

LAND DISPUTE RESOLUTION WITH JUSTICE

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Abstract

Its provision, allocation, control, use and maintenance need to be regulated. The purpose, as with various other arrangements, is to ensure legal certainty, provide legal protection for the people in the context of supporting sustainable development without ignoring the principle of environmental sustainability. The purpose of this research is to analyze the application of equitable land dispute resolution because so far the regulation of land dispute resolution has not been equitable, giving rise to various disputes in the process of resolving land cases. The research method used in this research is the normative juridical method. In addition, it is necessary to establish a special court that handles land issues, namely the Agrarian Court, a special court for land dispute resolution under the Supreme Court of the Republic of Indonesia. Novelty in this research with the establishment of institutions and laws and regulations that specifically deal with the issue of fair land dispute resolution is expected that the Agrarian Court can fulfill a sense of justice for the parties in the settlement of land disputes that have occurred so far in the community.

Keywords: *Dispute; Justice; Land.*

A. INTRODUCTION

The Pancasila state is a national state with social justice, which means that the state as an incarnation of human beings as creatures of God Almighty, individual natures and social beings aims to realize justice in living together (Social Justice).¹ Social justice is based on and imbued with the nature of human justice as a civilized being (second principle). Humans are

¹ Luh Putu Swandewi Antari and Luh De Liska., Implementasi Nilai Nilai Pancasila Dalam Penguatan Karakter Bangsa, *Widyadari*, Vol. 21, Nol. 2, 2020, page 676 - 687.

essentially just and civilized, which means that humans must be fair to themselves, fair to God, fair to other people and society and fair to their natural environment.²

In relation to Social Justice, the view of justice in law literally has a narrow meaning, namely what is in accordance with the law is considered fair while what violates the law is considered unfair.³ If there is a violation of the law, then a court must be held to restore justice. In the event of a criminal offense or what is colloquially called a "crime", a court must be convened to restore justice by imposing punishment on the person who committed the criminal offense or crime.⁴

Land is one of the main sources of livelihood,⁵ is a gift from the Creator. The philosophy of the Indonesian nation wants to achieve an ideal that it will cultivate land for the greatest achievement for the prosperity of the people in a fair and equitable manner.⁶ Its provision, allocation, control, use and maintenance need to be regulated. The aim, as with various other arrangements, is to ensure legal certainty, provide legal protection for the people in the context of supporting sustainable development without ignoring the principle of environmental sustainability.

Article 2 paragraph (1) of the Basic Agrarian Law, which stipulates that: The earth, water, and airspace, including the natural resources therein, are at the highest level controlled by the state as the organization of the power of all the people. The meaning of Article 2(1) of the Basic Agrarian Law is that the state has the power to regulate land that has been owned by a person or legal entity as well as free land that has not been owned by a person or legal entity - which will be directly controlled by the state.⁷

Research conducted by Vani Wirawan with the title Rekonstruksi Politics Of Land Dispute Resolution And Land Conflict In Indonesia that the results of this study are the need for a reassessment of the implementation of land law politics regarding HMN and various laws and regulations relating to land in the context of synchronizing policies between sectors for the realization of the principles referred to in Article 2 of Presidential Regulation Number 86 of 2018 and Article 5 of MPR Decree Number IX / MPR / 2001, as well as the idea of changing the land rights registration system, namely

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- 2 Fadilah, Fakhur., Constraints and Legal Efforts for Consumer Protection in Overcoming Forced Withdrawals by Leasing Parties in Fiduciary Guarantees, *Jurnal Hukum Sehasen*, Vol. 8, No. 2, 2022, page. 53
 - 3 Helen Sondang Silvina Sihaloho Sihaloho., Perbandingan Asas Legalitas Kitab Undang-Undang Hukum Pidana (KUHP) dan Hukum Islam, *Jurnal Hukum Respublica*, Vol. 21, No. 1, 2020, page. 18-31.
 - 4 Sihaloho, Perbandingan Asas Legalitas Kitab Undang-Undang Hukum Pidana (KUHP) dan Hukum Islam, *Jurnal Hukum Respublica*, Vol. 21, No. 1, 2021, page. 18-31.
 - 5 Hambali Thalib., *Sanksi Pidana Dalam Konflik Pertanahan*, Jakarta, Kencana, 2009, page. 47
 - 6 Boedi Harsono., *Menuju Penyempurnaan Hukum Tanah Nasional Dalam Hubungannya dengan TAP MPR RI IX/MPR/2001*, Jakarta, Universitas Trisakti, 2002
 - 7 Bachtiar Effendie, *Pendaftaran Tanah di Indonesia dan Peraturan-peraturan Pelaksanaannya*, Bandung, Alumi, 1983, page 13

the use of a negative publication stelsel land registration system to a positive publication stelsel.⁸

Research conducted by Putu Diva Sukmawati with the title Agraria Law In Resolution Of Land Disputes In Indonesia Indonesia that land disputes cannot be avoided today, apart from being caused by weak law enforcement officers, it is also caused by various land needs that are very high today while the number of land plots is limited. In resolving land disputes, there are several settlement processes that can be carried out, among others, through the court to mediation.⁹

The purpose of this research is to analyze the application of fair land dispute resolution because so far the regulation of land dispute resolution has not been fair, giving rise to various disputes in the process of resolving land cases.

B. RESEARCH METHODS

The approach used in this article is a normative juridical approach. used to determine the extent to which legal principles, vertical/horizontal synchronization, and legal systemic are applied, which relies on secondary data. Secondary data in the field of law can be divided into three, namely primary, secondary, and tertiary legal materials. According to Soerjono Soekanto, in normative legal research, comparative law is a method of legal research.¹⁰ Data collection is achieved by conducting library research and document studies. Data analysis in legal research uses a qualitative approach method, using statistical formulations, which explain everything about how to resolve disputes in the land sector. The data is then analyzed and compiled to be able to provide an overview and answers regarding the subject and object of research in the application of the law.

C. RESULTS AND DISCUSSION

1. Land Dispute Resolution Regulation

Land disputes are land disputes between individuals, legal entities or institutions that do not have a broad socio-political impact. The emphasis on not having a broad impact is what distinguishes the definition of a land dispute from the definition of a land conflict. Land disputes can be in the form of administrative disputes, civil disputes, criminal disputes related to ownership, transactions, registration, guarantee, utilization, control and customary rights disputes.¹¹

The root causes of land disputes in Indonesia can generally be caused by First, conflicts of interest caused by competing interests

8 Wirawan., Rekonstruksi Politik Hukum Penyelesaian Sengketa Tanah Dan Konflik Tanah Di Indonesia, *Jurnal Hukum Progresif*, Vol. 9, No. 1, April 2021, page. 1-15,

9 Putu Diva Sukmawati., Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia, *Jurnal Ilmu Hukum Sui Generis*, Vol 2 No 2, April 2022, Page. 89-96

10 Barda Nawawi Arief., *Perbandingan Hukum Pidana*, Jakarta, Radja Grafindo Persada, 2008, page. 21

11 <http://www.bpn.go.id/Program/Penanganan-Kasus-Pertanahan>

related to substantive interests.¹² Second, structural conflicts are caused, among others, by destructive patterns of behavior or interaction; unequal control of ownership or distribution of resources; unequal power of authority, as well as geographical, physical or environmental factors that hinder cooperation.¹³ Third, value conflicts are caused by differences in criteria used to evaluate ideas or behavior, differences in lifestyle, ideology or religion/belief. Fourth, relationship conflicts caused by excessive emotions, misperceptions, poor or incorrect communication, repetition of negative behavior. Fifth, data conflicts caused by incomplete information, misinformation, different opinions on relevant matters, different interpretations of data, and differences in assessment procedures.

Based on the description of the National Land Agency of the Republic of Indonesia (BPN RI), there are 10 (ten) typologies of land cases that occur in Indonesia, namely: first, there is land tenure without rights, namely differences in perceptions, values or opinions, interests regarding the status of control over certain land that is not or has not been attached to rights (State land), as well as those that have been attached to rights by certain parties. Second, disputes over the boundaries of decrees issued by the BPN relating to ownership/control rights over land that are concrete, individual and final in nature.¹⁴

According to data from the National Land Agency (BPN RI), precisely in the latest data, namely September 2013, it is alleged that the transition of land dispute resolution to the general court is the accumulation of land cases which reached 4,223 cases consisting of the remaining cases in 2012 totaling 1,888 cases and new cases totaling 2,335 cases. This shows that there are irregularities in the settlement of land disputes by the general courts.¹⁵

The concept of law as a means of reform and community development is associated with the practice of courts handling land disputes in Indonesia today, it can be said that the judiciary, through its decisions, should be a medium for creating order in the land sector.¹⁶ Therefore, upholding the principles of justice and economic democracy needs to be accompanied by concern for the weak, exploring the potential of the nation, both as consumers, entrepreneurs and as a workforce without distinguishing ethnicity, religion and gender to obtain

12 Jushendri., Kedudukan Pengadilan Adat Dalam Rangka Menyelesaikan Sengketa Tanah, *Sol Justicia*, Vol. 2, No. 2, 2019, page 154-167.

13 Maria SW Sumarjono., *Tanah Dalam Perspektif Hak Ekonomi, Sosial dan Budaya*, Jakarta, Kompas, 2009, page. 112-113.

14 Aksar et al., Pemahaman Hukum Administrasi Pertanahan Bagi Masyarakat Desa Sanglar Kabupaten Indragiri Hilir Guna Mencegah Konflik Dan Sengketa Pertanahan, *Mimbar Keadilan*, Vol. 15, No. 1, 2022, page 68-80

15 Widhi Handoko., Analisis Pengembangan Kebijakan dan Manajemen Pertanahan Bpn/Kementerian Agraria RI, *Recital Review*, Vol. 1, No. 2, 2019, page 23-43

16 James Yoseph Palenewen., Penyelesaian Sengketa Pemilikan Dan Pemanfaatan Rumah Susun Berdasarkan Undang-Undang Nomor 20 Tahun 2011, *Jurnal Hukum Ius Publicum*, Vol. 1, No. 1, 2021, page 56-68.

opportunities, protection and rights to improve their standard of living and to take an active role in various economic activities, including in utilizing and maintaining land as one of Indonesia's natural resources.

Land disputes and their resolution In general, land disputes arise due to several factors, including incomplete regulations; incompatibility of regulations; land officials who are less responsive to the needs and amount of land available; inaccurate and incomplete data; erroneous land data; limited human resources in charge of resolving land disputes; erroneous land transactions; the actions of the right applicant / the existence of settlements from other agencies, resulting in overlapping authority.¹⁷ In general, land disputes arising in Indonesia can be grouped into 4 classifications of problems, namely problems related to: a) Recognition of ownership of land; b) Transfer of land rights; c) Encumbrance of rights and d) Occupation of former private land.¹⁸

In relation to the process of resolving land disputes in the judiciary, Article 4 Paragraph (2) of the Law of the Supreme Court of the Republic of Indonesia regulates that justice is carried out quickly, simply and at low cost. This is intended so that the disputing parties and citizens involved in land disputes are not harmed and are not burdened with expensive costs in order to obtain legal certainty over the disputed land. Long settlement times and even accompanied by all kinds of convoluted administrative procedures will actually increase the number of land disputes.¹⁹

Land disputes in Indonesia are resolved in the usual way through general courts and State Administrative courts with incomplete and suboptimal results. This is due to the overlapping decisions made by each judicial body, the difficulty of executing judicial body decisions that have permanent legal force and the absence of firmness about which laws and regulations are competent to resolve land cases in Indonesia. As a result, injustice, legal uncertainty, land grabbing, disruption to the rate of economic growth and development as investors find it difficult to invest in Indonesia, and social and political conflicts arise. To overcome the weaknesses in land dispute resolution mentioned above, it is necessary to revitalize the judicial function. Revitalization itself is more aimed at the judiciary because the term "judiciary" refers to the procedures or ways and processes of adjudicating a case.

2. Implementation of Land Dispute Settlement that has not been equitable

Settlement of land disputes through the judiciary, which is

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- 17 Johamran Pransisto., Analisis Yuridis Pengolahan Data Fisik dan Yuridis Dalam Pendaftaran Tanah Menurut PP No 24 Tahun 1997 di Kantor Pertanahan Kabupaten Maros, *Jurnal Litigasi Amsir*, 2023, page. 219-238
 - 18 Mulyadi, Satino., Penyelesaian Sengketa Kepemilikan Tanah Bersertifikat Ganda, *Jurnal Yuridis*, Vol. 6, No. 1, 2019, page. 147-173
 - 19 Ferika Nurfransiska et al., Penyelesaian Sengketa Terhadap Sertifikat Ganda Hak Atas Tanah Di Pengadilan Tata Usaha Negara, *Jurnal Lawnesia*, Vol. 1, No. 2, 2022, page. 168-185

submitted to the general court on a civil or criminal basis, if the dispute is about illegal land settlement made possible by Law No. 51/Prp/1960 concerning the prohibition of land use without the permission of the rightful owner or his attorney or through the state administrative court. In general, all land disputes can be submitted to the courts, either within the scope of the general court or the state administrative court. However, it is no secret that there are relatively many land disputes whose resolution through the courts is perceived to be less effective in addition to being time-consuming and costly.²⁰

In addition, from the analysis of several cases involving land disputes that have been decided by the courts, either at the first, appeal or cassation levels; without intending to generalize, it appears that it is necessary to improve understanding of the substance of the problem with regard to the underlying concepts so that decisions taken can truly provide justice and legal certainty, so as to benefit justice seekers.

Land issues from a juridical point of view alone are not simple to solve and in a case, it is not uncommon to involve several agencies that are directly or indirectly related to the problem/dispute filed in court. A common understanding of the concept is needed so that there is a common perception that will result in a solid and fair decision for the parties seeking justice. In the development of land disputes involving a group of community members, based on a pessimistic attitude towards the court channel, the idea of establishing a 'Land Court' within the scope of the general court was once raised.²¹

Theoretically, the establishment of a land court is possible.²² For example, in the past an Economic Court was established as a consequence of the issuance of Law No. 7/Drt/1955 on the Investigation, Prosecution and Trial of Economic Crimes (enacted into law by Law No. 1 of 1961). After the issuance of Law No. 2 of 1986 on General Courts, the legal basis for the establishment of land courts within the general judicial environment can be seen in Article 8, which states that within the General Judicial Environment, specializations can be made which are regulated by law.

The main characteristics of the Land Court that are expected are firstly, in each District Court a judge or more is placed, who is solely assigned (thus: appointed) to hear land cases. Thus, Land Court judges are District Court judges with special assignments. Second, the procedural law used is the civil procedural law applicable to the District Court. Third, if one of the parties objects to the decision, it can be appealed to the High Court and cassation to the Supreme Court, as well

20 Sondy Raharjanto et al., Analisis Perbuatan Melawan Hukum Dalam Putusan Pengadilan Negeri Medan no. 3135/pid.b/2014/pn.mdn, *Jurnal Ilmiah Penelitian: Law Jurnal*, Vol. 11, No. 1, 2021, page 27-42

21 Hendri Jayadi et al., Penyelesaian Sengketa Tanah Berdasarkan Hukum Positif Tentang Penyelesaian Sengketa Di Indonesia, *Jurnal Comunit A Servizio*, Vol. 5, No. 1, 2023, page 1050-1069

22 Khoirun Nisa., Penyelesaian Sengketa Wakaf: Studi Kasus di Desa Sungai Ruan Kabupaten Batang Hari, *Al-Mizan : Jurnal Hukum Dan Ekonomi Islam*, Vol. 7, No. 1, 2023, page 64-87

as the possibility of requesting a judicial review.²³

3. Implementation of Justice-Based Land Dispute Resolution

Land disputes are inevitable in this day and age, this is due to the various land needs that are very high in this day and age while the number of land parcels is limited. This demands improvements in the field of land arrangement and use for the welfare of the community and especially its legal certainty.²⁴ For this reason, various efforts have been made by the government, namely seeking to resolve land disputes quickly to avoid the accumulation of land disputes, which can harm the community, for example, land cannot be used because the land is in dispute.²⁵

During conflicts, the land that is the object of conflict is usually in a status quo state so that the land concerned cannot be utilized.²⁶ The result is a decline in the quality of land resources that can harm the interests of many parties and does not achieve the principle of land benefits. Legislation (basic laws), codification, laws, government regulations, and so on and written legal norms formed by judicial institutions (judge made law), as well as written law made by interested parties (contracts, legal documents, legal reports, legal records, and draft laws).²⁷

Based on the above study, it turns out that the problems of land, forestry and mining affairs are caused by the lack of regulation in the basic concept and many sector regulations that have not been synchronized with the law on regional government and their implementation has not been implemented consistently.²⁸ For this reason, suggestions for improving the law on local government and improving its implementation in the future can be explained as follows: First, the importance of land, forestry and mining regulations needs to be specifically regulated in a separate article in the revision of the law on regional government; Second, as a basic requirement for autonomous regions to carry out these three affairs, it is mandatory to first issue Norms, Standards, Criteria and Procedures (NSPK) in the fields of land, forestry and NSPK in the mining sector. Furthermore, the affairs can be

23 Enrico Simanjuntak., Rekonseptualisasi Pengadilan Pertanahan, *Jurnal Hukum Peradilan*, Vol. 3, No. 3, 2014, page 253-268

24 Liam D Kelly., The Nature of Property Rights in Haiti: Mode of Land Acquisition, Gender, and Investment, *Journal of Economic Issues*, Vol. 53, 2019, page. 726-747

25 Adityo Santoso et al., Efektifitas Upaya Hukum Sengketa Tanah Ulayat Masyarakat Adat Pantai Raja Dengan PTPN V, *Jurnal Kewarganegaraan*, Vol. 7, No. 1, 2023, page 1258-1264

26 Riwanto and Adrianus Anto., Sengketa Tanah Terminal Di Kelurahan Tangge Kecamatan Lembor Kabupaten Manggarai Barat, *Nirwasita*, Vol. 2, No. 1, 2021, page 16-29

27 Muhammad Ilham Arisaputra and Sri Wildan Ainun Mardiah., Kedudukan Hukum Tanah Adat dalam Pengembangan Administrasi Pertanahan di Indonesia: Studi Komparatif, *Amanna Gappa*, Vol. 27, No. 2, 2019. page 67-87.

28 Muslim Lobubun et al, Inkonsistensi Peraturan Perundang-Undangan Dalam Penyelenggaraan Pemerintahan Daerah Di Indonesia, *Jurnal Pembangunan Hukum Indonesia*, Vol. 4, No. 2, 2022, page 294-322

implemented by the autonomous regions in full followed by inherent guidance and supervision; Third, it is necessary to immediately harmonize the laws and regulations that are not in accordance with the regional government law; Fourth, to avoid a vacuum in the establishment of NSPK for a long time, due to the length of the drafting process, the establishment of NSPK can be broken down into sub-fields, for example in the mining sector, NSPK for iron ore mining, NSPK for tin mining, NSPK for coal mining can be issued first. NSPK in the forestry sector can be issued first NSPK of forestry power, NSPK of tree felling, NSPK of reforestation, NSPK of land conservation, NSPK of wildlife; Fourth, it is necessary to regulate sanctions and strict law enforcement against violations of NSPK in the fields of land, forestry and mining; Fifth, although land, forests and mines are important for the survival of the country, the public interest and environmental sustainability, land, forestry and mining affairs remain decentralized affairs and still encourage regional innovation and creativity in their utilization.

Table 1
Implementation of equitable settlement of land disputes in Indonesia

| Regulation | Weakness | Implementation of Land Dispute Resolution |
|---|---|--|
| <p>Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases (Article 2 and Article 3)</p> <p>Article 2 (1) Settlement of Land Cases is intended to:</p> <p>a. find out the history and root causes of Disputes, Conflicts or Cases;</p> <p>b. formulate strategic policies to resolve the Dispute, Conflict or Case; and</p> <p>c. Settle the Dispute, Conflict or Case, so</p> | <p>In practice, many land dispute cases take a very long time, and are not even resolved and do not fulfill a sense of justice and many people are still unfamiliar with the need for legal assistance.</p> <p>There are still many double land certificates.</p> | <p>PURPOSE, OBJECTIVES AND SCOPE</p> <p>Article 2 (1) Settlement of Land Cases is intended to: a. b. c. find out the history and root causes of Disputes, Conflicts or Cases; formulate strategic policies to resolve Disputes, Conflicts or Cases; and settle Disputes, Conflicts or Cases THROUGH WIN WIN SOLUTION, so that land can be controlled, owned, used and utilized by its owner.</p> <p>(2) Settlement of Land Cases aims to provide legal certainty and justice regarding the control, ownership, use and utilization of land in a SUSTAINABLE manner.</p> <p>Article 3 The scope of this Ministerial Regulation includes: a. b. c. d. Legal and Relationship Bureau for Dispute and Conflict</p> |

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| <p>that the land can be controlled, owned, used and utilized by its owner.</p> <p>(2) Settlement of Land Cases aims to provide legal certainty and justice regarding the control, ownership, use and utilization of land.</p> <p>Article 3</p> <p>The scope of this Ministerial Regulation includes:</p> <ul style="list-style-type: none"> a. Dispute and Conflict Resolution; b. Case Settlement; c. Supervision and Control; and d. Legal Aid and Legal Protection. | | <p>Resolution; Case Settlement; Supervision and Control; and Legal Aid, Assistance and Legal Protection.</p> |
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From a legal perspective, land issues are not easy to resolve, and in some cases it is not uncommon for multiple entities to be directly or indirectly involved in issues/disputes raised in court. A shared understanding of the concept is necessary to develop a common understanding that leads to sound and fair decisions for the parties seeking justice.

Novelty in this research with the establishment of institutions and laws and regulations that specifically deal with the issue of fair land dispute resolution is expected that the Agrarian Court can fulfill a sense of justice for the parties in the settlement of land disputes that have occurred so far in the community.

D. CONCLUSION

Land disputes in Indonesia are resolved in the usual way through general courts and State Administrative courts with incomplete and suboptimal results. This is due to the overlapping decisions made by each judicial body, the difficulty of executing judicial body decisions that have permanent legal force and the absence of firmness about which laws and regulations are competent to resolve land cases in Indonesia. The problems of land, forestry and mining affairs are caused by the lack of regulation in the basic concept and many sector regulations that have not been synchronized with the law on regional government and their implementation has not been implemented consistently. The establishment of institutions and laws and regulations that specifically deal with the issue of fair land

dispute resolution is expected that the Agrarian Court can fulfill a sense of justice for the parties in the settlement of land disputes that have occurred so far in the community.

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