

Juridical Overview of Land Dispute Settlement

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ABSTRACT

Along with the times, the way people view land slowly began to change. In the past, land was only considered a supporting factor for agricultural activities, but now it has been seen from a more strategic perspective, namely as an important asset in the world of industry and human life. Now a lot of lands has been used not only as a place for agricultural activities but also for industrial activities, including being used as an integrated residential complex such as housing which has recently mushroomed everywhere. Settlement of land dispute cases as regulated in Law Number 51 of 1960, in article 2 and article 6 paragraph (1) letter a, that the use of land without permission from those who are entitled or their legal proxies is a prohibited act and is threatened with criminal penalties. However, in responding to conflicts and land disputes that arise, one must look at it from several points of view while still prioritizing justice and not harming both parties, so it is not only seen from the side of the occupation, but also in terms of the utilization and use of the land by the community owner if in terms of utilization the land is not utilized optimally and even seems to have been neglected by the owner for approximately 15 years. Settlement of disputes through deliberation with mediation is taken as a path to resolving land problems, considering that the main purpose of mediation is to resolve problems, not just applying norms or creating order, but its implementation must also be based on general principles.

Keywords: Land dispute; Settlement; Agrarian Regulation.



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INTRODUCTION

Along with the times, the way people view land slowly began to change. In the past, land was only considered as a supporting factor for agricultural activities, but now it has been seen from a more strategic perspective, namely as an important asset in the world of industry and human life. Now a lot of land has been used not only as a place for agricultural activities, but also as industrial activities, including

being used as an integrated residential complex such as housing which has recently mushroomed everywhere.

Along with the increase in population, the need for land increases, this causes people to struggle to get land to be used according to their needs. The high need for land when it creates friction between citizens. Land conflicts that occur in the community appear in various forms. There are also many parties involved in the conflict resolution process, both the state and civil society institutions such as; non-governmental organizations (NGOs). However, the dispute resolution process is often deadlocked, making the conflict more protracted ([Bernhard, 2012](#)).

In Article 1 paragraph 1 a and b of PERPU No. 51 of 1960 it is explained that: ([Yustisia, 2010](#))

“Land is a basic human need, apart from clothing, food and housing. In a government regulation in lieu of law, what is meant by land is land that is directly controlled by the state and land that is owned with certain rights by individuals or legal entities.

It is partly due to the lack of identification of the root causes of conflict and mapping of the social, political, economic, and cultural aspects involved in it. As a result, conflict resolution offers are often temporary formulas. Identification and in-depth research on the roots of conflict and accurate mapping of social, economic, political, and cultural aspects are needed to help settle land disputes permanently ([Harsono, 2008](#)).

Land conflict is a process of interaction between two (or more) or groups that each fight for their interests over the same object, namely land and other objects related to land, water, plants, mines, as well as air that is above the land concerned. On a micro level, conflict sources can arise due to differences or clashes of values (cultural), different interpretations of information, data, or an objective picture of local land conditions (technical), or differences/conflicts of economic interests seen in the gaps in land ownership and control structures.

One of the many disputes regarding land boundaries is caused by many things because land that has not been registered can also be due to a third party who has rights to the land, protracted land dispute resolution, and no good settlement can lead to parties who harmed and filed a lawsuit in court.

Although there is a great opportunity to sue through the courts, ordinary people tend to avoid it, besides that, there is an assumption in the community that filing a lawsuit through the court is relatively expensive, takes a long time, and is even convoluted. Therefore, the community tries to resolve their disputes by taking non-litigation routes.

Land problems from a juridical point of view are not simple to solve. The emergence of legal disputes regarding land stems from complaints from one party (person/entity) which contains objections and claims for land rights both on land status or ownership priorities in the hope of obtaining administrative settlements under applicable regulations. ([Murad, 1991](#))

Settlement through the courts is aimed at obtaining justice and legal certainty, so the settlement outside the court is prioritized for peace in overcoming disputes that occur between the disputants and not looking for the right or wrong party. If you have to find out who is right and wrong, it will not result in a decision that benefits the disputing parties (Law Number 9 of 1999 concerning Arbitration and Alternative Dispute Resolution).

The problem of land in the agrarian sphere is an issue that always arises from time to time, along with the increase in population, development, and the increasing access of various parties to obtain land as a basic model in various interests. These land issues can be in the form of public complaints submitted directly, in writing, and not infrequently carried out through demonstrations. In addition, there are also land cases that are submitted through lawsuits to the Court.

Land dispute resolution is indeed not as easy as imagined, especially if it is not equipped with basic knowledge or understanding of how to manage disputes, of course, disputes will never reach a settlement point. Therefore, the main priority must be done through two effective ways to manage disputes. The parties involved in the dispute must be willing to sit together and be willing to accept and give in to each other.

RESEARCH METHOD

This writing uses normative juridical research methods: namely, research that is used to examine or analyze secondary data in the form of primary legal materials and secondary legal materials, carried out by approaching problems from a legal perspective, discussing and then reviewing books, statutory provisions that already exist and are related to the issues to be discussed. (Soemitro, 1990) The problem to be studied refers to the provisions of the 1945 Constitution, and all regulations related to this discussion.

RESULT AND DISCUSSION

A. Land Dispute Occurrence

The occurrence of land conflicts as a result of the impact of industrial activities that are closely related to the form of social relations that exist between stakeholders, namely the community, government, industrial authorities, and other agencies (including non-governmental organizations and religious institutions) whose activities are directly related to all three (Nurdin, 2018)

According to Christopher More, the root causes of land disputes, in general, can be caused by the following things: (Sumardjono, 2008)

1. Conflict of interest, namely the existence of competing interests related to substantive interests, procedural interests, and psychological interests;
2. Structural conflicts, caused by destructive behavior patterns, unbalanced resource ownership control;
3. Value conflicts, due to differences in criteria used to evaluate ideas or behavior, differences in lifestyle, ideology, religion, or belief;
4. Relationship conflicts, due to excessive emotions, wrong perceptions, poor or incorrect communication, repetition of negative behaviors;
5. Data conflicts due to incomplete information, erroneous information, different opinions on relevant matters, different interpretations of data, and differences in assessment procedures.

From various opinions about the root of the land problem which eventually became a land dispute in Indonesia, it was caused by:

1. A lack of orderly land administration in the past;
2. Inequality in the structure of land tenure and ownership;
3. Negative land registration publication system;
4. Increasing demand for land, so that land prices cannot be controlled due to the actions of the land mafia;

5. Overlapping laws and regulations, both horizontally and vertically, as well as the substances, regulated;
6. There is still a lot of abandoned land;
7. Not careful with notaries and land deed-making officials in carrying out their duties;
8. There is no implementation of the perception or interpretation of law enforcers, especially judges on the laws and regulations in the land sector; and
9. Law enforcers have not been less committed to implementing laws and regulations in a consumer and consistent manner.

Disputes of a political nature are usually marked by the following things: involving the community at large, causing public unrest and vulnerability, causing distrust of the government or state administrators, disturbing the implementation of national development, and creating the danger of national disintegration. These political disputes are, among others, caused by: 1) Exploitation and dramatization of inequalities in the state of control and ownership of the economically weak groups; and 2) Demands justice and partiality to the weak economic group. Strategic forms of land disputes include:

1. Demand for land return as a result of taking land during the colonial government era;
2. Claims for the return of arable land that is being controlled by other parties;
3. The seizure of plantation lands;
4. occupation of land assets of government agencies;
5. Demands for the granting of rights to former private land occupied by the people;
6. Demands for the return of land whose users are not under the location permit;
7. Problems that arise as a result of land acquisition activities for large-scale development/etc.

B. Land Dispute Settlement outside the Court

As regulated in Law Number 51 of 1960, in article 2 and article 6 paragraph (1) letter a, the use of land without permission from those who are entitled or their legal proxies is a prohibited act and is threatened with criminal penalties. However, in responding to conflicts and land disputes that arise, one must look at it from several points of view while still prioritizing justice and not harming both parties, so it is not only seen from the side of the occupation, but also in terms of the utilization and use of the land by the community owner, the land is not utilized optimally and even seems to have been neglected by the owner for approximately 15 years.

Therefore, as a manifestation of the government's desire and concern to deal with land conflicts and disputes that have direct implications for "victims" in the land sector, the National Land Agency has the mandate to manage the land sector by Article 2 of Presidential Regulation (Perpres) No. 2006 concerning the National Land Agency has the task of carrying out government duties in the land sector nationally, regionally and sectorally, forming Deputy V for the study and handling of land disputes and conflicts (article 343 of the Head of BPN Regulation No. 3 of 2006 concerning the Organization and Work Procedure of the National Land Agency of the Republic of Indonesia). Indonesia).

The Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases is a lex specialist on Law No. 30 of 1999. The Land Agency is the appointed institution in resolving land disputes by carrying out its duties under Ministerial Regulation No. 16 of 2016 Article 37 Paragraph (1) which reads: "The settlement of disputes or conflicts as referred to in Article 12 paragraph (5) can be done through mediation"

Settlement of disputes amicably with the mediation route is taken as the path to resolving land problems, considering that the main purpose of mediation is to resolve problems, not just applying norms or creating order, but in its implementation, it must also be based on the following general principles:

1. Volunteer

This principle is crucial because the parties have free will to carry out legal actions against the object of dispute. It is intended so that there will be no objections to the agreement that has been taken in the context of resolving the dispute in the future.

2. Independent and impartial

Dispute resolution through mediation must be free from the influence of any party, either from each party, the mediator, or a third party. For this reason, the mediator must be independent and neutral.

3. Personal relationship between parties

Dispute resolution will always be focused on the substance of the problem, to find a better solution than just formulating a good agreement.

In article 6 paragraph (2) of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 1 of 1999 concerning the Method of Handling Land Disputes, it is stated that the handling of the settlement of land problems/disputes at the district/municipality land office level is assigned to the Head of the Land Rights Section with the assistance of by the relevant officials/officers from the Land Office.

The section head as an official at the regional Land Office prepares materials and carries out activities for handling disputes, conflicts, and land cases as ordered by Article 1 Number 21 of Ministerial Regulation No. 11 of 2016. The land agency is the appointed institution in the settlement of land disputes by carrying out its duties by the regulation of Ministerial Regulation no. 11 of 2016 concerning the Settlement of Land Cases. The mediation process begins with a complaint report from the community in the form of a written application submitted to the Head of the Land Office, accompanied by the identity of the complainant and a description of the case. After the complaint is received, the officer who is responsible for handling the complaint, if the complaint file meets the requirements and the officer submits the complaint file to the official who is responsible for handling the dispute and administering the complaint into the complaint receipt register.

Furthermore, Mediation activities are carried out based on the approval of the disputing parties under Article 38 paragraph (1) of Ministerial Regulation No. 11 of 2016. Furthermore, based on the decision of the Head of the National Land Agency of the Republic of Indonesia Number 34 of 2007 concerning Technical Guidelines for Handling and Settlement of Land Problems Number 05 /JUKNIS/D.V/2007 concerning Mediation Stages, it is explained that the mediation mechanism consists of three stages, namely pre-mediation, mediation stage, and post-mediation mechanism.

In general, the process of resolving land disputes outside the judiciary can be carried out in various ways, as follows:

1. Negotiation

Negotiation is one of the main patterns or steps in Alternative Disputes Resolution (ADR). Negotiations involve two or more interested parties. The goal is to reach an agreement. That way they can work together again. Negotiations often occur in the business world because the essence is communication and bargaining ([Yusriyadi, 2010](#)).

2. Mediation

Mediation is a vocabulary or term that comes from English vocabulary, namely mediation. Indonesian writers and scholars then prefer to Indonesianize it as "mediation" as well as other terms that we know: negotiation becomes a negotiation, arbitration becomes arbitration, and so on ([Rahmadi, 2011](#)). According to Prof. Dr. Takdir Rahmadi, mediation is a dispute resolution process between two or more parties through negotiation or consensus with the help of a neutral party who does not have the authority to decide. The success of a mediation process largely depends on the willingness of the parties to talk to each other and set the goals of the discussion to find a solution that is acceptable to each party.

3. Conciliation Process

Conciliation can be interpreted as an effort to bring together the wishes of the disputing parties so that they agree to resolve the problem. Oppenheim says conciliation is "the process of resolving a dispute by submitting it to a commission of people whose job it is to elaborate or explain the facts and usually after hearing the parties and trying to get them to reach an agreement make proposals for resolving the issue. But the decision is not binding." ([Abdurrasyid, 2002](#))

4. Facilitation

In cases involving more than two parties, a third party is required to act as a facilitator. His job is to help the litigants by finding a way out together. In this case, the facilitator only provides facilities for effective communication between the parties. These facilities include a liaison, translator, joint secretariat, or meeting place.

5. Independent Appraisal Process

An independent appraiser is the use of impartial third-party service. An independent appraiser is one of the processes that can be used in the settlement of a case, especially a disputed land case between one party and another.

6. Arbitration

The civil procedure regulation or commonly abbreviated as Rv defines arbitration as a form of the trial held by and based on the will and good faith of the disputing parties so that their dispute is resolved by a judge(s) whom they appoint and appoint themselves, with the understanding that the decision taken by the judge is final, and which binds both parties to implement it ([Gunawan & Yani, 2001](#)) Meanwhile, according to article 1 paragraph 1 of Law no. 30 of 1999, arbitration is a way of settling a civil case outside a general court based on an arbitration agreement made in writing by the disputing parties. The dispute resolution process through arbitration can be divided into two types, namely:

- a. Ad, Hoc Arbitration This arbitration is also known as voluntary arbitration. The type of arbitration is specially formed to examine and decide certain disputes out of court according to the needs of the time. The arbitration ends when the arbitrator or arbitral tribunal has carried out its duties
- b. Institutional Arbitration, Institutional Arbitration is an institution or arbitration body that is permanent and deliberately formed to resolve the parties' disputes out of court.

7. Utilizing Traditional Institutions

Customary rights such as customary rights give authority to customary law communities to regulate and organize land use. It includes the authority to regulate and determine the legal relationship between people and land and the legal relationship between people and the law relating to land

In a mediation process, there will definitely be obstacles in implementing it, the obstacle that is often experienced is the difficulty of uniting the desires and interests of both parties and also that each mediator's ability is different. The difficulty in uniting

the two parties is the biggest obstacle experienced by the mediator because both parties to the dispute still maintain their rights and do not want to be harmed because their rights must be revoked. The competence of different mediators in the mediation process. The mediator's role is to identify the issues that are causing the dispute between the two parties to the dispute. The mediator must be able to build open communication between the parties because the mediator is the place to ask the parties. The current land issue is very relevant to be studied and considered in depth in relation to the policy in the land sector so far.

Obstacles that often occur when mediation is carried out for resolving land boundary disputes are that it takes a long time, the mechanism is difficult, depending on the good faith of the parties to be able to resolve the dispute to completion, mediation cannot run properly if the authority and information are not given enough.

CONCLUSION

Legal use of land according to PERPU No. 51. 1960 is the use of land that has strong evidence of ownership obtained through the National Land Agency or also through related institutions under it. Strong evidence of ownership is, for example, the existence of a certificate.

Occurrence of land disputes as a result of the impact of industrial activity. It is closely related to the forms of social relationships that exist between interest groups such as communities, governments, industry authorities, and other groups (including non-governmental and religious institutions), whose activity is directly related to all three.

Settlement of land dispute cases as regulated in Law Number 51 of 1960, in article 2 and article 6 paragraph (1) letter a, that the use of land without permission from those who are entitled or their legal proxies is a prohibited act and is threatened with criminal penalties. . However, in responding to conflicts and land disputes that arise, one must look at it from several points of view while still prioritizing justice and not harming both parties, so it is not only seen from the side of the occupation, but also in terms of the utilization and use of the land by the community. the owner, if in terms of utilization the land is not utilized optimally and even seems to have been neglected by the owner for approximately 15 years. Settlement of disputes through deliberation with mediation is taken as a path to resolving land problems, considering that the main purpose of mediation is to resolve problems, not just applying norms or creating order, but in its implementation, it must also be based on general principles.

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