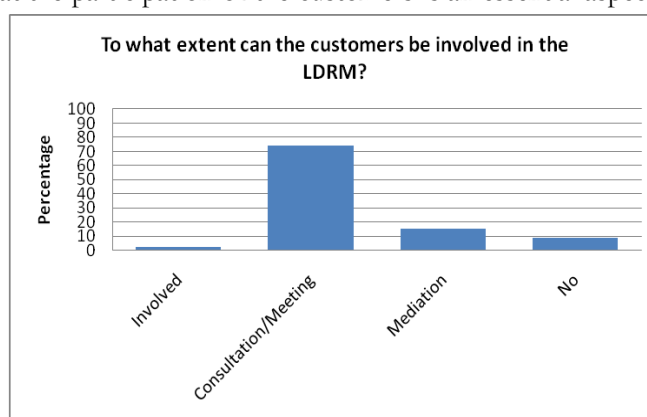


Figure 5.12: To what extent can the customers be involved in the land dispute resolution mechanism

5.7. Access to Information in the Land Dispute Resolution Mechanism in BPN

For the purpose of bridging the gap between the society and the BPN as the Agency handling the land dispute resolution there must be sufficient access to information. This can be shown through the completeness and up to date databases, openness of procedures and adequate information.

5.7.1. The completeness and up to date database

Based on the respondent from the BPN officers, most of them perceived that they have not have a good archiving data for each case that have been completed or still in the process due to the limited finance in developing a complete and up to date database in the land dispute resolution mechanism. But in some land offices which are located in the big cities where land transaction is also big, they have a good database. Regarding to this, based on the respondent of the land officers, it is shown in Figure 5.14, that

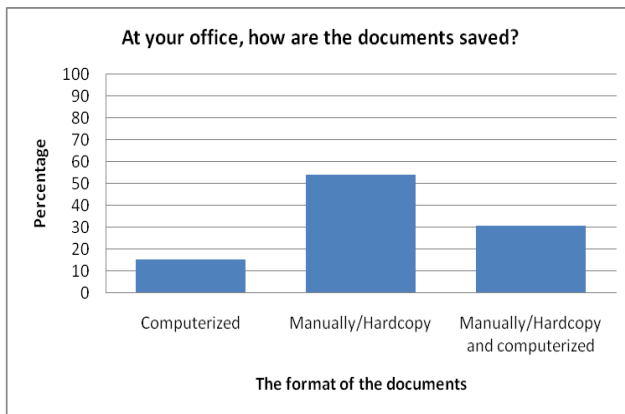


Figure 5.14: The format of the land dispute resolution documents

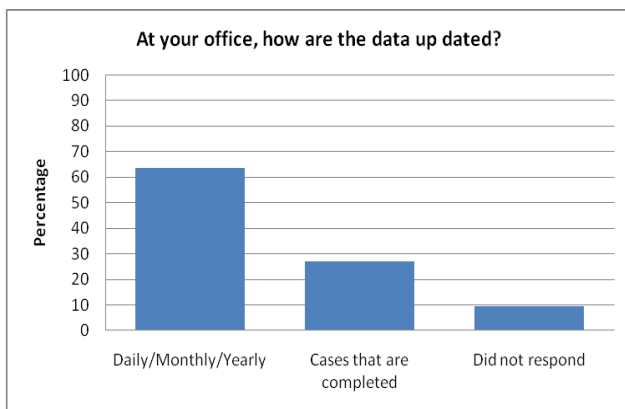


Figure 5.13: response from the BPN Officials regarding with how the documents are up to dated

more than 50 percent of the respondent agreed that the Land Dispute Resolution documents are in a format manually/hardcopy. Therefore it can be assumed in this research that most of the land offices are saving their documents in a proper database.

Furthermore if the office has a database, in updating the documents in the database, around more than 60 percent of the land offices responded that they updated there documents in daily/monthly and yearly, which is shown in Figure 5.13. This can be assumed from this research that the data are reported good most of the documents are archived well and the information that is provided are often the recent condition of the cases

5.7.2. The Openness of procedures and adequate information

In the access of information regarding the progress of the land disputes cases that were completed or still in process, based on the respondent from the BPN officers, most of them perceived that it can only be accessed directly in the administration section of the Land Dispute Resolution and Management division but not online. Furthermore based on the respond from

the BPN Officials, which more than 30 percent of them agree that the kind of media that is used by BPN in conveying information to the applicants regarding the land dispute cases that have been completed or still in process are through Notification Letter/Email and the rest are through the administration division directly or through newspaper.

The ability of accessing the information regarding to the land dispute case based on the respondent from the customers which is shown in the Figure 5.15, more than 60 percent of the customers responded that they can access the information. Then it can be assumed in this research that the information concerning the procedure and the process of the Land Dispute Resolution Mechanism is open. Furthermore, more than 60 percent of the respondent also agreed that in accessing the information they were satisfied and obtain good enough information.

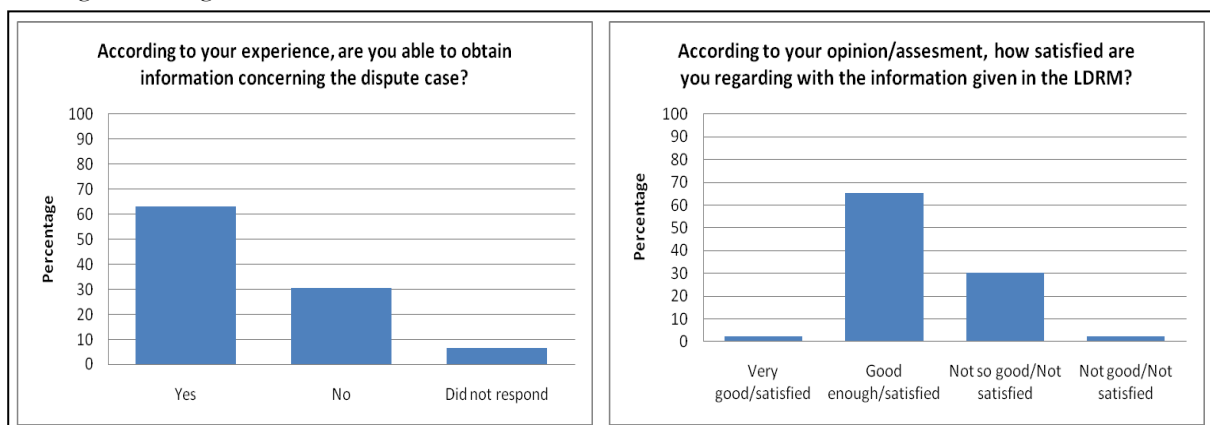


Figure 5.15: The ability of the customers in accessing information concerning the land dispute case process

5.8. Organization (Structure of Organization)

The Structure of Organization is looking into the clear job and responsibility in the organization and the clear strategies they have. First, based on the respondents from the BPN officers, it has been concerned about the satisfaction of the customers to the land dispute resolution mechanism in BPN and how many cases are solved in percentage. Therefore the land officers perceived that the customers are still not satisfied due to the time in handling a land dispute case are still considered long and for the percentage of cases that have been solved, most of them responded that 65 % of the total cases have not been solved. Here it is shown how the officers are dealing with their responsibilities.

Second, for all the land dispute cases that cannot be solved through BPN by mediation, then the parties will be recommended to continue the settlement through the judicial mechanism, which is the court. Furthermore the targets of the land dispute cases to be resolved in each year are planned 10-15 cases, this also caused by the limitation of budget and human resources.

Third, according to the respondents from the BPN officers, most of them agree that the roles and responsibilities of the officers in the land dispute resolution and management is not appropriate yet. This is caused by the lack of knowledge of the human resources regarding the land dispute resolution which also contains the acknowledgement of the law and regulations. But some of the respondents consider that the roles and responsibilities of the officers are already appropriate and sufficient.

But in contrast the Figure 5-16 below can show on how the customers are satisfied where more than 70 percent agreed that they were satisfied to the BPN employees services due to the land dispute Resolution mechanism and also how they are satisfied due to the current land dispute resolution mechanism in BPN, where more than 50 percent agreed that they are satisfied with the existing land dispute resolution mechanism:

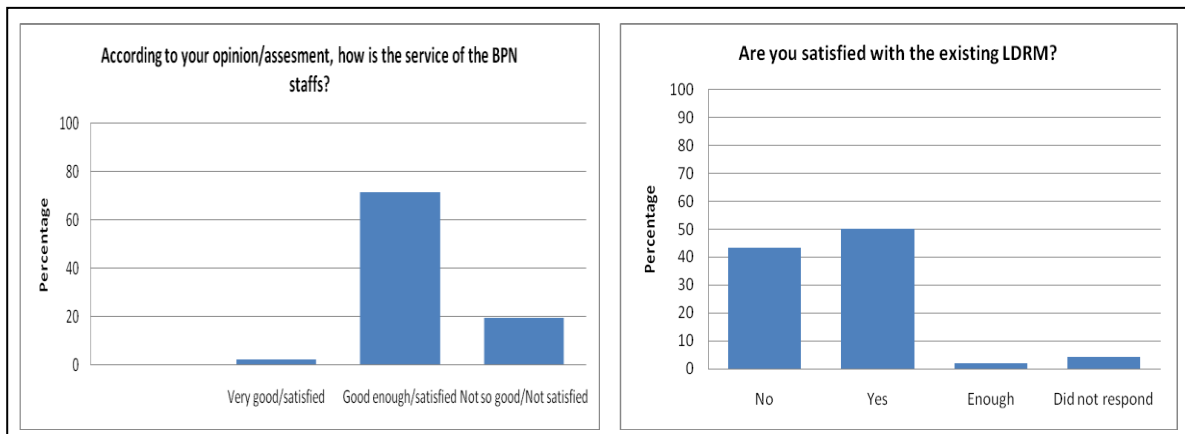


Figure 5-16: Responses from the respondent about customer satisfaction regarding with the Organization

From the data presentation, the main results of each indicator can be summarized as described in the table below:

Table 5.1: Summary the results of Indicators

Indicators	Result
Equity	
Gender	More than 80 percent land disputes cases are owned by men
Level of education	More than 50 percent of the customers have education in the university level.
Level of Income	More than 40 percent of the customers level of income is between 500.000 – 1.500.000 (1US \$ = RP 8.850)
Efficiency	
Clarity	3/4 of customers knew the procedure of the land dispute resolution mechanism in BPN
Simplicity	75 percent of the respondents agreed that the procedure was relatively complicated and need to be accelerated
Time	More than 80 percent of the customers responded that the time taken in the land dispute resolution mechanism is relatively long.
Cost	More than 1/2 of the respondent from the customers agreed that there is a fee and that the fee is fair costly
Participation	
Decision making	More than 70 percent of the customers participated in the decision making
Involvement	More than 70 percent of the customers participated through consultation/meeting
Access to Information	
Completeness and up to date databases	<ul style="list-style-type: none"> - Does not have a good data archive - More than 60 percent of the land offices responded that they updated their documents daily/monthly or yearly
Openness of procedures	30 percent of them agreed that the kind of information that they give to the applicants are based on the land dispute cases that are completed
Adequate Information	More than 60 percent of the customers responded that they can access the information concerning the procedures and they were satisfied in accessing and obtaining the information
Organization	
Clear job and responsibility	More than 70 percent agreed that they were satisfied with the BPN employees services
Clear strategy	More than 50 percent agreed that they are satisfied with the existing land dispute resolution mechanism

5.9. Summary

The results of the survey indicate that the practise governance principles within the context of Equity, Efficiency, Access to information, Participation and Organization are not all apparently visible in the respect of the land dispute resolution mechanism in BPN.

In regards with Equity, we identified how the land dispute resolution mechanism has opened up full access to any individual or corporate body, however based on the results` it is assumed that there are only the acknowledgeable people with sufficient resources and moreover are men that are involved in the land dispute resolution mechanism. Others have not been given the opportunity to resolve their land dispute cases through BPN.

With regards to Efficiency, the results show the procedures in the land dispute resolution mechanism gives a clear view, but there are issues on the complexity of the delivery. This causes the length of time in solving the land disputes to be high, which is a main concern for the citizens. Furthermore, there is uncertainty regarding the regulation on the fee in the process, yet most of the citizens consider the fee adequate.

With regard to Access to Information, evidence gathered showed that there has not yet been an adequate system of the documents archiving, which leads to most customers not being informed directly but they must be active in communicating with the BPN Officers to obtain the progress of the case. Furthermore, the information is based on the completeness of the cases which also causes many meetings with the officials who are gathering the information themselves.

With regard to Participation, responses gathered showed the involvement of the customers as an essential aspect of the success in solving the land disputes in the land dispute resolution mechanism. The exchange of information through meetings with the customers and the government are ensuring the interaction between them which gives the customers a feeling of ownership of the process.

With regard to Organization, the results show that the delivery of services of the mechanism are considered fulfilled by the customers. This comprises the manner of decision taking in respect of the land dispute resolution delivery. Even though there are criticisms of the customers, it pertains to do better.

With regard to the kinds of issues arising in the land dispute resolution mechanism, they are comparable to what has been discovered in other researches. Therefore the next chapter examines these results within the context of earlier works.

6. DISCUSSION

6.1. Introduction

In this section we discuss the results based on the five principles of the good governance in accessing the land dispute resolution mechanism (Chapter 5) in the context of contributions of earlier works as well as the contemporary facts (Chapter 2 and 3). In Indonesia, the land dispute resolution is one of the main concerns of the successes of the land administration system (Sumanto, 2008).

6.2. Equity in the land dispute resolution mechanism

This research has shown that the major means of the land dispute resolution mechanism are not applied in different levels of social status from the community. Most of the people that are accessing the land dispute resolution mechanism are considered as knowledgeable people with sufficient resources. This can be assumed that the people with lack of knowledge and lack of resources are consider not confident in processing their disputes in the land dispute resolution mechanism in BPN. But it is also assumed that the people who were responding were with the criteria of having sufficient knowledge knowing that it would not affect their dispute cases resolution, which is opposite with the people that are considered as the vulnerable ones or the poor. This can be shown through the data where more than 60 percent of the disputants were having education in the university and more than 40 percent are having sufficient resources. This leads to the question, where are the other levels of the community, especially the ones with minimum resources and knowledge. Based on the results that the people that are applying for the land dispute resolution are various from business owner, government employee, private company employee and farmers. This again leads to the question where are the other ones such as the farmers in this case which most do not have those criteria? It can be assumed that they are not accessing the land dispute resolution mechanism as much like the others. Furthermore, Crook (2005) reports that in Ghana, when the people making most use of the litigation process are studied based on gender, education and occupation, mostly were men with a high level of education (in this study was university) and having professional occupations.

Buscaglia & Stephan (2005), claim that there is a link between access to justice and poverty, where in Columbia the access to formal and informal resolution mechanisms in cases dealing with land disputes are also influenced by the level of income of the household, where the poor are least likely in having legal assistance, and therefore are likely to use the informal institutions. Then it can be assumed in this research that in most cases where the land dispute is being solved, this is due to the customer's ability of redressing their grievances.

There is the argument that more men are involved in the land dispute resolution than women. Similar is the case in Nepal (section 2.6.2). Furthermore Nelson (2008) explains that the approaches in the land dispute resolution should be applied in different levels of society. This will ensure that the process is sustainable including equal participation of women and men. Even though the land dispute resolution mechanism is open wide for any individuals and corporate body. In this research it can also be assumed that most of the lands are owned by men, since most of the land dispute applicants are the owner of the land.

6.3. Efficiency in the land dispute resolution mechanism

The Rules and regulations or the procedures on how the land dispute resolution mechanism is delivered must be clear in order to receive the full understanding of the people. A clear process will also lead to efficiency in the mechanism. Based on this research, there are various aspects included in the clarity of the land dispute resolution mechanism. First, concerning the Standard Operating Procedure (SOPs) as a guideline concerning the land dispute resolution. Based on the response of the BPN Officers there is a Standard Operating Procedure which is based on the Head of National Land Agency Decree Number 34 Year 2007. But in contrast there are also respondents that say that no Standard Operating Procedure is defined. It can be assumed that the mechanism is not conducted in the same way throughout the different BPN office. Even some of the respondents that agreed about the availability of the Standard Operating Procedure (the province DI Yogyakarta), which admit that the procedure has been issued in 2010 and the other offices that are not acknowledging the new standard are using a previous guide which is not a Standard Operating Procedure, but known as “Juknis No.34 Year 2007 ”(which is a guideline of the officers in handling the land disputes, conflicts and cases of land), so that the effectiveness of handling and settlement of disputes, conflicts and cases of land is expected to meet society's expectations that there is a handling and settlement of disputes, conflicts and cases of land that satisfactory. Therefore it is assumed that the socialization of the new procedure was not done which leads to the confusion of the people in understanding which procedure to follow. Therefore it will lead into different steps being used in approaching the land dispute resolution mechanism that can lead to further complicating its operation. The simplification of procedures needs to be addressed realizing that with better efficiency both costs and delays are reduced (FAO, 2002a).

The clarity of the procedures in the land dispute resolution mechanism is an essential aspect in the needs of the customers, therefore the processes and institutions gives results that meet the needs of the society by making the best use of their recourse (section 2.6.2).. As a result, more than 70 percent of the customers are aware of the procedures of the land dispute resolution mechanism and they also know where the process is delivered. Furthermore 70 percent of the respondents obtained the information concerning the procedures through the BPN Staffs due to they feel they will get more reliable information. Therefore it can be assumed that the clarity with the BPN staffs is essential. This relates with the amount of customers that applied themselves in the land dispute resolution mechanism. The result shows this is a big amount, more than 70 percent. Therefore it can be assumed that most of them feel clear about the procedures and that they feel confident in processing their land dispute cases in the land dispute resolution mechanism.

Schwedersky (2010) says that high cost are one reason why many land disputes never reach the formal institution due to the simply lack of the resources to pay for an official complaint. Based on the information obtained from the survey to the customers, more than 50 percent of them agreed that there were costs in the land dispute resolution mechanism. But in contrast most of the land officers responded that no fees charged to the customers since budget has been arranged from The National Budget plan. A few of the Officers however admit that there are costs due to the fee for recording data changes based on the court decision and also for blocking listing. This creates confusion and it can be assumed from this research that the costs to the customers are not well defined and may lead to extra costs that are not supposed to be part of the costs of the service.

There have been many concerns when dealing with the land disputes that receive national attention. Therefore there is specialization for dealing with cases of this type of land disputes where the land dispute is of national concern. Similarly in China, where this could be caused by the fundamental problem from the past (section 2.3.1). The first approach due to this kind of land disputes is through mediation and meetings with the disputants involved that will be held in the Provincial Land Office and then continued at the BPN Central Office. In the mediation process there are processes such as meetings to obtain the information from the parties who claimed then also by doing an administrative, physically and judicially

research. This does not close the opportunity in solving the case with forming special teams that may involve the people from the House of the Representative and other institution. This can be assumed that for national cases, the land dispute resolution mechanism are not defined clear due to the involvement of other institutions.

6.4. Participation in the land dispute resolution mechanism

Colvin (2002) contends that citizen participation may translate into various approaches, which one of them is through the nonbinding direct involvement, such as public hearings, written comments and open meetings. Based on the survey, more than 70 percent of the customers responded that they were participating in the decision making through meetings and mediation. But in contrast the BPN Officers perceived that the involvement of the customers is in the process of the land dispute resolution mechanism, such as through mediation where the disputants must be involved due to the obtaining of more information from them about the dispute. Therefore the involvements of the parties in the dispute are essential. It is likely that the public involvement will depend on the specifics of a situation, like in this research the land dispute resolution mechanism and that more knowledgeable decisions will require more citizens involvement (Rowe & Frewer, 2000)

Furthermore, besides the participation of the customers in the land dispute resolution mechanism, it is also influenced by other divisions in BPN and also other institutions. Based on the response of the land officers, in the BPN agency itself the Land Dispute Resolution and Management division is coordinated with the division of land rights and land registration and the division of measurement survey and mapping due to obtain the technical data and other data regarding the land dispute.

On the participation of other organization in the land dispute resolution mechanism, BPN recently had an agreement with the police because of the acceleration of the land dispute resolution which is known as land dispute investigation operations (Operasi Sidik Sengketa) and land dispute settlement operations (Operasi Tuntas Sengketa). Furthermore, regarding the formulation of the Policy, Regulation and the dispute resolution process, there are involvement of other organization, such as NGOs, Universities and the society would be advisable. They would contribute to the development of the land dispute resolution mechanism.

6.5. Access to Information

The publication of the land dispute resolution related documents has not been a part of the land dispute resolution activities in BPN. The archiving of data regarding the land dispute cases based on the results from the BPN Officers respondents revealed that most of the offices are having lack of completed and up to date databases. Most of the offices that require a complete and up to date database are the ones located in the big cities, where land transactions are many. This relates with the limitations of financing the development of the database. Therefore more than 50 percent of the respondents agreed that most of the land dispute resolution documents are still in a manual/hardcopy format. It can be assumed that the customer has to be active in seeking the process of their land dispute cases being resolved.

Based on the results, most of the BPN Officers agreed that the access of information regarding the land dispute cases are only accessible by coming directly to the administration section of the land dispute resolution and management office or to the officer handling the case directly, but not online. But this issue has not been perceived as a problem by the customer. They respond which more than 60 percent of the customers being satisfied with regard to the information given and the ability to obtain the information. This can be assumed that the Officers themselves are performing well in providing the information in accordance to the requirements of the customers. According to UN (2007) (section 2.6.2), Access to information is an essential element in order to reduce corruption and establishes the trust between citizens and governments and also entails the openness in conducting the public affairs.

6.6. Organization

Based on the research in Cambodia (Schwedersky, 2010), big concern of the land dispute resolution mechanism is the lack of clarity on the responsibility of the institution also because the citizens do not trust the formal institution. According to the results, it was revealed that the customers were satisfied with the services of the BPN officers in the land dispute resolution mechanism, therefore it can be assumed in this research that the employees have clearly defined their job and responsibility in solving the land disputes and that the customers trust in BPN in solving their land disputes. This is also supported by the fact that the job and the responsibilities of the land dispute resolution and management are based on the Presidential Regulation No.10 Year 2006 which regulates clearly the job and responsibility of every divisions in BPN. Remains the issue that, based on the results from the BPN officers, their roles and the responsibilities are not always clear with the risk of some roles and responsibilities not being assured. This can lead to the problems in the performance of delivering the service. Even though the customers feel that the service are more than sufficient.

Furthermore, arguments concerning the quality of an organization's governance will rely on a large part whether its organizational structure is suitable for what the organization has set up to do (section 2.6.2). In delivering the service of land dispute resolution by solving more land disputes cases, there is a need to have a clear strategy of the organization. This strategy must fulfil as well the customers' requirements and lead to a better performance. The land dispute resolution division has made several programs for the acceleration of the land dispute settlement, where the important aspect is the good coordination between the district office, regional office and the central office in solving the land dispute cases. From the results, it was revealed that more than 50 percents of the disputants were satisfied with the land dispute resolution mechanism, which means that there is already a sufficient performance of the organization in delivering the service but still need to be improved.

6.7. Summary

The assessment of the empirical case in Indonesia identified gaps of performance. Most of the people that are accessing the land dispute resolution mechanism are considered as knowledgeable people with sufficient resources and moreover are men, leaving out the others. The study also shows that most of the procedures are well known yet complicated. Furthermore, it was revealed that the involvement of the people in the process of dispute resolution is essential, especially with the approach of mediation. But the access to the land dispute resolution information is still not sufficient even though most of the people responded satisfied. In the concern of the roles of the actors involved, most of them responded sufficient. Despite the results indicating that the needs to be improved there are also satisfactions of the land dispute resolution mechanism that are conducted now, which are the concern of obtaining the information and also the clear procedure but still complicated.

The conclusion and recommendation of this study will be discussed in the next chapter.

7. CONCLUSION AND RECOMMENDATION

7.1. Introduction

The main objective of the study was to assess the weakness of land dispute resolution mechanism from good governance perspective and case study was conducted in the land dispute resolution mechanism in BPN, Indonesia and was to assess the land dispute resolution mechanism from good governance perspective. Below we provide the overall conclusion and recommendations of this research.

7.2. Conclusion

Two specific objectives due to achieve the goal of the main objective were developed as described in chapter 1. The conclusions concerning both specific objectives are explained below:

Specific objective -1: To identify the challenges of land dispute resolution mechanisms

In the land dispute mechanism there are various types of land disputes that are handled. Most of them are dealing with land disputes that have boundary issues especially between individuals. Therefore the land dispute resolution mechanism are also various, yet the speciality is that the land agency has the authority to handle the land disputes, while coordinating with other institution such as the court and other litigation institution.. The main actors who play a prominent role are the land officers itself and also with the coordination with other institution such as the court and police with whom they coordinate. Here the issues derived are not only the coordination between the organization, but the essential part is the mechanism itself within the organization, which looks into many aspects such as the equity, efficiency, access to information, participation and organization to meet the requirements of the customers that would lead into better performance.

Specific objective-2 : To evaluate the land dispute resolution mechanism by using the most effective good governance indicators

Based on the five principles of good governance that have been taken into account for the assessment of the land dispute resolution mechanism, a framework has been developed with selected indicators. These indicators were developed by looking into the issues of the land dispute resolution mechanism. After the framework was developed, the opinion of the customers and the BPN Officers was sought to see whether their expectations were met by a better mechanism.

In Indonesia, 14 indicators were used in applying the framework to the land dispute resolution mechanisms within BPN. Furthermore the result of the land dispute resolution mechanism in BPN is shown as follow:

1. Six indicators of the good governance dimensions found weaknesses in the land dispute resolution mechanism. Even though the land dispute resolution mechanism is wide open to any individual and corporate body and consists already of clear procedures, these indicators suggest that these need to be improved than the other indicators.
2. Eight indicators of the land dispute resolution can be used to see the ability of BPN in solving the land disputes. These results show positive results more than the other indicators.

Based on the indicators that measure the performance of each dimension, weaknesses were revealed, and also positive indicators that point towards satisfactory dimensions became clear. First, when we look into

Equity, the results shows that that not all people of different social status are represented, therefore this dimension should be improved. Second, in the efficiency, the cost and clarity are performed well, yet the simplicity and time must be improved. Third, in the participation, the involvements of the customers are conducted well. Fourth, looking into the Access to information, the information can be obtained, but not with the expectation of the citizens and Fifth the Organization, where there are gaps, where the results shows satisfactory but based on the cases resolved shows that is not yet sufficient. Therefore, this framework has been appropriate and sufficient in assessing the weaknesses of the land dispute resolution mechanism in Indonesia, where there are some dimensions to be improved to lead into an improved land dispute resolution mechanism.

The expectations of the citizens are to have a full access to the land dispute resolution mechanism, with the clear and simplified procedure, furthermore the clarity of the cost must be defined and the time of resolving the land disputes must be shortened. Therefore not all of the selected dimensions are meeting the expectation of the citizens.

7.3. Recommendation

For the improvement of the land dispute resolution, here are some recommendations and also suggestions for BPN as well as for further research:

7.3.1. Badan Pertanahan Nasional

- The government needs to simplify the procedures of the land dispute resolution mechanism. This would lead to efficiency of the land dispute resolution mechanism that will lead to the acceleration of the land dispute resolution.
- The government should provide sufficient databases for the archiving of land disputes cases. This would positively affect the customer's needs in obtaining the information on their land dispute case.
- In implementing the new programs, whose aim is to accelerate the land dispute resolution, should consider not only the coordination with other institution but also plan the time needed in solving a land dispute case.

7.3.2. Future Research

- The differences of handling land disputes for different types of land disputes are not mentioned in the thesis. This issue could be studied in the future. The indicators applied here may be used not only in Indonesia but other common countries that are having a similar situation.
- The programs that BPN has developed in accelerating the land dispute resolution has relations with other institutions. What is interesting is that the coordination between the court system and BPN are crucial. In this thesis the effect of the lack of coordination between the land agency and the court on the performance of the land dispute resolution mechanism has not been explored further.
- This research has given more emphasis to the customer requirements of the land dispute resolution mechanism. In this regard, however there are other requirement to look at to see the progress of the land dispute resolution mechanism.

List of references

- Abu-Ras, D. T. (2006, April 2006). Land Disputes in Israel: The Case of the Bedouin of the Naqab. *Adalah's Newsletter*. Retrieved from <http://www.adalah.org/newsletter/eng/apr06/ar2.pdf>
- Adan, M., & Pkalya, R. (2006). *Conflict Management in Kenya: Towards Policy and Strategy Formulation*: USAID and CORDAID Regional Office in Nairobi.
- Aday, L., Begley, C., Lairson, D., Slater, C., Richard, A., & Montoya, I. (1999). A framework for assessing the effectiveness, efficiency, and equity of behavioral healthcare. *Am J Manag Care*, 5(8), S25-S43.
- Anthony, A., Jong, J. d., Arbind Tuladhar, & Zevenbergen, J. (2010). Customary Tenure Institutions and Good Governance.
- Antonio, D. (2006). Instituting good governance in the land administration system—the Philippines' perspective. Land Reform, Land Settlement and Cooperatives (FAO); Reforme Agraire, Colonisation et Cooperatives Agricoles (FAO); Reforma Agraria, Colonizacion y Cooperativas (FAO).
- Appendini, K. (2002). Land regularization and conflict resolution: The case of Mexico. *Reforma Agraria, colonización y cooperativas*, 2.
- ARD, I., with assistance from the Rwandan Initiative for Sustainable Development and the Rural Development Institute. (2008). *Land Dispute Management in Rwanda*. Burlington: USAID.
- Ari Sucaya, I. K. G. (2009). Application and validation the land administration domain model in real life situation : a case study in Indonesia. ITC, Enschede.
- Arko-Cobbah, A. (2007). The right of access to information: Civil society and good governance in South Africa.
- Bacaron, M. A. (2009). INDIGENOUS CONFLICT RESOLUTION MECHANISMS IN MINDANAO: IS THEIR INSTITUTIONALISATION THE ANSWER? [A]. *ASLAN JOURNAL OF PUBLIC AFFAIRS VOL. 3 NO. 1*.
- Bailliet, C., & i Oslo, U. (2004). Between Conflict & Consensus: Conciliating Land Disputes in Guatemala: a Study in Preventing and Resolving Internal Displacement: University of Oslo, Norway.
- Barzel, Y. (2000). Dispute and its resolution: delineating the economic role of the common law. *American Law and Economics Review*, 2(2), 238-258.
- Basuki, O. (2010, 15 January 2010). 2.913 Sengketa Tanah Menunggu Penyelesaian. *Kompas.com*. Retrieved from <http://nasional.kompas.com/read/2010/01/15/12170537/2.913.Sengketa.Tanah.Menunggu.Penyelesaian>
- Bell, K. C. (2007). *Good Governance in Land Administration*. Paper presented at the Plenary Session III – Responding to the Global Agenda – Policies and Technical Aspects, FIG Working Week.
- Bingham, L., Nabatchi, T., & O'Leary, R. (2005). The new governance: Practices and processes for stakeholder and citizen participation in the work of government. *Public Administration Review*, 65(5), 547-558.
- Brits, A., Grant, C., & Burns, T. (2002). Comparative Study of Land Administration Systems.
- Broadbent, N. (2009). Alternative Dispute Resolution. *Legal Information Management*, 9(03), 195-198.
- Brown, K., & Corbera, E. (2003). Exploring equity and sustainable development in the new carbon economy. *Climate Policy*, 3(S1), s41-s56.
- Burns, T., Grant, C., Nettle, K., Brits, A., & Dalrymple, K. (2007). Land administration reform: indicators of success and future challenges. *Agriculture and Rural Development Discussion Paper*, 37.
- Buscaglia, E., & Stephan, P. (2005). An empirical assessment of the impact of formal versus informal dispute resolution on poverty: A governance-based approach. *International Review of Law and Economics*, 25(1), 89-106.
- Cambodia, T. N. F. o. (2010). Statistical Analysis on Land Disputes Occurring in Cambodia 2009.
- Cheema, S., & Maguire, L. (2002). Democracy, Governance and Development: A Conceptual Framework.

- Childress, M. (2004). *Regional Study on Land Administration, Land Markets, and Collateralized Lending*. Washington, DC: Rural Development and Natural Resources(EASRD)-East Asia and Pacific Region.
- Chimhamhiwa, D., Molen, P., Mutanga, O., & Rugege, D. (2009). Towards a framework for measuring end to end performance of land administration business processes-A case study. *Computers, Environment and Urban Systems*, 33(4), 293-301.
- Chirayath, L., Sage, C., & Woolcock, M. (2006). Customary Law and Policy Reform: Engaging with the Plurality of Justice Systems. *Background paper for the WDR*.
- Colvin, R. A. (2002). Community-Based Environment Protection,Citizen Participation, and the Albany Pine Bush Preserve.
- Cotula, L., Toulmin, C., & Hesse, C. (2004). Land tenure and administration in Africa: lessons of experience and emerging issues. *London, IIED*.
- Crook, R. C. (2005). State courts and the regulation of land disputes in GHana: the litigants perspective: Institute of Commonwealth Studies.
- Curry, N. (2001). Rights of access to land for outdoor recreation in New Zealand::: dilemmas concerning justice and equity. *Journal of Rural Studies*, 17(4), 409-419.
- Daryono. (2004). *The alternative dispute resolution (ADR) and customary (adapt) land dispute in Indonesia*. Paper presented at the 15th Biennial Conference of Asian Studies of Australia.
- Daudelin, J. (2003). Alternative Dispute Resolution in Land Conflicts: A Tentative Assessment.”. *FAO-USAID “Mesa redonda sobre manejo de conflictos de tierras en America Latina”, Quito*, 24-26.
- David Palmer, Szilard Fricska, & Wehrmann, B. (2009). *Towards Improved Land Governance*.
- Deininger, K., & Castagnini, R. (2006). Incidence and impact of land conflict in Uganda. *Journal of Economic Behavior & Organization*, 60(3), 321-345.
- Deputy of Land Dispute Resolution and Management. (2010a). *Land Dispute Resolution and Management Report 2010*. Jakarta.
- Standards of Operation in the Land Dispute Resolution (2010b).
- Disini, D., Aguilin-Pangalangan, E., Daroy-Morales, R., Gatmaytan, D., Lim-Jardeleza, C., & Economies, I. o. D. (2002). *Dispute resolution mechanism in the Philippines*: Institute of Developing Economies.
- FAO. (2002a). The Judicial System.
- FAO. (2002b). Land tenure and rural development. Rome: FAO.
- FAO. (2007). *Good governance in land tenure and administration*. Rome: Food and Agriculture Organization of The United Nations.
- Fitzpatrick, D. (2008). Mediating land conflict in East Timor. *Volume two*, 175.
- Fonmanu, K., Ting, L., & Williamson, I. (2003). Dispute resolution for customary lands: some lessons from Fiji. *Survey Review*, 37(289), 177-189.
- Garcia, A. (1991). Dispute resolution without disputing: How the interactional organization of mediation hearings minimizes argument. *American Sociological Review*, 56(6), 818-835.
- Gonzalez, E., & Mendoza, M. (2003). *Governance in Southeast Asia: issues and options*: Philippines Institute for Development Studies.
- Goodale, M., & Sky, P. (2000). A comparative study of land tenure, property boundaries, and dispute resolution: examples from Bolivia and Norway. *Working Papers*.
- Grindle, M. (2004). Good enough governance: poverty reduction and reform in developing countries. *Governance*, 17(4), 525-548.
- Hassall, G. (2005). Conflict in the Pacific: challenges for governance. *Pacific Economic Bulletin*, 20(1), 192-193.
- Heryani, E., & Grant, C. (2004). *Land Administration in Indonesia*.
- Ho, P. (2003). Land disputes. customary tenure and the statel. *Chinese society: change, conflict and resistance*, 93.
- Kakonge, J. (1998). Eia and good governance:: Issues and lessons from africa. *Environmental Impact Assessment Review*, 18(3), 289-305.

- Kalande, W. (2008). *Kenyan Land Disputes in the Context of Social Conflict Theories*. Paper presented at the FIG Commission 7 Annual Meeting and Open Symposium on Environment and Land Administration 'Big Works for Defence of The Territory'
- Kamarck, E., & Nye, J. (2002). *governance. com: Democracy in the Information Age*: Brookings Inst Pr.
- Kaufmann, D., Kraay, A., & Mastruzzi, M. (2009). Governance matters VIII: aggregate and individual governance indicators, 1996-2008. *World*.
- Kigula, J. (1993). *Land disputes in Uganda : an overview of the types of land disputes and the dispute settlement fora*: Makerere Institute of Social Research, Makerere University, Kampala, Uganda and The Land Tenure Center, University of Wisconsin-Madison, USA.
- Kombe, W., & Kreibich, V. (2000). Reconciling informal and formal land management::: an agenda for improving tenure security and urban governance in poor countries. *Habitat international*, 24(2), 231-240.
- Kumar, R. (1999). *Research Methodology: A Step-By-Step Guide for Beginners*. London: SAGE Publications.
- Lauras, M., Marques, G., & Gourc, D. (2010). Towards a multi-dimensional project Performance Measurement System. *Decision Support Systems*, 48(2), 342-353.
- Lieberman, J., & Henry, J. (1986). Lessons from the Alternative Dispute Resolution Movement. *The University of Chicago Law Review*, 53(2), 424-439.
- Löffler, U. (1996). Land Tenure Developments in Indonesia: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ).
- Loode, S., Nolan, A., Brown, A., & Clements, K. (2010). *Conflict Management Processes for Land-related conflict*.
- Lucas, A. (1992). Land disputes in Indonesia: Some current perspectives. *Indonesia*, 53, 79-92.
- Macours, K. (2009). Land Titles and Conflicts in Guatemala Washington DC.
- Magel, H., & Wehrmann, B. (2001). Applying Good Governance to Urban Land Management—Why and How. *Zeitschrift für Vermessungswesen (ZfV)*, 126(6), 310-316.
- Mahaphonh, M. N., Ngaosrivathana, D. P., Phimphachanh, M. M., Chittasupha, M. S., Pasay, M. S., & Jones, M. P. (2007). *Study on Land Conflicts and Conflict Resolution in LAO PDR*.
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 (1945).
- McGregor, J. (1997). Staking their claims: land disputes in southern Mozambique. LTC Paper, 158.
- McLaughlin, K., & Perdana, A. (2010). Conflict and Dispute Resolution in Indonesia : Information from the 2006 Governance and Decentralization Survey. Jakarta: World Bank.
- Merlet, M. (2007). Land Policies and Agrarian Reforms.
- Mitchell, D., Clarke, M., & Baxter, J. (2008). Evaluating land administration projects in developing countries. *Land Use Policy*, 25(4), 464-473.
- Mnookin, R. (1998). *Alternative dispute resolution*: Harvard Law School.
- Molen, P. V. D., & Tuladhar, A. (2007). Corruption and Land Administration *International Federation of Surveyors*
- Nelson, G. (2008). Review of the Gender Dimensions of Land-Based Conflict in the Pasific.
- North, D. (1990). Institutions, institutional change, and economic performance: Cambridge Univ Pr.
- Odgaard, R. (2006). *Land Rights and Land Conflicts in Africa: The Tanzania case*. Copenhagen Danish Institute for International Studies.
- OPM, & CIPFA. (2004). The Good Governance Standard for Public Services. London.
- OPSSC. (2009). Good Governance Guide Principles.
- Palmer, R. (2007). Literature Review of Governance and Secure Access to Land.
- Parigi, V., Leader, W., Geeta, P., & Kailasam, R. (2004). Ushering in Transparency for Good Governance.
- Peerenboom, R., & He, X. (2009). Dispute Resolution in China: Patterns, Causes and Prognosis.
- Popova, V., & Sharpanskykh, A. (2010). Modeling organizational performance indicators. *Information Systems*, 35(4), 505-527.
- Powell-Smith, V., Sims, J., & Dancaster, C. (1998). *Construction arbitrations: a practical guide*: Wiley-Blackwell.


- Undang-Undang No.5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (1960).
- Keputusan Presiden No.26 Tahun 1988 tentang Badan Pertanahan Nasional Republik Indonesia (1988).
- Peraturan Pemerintah Republik Indonesia Nomor 10 Tahun 2006 tentang Badan Pertanahan Nasional (2006).
- Undang-Undang No.17 Tahun 2007 tentang Rencana Pembangunan Jangka Panjang Nasional Tahun 2005-2025 (2007).
- Pryles, M. (2006). *Dispute resolution in Asia*. Kluwer Law Intl.
- Quinn, J. (2004). Customary Mechanisms and the International Criminal Court: The Case of Uganda. *World*.
- Rahman, H., & Robinson, M. (2006). Governance and State Effectiveness in Asia. *IDS Bulletin*, 37(3), 130-149.
- Ramírez, R. (2002). A Conceptual map of land conflict management: Organizing the parts of two puzzles. *Institutions*.
- Reed, M. (2008). Stakeholder participation for environmental management: A literature review. *Biological Conservation*, 141(10), 2417-2431.
- Reuben, R. (1997). Public Justice: Toward a State Action Theory of Alternative Dispute Resolution. *California law review*, 85, 577.
- Richards, C., Carter, C., Sherlock, K., & Research, M. I. f. S. (2004). *Practical approaches to participation*: Macaulay Institute.
- Rognes, J., & Sky, P. K. r. (2003). 'Intervention methods in land disputes', *European Planning Studies*. 11(No. 8).
- Rowe, G., & Frewer, L. (2000). Public participation methods: A framework for evaluation. *Science, Technology, and Human Values*, 25(1), 3-29.
- Rowe, G., & Frewer, L. (2004). Evaluating public-participation exercises: a research agenda. *Science, Technology, and Human Values*, 29(4), 512-557.
- Roy, K., & Tisdell, C. (1998a). Good governance in sustainable development: the impact of institutions. *Economics*, 25(6/7), 8.
- Roy, K., & Tisdell, C. (1998b). Good governance in sustainable development: the impact of institutions. *International Journal of Social Economics*, 25(6/7/8), 1310-1325.
- Rugadya, M. (2009). Escalating Land Conflicts in Uganda: A review of evidence from recent studies and surveys.
- Rugadya, M., Nsamba-Gayiiya, E., & Kamusiime, H. (2006). A Review of Literature on Post Conflict Land Policy and Administration Issues, During Return and Resettlement of IDPs: International Experience and Lessons from Uganda.
- Rural Development Institute. (2008). Women and Vulnerable Groups in Land Dispute Management: A plan to ensure that they fully participate and benefit.
- Schwedersky, L. H. (2010). *Mechanism of Land Conflict Resolution in Rural Cambodia*. Universitat zu Berlin Geographisches Institut.
- Scott Brown, Christine Cervenak, & Fairman, D. (1998). *Alternative Dispute Resolution Practitioners' Guide* Washington, D.C.: Center for Democracy and Governance Bureau for Global Programs, Field Support, and Research U.S. Agency for International Development Washington, D.C.
- Shah, A. (2005). *Public services delivery*: World Bank Publications.
- Spector, B. (1997). Policy Implementation, Conflict and Dispute Resolution. *Washington, DC: Management Systems International Inc., IPC Working Paper*, 11.
- Steer, L., & Sen, K. (2008). *Informal Institutions in Transition: How Vietnam's Private Sector Boomed without Legal Protection*. London: IPPG Programme Office, IDPM, School of Environment & Development University of Manchester.
- Stenseke, M. (2009). Local participation in cultural landscape maintenance: Lessons from Sweden. *Land Use Policy*, 26(2), 214-223.

- Study Circle Program NDI. (2003). Study Circle Discussion Guide on Alternative Dispute Resolution Dhaka.
- Sumanto, L. S. M. (2008). *Mediation: The Alternative of Land Dispute Resolution in Indonesia* Paper presented at the Asia Pacific Mediation Forum Conference 2008 Harun M. Hashim Law Centre International Islamic University Malaysia Retrieved from <http://www.apmec.unisa.edu.au/apmf/2008/papers/12-%20Listyowati%20Sumanto.pdf>
- Thorson, P. (2009). Dispute resolution and legitimacy in Kacerere: examples from two land disputes.
- Toatu, T. (2004). From institutions to governance-getting the governance structure right for optimal economic performance.
- Torell, D. (1994). Viewpoint: Alternative dispute resolution in public land management. *Journal of Range Management*, 47(1), 70-73.
- Tuladhar, A. M. (2009). Evolution of Land Administration. Department of Urban and Regional Planning and Geo-Information Management (PGM), ITC, UT.
- UN-ESCAP. (2006). What is Good Governance?
- UN-HABITAT. (2009). Land and Conflict: A Handbook for Humanitarians.
- UN. (2007a). Public Governance Indicators: A Literature Review
- UN. (2007b). Public Governance Indicators: A Literature Review. New York.
- Upreti, B. R. P. D., Sharma, S. R. P. D., & Basnet, J. (Eds.). (2008). *Land Politics and Conflict in Nepal: Realities and potentials for agrarian transformation*: Community Self Reliance Centre (CSRC) South Asia Regional Coordination Office of NCCR North-South Human and Natural Resources Studies Center (HNRSC), Kathmandu University.
- USAID. (2005). Land and Conflict : A Toolkit for Intervention. Washington DC.
- USAID. (2007). Land Tenure and Property Rights Regional Report Volume 2.4: East and Southeast ASIA.
- Van Der Molen, P. (2007). *Some Measures to Improve Transparency in Land Administration*. Paper presented at the Strategic Integration of Surveying Services FIG Working Week 2007.
- van Rossum, W. (2008). Religious Courts Alongside Secular State Courts: The Case of the Turkish Alevis.
- Villiers, S. N. D., & Tuladhar, A. M. (2010). *Transparency in The Resettlement Process*. Paper presented at the FIG Congress 2010
- Wagener, H. (2004). Good governance, welfare, and transformation. *European Journal of Comparative Economics*, 1(1), 127-143.
- Wehrmann, D. B. (2008). *Land Conflicts : A practical guide dealing with land disputes*. Eschborn: Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH
- Williams, G. (1995). Alternative dispute resolution. *Australian Accountant*, 65, 33-33.
- Wily, L. (2003). Governance and land relations: a review of decentralisation of land administration and management in Africa: International Institute for Environment & Development.
- Winoto, J. P. (2009). Taking Land Policy and Administration in Indonesia to The Next Stage and National Land Agency's Strategic Plan Paper presented at the International Federation of Surveyors` Forum.
- Wit, P. V. D. (2002). Land Conflict Management in Mozambique:Case study of Zambezia Province.
- Wohlmuth, K. (1998). *Good governance and economic development: new foundations for growth in Africa*: Institut für Weltwirtschaft und Internationales Management, Universität Bremen.
- Yamano, T., & Deininger, K. (2005). Land Conflicts in Kenya: Causes, Impacts, and Resolutions Japan.
- Yin, R. K. (2003). *Applications of case study research*: Sage Publications, Inc.
- Zakout, W., Wehrmann, B., & Törhönen, M. (2006). Good governance in land administration: principles and good practices.

Appendices

Appendix 1:

The Questionnaire for land officer

QUESTIONNAIRE	
	UNIVERSITY OF TWENTE.
<p>Dear. BPN officers,</p> <p>I would like to ask your help to complete the questionnaire below. This questionnaire aims to collect data for completing my research as part of writing my thesis at ITC-University of Twente, Enschede, The Netherlands. Collecting data in this questionnaire will only be used for educational purposes and the confidentiality of your answers will be guaranteed. Your answers will be very useful and meaningful to the success of my research. I hope, the results of my research can contribute in the science of land administration in general and particularly in a better problems solving in the settlement of land disputes / conflicts / cases in our country, Indonesia. Thank you for your participation.</p> <p>Yours sincerely, Sandra Maria Stephanie Hutabarat (Researcher)</p>	
<p>A. PERSONAL INFORMATION</p> <p>Please complete the following questions based on your personal information</p>	

BPN Office :
Office Address :
Province / City / District :

B. QUESTION

Answer these questions about the settlement of land disputes / conflicts / cases below based on your experience / opinion of your own!

1. Types and the number of disputes that is often become the case / petition (types of dispute, the average per year / month), State and Explain!
2. Based on the settlement of land disputes/conflict /cases that has been completed, what percentage of cases of dispute / conflict / lawsuits that are owned by women and what percentage are owned by men
☐ Above 50% owned by men
☐ Above 50% owned by women
☐ ...
3. Based on the settlement of land disputes / conflicts / cases that has been completed, what percentage of cases of dispute / conflict / lawsuits that are owned by low-income groups and what is the percentage owned by above-average income groups/high income groups?
☐ Above 50% owned by low-income groups
☐ Below 50% owned by high-income group
☐
4. For cases of land dispute / conflict / land matters of public/national concern, does your office have a specialization in the settlement? Explain!
5. Explain the process from receiving the file of land dispute / conflict / cases up to its completion and how to process complaints from the public entrance to your office!

6. Are there Standard Operating Procedures (SOPs) as guidelines in dispute resolution / conflict / the case of land? Specify and Explain!
7. Is the division of dispute resolution / conflict / land matters having coordination or cooperation with other divisions within the BPN? Explain forms of coordination / cooperation!
8. With regard to the procedures for dispute settlement / conflict / case of land, what is your opinion/assessment of the procedure / steps?
 - a) The procedures / steps in the settlement of disputes / conflicts / cases have been sufficient and appropriate land? --- Yes --- No
 - b) The procedures / steps in the settlement of disputes / conflicts / cases of land must be made easier, Explain!.
9. With regard to the procedures for dispute settlement / conflict / case of land, state your personal opinion/assessment of the allocation of time in the service of dispute resolution / conflict / the case of land?
 - a. Have enough time allocation
 - b. Need extra time allocation. Explain
 - c. Time allocation needs to be reduced. It should be shortened. Explain:
10. Is there a fee charged to the applicant in the dispute resolution service / conflict / land matters in your office?
 - ☐ There is a fee charged, Explain for what:
 - ☐ There is no fee charged. Explain why:
 - ☐ Other, Explain:
11. Based on your personal opinion/assessment, is the division of dispute resolution / conflict / land matters of BPN involving external parties in the formulation of policy, legislation and land dispute resolution (Yes / No), If yes, which parties are involved?

For Policy formulation

 - ☐ Team of experts from other agencies. Specify and Explain
 - ☐ NGOs, State and Explain their roles
 - ☐ University, Name and Describe their roles
 - ☐ Community, State and Explain the role
 - ☐ Other, Specify and Explain its role

For Regulation formulation

 - ☐ Team of experts from from other agencies. Specify and Explain
 - ☐ NGOs, State and Explain their roles
 - ☐ University, Name and Describe their roles
 - ☐ Community, State and Explain the role
 - ☐ Other, Specify and Explain its role


For the Dispute Resolution Process:

 - ☐ Team of experts from from other agencies. Specify and Explain
 - ☐ NGOs, State and Explain their roles
 - ☐ University, Name and Describe their roles
 - ☐ Community, State and Explain the role
 - ☐ Other, Specify and Explain its role
12. Based on the cases of settlement of disputes / conflicts / cases of land by the directorate /regional office, whether there are complaints from the applicant regarding the completion of the process of

- dispute / conflict / the case of land? (Yes / No). for those complaints, what percentage (%) of the total cases of settlement of disputes / conflicts / cases and what percentage of those complaints are not resolved? Explain!
13. Do you involve the applicant in the process of dispute resolution / conflict / land matters for consideration in making decisions?
 14. What is the follow-up action for handling cases of disputes / conflicts / cases of land that once learned cannot be handled by BPN and what are the reasons?
 15. Does your office have a good archiving data for each case of dispute / conflict / lawsuits that have been completed or are still in the process? (Yes / No) Explain:
 16. In what form are your office filing the documents/data with regard to cases of dispute resolution / conflict / the case of land?
 - ☐ Manually / hardcopy
 - ☐ Computerized
 - ☐ Other, Explain:
 17. In your office, Do the data base of documents and reports of settlement of disputes / conflicts / cases of land is always updated (up to date)? (Yes / No), If Yes, what is the basis for data renewal?
 - ☐ Daily / Monthly / Yearly
 - ☐ Any cases that were completed
 - ☐ Other. Explain:
 18. Is citizen / applicant have access to clear information regarding the progress of the case of disputes / conflicts / cases of land that were completed or still in the process?
 - ☐ Yes
 - ☐ No, Please list your reason!
 19. What kind of media does your office use in conveying information to the applicant / resident / others with regard to cases of disputes / conflicts / cases of land that has been completed or still in process?
 - ☐ Internet
 - ☐ Newspaper
 - ☐ Email / Letter
 - ☐ TV
 - ☐ Other. Please Explain
 20. What is the target of the settlement of disputes / conflicts / cases of land on an annual basis? Explain:
 21. Based on your personal opinion/assessment, whether the roles and responsibilities of employees in the division of dispute resolution / conflict / the case of land have been appropriate? Explain:
 22. Who are the key players in the process of resolving disputes / conflicts / cases of land? Explain:
 23. Based on your personal opinion/evaluation, were the authorities in the process of resolving disputes / conflicts / cases of land have been appropriate in carrying out its authority in implementing the existing rules? Explain:
 24. Write down five obstacles / barriers in the services / procedures for the settlement of disputes / conflicts / cases of land!
 25. Write your three (3) opinion in order to fix the problems / barriers in the service / procedures for the settlement of dispute / conflicts / cases of land.

Appendix 2:

The Questionnaire for Applicants

QUESTIONNAIRE	
 Faculty of Geo-Information Science and Earth Observation	UNIVERSITY OF TWENTE
<p>Dear Applicants,</p> <p>I would like to ask your help to complete the questionnaire below. This questionnaire aims to collect data for completing my research as part of writing my thesis at ITC-University of Twente, Enschede, The Netherlands. Collecting data in this questionnaire will only be used for educational purposes and the confidentiality of your answers will be guaranteed. Your answers will be very useful and meaningful to the success of my research. I hope, the results of my research can contribute in the science of land administration in general and particularly in a better problems solving in the settlement of land disputes / conflicts / cases in our country, Indonesia. Thank you for your participation.</p> <p>Yours sincerely, Sandra Maria Stephanie Hutabarat (Researcher)</p>	
<p>B. PERSONAL INFORMATION</p> <p>Please complete the following questions based on your personal information</p>	

Occupation :
Age :
Sex :
Address :

B. QUESTION

Answer the following questions concerning the settlement of disputes / conflicts / case of land based on your experience / opinion

1. What is your Gender
 - ☐ Female
 - ☐ Male
2. What is your education level?
 - ☐ High School
 - ☐ D3/S1
 - ☐ S2/S3
 - ☐
3. What is your occupation?
 - ☐ Private Company
 - ☐ Government employee
 - ☐ Business Owner
4. What is the magnitude of your income per month?
 - ☐ < Rp.500.000
 - ☐ Rp.500.000 - Rp.2.500.000

- ☐ Rp.2.500.000-5.000.000
 - ☐ > Rp.5.000.000
5. How do you file the dispute / conflict / case of your land?
 - ☐ I do myself without representation
 - ☐ With lawyer representation
 - ☐ With Mediator
 - ☐ Other, Explain
 6. Do you know the procedure / steps in the settlement of disputes / conflicts / cases of land? (Yes / No), If Yes, Where did you get that information?
 - ☐ BPN staffs
 - ☐ BPN Website
 - ☐ Lawyer
 - ☐ Mediator
 - ☐ Other, Explain
 7. Are there any fees you pay in the process of resolving disputes / conflicts / cases of land? (Yes / No), If yes, what is your opinion about those costs?
 - ☐ Too costly
 - ☐ Fair costly
 - ☐ Affordable cost
 8. Based on experience / your personal opinion, do you go directly to the division of dispute / conflict / case of land in the settlement of your case or do you have to go to other parts of the BPN during the process of resolving your dispute?
 9. Based on your experience, how many times you have to come to the office of BPN in the process of resolving disputes / conflicts / cases of land?
 - ☐ 2
 - ☐ 3
 - ☐ 4
 - ☐ More than 4
 10. Based on experience / your personal opinion, how was the process of settlement of disputes / conflicts / cases of land?
 - ☐ Complicated, need to be accelerated, and simplified
 - ☐ Very complicated, need to be accelerated and simplified
 - ☐ Plain and simple
 11. Based on experience / your personal opinion, how is the allocation of time in the process of resolving disputes / conflicts / cases of land?
 - ☐ Too long
 - ☐ Long
 - ☐ Enough

12. Based on your experience / your personal opinion in the process of handling dispute resolution / conflict / case of land by BPN, what is your complaint?
- ☐ The timing of the process
 - ☐ The cost of the process
 - ☐ Bureaucracy / steps in the procedure
 - ☐ Other, Explain
13. Are you involved in the decision of the settlement of disputes / conflicts / cases of land in your case? (Yes / No), If yes, how can you be involved?
- ☐ Consultation / Meeting
 - ☐ ...
14. Have you been satisfied with the land dispute settlement procedure / conflict / lawsuits there now?
- ☐ Yes
 - ☐ No
15. Based on your personal opinion / your assessment, how do you value the service of BPN employees?
- ☐ Very good / satisfied
 - ☐ Good enough / Satisfied
 - ☐ Not so good / Not Satisfied
 - ☐ Not good / Not Satisfied
16. Are you able to access information on the status of cases of dispute / conflict / case of your land from the BPN?
- ☐ Yes
 - ☐ No
17. Did you know / clear on procedures that exist in the settlement of disputes / conflicts / cases of land?
- ☐ Yes
 - ☐ No
18. Based on experience / your personal opinion, are the information regarding the settlement of disputes / conflicts / cases of land good enough to be accessed?
- ☐ Very good / satisfied
 - ☐ Good enough / Satisfied
 - ☐ Not so good / Not Satisfied
 - ☐ Not good / Not Satisfied
19. What is the problem / barriers / obstacles that you experience in services / procedures for the settlement of disputes / conflicts / cases of land?
- 1)
 - 2)
20. Based on experience / your personal opinion, are there things that should be improved to get better service of disputes / conflicts / cases of land? If Yes
- ☐ Experience: ...
 - ☐ Personal opinion:

Appendix 3:

REGIONAL SALARY STANDARD
YEAR 2008
SOURCE: NATIONAL BERAU STATISTICS

NO	PROVINCE	REGIONAL STANDARD SALARY
1	2	3
1	ACEH	1,200,000
2	SUMATERA UTARA	822,205
3	RIAU	800,000
4	KEPULAUAN RIAU	833,000
5	SUMATERA BARAT	700,000
6	SUMATERA SELATAN	743,000
7	BANGKA BELITUNG	813,000
8	JAMBI	724,000
9	BENGKULU	683,528
10	LAMPUNG	678,900
11	BANTEN	978,400
12	DKI JAKARTA	972,604
13	JAWA BARAT	994,000
14	D.I. YOGYAKARTA	586,000
15	JAWA TENGAH	547,000
16	JAWA TIMUR	805,500
17	BALI	800,000
18	NUSA TENGGARA BARAT	730,000
19	NUSA TENGGARA TIMUR	650,000
20	KALIMANTAN BARAT	645,000
21	KALIMANTAN TENGAH	825,000
22	KALIMANTAN TIMUR	815,000
23	KALIMANTAN SELATAN	825,000
24	SULAWESI UTARA	
25	GORONTALO	600,000
26	SULAWESI BARAT	760,500
27	SULAWESI TENGAH	670,000
28	SULAWESI TENGGARA	700,000
29	SULAWESI SELATAN	
30	MALUKU	700,000
31	MALUKU UTARA	700,000
32	PAPUA	1,105,500
33	PAPUA BARAT	

1 USD = 8,850 IDR