

Land dispute resolution through the special land courts as a transformative step in agrarian reform in Indonesia

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Abstract

Land disputes involving the common people, local entrepreneurs, foreign investors, or government agencies are increasingly rife in both the National Land Agency (BPN) and the General Courts and the State Administrative Courts. There has been a suggestion that a special court should be formed to handle land matters within the scope of the General Court. In dealing with land issues, coordinated and integrated policies and measures are needed, bearing in mind that land cases cover cross-sect oral tasks and involve more than one government agency. This paper revealed that to establish a special land court and land arbitration institution with quality human resources is an absolute prerequisite. Judges, BPN and local government employees and related officials, land academics who can be expert witnesses and advocates are human resources that need to be prepared and continuously developed. Main conclusion drawn was that the agrarian reform that is being carried out aims to make Indonesia a prosperous future, a people who can participate in world culture, and an increased sense of justice.

Keywords: agrarian reform, dispute resolution, special court, basic agrarian law, basic justice law

Introduction

Land disputes involving the common people, local entrepreneurs, foreign investors, or government agencies are increasingly rife in both the National Land Agency (BPN) and the General Courts and the State Administrative Courts (Lucas, 1997; Pattiselanno & Sopamena, 2018) ^[8]. There has been a suggestion that a special court should be formed to handle land matters within the scope of the General Court. Based on Presidential Decree No. 4 In 1985, the membership of the land team was simplified (Sakumoto, 2007) ^[11]. The Minister for State Apparatus Empowerment is appointed as chairman. After BPN was formed by stipulation on 19 July 1988 and inaugurated on 21 November 1988, the land team was disbanded and its tasks were handed over to be able to be handled functionally to BPN.

However, both the BPN and the General Courts and the State Administrative Courts still cannot be expected by many people because the decisions they make do not resolve arbitrarily, they even cause new problems so that they are not beneficial to the parties. On the one hand, the expanding agrarian dispute with all the dimensions of the problems attached to it shows the crisis of people's trust in capitalism, authoritarianism, and ideological hegemony carried out by the ruling factions (Bachriadi, 2001) ^[2]. On the other hand, the failure of the functioning of existing judicial institutions in resolving agrarian disputes fairly and prioritizing the aspirations of the people instead of submitting to the domination of executive power and the insistence of capital forces shows that state life in Indonesia is completely undemocratic and distant of rule of law principles. The negative impact of agrarian disputes would harm everyone, except those who deliberately take advantage of them. The delay in solving the agrarian problem tends to be a time bomb which can explode at any time. Therefore, fair and civilized handling of all agrarian disputes that occur needs to be pursued immediately. It is the duty of the Parliament

to exercise the right of initiative, propose the establishment of an independent agrarian court. This agrarian court is specifically designed to handle land disputes that arise, both horizontal and vertical. It is hoped that the agrarian court will become a judicial body that explicitly asserts itself under the sole authority of the judiciary. In this way, this court is free from the dualism of power interests. This idea was empirically supported by some investigation of the role of land and environmental court on the land dispute in some countries, especially in New Zealand (Preston, 2008; Bedi, 2015; Macintosh et al., 2018) ^[9, 3, 18]. Hence, by using the conceptual paradigm developed by Syarief (2014) ^[15], this paper aims to investigate the possible formation of the special land courts to resolve land dispute as a transformative step in agrarian reform in Indonesia.

Basic Justice Law and the Basic Agrarian Law

The formation of special body for land dispute would mean that Parliament needs to revise the Basic Justice Law and the Basic Agrarian Law (BAL). It is necessary to study the main characteristics of the land court that are expected, including those related to the appointment of judges, the procedural law that will be used (for example, the trial can be held on site, the judge has the right to obtain authentic land data from BPN and related officials such as local government from the neighborhood association (RT/RW) level to the governor. , criteria for expert witnesses, etc.) in addition to the civil procedural law as applicable in general courts (Sumardjono, 2008) ^[14]. It is also necessary to regulate the authority of the land court which will legally handle land disputes involving many people or collective and individual claims.

In dealing with land issues, coordinated and integrated policies and measures are needed, bearing in mind that land cases cover cross-sect oral tasks and involve more than 1 (one) related government agency. By Presidential Decree No. 51 dated 12 October 1972, a land team was formed

which was led by the State Minister for State Apparatus Control/Deputy Chairperson of National Development Planning Agency/Bappenas. Members of this team consist of members from Departments and Non-Departmental Agencies who have the task of dealing with land.

The duties of the Land Team include

1. Conducting further research on land issues.
2. Compiling/preparing materials for formulating government policies in land affairs.
3. Coordinating and controlling the implementation of policies/programs in the land sector established by the government.

In addition to establishing a special agrarian court, the idea of land arbitration has also emerged as an effort to deal with land disputes. This idea is not simple. This is because arbitration demands intermediaries who really understand the land dispute map in addition to the arbitration principles it. The idea of arbitration for land disputes emerged as an alternative to dispute resolution in court (Neman Palilingan, 2019) ^[7].

Broadly speaking, land problems can be grouped into the following categories: (1) problems with community cultivation of land for forestry areas, plantations, and others, (2) problems with violations of land reform provisions, (3) problems with access to land provision for development purposes, and (4) court disputes related to land. The first and second problems require consistent and consistent implementation of regulations. The statutory regulations regarding the settlement of the people's status as cultivators are sufficient. What is needed in this case is the government's wise attitude in facing the demands of the people with good intentions and the government's willingness to not merely carry out legalistic land data collection (Triramdhani et al., 2020) ^[16].

So far, the third problem has been resolved through the courts, both within the scope of general courts and state administrative courts. The social unrest that often arises is generally caused by the determination of compensation or the determination of land prices that are not fair. In this case, it is important to have an appraiser who is expected to be able to provide a reasonable and acceptable land price assessment for the parties. Perhaps what is needed is the role of an independent and professional judicial service institution, and this institution is already in place. The solution to the fourth problem is more complicated because it focuses on proof of land ownership and testing the validity of certificate data and procedures for issuing certificates. So far, these matters have been taken care of by the general courts and state administrative courts. Only if there are indications of forgery of land titles and authentic certificates can they be prosecuted criminally in the police, which will ultimately be tried in the general court.

Looking at the four categories of land problems and their respective characteristics, it can be concluded that the most appropriate one to be resolved through land arbitration is the third problem. This is because arbitration that is informal, closed, cheap, and efficient is expected to be able to resolve land disputes quickly. The nature of the arbitration award is final and executable immediately. Arbitration is an alternative to dispute resolution out of court. In arbitration the disputing parties agree to select a third party to mediate. An arbitration decision is stated in an agreement clause or a

special agreement regarding arbitration after a dispute occurs. The use of arbitration is aimed at avoiding long trial and examination of cases through the court which can harm both parties. For land ownership disputes that require accuracy of ownership evidence, land arbitration cannot be used. However, arbitration can be effectively used for land acquisition disputes, land acquisition by employers, especially in terms of providing compensation to the parties concerned.

Agrarian Reform to Achieve People's Prosperity

Indonesia is an agricultural country. So, land has a very important function for the prosperity and welfare of the people. Limited land area, especially agricultural land which is nothing but a means of production. On the other hand, the population increases. The main problem arises of an agrarian country: how to maintain, preserve, allocate, cultivate, manage and divide the land in such a way as to benefit the people and the state, bringing prosperity to all (Fauzi, 1997) ^[4].

This main problem is what agrarian political science seeks to solve, which examines the relationship between man and land and all the problems and social institutions associated with it, whether they are political, economic, social or cultural (Agustina, 2018) ^[11]. It can be said that the attention of agrarian science focuses on three things: (1) the relationship between humans and land which is a reality that will continue to exist, (2) humans from a political, social, economic, cultural and mental perspective, and (3) nature, especially land (Soetiknjo, 1974; Sihombing, 2019) ^[13, 12].

The BAL of 24 September 1960 removed the dualistic legislation in the Dutch East Indies era. This is because it is seen that the ideologies of capitalism and individualism are incompatible with the spirit of the Indonesian people, which have long had rules regarding land in their respective customary laws. Therefore, it is appropriate for the BAL to be based on the concepts of customary law that apply in the territory of Indonesia. The BAL adheres to populism, which recognizes individual rights to land but also that each land title has a social function. Through the principle of the right to control the state, the government regulates that lands are used for the greatest welfare of the people according to Article 33 paragraph 3 of the 1945 Constitution. The BAL bases itself on the assumption of mono-dualist humans, as individuals and as social beings.

To implement Article 33 paragraph 3 of the 1945 Constitution, it is clear that control of land must be carried out by the state, in which the right of the nation is the highest ownership right over collective land, is eternal, and is the mother of other land tenure rights as stated in Article 1 of the BAL. The regulation that land is controlled by the Indonesian nation as collective land shows a legal relationship in the civil domain. Even though it is stated that it is collective land, it does not mean that there is no individual and legal entity ownership. It can be seen in Article 16 of the BAL that property rights are one type of right that is recognized.

The provision that the state will regulate the land for the greatest prosperity of the people does not mean that the people can normally occupy state land. For example, the people's occupation of state land creates many problems. For example, flooding, slum settlements, throwing stones when the train passes so that many railroad windows are broken and damaged, delays or cancellations of property

development, plantation or agricultural areas, and so on. Many people misinterpret Presidential Decree No. 32 of 1979 concerning Policy Principles in the Context of Granting New Rights to the Land of Origin of the Conversion of Western Rights. Article 5 of the Presidential Decree states that the settlement lands of the former Western rights which have become settlements or are occupied by the people, will be given to the people who occupy them after the conditions relating to the interests of land rights holders are met. As a result, many people try to own vacant lands that are formerly Western rights that they occupy in groups with the aim of being able to apply for rights to the land (sometimes they come from the same village in their area of origin). In fact, the purpose of this Presidential Decree is to restructure the use, control and ownership of land as intended by the Decree of the Indonesian People's Consultative Assembly No. IV/MPR/1978.

Thus, it is clear that the Presidential Decree is intended to protect the interests of the people who have "good faith", who have occupied land that was formerly entitled to the West (Putra, 2020). The people's occupation of land that is formerly entitled to the West that is done illegally cannot be protected. No compensation will be given if it is transferred to other uses. Moreover, given priority to apply for land rights, if the people freely and illegally occupy the land of the former right of the West, this will set a bad precedent. This shows that the people do not have good intentions and what applies is the law of the jungle: whoever is strong and brave, he can control the land. These things can hinder the achievement of the state's goal of building the land for the greatest prosperity of the people.

Conclusion

The agrarian reform that is being carried out aims to make Indonesia a prosperous future, a people who can participate in world culture, and an increased sense of justice. In order to achieve these goals, the country's political economy should be formulated based on the Indonesian people's culture, which is agrarian in style. Because land is the main source of life for the Indonesian people, land ownership laws and regulations need to be designed in such a way as to strengthen the position of land as a source for the prosperity of all the people.

To establish a special land court and land arbitration institution with quality human resources is an absolute prerequisite. Judges, BPN and local government employees and related officials, land academics who can be expert witnesses and advocates are human resources that need to be prepared and continuously developed. Thus, it is hoped that agrarian courts or land arbitration institutions can produce quality decisions, which are able to improve the image of the court as a place for justice seekers.

Based on this, the formation of an arbitration institution needs to remember the following considerations

1. Determining the types of land disputes that can be resolved by arbitration.
2. Determining who can be appointed as an intermediary/peacemaker (arbitrator) for the land arbitration institution. Of course, people who control the substance of land law and understand the conditions in the field, especially lands that have the potential to cause disputes.

3. Determination of arbitration procedures, procedures and conditions for filing disputes, as well as awarding and implementing decisions.
4. Determination of the procedural law used and the nature of the decision.

The provision that the state will regulate the land for the greatest prosperity of the people does not mean that the people can normally occupy state land. The state will regulate and manage the state land so that the results can increase the prosperity of the people. Thus, the people also have to comply with the land allotment that is regulated by the state. This is because land management is now a difficult thing. Everywhere the people occupy the empty state land. Here, practical implication would imply that without obedience from community members, state land cannot be utilized as well as possible. Seeing the illegal occupation of state land formerly Western rights which is increasing and land disputes are increasing, especially that many decisions are not quality and overlapping agrarian reform is an urgent thing to do so that the greatest prosperity of the people can be achieved.

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