

Agrarian Law in Land Dispute Resolution in Indonesia

Khotibul Umam¹ Ismail Halomoan Harahap²

¹Universitas Gajah Mada, Yogyakarta

²State Islamic University of North Sumatra

Email: khotibulumam@ugm.ac.id harahapismailhalomoan@gmail.com

Info Articles	Abstract
Article History Received : 2020-07-03 Revised: 2020-07-11 Published: 2020-07-30 Keywords: Agrarian Law; Land and Disputes; Land	Land disputes remain one of the most significant legal issues in Indonesia due to increasing land demand, limited land availability, weak law enforcement, and deficiencies in the land administration system. These disputes create legal uncertainty, hinder social welfare, and negatively affect sustainable development. This study aims to examine the causes of land disputes in Indonesia and analyze appropriate dispute resolution mechanisms from the perspective of Indonesian agrarian law. The research employs a normative juridical (library research) method using statutory and conceptual approaches. Primary legal materials include Law Number 5 of 1960 concerning Basic Agrarian Principles and other relevant regulations, while secondary materials consist of books, scientific journals, and previous studies related to agrarian law and land dispute resolution. The collected legal materials were analyzed qualitatively using a descriptive-analytical method. The findings reveal that land disputes are primarily caused by overlapping land ownership, weak land registration and administration systems, inconsistent implementation of agrarian regulations, limited public legal awareness, and increasing competition over land resources. In addition, disputes frequently arise between individuals, corporations, and government institutions due to conflicting ownership claims and development projects. The study also finds that litigation often requires considerable time and expense and may not provide satisfactory outcomes for all parties. Conversely, mediation and other non-litigation mechanisms offer more effective, efficient, and mutually beneficial solutions by encouraging dialogue, consensus, and the preservation of social relationships. Therefore, strengthening law enforcement, improving land administration through digitalization, enhancing legal awareness, and prioritizing mediation are essential to achieving legal certainty, justice, and sustainable land governance in Indonesia.

I. INTRODUCTION

Agrarian law is the totality of legal norms, both written and unwritten, that regulate legal relations between legal subjects in the agrarian sector. Agrarian law is actually a group of various legal fields, each of which regulates the rights to control natural resources, namely land law, water law, and mining law, fisheries law and law on control over energy and the elements of the universe.

Agrarian law is a matter that greatly affects the lives of the people because it contains regulations regarding land where the people live. Law Number 5 of 1960 concerning the Principles of Agrarian Law is the legal basis and bulwark of national agrarian law, especially in prioritizing land redistribution for poor farmers, upholding

the social function of land, and prohibiting the domination of the private sector in the agrarian sector.

Land plays a vital role in the lives of the Indonesian people, thus being regulated in the Indonesian Constitution. Land plays a crucial role in human life because, in reality, humans and the land are eternally connected. This illustrates the close relationship between humans and the land, as it is their lifeblood. Law Number 1 of 1960 concerning Agrarian Principles defines land as the surface of the earth.

However, in reality, many individuals still exploit the weakness of law enforcement, leading to an increase in land disputes. Land disputes are unavoidable in today's world, not only due to

weak law enforcement but also due to the extremely high demand for land and the limited availability of land. Land disputes arise from conflicting interests over land. Improvements are needed in land management and use for the well-being of the community, and especially for legal certainty. 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 in dispute cannot be used.

There are several possible processes for resolving land disputes. The first involves litigation in court and the second involves out-of-court cooperation. Judicial processes often fail to address mutual interests, create new problems, and result in slow reconciliation of hostilities. On the other hand, out-of-court processes foster agreement, which is a "two-way solution," where both parties work together and reach a comprehensive conclusion, while maintaining good relations.

This article will discuss the general symptoms and causes of land disputes in Indonesia. It is widely known that land is crucial to development dynamics, and land disputes have become a common problem for society. Land disputes can arise between individuals or between individuals and various legal entities. Every land dispute can be resolved out of court through mediation. However, if the dispute cannot be resolved peacefully or through mediation, the final resort is to seek a resolution in court. Therefore, this article will explain agrarian law, land disputes, the causes of land disputes, and the land dispute resolution process.

II. RESEARCH METHOD

This research uses a normative legal research method (normative juridical), namely research that focuses on the study of legal norms applicable in the agrarian sector, particularly related to land disputes in Indonesia. The approaches used in this

research are the statute approach and the conceptual approach. The statutory approach is carried out by examining various relevant regulations, such as Law Number 5 of 1960 concerning the Principles of Agrarian Law and other provisions related to land ownership and utilization. Meanwhile, the conceptual approach is used to understand the basic concepts of agrarian law, land disputes, and the principles of *jus tice* and legal certainty.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include laws and court decisions related to land disputes. Secondary legal materials consist of books, scientific journals, and previous research relevant to the topic. Tertiary legal materials include legal dictionaries and encyclopedias that support understanding of legal terms. The legal materials were collected through library research, which involved inventorying, reviewing, and analyzing relevant legal sources.

The analysis of legal materials in this study was conducted qualitatively using a descriptive-analytical method, which describes and outlines existing problems, then analyzes them to draw logical and systematic conclusions. This method is expected to identify the common causes of land disputes in Indonesia and provide effective alternative solutions to achieve legal certainty and justice for the community.

II. RESULTS AND DISCUSSION

A. Research result

Based on the normative legal research method used, it was found that land disputes in Indonesia are generally caused by several main factors. First, there is overlapping land ownership and control due to weak land administration and registration systems. Second, the lack of legal certainty in the implementation of Law Number 5 of 1960 concerning the Principles of Agrarian Law, which has given rise to differing interpretations in the field. Third, the high demand for land

disproportionate to the availability of land, thus triggering conflicts of interest. Fourth, there is still weak law enforcement and the existence of individuals who abuse their authority in land management and control.

Furthermore, this study found that low public legal awareness regarding the importance of legality and land registration contributes to the potential for disputes. Many communities lack legal proof of ownership, leaving them vulnerable to claims from other parties. Furthermore, conflicts frequently arise between communities and companies or the government over land ownership for development purposes.

In terms of dispute resolution, research shows that litigation in court is often time-consuming, expensive, and does not necessarily provide a satisfactory solution for all parties. Conversely, non-litigation resolution methods such as mediation and negotiation are considered more effective because they are faster, relatively cost-effective, and can maintain good relations between the disputing parties.

B. Discussion

Agrarian law is a group of various legal disciplines, each of which regulates the rights of control over specific natural resources. These various legal disciplines include land law, water law, mining law, and so on. The legal basis governing national agrarian law is Law No. 5 of 1960 concerning Basic Agrarian Regulations. Based on its importance, agrarian law is divided into two. First, administrative agrarian law, namely the entire set of regulations that serve as the basis for the state or authorities or government in determining and carrying out specific actions in the agrarian sector. Second, civil agrarian law, namely the entire set of regulations that regulate the interests of individuals or civil legal entities in the land or agrarian sector.

However, in reality, many individuals still exploit the weakness of law enforcement, leading

to an increase in land disputes. Land disputes are unavoidable in today's world, not only due to weak law enforcement but also due to the extremely high demand for land and the limited availability of land.

Land disputes are regulated by the Law on Land Disputes. In other words, Regulation of the Head of the Indonesian National Land Agency No. 3 of 2011 defines them as land disputes involving legal entities, bodies, or individuals. In short, disputed land is land whose ownership is disputed by two competing parties claiming ownership. These types of land disputes range from forged documents to illegally altered land boundaries.

There are three types of land disputes: Minor Cases. These are called minor cases because the provision consists of technical management instructions, which are sufficient to provide a comparison with the applicant or complainant. Second, moderate cases. These are cases that involve law enforcement in clear resolution and control, but do not cause social, political, security, or economic problems. Third, serious cases. Conflicts affect many people and can be considered serious if the legal aspects are complex enough to cause social, political, and security problems.

Land disputes are caused by many factors or causes. These factors are dominant in all land disputes, due to imperfect regulations, non-compliance with regulations, and a lack of responsiveness from land authorities to the integrity and quantity of available land. Containing inaccurate data. Incomplete and inaccurate land data, limited resources to resolve land disputes, inaccurate land transactions, applicant legal actions, and comparisons with other authorities. This leads to duplication of authority. Land disputes that occur in Indonesia are usually related to land ownership agreements, transfer of rights, transfer of rights, and control of previously private land. To use land as an

agricultural resource fairly, transparently, and productively, customary rights and the existence of indigenous legal communities must be considered. In addition, the integrity of inventory data, quantity/area, and management status must be complete and up-to-date to create a harmonious and balanced regional spatial plan.

When a land dispute arises in an area, local officials can resolve it promptly, and the outcome is more acceptable to the disputing parties. This situation then gives rise to land law reform and simultaneously fosters societal development. Land law reform, which precedes the development of land policy, must naturally begin with the development of land law as part of the national legal system. However, this development must continue to be based on the basic principles of the Basic Agrarian Law (BAL), as the primary provision of national law.

Land disputes can be resolved in various ways, including through the courts, complaints to the land office and peacefully through mediation.

First, peaceful dispute resolution through mediation. Mediation is an alternative out-of-court land dispute resolution method that prioritizes counseling to reach consensus, a timeframe for resolving controversial disputes, a structured, task-oriented process, and active participatory intervention to contribute to mutually agreed-upon outcomes.

The role of the mediator during mediation is to lead the discussion, enforce or maintain the law, encourage the parties to be open about the issues and interests, and make them aware that the conflict is not a battle but resolving, listening, taking notes, and asking questions will help the parties reach an agreement. The stages and processes of mediation include: First, establishing relationships with the disputing parties through pre-mediation, namely, (1) Explaining the role of the mediator and providing an understanding to the parties about the mediation process and procedures. (2) Mediation strategy proceedings.

The mediator explains the strengths and weaknesses of each party, and the mediator supports the parties in the analysis as a dispute management proposal. (3) Collecting and analyzing background information on the problem Collecting and analyzing dispute data Determining the parties and the subject of the dispute and determining the interests of the disputing parties, (4) Negotiating who will be involved in the negotiations and where How the negotiations are organized, the seating arrangements of the participants, the procedures used, the issues or interests, and what the parties may want to make changes. Establishing negotiation rules, a general plan for initial negotiations, how to guide the parties, or how to provide insight into the arbitration process, how to overcome deadlocks, (5) Building trust and cooperation between the parties. Building the parties' trust in preparing for the mediation process.

Second, the mediation stage, includes: (1) Starting the mediation session where the mediator introduces himself and the parties, explains the importance of mediation and the role of the mediator, explains the mediation process, and the parties for the motivation of the settlement, explains the rules of the mediation process, gives the parties the opportunity to ask and answer questions, explains the purpose of the cause, outlines the schedule and time of the mediation process, (2) Preparing the agenda Submitting, namely investigating and coordinating the topics to be discussed, preparing the agenda to be discussed, and

(3) Revealing the hidden interests of the parties in two ways: directly, namely asking questions directly. Listening or reformulating statements made by the parties and indirectly, namely by the parties, (4) Creating dispute resolution options. The mediator encourages the parties to be open and together seek alternative solutions to the problem. (5) Analysis of dispute resolution

options. The mediator helps the parties determine the strengths and weaknesses of accepting or rejecting solutions to the problem. Mediator warn the parties not to make unreasonable demands or unrealistic offers. (6) The negotiation process. Both parties see mutual interests and are ready to make concessions to each other. (7) A formal agreement is reached. The process or plan of the parties to make an agreement and implement the agreement refers to the steps the parties take to implement the agreement and end the dispute.

III. CONCLUSION AND SUGGESTIONS

A. Conclusion

Land disputes are unavoidable in today's world, caused not only by weak law enforcement but also by the extremely high demand for land and the limited availability of land. In short, disputed land is land whose ownership is disputed by two competing parties, each claiming ownership.

These factors are very dominant in all land disputes, due to imperfect regulations, non-compliance with regulations, and a lack of responsiveness from land authorities to the integrity and quantity of available land. Containing inaccurate data. Incomplete and inaccurate land data, limited resources to resolve land disputes, inaccurate land transactions, legal actions of applicants, and comparisons with other authorities.

Mediation is an alternative way to resolve land disputes outside the courts that prioritizes counseling procedures to reach consensus, a timeframe for resolving controversial disputes, a structured, task-oriented path, and intervention with active participation.

The role of the mediator during mediation is to lead the discussion, enforce or maintain the law, encourage the parties to be open about the issues and interests, and make them aware that the conflict is not a battle but resolving, listening, taking notes, and asking questions will help the parties reach an agreement. The stages and processes of mediation include: First, establishing a relationship with the disputing parties through pre-mediation, namely, explaining the role of the mediator and providing an understanding to the

parties about the process and procedures of mediation, collecting and analyzing background information on the problem, collecting and analyzing dispute data, determining the parties and the subject of the dispute and determining the interests of the disputing parties, negotiating who will be involved in the negotiations as well as where and how the negotiations are arranged, the seating arrangements of the participants, the procedures used, the issues or interests, and what may The parties may want to make changes.

B. Suggestion

Agrarian Law in resolving land disputes in Indonesia requires strengthening law enforcement by professional, firm, and transparent authorities to prevent abuse of authority, as well as optimizing the consistent implementation of Law Number 5 of 1960 concerning the Principles of Agrarian Law, particularly in realizing the social function of land and equitable distribution of land ownership. Furthermore, the government needs to improve the land administration system through digitization and data integration to prevent overlapping ownership. Land dispute resolution should also prioritize non-litigation channels such as mediation and negotiation because they are more effective, faster, and able to maintain good relations between parties. Furthermore, increasing public legal awareness regarding the importance of land legality and certification needs to be continuously carried out to minimize the potential for conflict. Supervision of land use and utilization must also be tightened to ensure it is in accordance with its intended use and to prevent excessive control by certain parties, thereby creating legal certainty and justice in the agrarian sector.

REFERENCE LISTAN

- Bhaskara, N. T. (2019). *Penyelesaian Sengketa Tanah Melalui Mediasi (Studi Kasus Di Kantor Pertanahan Kabupaten Kotawaringin Barat)*. *Doctoral Dissertation, Universitas Islam Sultan Agung*.
- Hapsari, S. D. (2017). *Peran Notaris Dalam Implementasi Asas Nemo Plus Yuris Dan Itikad Baik Dalam Peralihan Hak Atas*

- Tanah Sebagai Dasar Pembuktian Bagi Pemiliknya. *Doctoral Dissertation, Fakultas Hukum Unissula*.
- Istijab. (2018). Penyelesaian Sengketa Tanah Sesudah Berlakunya Undang-Undang Pokok Agraria. *Widya Yuridika Jurnal Hukum*, 11-16.
- Itasari, E. R. (2019). Fulfillment Of Education Rights In The Border Areas Of Indonesia And Malaysia. *Ganesha Law Review*, 1(1), 1-13.
- M., M. (2015). Perspektif Penanganan Sengketa Di Badan Pertanahan Nasional. *Jurnal Ilmiah Penegakan Hukum*, 101-107.
- Malik, F. (2019). Basic Ideas For Determining Death Criminal Threats In Law Number 35 Of 2009 On Narcotics. *Ganesha Law Review*, 1(1), 27-40.
- Prospeku. (2021, Agustus 31). *Prospeku.Com/Artikel/Sengketa Tanah*. Retrieved Desember 28, 2021
- Purwendah, E. K. (2019). The Eko-Teocracy Concept In Disposal Settlement Of Oil Pollution In The Sea By Tanker Ship. *Ganesha Law Review*, 1(1), 14-26.
- Roeroe, S. D. (2013). Penegakan Hukum Agraria Dan Penyelesaian Sengketa Pertanahan Dalam Proses Peradilan. *Penegakan Hukum*, 100-111.
- Sulistifani, I. (2018). Penyelesaian Sengketa Tanah Melalui Mediasi Di Kantor Pertanahan Kabupaten Karanganyar.
- Yuningsih, S. (2019). Hukum Agraria Dalam Sengketa Tanah Di Indonesia.