



JURIDICAL REVIEW OF THE IMPLEMENTATION OF THE PRINCIPLES OF JUSTICE IN JUDGES' DECISIONS IN LAND DISPUTE CASES

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Abstract

Land disputes are disputes that arise due to conflicts of interest over land. Land disputes cannot be avoided nowadays. This requires improvements in the field of planning and use of land for the welfare of society and most importantly legal certainty therein. The government has made various efforts to resolve land disputes quickly in order to avoid the accumulation of land disputes, which can be detrimental to the community because the land cannot be used because the land is in dispute¹. Legal resolution efforts regarding land disputes or disputes are regulated in Presidential Decree no. 20/2015 concerning the National Land Agency (BPN) Article 3 points 3 and 4 states that the Head of BPN has the task of carrying out policies in the field of determining land rights, land registration and community empowerment as well as in the field of regulating, structuring and controlling land policy.

Keywords: *The government, Legal resolution, empowerment*

INTRODUCTION

Land disputes are disputes that arise due to conflicts of interest over land. Land disputes cannot be avoided nowadays. This requires improvements in the field of planning and use of land for the welfare of society and most importantly legal certainty therein. The government has made various efforts to resolve land disputes quickly in order to avoid the accumulation of land disputes, which can be detrimental to the community because the land cannot be used because the land is in dispute¹. Basically, dispute resolution options can be carried out using 2 (two) processes. Settlement of the process through litigation in court, and the dispute resolution process through cooperation (cooperation) outside of court. The litigation process usually results in an adjudicative agreement that is unable to embrace common interests, tends to create new problems, and is slow to resolve. On the other hand, through an out-of-court process, we can produce an agreement that is a "win-win solution", resolve it comprehensively together and maintain good relations. Economically, the dispute has forced the parties involved to incur costs. The longer the dispute resolution process takes, the greater the costs that must be incurred and often the costs incurred are not commensurate with the price of the land object in dispute. However, for some people or certain groups, land is a form of self-esteem that must be held firmly and will be defended until death.

Legal resolution efforts regarding land disputes or disputes are regulated in Presidential Decree no. 20/2015 concerning the National Land Agency (BPN) Article 3 points 3 and 4 states that the Head of BPN has the task of carrying out policies in the field of determining land rights, land registration and community empowerment as well as in the field of regulating, structuring and controlling land policy. Considering that Indonesia is a country of law, everything related to the lives of citizens must follow the applicable laws³. Land dispute resolution is generally taken through legal channels, namely the courts. Cases relating to violations of land reform regulations (rearranging the structure of land control and ownership) are enforced in accordance with the underlying statutory regulations. In the Decree of the Head of BPN RI Number 34 of 2007 concerning Technical Instructions for Handling and Resolving Land Problems, a distinction is made between disputes and conflicts. Disputes are differences in values, interests, opinions and/or perceptions between individuals and/or legal entities (private or public) regarding ownership status and/or usage status, or use or utilization of certain land plots, on the status of State Administrative Decrees regarding control, ownership, and use or utilization of certain plots of land. Conflict is a

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difference in values, interests, opinions and/or perceptions between citizens or community groups and/or citizens or community groups and legal entities (private or public), society and society regarding the status of use and/or ownership status and/or status of use or utilization of certain plots of land by certain parties, or the status of State Administrative Decrees concerning control, ownership and use or exploitation of certain plots of land, and containing political, economic and socio-cultural aspects.

Formulation of the problem

Based on the background of the problem that has been described, the problems in this journal are as follows:

1. How is the law applied in resolving land disputes?
2. What is the legal basis governing land disputes?
3. How is the principle of justice implemented in land disputes?

Research purposes

Based on the problem formulations above, the research objectives are:

1. To find out how the law is applied in resolving land disputes
2. To understand the legal basis governing land disputes
3. To find out the implementation of the principles of justice in land disputes.

Benefits of research

In the research, there are two benefits obtained as follows:

1. Theoretical Benefits
Theoretically, it is hoped that it can be understood and increase knowledge regarding the implementation of the principles of justice in land disputes.
2. Practical Benefits
Practically, it is hoped that this research will be useful and provide information on how to apply the law in resolving land disputes, the legal basis that regulates land disputes.

METHOD

This research uses empirical juridical research. The type of legal material in this research is secondary legal material collected using the literature study method. This type of research refers to sociological legal research, referring to laws that have been implemented and occur in social life and by collecting various facts and theories that are needed. The data analysis method used in this research is quantitative analysis. The approach in this research is carried out by examining legal sources from conditions that occur in society.

RESULTS AND DISCUSSION

Contents Results and Discussion

Implementation of the Principles of Justice in Land Disputes

The Preamble to the 1945 Constitution contains Pancasila (State of Belief in God), the basic principles of human rights, justice (Rule of Law), people's sovereignty (Democratic State), as well as the duties and obligations of the Government (all state institutions) to realize the State. Welfare which includes protecting Indonesia's bloodshed, improving the welfare of the people, making the nation's life intelligent, and participating in implementing world order. The values of Pancasila as stated in MPRS Decree no. XX/MPRS/1966, is essentially a view of life, awareness and legal ideals as well as noble moral ideals which include the psychological atmosphere and character of the Indonesian nation.

Judging from its position, Pancasila is the highest source of law, which means that Pancasila is the standard for assessing our laws. Legal rules applied in society must reflect awareness and a sense of justice in accordance with the personality and philosophy of life of the

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Indonesian people. Why is Pancasila qualified as the source of all sources of law in national and state life? Because the Pancasila principles explicitly mention the word 'fair' in the second principle and 'justice' in the fifth principle. Thus, Pancasila is synonymous with justice for the Indonesian people. The goal of law cannot be separated from the ultimate goal of social life which cannot be separated from the values and philosophy of life of Pancasila, which is the basis of community life which ultimately leads to justice. 3 Laws must contain the value of justice for everyone. Defining justice is not easy. Justice is interpreted in so many different ways, a word that is very unclear, full of various meanings, and it is not so easy for us to digest it. An example of a land conflict was recorded in Subang Regency in connection with the occurrence of 3,441 hectares of land arising in 2002. Then in 1999 an area of land was lost. 166 Ha, which then gave rise to conflict. Currently, a conflict has arisen on the northern coast of Subang between the District Government.

Subang, Perhutani and local communities. Each of them claims that they have the right to the land that emerged with the issuance of a state administrative decision. Existing legal regulations regarding emerging land are currently still confusing. The Minister of State for Agrarian Affairs/Head of the National Land Agency actually issued a letter of instruction number 410-1293 on May 9 1996 concerning Controlling the Status of Land Arising and Reclamation Land. The letter states that naturally occurring lands such as deltas, coastal lands, lake shores, river bank deposits, emerging islands and other naturally occurring lands are declared as land directly controlled by the state. Furthermore, control/ownership and use are regulated by the Head of the National Land Agency in accordance with applicable laws and regulations. Even though these regulations exist, they still create uncertainty in their control, resulting in conflict.

Legal Basis Governing Land Disputes

Settlement of land dispute cases is regulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases. The law explains that a land case is a dispute, conflict or land case that is submitted to the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency, Regional Office of the National Land Agency, land office in accordance with its authority to obtain handling and resolution in accordance with the provisions of statutory regulations.

The land case itself is divided into three parts, including:

1. Land disputes, namely land disputes between individuals, legal entities or institutions that do not have a broad impact.
2. Land conflict, namely land disputes between individuals, groups, factions, organizations, legal entities, or institutions that have a tendency or have had a wide impact.
3. Land cases, namely land disputes which are handled and resolved through judicial institutions.

Then, land disputes themselves are divided into three classifications, namely,

1. Serious cases, which involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political and security turmoil.
2. Medium cases include parties whose legal and/or administrative dimensions are quite clear and if the resolution is determined through a legal and administrative approach, it will not cause social, economic, political and security turmoil.
3. Light cases, namely complaints or requests for instructions that are technical administrative in nature and the resolution is sufficient with a letter of resolution instructions to the complainant or applicant. How to Apply the Law in Settlement of Land Disputes

In resolving land disputes, dispute handling can be carried out through the following stages:

Case review, which is carried out to make it easier for cases to be handled and is expressed in the form of a staff review which includes:

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1. Title;
2. main issue (disputed subject, objections or demands of the complaining party, location, extent and status of the object of the case);
3. case history;
4. available data or documents;
5. case classification; And
6. other things considered important.
7. The initial level, led by the Director, Head of Division V or Head of Section V, aims to:
8. determine agencies or institutions or parties who have authority and/or interests related to the case being handled;
9. formulate a treatment plan;
10. determine the provisions of applicable laws and regulations;
11. determine juridical data, physical data, field data, and required materials;
12. prepare a research work plan; And
13. determine targets and completion time.
14. The results of the initial degree are made into summary minutes and used as a basis for:
15. prepare letters to other agencies to resolve cases that fall under the authority of other agencies;
16. prepare a letter to the Head of the Regional Office and/or the Head of the Land Office to carry out case handling and resolution
17. prepare responses or answers to complainants; or
18. prepare research working papers as a basis for carrying out research.
19. Research, namely the process of searching, exploring, developing, finding and testing data and/or information needed to shed light on a case.

The results of the research are presented in the form of a research report, which describes the typology of problems, root of the problem, main problem, case history, description of field conditions, position or legal status of each party from legal/legislative studies and problems of obstacles and suggestions for follow-up solution.

1. Expose research results, to convey data/information material that explains the legal status of legal products and the legal position of each party.

If the exposure of the research results concludes that data, material information and/or coordination meetings with relevant agencies or institutions are still needed to make decisions or that mediation steps are needed to resolve the case, then:

1. reassessment;
2. research returns with the development of research plans and targets;
3. testing/research/examination by the examination team to obtain recommendations for case resolution;
4. coordination meeting inviting relevant agencies or institutions; or
5. mediation.
6. Coordination meetings, namely meetings held by the Ministry of ATR/BPN, Regional Offices of BPN, land offices in accordance with their authority with related agencies in the context of integration, synchronization of handling and/or resolution of cases.

Coordination meetings produce conclusions in the form of case resolution or recommendations/instructions. Additional data or information is still needed to reach a conclusion on case resolution.

1. The final degree is carried out if the exposure of the research results concludes that there is sufficient data and basis for making a decision to resolve the case which will be made by the Minister, Head of the Regional Office, or Head of the Land Office.

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Recommendations for final degree results are outlined in the form:

1. Data processing minutes signed by:
2. processing up to Director General VII, if the authority to resolve the case rests with the Minister;
3. Processor up to the Head of Division V if the authority to resolve cases rests with the Head of the Regional Office; And
4. The processor is up to the Head of Section V if the authority to resolve the case rests with the Head of the Land Office.
5. Letter of recommendation for case settlement to the Regional Office or Land Office if the final title is carried out by the Ministry but the issuance of the case settlement decision is the authority of the Regional Office or Land Office.
6. Letter of proposal for case settlement submitted to the Minister if the final title is carried out by the Regional Office and/or Land Office but the issuance of the case settlement decision is the authority of the Minister
7. A letter of proposal for resolving the case should be sent to:
8. The Minister, if the final title is carried out by the Regional Office and/or Land Office, however, the issuance of the decision to resolve the case is the authority of the Minister.
9. The Head of the Regional Office, if the final title is carried out by the Land Office, however, the issuance of the decision to settle the case is the authority of the Regional Office.
10. A letter of recommendation for case settlement is submitted to the Head of the Land Office if the final title is carried out by the Ministry and/or Regional Office, but the implementation of case settlement is under the authority of the Land Office.
11. Case resolution is a decision taken on the case as a follow-up to the handling carried out by the Ministry of ATR/BPN, Kanwil BPN, land office according to their authority.

CLOSING

Conclusion

Land disputes are disputes that arise due to conflicts of interest over land. Land disputes cannot be avoided nowadays. This requires improvements in the field of planning and use of land for the welfare of society and most importantly legal certainty therein. The government has made various efforts to resolve land disputes quickly in order to avoid the accumulation of land disputes, which can be detrimental to the community because the land cannot be used because the land is in dispute¹. Basically, dispute resolution options can be carried out using 2 (two) processes. Settlement of the process through litigation in court, and the dispute resolution process through cooperation (cooperation) outside of court. The litigation process usually results in an adjudicative agreement that is unable to embrace common interests, tends to create new problems, and is slow to resolve. On the other hand, through an out-of-court process, we can produce an agreement that is a "win-win solution", resolve it comprehensively together and maintain good relations. Economically, the dispute has forced the parties involved to incur costs. The longer the dispute resolution process takes, the greater the costs that must be incurred and often the costs incurred are not commensurate with the price of the land object in dispute. However, for some people or certain groups, land is a form of self-esteem that must be held firmly and will be defended until death.

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