

Reconstructing a Progressive-Law-Based Model for Land-Dispute Resolution in Indonesia

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Abstrak

Penyelesaian sengketa tanah di Indonesia masih sangat dipengaruhi oleh penalaran positivistik dan formal yang menempatkan legalitas administratif serta prosedur peradilan sebagai pusat pengambilan keputusan. Artikel ini mengkaji keterbatasan pendekatan tersebut dalam mewujudkan keadilan substantif, khususnya pada sengketa yang melibatkan penguasaan historis, ketimpangan posisi tawar, sertifikat tanah yang tumpang tindih, serta konflik agraria antara masyarakat, korporasi, dan negara. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan konseptual, dengan penggunaan referensi yudisial secara terbatas. Hukum progresif digunakan sebagai kerangka interpretatif yang tidak menolak kepastian hukum, tetapi menuntut agar kepastian dibaca bersama keadilan sosial, martabat manusia, dan nilai hukum yang hidup. Hasil penelitian menunjukkan bahwa penyelesaian sengketa tanah perlu direkonstruksi melalui administrasi pertanahan yang preventif dan partisipatif, mediasi substantif, penalaran yudisial progresif, serta penguatan integrasi kelembagaan dan data. Validasi administratif harus disertai verifikasi sosial, sedangkan pengadilan dan mediator perlu menilai asal-usul penguasaan, itikad baik, ketimpangan kekuasaan, cacat prosedural, dan dampak sosial putusan. Model ini ditujukan untuk menghasilkan penyelesaian yang sah secara hukum sekaligus bermakna secara sosial dan responsif terhadap keadilan.

Kata Kunci: administrasi pertanahan; hukum progresif; keadilan substantif; sengketa tanah.

Abstract

This article reconstructs a progressive-law-based model for land-dispute resolution in Indonesia without displacing statutory authority, evidentiary rules, or judicial review. It uses normative legal research with statutory and conceptual approaches and codes recurring dispute patterns from selected legal scholarship and official land-dispute regulations. The study clarifies Indonesia's negative land-registration publication system with positive elements: certificates constitute strong evidence but are not absolutely conclusive, while Article 32 of Government Regulation Number 24 of 1997 creates a five-year protection mechanism under specified conditions. The article identifies normative gaps in social-history verification, overlapping claims, power asymmetry, inter-agency data integration, and remedy coordination. Progressive law is operationalized through seven stages: intake and authority screening, integrated document and spatial verification, social-history verification, dispute typology, facilitated settlement, reasoned determination or referral, and post-resolution monitoring. Each stage is bounded by legality, evidence, proportionality, reasoned decision-making, and reviewability. The

model distinguishes remedies within BPN authority, party agreement, and judicial jurisdiction, and proposes output, outcome, and safeguard indicators for future pilot testing.

Keywords: *land administration; progressive law; substantive justice; land disputes.*

INTRODUCTION

Land in Indonesia is simultaneously an economic asset, a space of livelihood, a source of social identity, and an object of public administration. Disputes therefore often combine formal title, long possession, customary claims, inheritance history, spatial boundaries, state concessions, and unequal bargaining power. A resolution model that reads only the latest certificate may miss relevant social and historical facts; a model that ignores formal registration, on the other hand, undermines legal certainty. The task is not to choose between legality and substantive justice but to structure a process in which both can be examined within lawful institutional authority.¹

The Indonesian registration system is commonly described as negative with positive elements. Article 32(1) of Government Regulation Number 24 of 1997 treats the certificate as strong evidence: its physical and juridical data are accepted as correct so long as contrary proof is not established and the data correspond with the land book and measurement document.² The elucidation expressly rejects a pure positive system. Article 32(2), however, gives additional protection after five years where the certificate was lawfully issued to a good-faith acquirer who actually possesses the land and no timely objection or lawsuit was filed. This structure explains why a certificate is powerful but not absolutely conclusive.

Recent land-administration reform also emphasizes electronic registration, data quality, prevention, and dispute handling. Government Regulation Number 18 of 2021 provides the framework for electronic land registration.³ Ministerial Regulation Number 21 of 2020 governs the handling and settlement of land cases.⁴ Ministerial Regulation Number 15 of 2024 adds a prevention framework based on identification, assessment, and recommendations.⁵ Research on Indonesia's e-land-registration system identifies digitization, institutional coordination, and implementation capacity as central policy challenges.⁶ Recent work on incremental land-data quality improvement likewise underscores the importance of systematic data governance and institutional readiness.⁷ These rules and studies provide important institutional tools,

¹ Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.

² Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 1997 tentang Pendaftaran Tanah, art. 32 and its elucidation.

³ Peraturan Pemerintah Republik Indonesia Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah.

⁴ Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 21 Tahun 2020 tentang Penanganan dan Penyelesaian Kasus Pertanahan.

⁵ Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 15 Tahun 2024 tentang Pencegahan Kasus Pertanahan.

⁶ A. R. Diany, A. M. Ramli, H. Adolf, and D. Hasan, "E-land Registration System in Indonesia: Policy, Progress, and Challenges," *International Journal of Public Law and Policy* 10, no. 4 (2024): 411–429, <https://doi.org/10.1504/IJPLAP.2024.141713>.

⁷ N. Huda et al., "The Strategic Development of Quality Improvement Land Data Incrementally Using Integrated PESTEL and SWOT Analysis in Indonesia," *Land* 13, no. 10 (2024): 1655, <https://doi.org/10.3390/land13101655>.

but they do not eliminate recurring disputes arising from historical chains of possession, incomplete social verification, overlapping spatial data, or power asymmetry.

Progressive law offers a useful critical perspective because it treats law as serving human beings and justice rather than elevating procedure into an end in itself.⁸ Yet progressive law cannot mean discretionary decision-making without legal boundaries. In a constitutional state, a 'progressive' land-resolution model must remain within the decision-maker's authority, rely on verifiable evidence, give reasons, respect property and procedural rights, apply proportionality, and remain open to objection and judicial review. This article operationalizes progressive law through those constraints.

Prior scholarship has examined conflict narratives and the institutional framing of land disputes in Indonesia.⁹ Restorative approaches have also been proposed for plantation and agrarian conflict resolution.¹⁰ Research on agrarian reform similarly explores restorative-justice mechanisms for conflict resolution.¹¹ Studies of adat in Indonesian land law demonstrate the continuing significance and limits of customary claims within the national legal order.¹² Indonesian legal-pluralism scholarship further shows that multiple normative orders remain relevant to land governance.¹³ Work on agrarian dispute institutions has connected progressive-law reasoning with institutional transformation.¹⁴ Legal-pluralist approaches to customary-law studies likewise emphasize interaction among customary, national, and international norms.¹⁵ Progressive-law analysis has also been applied specifically to agrarian-conflict resolution.¹⁶ Legal-policy scholarship on land disputes has called for reconstruction of Indonesia's dispute-settlement architecture.¹⁷ The novelty here lies not in claiming a new philosophy, but in translating those strands into a seven-stage operational model that explicitly separates BPN administrative authority, voluntary party settlement, and judicial remedies.

⁸ Satjipto Rahardjo, *Hukum Progresif sebagai Dasar Pembangunan Ilmu Hukum Indonesia* (Yogyakarta: Pustaka Pelajar, 2012).

⁹ Ward Berenschot, Ahmad Dhiaulhaq, and Afrizal, "Discourses of Land Conflicts in Indonesia," *Development and Change* (2024), <https://doi.org/10.1111/dech.12865>.

¹⁰ A. Artaji et al., "Resolution of Agrarian Conflicts on Plantation Land through Restorative Justice in Indonesia," *Lex Scientia Law Review* 8, no. 1 (2024): 107–136, <https://doi.org/10.15294/lslr.v8i1.14060>.

¹¹ M. F. Alan, "Restorative Justice and Agrarian Reform Conflict Resolution," *BHUMI: Jurnal Agraria dan Pertanahan* 10, no. 1 (2024): 110–123, <https://doi.org/10.31292/bhumi.v10i1.773>.

¹² Adriaan Bedner and Yance Arizona, "Adat in Indonesian Land Law: A Promise for the Future or a Dead End?," *The Asia Pacific Journal of Anthropology* 20, no. 5 (2019): 416–434, <https://doi.org/10.1080/14442213.2019.1670246>.

¹³ F. P. Disantara, "Konsep Pluralisme Hukum Khas Indonesia sebagai Strategi Menghadapi Era Modernisasi Hukum," *Al-Adalah: Jurnal Hukum dan Politik Islam* 6, no. 1 (2021): 1–36, <https://doi.org/10.35673/ajmpi.v6i1.1129>.

¹⁴ S. P. Maulu, F. M. Wantu, and Z. Abdussamad, "Agrarian Dispute Resolution Institution as a Manifestation of Progressive Legal Transformation," *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan* 3, no. 2 (2025): 12–21, <https://doi.org/10.59966/yudhistira.v3i2.1788>.

¹⁵ I. Pradhani, "Pendekatan Pluralisme Hukum dalam Studi Hukum Adat: Interaksi Hukum Adat dengan Hukum Nasional dan Internasional," *Undang: Jurnal Hukum* 4, no. 1 (2021): 81–124, <https://doi.org/10.22437/ujh.4.1.81-124>.

¹⁶ S. Utomo, "Penerapan Hukum Progresif dalam Penyelesaian Konflik Agraria," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 3, no. 2 (2020): 33–43, <https://doi.org/10.24090/volksgeist.v3i2.3998>.

¹⁷ V. Wirawan, "Rekonstruksi Politik Hukum Penyelesaian Sengketa Tanah dan Konflik Tanah di Indonesia," *Jurnal Hukum Progresif* 9, no. 1 (2021): 1–15, <https://doi.org/10.14710/jhp.9.1.1-15>.

RESEARCH METHOD

This study is normative legal research using statutory and conceptual approaches. The earlier reference to a case approach is removed because the article does not conduct full doctrinal analysis of identified court decisions. Primary materials include the Basic Agrarian Law, Government Regulations Numbers 24 of 1997 and 18 of 2021, the Judicial Power Law, Supreme Court mediation regulations, and the current ATR/BPN regulations on handling and prevention of land cases. Official regulatory sources are used with a cut-off of 30 September 2026.

Recurring dispute patterns are derived from selected scholarly literature published mainly from 2020–2026 concerning overlapping claims, corporate–community disputes, customary tenure, boundary determination, cadastral data quality, legal pluralism, and agrarian conflict resolution. Boundary-fixing research demonstrates the legal and technical importance of reliable cadastral delimitation.¹⁸ Digital-transformation research on land services identifies institutional readiness and data integration as persistent implementation concerns.¹⁹ Studies of indigenous rights and forest-land conflict show how agrarian-justice claims can be framed through overlapping legal and social orders.²⁰ Research on corporate–community land-tenure conflict illustrates the power and evidentiary asymmetries that often complicate formal resolution.²¹ Land-reform scholarship also highlights the relationship between resource governance and protection of local communities.²² Evidence from forest governance in West Sumatra further demonstrates the practical relevance of legal pluralism in land and resource management.²³ The coding categories are: defect in documentary chain; boundary/spatial inconsistency; dual or overlapping rights; customary/community claim; inheritance or possession history; concession/community conflict; and administrative-service or data error. The study does not claim a statistically representative frequency of these categories.

RESULTS AND DISCUSSION

Why Formal Evidence Alone Does Not Resolve the Land-Dispute Problem

The first normative gap is verification depth. Land offices work with formal registration data, but a dispute may require reconstruction of earlier transfers, possession, boundaries, customary relations, inheritance, or administrative changes. A progressive model should not replace documentary evidence with oral assertion; it should identify when social-history evidence is necessary to test or contextualize the

¹⁸ D. B. Martono, T. Aditya, and J. Zevenbergen, "The Legal Element of Fixing the Boundary for Indonesian Complete Cadastre," *Land* 10, no. 1 (2021): 49, <https://doi.org/10.3390/land10010049>.

¹⁹ K. Kusmiarto et al., "Digital Transformation of Land Services in Indonesia: A Readiness Assessment," *Land* 10, no. 2 (2021): 120, <https://doi.org/10.3390/land10020120>.

²⁰ A. Dhiaulhaq and J. F. McCarthy, "Indigenous Rights and Agrarian Justice Framings in Forest Land Conflicts in Indonesia," *The Asia Pacific Journal of Anthropology* 21, no. 1 (2020): 34–54, <https://doi.org/10.1080/14442213.2019.1670243>.

²¹ A. Hariri et al., "Corporate vs Community Head to Head: The Complexity of Land Tenure Conflict in Indonesia," *Indonesian Journal of Advocacy and Legal Services* 4, no. 1 (2022), <https://doi.org/10.15294/ijals.v4i1.23354>.

²² F. A. J. Putri, "The Impact of Land Reform Policies on the Sustainable Management of Natural Resources and the Protection of Local Communities," *Journal of Human Rights, Culture and Legal System* 4, no. 2 (2024), <https://doi.org/10.53955/jhcls.v4i2.197>.

²³ R. Rudy et al., "Forest Cover Change and Legal Pluralism in Forest Management: A Review and Evidence from West Sumatra, Indonesia," *Indonesian Journal of Science and Technology* 6, no. 2 (2021): 299–314, <https://doi.org/10.17509/ijost.v6i2.34190>.

documentary chain. The minimum record should distinguish facts that are officially registered, facts supported by other documents, facts supported by consistent witness or community information, and contested allegations.

The second gap is data integration. Spatial plans, cadastral maps, forest or plantation boundaries, local-government records, court disputes, and registration data may be held by different institutions. Research on spatial-plan information systems shows the importance of integrating planning and land information for public administration.²⁴ More recent work on integrating land registration and spatial planning likewise demonstrates the value of linking rights, restrictions, and responsibilities across datasets.²⁵ BPN cannot decide matters outside its statutory authority, but it can coordinate data verification and state clearly which inconsistency requires action by another authority. Current BPN functions include land-data management and handling/prevention of disputes, which supports an integrated-verification role without converting BPN into a court.

Table 1. Dispute Types, Evidence, and Resolution Routes

Dispute type	Typical evidence	Primary route	Key risk
Administrative data/registration defect	Land book, certificate, measurement, administrative file	BPN administrative handling within authority	Correction without adequate notice or evidence
Boundary/spatial inconsistency	Survey, coordinates, maps, physical markers	BPN verification; court if ownership becomes disputed	Map mismatch and outdated boundary data
Civil ownership/transaction dispute	Deeds, inheritance, payment, possession, witness evidence	Settlement/mediation or court	Administrative forum deciding beyond competence
Customary/community claim	Customary history, community evidence, maps, official recognition where relevant	Multi-agency verification; settlement/court according to issue	Treating oral/social history as either conclusive or irrelevant
Concession/community overlap	Permit/concession data, cadastral and spatial records, possession history	Competent sector agency + BPN coordination + court where needed	Power asymmetry and fragmented data

The third gap is power asymmetry. Formal mediation can reproduce inequality when one party controls documents, technical expertise, access to officials, or economic resources. Progressive-law safeguards therefore require equal access to relevant non-confidential information, opportunity to obtain assistance, a facilitator

²⁴A. Indrajit et al., "Implementation of the Spatial Plan Information Package for Improving Ease of Doing Business in Indonesian Cities," *Land Use Policy* 105 (2021): 105338, <https://doi.org/10.1016/j.landusepol.2021.105338>.

²⁵G. Triwibawa, T. Aditya, and H. Sutanta, "Deriving RRR Elements from the Integration of Land Registration and Spatial Planning," *Land* 14, no. 10 (2025): 2084, <https://doi.org/10.3390/land14102084>.

trained in land law and conflict dynamics, and a reasoned record showing that any agreement was voluntary. Mediator competence should build on the existing Supreme Court mediation framework rather than create an unnecessary parallel profession for every dispute.²⁶ Electronic-mediation rules also provide a procedural basis for technology-assisted mediation within the court system.²⁷ A land-specific competence module can supplement general mediator certification.

Institutional Boundaries: Administrative Correction, Agreement, and Judicial Decision

A land dispute may require different remedies. BPN may correct or cancel administrative products only within the scope authorized by land regulations and applicable procedural safeguards. Parties may settle private aspects through a lawful agreement or court-annexed mediation. Questions that require adjudication of disputed ownership, invalidity of a civil transaction, compensation, or binding determination beyond administrative authority belong to the courts. A progressive model should therefore improve routing, not concentrate all remedies in one institution.

Judges may consider social impact and the factual context only within the governing law, evidence, claims, and procedural rules. Substantive justice does not authorize ultra petita relief or disregard property rights.²⁸ A reasoned judgment can, however, explain why formal evidence is insufficient, how good faith or possession is assessed, how conflicting documents are weighed, and what legal consequence follows. Progressive reasoning is legitimate when it deepens legal justification rather than replaces it.

A Seven-Stage Progressive Land-Dispute Resolution Model

Table 2. Seven-Stage Progressive Land-Dispute Resolution Model

Stage	Lead actor	Minimum record	Decision/output	Review / objection
1. Intake & authority	Receiving BPN unit / competent forum	Parties, object, requested remedy, urgency	Accept, route, or refer with reasons	Administrative complaint / forum correction
2. Documentary & spatial verification	BPN + relevant data holders	Land book, survey, deeds, maps, overlays	Verified chronology and discrepancy list	Party comments on record
3. Social-history verification	Facilitator / verification team	Possession, inheritance, customary/social history sources	Source-graded factual memorandum	Contrary evidence and correction

²⁶Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016 tentang Prosedur Mediasi di Pengadilan.

²⁷Peraturan Mahkamah Agung Republik Indonesia Nomor 3 Tahun 2022 tentang Mediasi di Pengadilan Secara Elektronik.

²⁸ Undang-Undang Republik Indonesia Nomor 48 Tahun 2009 tentang Kekuasaan Kehakiman.

Stage	Lead actor	Minimum record	Decision/output	Review / objection
4. Typology & qualification	Competent legal/land unit	Verified facts and applicable rules	Dispute type and lawful remedy route	Internal legal review
5. Facilitated settlement	Certified mediator / facilitator	Issues, options, consent safeguards	Lawful written agreement or no-settlement record	Court/administrative route remains
6. Determination / referral	BPN or court according to authority	Complete file and reasons	Administrative decision, settlement instrument, or referral	Statutory objection/appeal/judicial review
7. Post-resolution monitoring	Implementing agency / parties	Implementation checklist, data update	Registration/data correction and closure report	Complaint if implementation fails

The proposed model has seven stages and should be used consistently. Stage 1 is intake and authority screening: identify the parties, object, requested remedy, urgency, and competent forum. Stage 2 is integrated documentary and spatial verification: land books, certificates, measurement data, transfer documents, spatial overlays, and relevant official records are checked. Stage 3 is social-history verification when legally relevant: possession, inheritance, customary relations, community boundaries, and earlier dispute history are recorded with source quality.

Stage 4 is dispute typology and legal qualification. The verified facts are classified to determine whether the core issue is an administrative data defect, overlapping rights, boundary inconsistency, civil ownership dispute, customary/community conflict, concession overlap, or mixed case. Stage 5 is facilitated settlement where lawful and appropriate. Stage 6 is a reasoned administrative determination, settlement instrument, or referral to the competent court/agency. Stage 7 is post-resolution monitoring: implementation, data correction, registration changes, and recurrence risk are checked.

Every stage is bounded by five principles: legality and institutional competence; evidence-based verification; proportionality; reasoned decision-making; and reviewability. These boundaries answer the common objection that progressive law invites subjectivity. The model does not authorize officials to disregard statutes; it requires them to use lawful discretion transparently and to identify the evidentiary and social context necessary to reach a defensible result.

Table 3. Indicators for Monitoring Land-Dispute Resolution

Indicator level	Examples	Use
Output	Verification completed, routing time, agreements, data corrections	Operational performance

Indicator level	Examples	Use
Outcome	Implementation rate, recurrence of administrative error, avoided forum switching	Near-term resolution quality
Safeguard	Complaints, reversals, unequal-access indicators, incomplete evidence flags	Rights and accountability
Impact (future empirical study)	Perceived fairness, trust, long-term conflict recurrence	Not measurable by this normative article alone

Evaluation and Pilot Implementation

Evaluation should distinguish output, outcome, and impact. Outputs include completion of verification stages, time to route a case, agreements reached, and data corrections. Outcomes include implementation of agreements or decisions, reduction in repeat administrative errors, and the proportion of cases resolved without unnecessary forum switching. Perceived fairness, trust, and longer-term conflict reduction are impact indicators that cannot be proven by this normative study; they require future empirical research.

A pilot is therefore a policy agenda, not evidence of effectiveness. Pilot sites should be selected using transparent criteria such as dispute volume, data readiness, institutional cooperation, and representation of different dispute types. Baseline metrics, data-protection safeguards, complaint channels, and independent evaluation should be specified before implementation. The 2024 prevention regulation's identification–assessment–recommendation structure can be linked to the seven-stage model so that prevention and resolution use compatible data.²⁹

CONCLUSION

A progressive approach to land-dispute resolution is defensible only when it strengthens, rather than displaces, legal certainty. Indonesia's land-registration system gives certificates strong evidentiary status but not absolute conclusiveness, and the five-year protection mechanism in Article 32(2) operates under specified conditions. Current ATR/BPN regulations provide mechanisms for handling and preventing land cases, yet recurrent disputes reveal a need for deeper verification, data coordination, power-sensitive facilitation, and clearer routing of remedies.

The proposed seven-stage model integrates intake, documentary/spatial verification, social-history verification, legal typology, facilitated settlement, reasoned determination or referral, and post-resolution monitoring. Its safeguards are legality, evidence, proportionality, reasons, and reviewability. BPN, parties, and courts retain distinct authority. The model should be tested through a measured pilot and evaluated using outputs, outcomes, and safeguards before any claim is made about broader social impact.

²⁹ Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 15 Tahun 2024 tentang Pencegahan Kasus Pertanahan.

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