

Settlement of Land Disputes with the Competence of the State Administrative Court According to the Perspective of Indonesian Law

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ABSTRACT

In the settlement of land disputes in each region, the characteristics are always different. In undeveloped areas, land dispute resolution is generally carried out by community leaders who are respected by local residents, namely customary heads or village heads. It can be said that cases of disputes in the land sector never subside; in fact, they tend to get more complicated and cause many problems, in line with Indonesia's economic, social, and political dynamics. The emergence of cases of land disputes in Indonesia lately seems to restate the fact that during Indonesia's independence, the state was still unable to guarantee land rights to its people, and the UUPA (Basic Agrarian Law) was only limited to marking the start of a new era. Land ownership, which was originally open and gradually developed into individual ownership, In this study, a normative juridical type was used through library research to identify and analyze legal factors that became obstacles in the application of laws and regulations, referring to laws and regulations on land and state administrative justice, court decisions, and other legal materials.

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Introduction

Article 1 paragraph 3 of the 1945 Constitution states that Indonesia is a country based on law. In a rule of law state, every action of the government in carrying out its duties such as development or realizing state goals must have a legal basis or authority. In the constitutional law literature, every government activity must be based on a law known as the principle of legality (*principle of legality or lawfulness of governance*), which means that every government activity must be based on the applicable laws and regulations (Simanjuntak, 2017). The government does not have the power to influence or change the condition or legal status of its citizens without the basis of authority granted by the applicable laws and regulations.

With truth and justice as its core, a rule of law guarantees certainty, order and legal protection. In this context, certainty, order and legal protection require, among other things, that legal transactions in social life require evidence that clearly stipulates the rights and obligations of individuals as subjects of community law (Urip Santoso, 2019). Everything that concerns the general welfare has been regulated in law through written

regulations. Therefore, the existing Indonesian constitution has basically guaranteed a person's legal certainty.

It can be said that cases of disputes in the land sector never subside, in fact tend to get more complicated and have many problems, in line with Indonesia's economic, social and political dynamics. For judges in resolving disputes is another problem that must be faced in court when deciding cases by prioritizing legal certainty. Legal certainty must be the main goal of law, then followed by benefit as a secondary goal (Koeswahyono & Maharani, 2022).

Legal disputes arise as a result of a complaint from a party (person/legal entity) who has objections and demands for rights, whether regarding land status, priority, or ownership, with the aim of obtaining an administrative settlement in accordance with relevant regulations (Suhadi, 2017). The recent emergence of cases of land disputes in Indonesia seems to reaffirm the fact that during Indonesia's independence, the state was still unable to guarantee land rights to its people, and the UUPA (Basic Agrarian Law) was only limited to marking the start of a new era of land ownership. which was originally open and gradually developed into individual ownership.

In general, land conflicts occur from several very important factors in any land dispute anywhere, these factors include:

1. Lack of regulation;
2. Improper rules;
3. Lack of responsiveness from the government to the needs and amount of available land;
4. Inaccurate and incomplete data;
5. Incorrect land data;
6. Inadequate human resources to resolve land disputes;
7. There is an agreement in the wrong land transaction;
8. Settlement from other agencies and results in overlapping authorities.

Meanwhile, according to the Head of the Central BPN, there are three main causes of land disputes:

1. The management of land certificates is not clear, as a result there are two people who own the land, each with their own certificate.
2. The distribution of land ownership is uneven for both agricultural and non-agricultural land, causing economic, political and social inequality. In this case, the heaviest burden is borne by the grassroots, especially farmers/land cultivators. This imbalance in land distribution is inseparable from liberal and capitalist-oriented economic policies. In the name of development, lands cultivated by farmers or land belonging to indigenous peoples are taken over by investors at low prices
3. The legality of land ownership is only based on formal evidence (certificate), regardless of the yield of the land. Thus, legally (*de jure*) it is possible that a lot of certified land is owned by large companies or investors, because they buy it from farmers/land owners, but the land is neglected. Maybe some people

underestimate the problem of land disputes, even though this is a problem that needs to be resolved immediately. Because land disputes have the potential risk of conflict between races, ethnicities and religions. As a result, self-esteem must be at stake.

The limited availability of land is not always matched by the use of human needs. This is what triggers the land conflict. Land disputes in Indonesia are resolved through the State Administrative Court and the General Court. However, the many cases that have been submitted to the court have had unsatisfactory resolutions, resulting in a perception in the community that the judiciary is not the best choice to resolve land disputes (Sutedi, 2019). As a result, people do not feel the sense of justice and legal certainty that they expect, instead there are only new issues whose results can make matters worse.

In the case of peace that regulates the fair distribution of land rights in accordance with the agreement of the parties, land rights disputes can be easily resolved without involving other parties. However, if the two parties cannot agree on the best course of action, the resolution process can often take a very long time. Therefore the judge will try and decide the case through the civil court system when the parties to the land dispute cannot reach an agreement (Wirayuda, 2011).

Therefore, it is necessary to have a rule of law or rule of law, namely the rules of social life that regulate and enforce in order to maintain public order. In order to provide legal certainty to the legal owners of certain lands, the law must be in the form of clear laws. Thus, this is one way to reduce conflict between the community and the government which is motivated by land disputes (Elfah et al., 2018).

And the formulation of the problem in this research is How is the authority of the State Administrative Court (PTUN) in adjudicating land disputes? What is the mechanism for resolving land disputes through the State Administrative Court (PTUN)?

Research Methods

In this study, a normative juridical type was used through library research. The normative juridical research method is library law research which is carried out by examining library materials or secondary data by studying books, laws and regulations and other documents related to this research. The technique for collecting materials in this research is to collect from books, papers, articles, magazines, journals, newspapers and sources related to the problems in this research (Moleong, 2014).

This study uses a type of normative legal research to identify and analyze legal factors that become obstacles in the application of laws and regulations, where this research refers to laws and regulations on land and State Administrative Court Law, court decisions and other legal materials (Zainuddin, 2016).

Results and Discussions

A. The authority of the State Administrative Court (PTUN) in adjudicating land disputes.

The creation of a land dispute court at this time does not intend to return to Law Number 21 of 1964 concerning Land reform Justice, the aim is to be able to unite land issues with one court in resolving disputes. Where land disputes or agrarian conflicts are

made part of criminal or civil acts, causing the loss of the actual form of land as a source of life that has social, political, religious, and economic values. These four characteristics characterize the life of the Indonesian people in relation to land.

Starting from who has more rights over the contested land, it creates many victims of disputes in the land sector which triggers prolonged conflicts between the community, even with their heirs, so that the parties compete to prove that they have more rights over the land. In this regard, it is increasingly felt that there is a need for guarantees of legal certainty and certainty of ownership rights to land. To obtain guarantees of legal certainty and certainty of land rights, the community needs to register land in order to obtain a certificate of land rights which functions as a strong means of proving the ownership of land rights. Land rights certificates are legal or strong evidence as stated in article 19 paragraph 2 letter c of the Basic Agrarian Law (UUPA) and article 32 paragraph 1 of Government Regulation (PP) Number 10 of 1961 concerning land registration, which has now been repealed and reaffirmed in Government Regulation Number 24 of 1997 .

Therefore the panel of judges must determine precisely the subject matter of land disputes, whether they are included in civil law or public law. Thus, it can determine land disputes into the authority of the general court or state administrative court. In practice, the settlement of land disputes is at the court of first instance while appeals and cassation are the authority of the State Administrative Court. But when there is a Judicial Review (PK) it will become the authority of the general court or vice versa (Ramadhani, 2021).

To determine whether a dispute is included in a state administrative dispute or civil dispute, based on the Supreme Court circular letter Number 4 of 2014 concerning the Implementation of the Formulation of the Results of the 2013 Supreme Court Chamber Plenary Meeting, namely as follows:

If the object of the dispute concerns the validity of a state administrative decision, then it includes a state administrative dispute;

If the lawsuit raises questions about the legality of issuing state administrative decisions, then it includes state administrative disputes;

If the only way for the Judge to determine whether the TUN's decision on the object of dispute is valid or not is legal substance, then this matter becomes the authority of the civil court; or

If the legal principles of State Administration can resolve the dispute, it can be recorded as a State Administrative dispute

The State Administrative Court examines many cases involving decisions in the field of land affairs and dismissal from office and renders decisions for parties who make mistakes in carrying out their duties and positions. The State Administrative Court has carried out its role for approximately 14 (fourteen) years as a public object and civil legal entity to carry out legal oversight of written decisions of state administrative officials. However, in implementing the decisions of the State Administrative Court there were many controversies where there were officials who did not want to implement the decisions of the State Administrative Court (Urip Santoso, 2015).

In its application, it turns out that there are still decisions on state administrative disputes that have been decided and have permanent legal force, but their application has not been implemented. This is because there are still officials who are still very concerned about their awareness and compliance with the law itself. In accordance with the existing procedural law and the characteristics of the State Administrative Court, the State Administrative Court is not the executor (executor of decisions) but only as the supervisor

of the implementation of decisions. While those who are obliged to act as executors of the stipulation are the public officials themselves.

B. Land dispute settlement mechanism through the State Administrative Court (PTUN)?

In the settlement of land disputes in each region, the characteristics are always different. In undeveloped areas, land dispute resolution is generally carried out by community leaders who are respected by local residents, namely customary heads, or village heads. In addition, the role of community leaders helps determine the allotment and supervision of land use by local residents. This is because in general the local customary heads/chairmen already have land data in their respective areas, both regarding the area, boundaries and land use by the local population.

Settlement of land disputes through the courts or litigation channels based on the object of land disputes, this is related to the authority to adjudicate land disputes, both of which are the competence or absolute authority of the General Court and the State Administrative Court. The absolute authority of the judiciary, competence, or authority for retribution (*attributie van rechtsmacht*) concerns the distribution of authority between judicial bodies based on the type of judicial environment, for example the division of powers between the State Administrative Court and the General Court.

According to Thorbecke and Buys, the measure for determining whether a case falls under the jurisdiction of the State Administrative Court depends on the subject matter of the dispute (*objectum litis fundamentum petendi*). If the right to act is within the framework of public law, then the case is under the authority of the State Administrative Court, and if it is in the field of civil law, then the absolute authority lies with the General Court. The absolute authority of the State Administrative Court is only limited to adjudicating disputes that are in public law, namely disputes that arise as a result of government actions in external public law that are unilateral, concrete, and individual in nature, and are final as stated in the decision of the State Administrative Officer.

Provisions for implementing the decisions of the State Administrative Court are regulated in Law Number 5 of 1986 in conjunction with Law No. 9 of 2004 in Article 115 to Article 119. In Article 115 it is explained that in order to implement a court decision one must obtain permanent legal force. At that time, a legal dispute must be ended. If there are no more ordinary legal remedies that can be used, it means that the decision of the State Administrative Court has permanent legal force (*in kracht van gewijsde*) and has binding force (*res judicata pro veritate habetur*). In Article 116 paragraphs 3 and 4 orders that the defendant carry out the court's decision and submit it to a higher agency according to his level of office, while the head of the court in implementing the court's decision is only limited to supervising decisions that have permanent legal force. Basically, the implementation of the State Administrative Court emphasizes the legal awareness of state administrative officials regarding the contents of the judge's decision to carry it out voluntarily without coercion (*dwangmiddelen*) which can be directly felt and dropped by the court against the State Administrative Officer concerned.

In the Civil Code, land is classified under private law. However, in reality, the government participates in land management. This can be seen in the main laws that form the basis for the regulation of land law in Indonesia, among others

Article 33 Paragraph (3) of the 1945 Constitution; TAP MPR RI No. IV of 1973 concerning Outlines of State Policy (GBHN); Article 2 Paragraph (1) UUPA along with several implementing regulations.

State Administrative Disputes are resolved in two ways, namely:

Through administrative measures (Article 48 of Law No. 5 of 1986 in conjunction with Law No. 9 of 2004 concerning State Administrative Court). This method is a procedure that can be taken by a person or civil legal entity if they are not satisfied with a decision of the State Administration. The forms of administrative efforts are:

Administrative appeal, settlement of administrative efforts carried out by a higher agency or other agency that issues a decision.

Objection, settlement of administrative efforts carried out by the State Administrative agency or official who issued the decision.

Settlement of land disputes can be through mediation, this mediation is carried out in order to achieve a win-win solution between the parties. Mediation is a way of resolving conflicts that is faster and cheaper, and can provide greater access to justice for the parties by resolving disputes in an acceptable way and provides a sense of justice. Integrating mediation into the judicial process can be one of the most effective tools for overcoming the problem of backlog of cases in court as well as strengthening and maximizing the function of non-judicial institutions for dispute resolution other than adjudicative (deciding) judicial processes.

Through a lawsuit

There are two subject parties or parties to litigation in the State Administrative Court, namely:

The plaintiff is a civil legal person or entity who feels disadvantaged by the issuance of a state administration decision by a state administration body or official both at the central and regional levels.

The Defendant is a State Administrative body or official who issues a decision based on the authority given to him or delegated to him.

Referring to Law Number 5 of 1986 in conjunction with Law Number 9 of 2004 Article 1 paragraph 4 regarding the State Administrative Court, which reads as follows:

"State Administrative Disputes are disputes that arise in the field of State Administration between civil persons or legal entities and State Administrative Agencies or Officials, both at the central and regional levels, as a result of the issuance of State Administrative Decisions, including labor disputes based on laws and regulations. valid invitation."

Based on the explanation above, land disputes can be resolved by the State Administrative Court in the event of cancellation of a decision letter granting land rights or a certificate of land rights, or a decision containing a refusal or request to obtain a certificate of land rights issued by the head of the regional or district/district office. City. While claims or civil rights are the authority of the General Courts in terms of examining and deciding land disputes that contain civil elements related to claims regarding property rights or rights originating from the property.

In accordance with Article 53 paragraph 1 of the State Administrative Court Law, it is stated that any person or civil legal entity who feels his interests have been harmed because of the issuance or non-issuance of a title certificate or decision letter granting land rights by a land agency or official of the land office by a Administrative Decree. State Enterprises may submit a written claim to the competent court containing demands

for the disputed State Administrative decision to be declared null and void, with or without a claim for compensation and/or rehabilitation.

Conclusion

Settlement of land disputes through courts or litigation channels based on the object of land disputes is related to the authority to adjudicate land disputes which is the absolute power or authority of both the General Court and the State Administrative Court. The absolute authority of the State Administrative Court is only limited to adjudicating disputes that are in public law, namely disputes that arise as a result of government actions in external public law that are unilateral, concrete, and individual in nature and are declared final in the decision of the State Administrative Court. To obtain guarantees of legal certainty and certainty of land rights, the community must carry out land registration to obtain a certificate of land rights which functions as strong proof of ownership of land rights. Certificates of land rights are valid or strong evidence, as emphasized in Article 19 paragraph 2 letter c of the Basic Agrarian Law (UUPA) and Article 32 paragraph 1 of Government Regulation (PP) Number 10 of 1961 concerning Land Registration which has now been revoked and reconfirmed in Government Regulation Number 24 of 1997. Therefore, the panel of judges must determine precisely the subject matter of the land dispute, whether it is included in civil law or public law and can determine whether land disputes are under the jurisdiction of the general court or the Administrative Court. Country.

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