

Legal Reconstruction of Land Dispute Regulation in Indonesia Based on Pancasila Justice

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Abstract

The purpose of this study is to find out and analyze the Weaknesses of Indonesia's Current Land Dispute Regulations and how to Reconstruct Indonesian Land Dispute Regulations Based on Pancasila Justice. This study uses a constructivist paradigm with a sociological juridical approach to solving research problems by examining secondary data and primary data by finding legal realities experienced in the field as well as qualitative descriptive methods. Based on the results of the research, it was found that the Weaknesses of Indonesia's Current Land Dispute Regulations Fundamentally, the land is an asset with high economic value and is very vital for human life, so in this case many parties seek to profit from various transactions related to land. Despite the fact that landowners are legally required to register their rights to their property, it is not uncommon to find a phenomenon nowadays of landowners who do not want to properly register their ownership rights to land. This usually happens due to various factors such as the process which is considered too long and will take up a lot of time and money they have. Reconstruction of Indonesian Land Dispute Regulations Based on Pancasila Justice because in general, justice is a universal value that includes recognition and respect for everyone's legal rights and safeguarding freedom, honor, and property through upholding truth and justice. Then, the balance of rights and obligations is one of the most important characteristics of justice. Furthermore, Justice is also seen as the ability to stand in the middle of two things and give everyone what he deserves. In this case, every living thing in the process is very closely related to the concept of justice in the use and use of land.

Keywords: Legal Reconstruction, Land Dispute, Pancasila Justice.

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INTRODUCTION

Land disputes are disputes arising from conflicts of interest in land. Land disputes are unavoidable nowadays. This requires improvements in the field of arrangement and use of land for the welfare of the community and especially legal certainty in it. Various attempts have been made by the government 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 dispute.

Economically, the dispute has forced the parties involved to incur costs. The longer the dispute resolution process, the greater the costs that must be incurred, and often the costs incurred are not comparable to the price of the land object in dispute. But by some people or certain groups of land is a pride that must be held firmly and will be maintained until death.

By looking at the regulations that cover the settlement of disputes above, it can be seen that the role of the National Land Agency (hereinafter abbreviated as BPN) in Indonesia is to mediate. Mediation so far is BPN's attempt to resolve land disputes using a juridical data approach. However, in practice, it turns out that the mediation must be followed by verification of field data/physical data in the form of measurement and mapping of land parcels. This physical data or field data is also known as land technical data.

Settlement of land disputes is generally taken through legal channels, namely the courts (Toebagus, 2022). Cases related to violations of land reform regulations (rearrangement of land tenure and ownership structures) are enforced in accordance with the laws and regulations that underlie them.

Based on the land law, the existence of a change in physical data or juridical data is included in the scope of maintaining land registration data. One of the reasons for changing juridical data on a certificate of land rights is that there is a transfer of rights due to legal actions in the form of buying and selling. so that the change requires the process of registering the transfer of land rights. So that in the process of applying for registration of the transfer of ownership rights to land that has been certified, it must attach administrative principles in accordance with what has been determined by applicable regulations. If all administrative requirements have been met, the process of transferring land rights can then be carried out until the completion. Therefore, Based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction Of Land Dispute Regulation In Indonesia Based On Pancasila Justice*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of Indonesia's Current Land Dispute Regulations?
2. How is the Legal Reconstruction of Indonesian Land Disputes Regulations Based on Pancasila Justice?

METHOD OF RESEARCH

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.

3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

RESEARCH RESULT AND DISCUSSION

1. Weaknesses of Indonesia's Current Land Dispute Regulations

In Indonesia, there were a total of 457 land disputes in Indonesia from 1988-2019 with a land area of 4.4 million hectares. The area of conflict in the plantation sector (2.4 million hectares) and production forestry (1.1 million hectares) is the most dominating. Meanwhile, the area of conflict in other sectors ranges from under one million hectares which include: the mining sector (532.6 thousand hectares), conservation forestry (138.7 thousand hectares), protected forestry (43.9 thousand hectares), coastal and marine (19.7 thousand hectares), food and energy (11.9 thousand hectares), transmigration (4 thousand hectares), industrial areas (2 thousand hectares), and electricity infrastructure (1 thousand hectares). During the process of land conflicts from 1988-2019, around 673.8 thousand people died in various provinces in Indonesia (Kompas, 2021).

Then, in 2020 there were 241 cases of land conflict. According to Dewi Kartika as Secretary General of the Consortium for Agrarian Reform (KPA), there is an anomaly where economic growth is minus 4.4 percent in 2020 and a number of regions have issued large-scale social restriction policies (PSBB), but the number of agrarian and land conflicts is still high.

Furthermore, from March 29 to December 2021, Junimart Girsang as Chair of the Working Committee (Panja) for the Eradication of Land Mafia Commission II of the DPR RI revealed that there were 4,358 complaints he had received from the public, of which there were more than 100 thousand cases of land disputes in Indonesia. Most of these land conflicts include the existence of a lot of tension between legitimate land owners and land mafias in terms of land disputes. The various issues of land disputes and conflicts over land rights, of course, must be taken seriously by the government so that legal clarity can be maintained.

Along with the progress and development of human life, it demands a lot of changes, both in terms of physical changes and scientific advances. This is very important for the well-being of every human being. As the world's population continues to grow, there is an increase in the range of services that people need. The

need for land for non-agricultural activities grows along with population growth and changes in economic structure. The construction of state-of-the-art homes, workplaces, factories, and even business centers has reflected increasing human demands. Industrial and residential growth can thrive in locations that have been converted to industrial or residential areas due to better access to the area. Because of these trends, it is impossible to avoid changes in agricultural land use.

In general, aspects of land ownership and control will have a significant impact on a person's strategy and ability to make a living. In this case, individuals who do not have a clear understanding of the state of their land rights, so that they guarantee these property rights to the bank, will result in a low credit score. The amount of credit given by the bank usually depends on the status and type of land rights attached. Communities can use the legal certainty obtained from land ownership to improve the economic welfare of their family members by using land as a source of business capital and securing business loans against it as collateral (Jushendri, 2020).

The above description is in line with the view put forward by Effendi (1994) which reads as follows: in the negative system, a letter of proof of right is valid as a strong means of proof, meaning that the information contained therein has legal force and must be accepted by (Judge), as the statement is correct, as long as and as long as there is no other evidence proving otherwise. In this case, the court will decide on the correct means of proof.

Based on the results of a review of some of the previous literature, it can be seen that various factors that influence disputes in the land sector include: factors of legal issues, especially regulations that are multiple interpretations, factors of dishonesty in law enforcement officials, factors of facilities and infrastructure such as facilities that are still not effective, the factor of the lack of understanding of the law by the community, as well as cultural factors such as bad habits and mindset of law enforcers and society.

To resolve land ownership disputes, Santiago (2017) states that the following steps are important to take, namely:

- a) Solutions Through Mediation, namely finding a solution to a problem can be done through mediation, where litigation and non-litigation channels can be used to resolve land conflicts. Mediation is an option for resolving disputes with the help of a third party (mediator) through procedures agreed upon by the parties which are facilitated in order to reach a solution that benefits each party. However, in the current era of modern civilization, this solution is rarely an option for the community in resolving their land dispute problems. This

solution is commonly used by indigenous peoples or those related to customary land disputes. Meanwhile, on the other hand, modern society prefers to settle disputes through litigation or through the judiciary.

- b) Solution Through the National Land Agency, namely procedurally, the process of resolving land disputes can be submitted to the National Land Agency (BPN) with the condition that the emergence of land cases being filed is the result of demands from citizens/communities, both people and legal entities as a result of the issuance of decisions state administration (KTUN) by state administration officials (TUN) which causes harm to the community. Then, in this case, the state administration official (TUN) in question is a state administration official within the National Land Agency as the agency authorized to take care of land aspects. The procedure for resolving disputes through the National Land Agency, namely: with an application submitted to the national land agency (BPN), the Head of the National Land Agency (BPN) will then make corrections to the issuance of a State Administrative Decree (KTUN) in the land sector which by or on the basis of the decision arise, disappear or disruption of land rights. When the complaint file has been received from the public, then data collection and research on the file are carried out by the authorized official. Furthermore, by temporarily concluding (hypothesis) the results of the examination of the application file, whether the application for objection can be continued with the settlement process or not, in the event that the application for objection is submitted directly to the office of the National Land Agency and the application file is declared incomplete and unclear by the National Land Agency then the National Land Agency will ask for an explanation to the head of the Regency/Municipal Land Agency office accompanied by other relevant supporting data. By submitting cases of conflicts or land disputes to the National Land Agency for resolution, the National Land Agency will resolve disputes through mediation by summoning the parties to the dispute over the ownership of the intended land and land. Procedurally, the National Land Agency will be able to mediate between the disputing parties in accordance with the Minister of Agrarian and Spatial Planning Regulation Number 11 of 2016. After a dispute has been successfully resolved by the National Land Agency through mediation, the disputing parties will receive notification of the results of the mediation, minutes of the meeting, as well as a deed drawn up and signed in front of a notary

as proof of the agreement between the two. Meanwhile, in the event that an examination by the National Land Agency of the decision of a state administration official in the field of land is then requested for settlement to the National Land Agency, it has obtained the result that the decision, both material and formal, has made the decision appropriate and was made based on a good and correct mechanism, then the National Land Agency National Land Affairs will be able to issue a statement rejecting the application submitted by the applicant. The decision given by the National Land Agency in the form of rejection of the application from the applicant can then be submitted to the court as available legal remedies, which then settle the dispute through a judicial process in disputes that arise due to land acquisition by the government, the object of the dispute may not be carried out mutations against it which could be detrimental to the parties to the dispute until a judge's decision has permanent legal force. If the judge's decision has a permanent legal force to grant the request/request of the applicant, the next step is to submit an application to the head of the district/city land office to cancel the state administrative decision that was previously issued. Thus, it can be understood that dispute resolution through the National Land Agency (BPN) is one of the right ways to resolve land disputes because they are handled directly by the agency that organizes them. Although in essence, customary or familial mediation can be carried out before the lawsuit.

- c) The solution is through the judiciary, namely if the settlement of land disputes through mediation and the National Land Agency (BPN) is considered unacceptable by the community, then the community can take it through the courts. However, it should be remembered that the Head of the National Land Agency has administrative authority over the revocation or annulment of land certificates or decrees relating to land rights, so in circumstances where a judge's decision in resolving disputes through court cannot be implemented, the Head of the National Land Agency may issue policy under these conditions. The National Land Agency (BPN) currently still controls land as a vertical agency, but there are still frequent differences in the functions of land certificates which result in losses for the community and investors because the permits granted by the BPN are not integrated with city spatial plans, thereby limiting land use. belongs to the community. In response to this, the government reorganized agencies in order to create good and integrated governance, namely

by merging the National Land Agency (BPN) and the Directorate General (Dirjen) of Spatial Planning of the Ministry of Public Works into the Ministry of Agrarian Affairs and Spatial Planning. This provides a breath of fresh air for the community so that they no longer need to worry about disparities in the function of land because both the issuance of land permits and control of spatial planning will be decided by the same organization.

Thus, it can be seen that the National Land Agency (BPN) as a government agency in the land sector must provide land registration services that are simple, straightforward, and fast so that people can obtain legal ownership rights over their land as well as receive optimal excellent service.

2. Legal Reconstruction of Indonesian Land Disputes Regulations Based on Pancasila Justice

In an effort to guarantee legal certainty and force in Indonesia, the procedures for land registration must continue to use a negative publication system with a positive trend because, with an analysis of Indonesia's current situation, this system is believed to be still suitable for use. Meanwhile, on the other hand, the positive publication system looks very difficult and complicated to use because it is inconsistent with national land law and also because it requires a large budget and adequate legal instruments to be enforced. In addition, the government is also expected to be able to equip the public with awareness about the conversion of old rights, especially the conversion of evidence other than certificates to be converted into certificates of land rights which will be able to provide certainty and legal protection for the holder.

In order to realize these various things, several legal provisions were reconstructed. The reconstructed legal provisions include;

- a) Law Number 5 of 1960 Concerning Agrarian Principles Criminal provisions relating to violations of the rights of holders of property rights to land have not been regulated in Law Number 5 of 1960 concerning Agrarian Principles. So that it is necessary to add criminal provisions to Article 52 of Law Number 5 of 1960 concerning Agrarian Principles related to criminal violations that can harm the holders of legal ownership rights over land. So that Article 52 of Law Number 5 of 1960 Concerning Agrarian Principles becomes: (1) Whoever deliberately violates the provisions in Article 15 shall be punished with imprisonment for a maximum of 3 months and/or a maximum fine of Rp. 10,000 for violation of the regulations with imprisonment for a maximum of 3 months and/or a maximum fine of Rp. 10,000. (3) Any party violating the provisions of Article 20 unlawfully and without rights shall be subject to imprisonment for 4 years

and/or a maximum fine of Rp. 10.000,-. (4) The criminal acts in paragraphs (1) and (2) of this article are violations.

- b) Regulation of the President of the Republic of Indonesia Number 66 of 2020 concerning Funding for Land Acquisition for Development in the Public Interest in the Context of Implementing National Strategic Projects. Community involvement and transparency of information related to compensation in land acquisition for development in the public interest are not clearly regulated in the Presidential Regulation Republic of Indonesia Number 66 of 2020 concerning Funding for Land Acquisition for Development in the Public Interest in the Context of Implementing National Strategic Projects. Based on this fact, it is necessary to carry out transparency regarding Article 7 of Presidential Regulation of the Republic of Indonesia Number 66 of 2020 concerning Funding for Land Acquisition for Development in the Public Interest in the Context of Implementing National Strategic Projects so that: (1) Funding as referred to in Article 6 is carried out by the Minister. (2) Funding as referred to in paragraph (1) is technically carried out by a work unit within the Ministry of Finance which carries out the duties and functions of state asset management by implementing public service agency financial management. (3) Further provisions regarding the implementation of Funding by the Minister as referred to in paragraph (1) and the implementation of tasks and functions by work units within the Ministry of Finance as referred to in paragraph (2) are regulated in a Ministerial Regulation. (4) Land valuation in the context of land acquisition as referred to in paragraph (1), paragraph (2), and paragraph (3) The agency requiring land uses an appraiser's service valuation by also taking into account the results of deliberations with the affected community.
- c) Regulation of the Minister of Land and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning the Settlement of Land conflict Cases. This legal provision does not contain efforts to prevent conflicts, this provision only contains resolution after a land conflict occurs. So it is necessary to add the provisions of Article 4A related to prevention efforts by the government. The provisions of Article 4A of the Regulation of the Minister of Land and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning the Settlement of Land conflict Cases reads: (1) The Ministry cooperates with Regional Governments and/or Village Governments to make preventive efforts to prevent land conflicts from occurring. (2) The intended preventive efforts consist of: a. Realizing a transparent and digital-based land

information system, b. Able to conduct monitoring and early data collection regarding land status that has the potential to create conflict, c. Able to Evaluate land that has the potential to cause land conflicts. d. Able to Conduct outreach to the community regarding the status of land owned by the community, e. Realizing a mass land registration program in the community, f. Creating partnerships with law enforcement institutions as well as local governments and other institutions related to land disputes in forming community advocacy platforms related to land conflicts.

As a developing country, Indonesia is classified as a transitional country, meaning that land law policies must be built (reconstructed), especially in the bureaucratic system and public services at the State Land Agency (BPN). In essence, the land law policy aims to achieve three main mutually reinforcing goals, namely economic efficiency and growth, social justice, and environmental preservation, as well as sustainable land use patterns. Various approaches based on the aspects of urgency, consistency, and risk can be taken to achieve efficiency. Then, the role of land as a basis for obtaining work and income, identifying parties who are disadvantaged in various conflicts of interest, and caring for indigenous peoples' lands is an action that needs to be carried out so that social justice can be achieved (Sianturi, 2022).

Meanwhile, the ability to explore local community participation in natural resource management, as well as effective coordination of administrative branches, can be used to achieve comprehensive and sustainable goals.

In general, justice is a universal value that includes recognition and respect for everyone's legal rights and safeguarding freedom, honor, and property through upholding truth and justice. Then, the balance of rights and obligations is one of the most important characteristics of justice. Furthermore, Justice is also seen as the ability to stand in the middle of two things and give everyone what he deserves. In this case, every living thing in the process is very closely related to the concept of justice in the use and use of land. Concepts like this are in accordance with the concept of natural law so that the availability of land is a right for every human being.

In the concept of law, justice is defined as justice that in itself can bring peace, happiness, and peace to society. When a judge's decision is handed down by law enforcement officials, or even when a public policy is implemented in a legal system, justice in law can be seen clearly in practice. If the decisions of judges or public policy makers (government) have produced legal ideals such as peace, happiness, and tranquility for the community and have fostered public opinion, then it can be said that the decisions of judges

and the government have been fair and reasonable (Wahyu, 2019).

Furthermore, justice is not just a slogan but must be realized as a joint effort to achieve the desired society, namely a just, prosperous, and prosperous society. According to this concept, land law policies must consider land rights as a social function, where the existence of customary rights must be protected and recognized as part of the function of land in a social function which is a source of land law in Indonesia. According to Wahyu (2018) justice can be interpreted as fairness, namely generalizing and elevating traditional conceptions of social contracts to a higher level, where justice is the main policy in social institutions which is analogous to truth in systems of thought, namely justice. However, if a theory is incorrect and tends to lead to injustice, it should be rejected and revised as soon as possible.

Likewise, legal authorities and other institutions must be reformed systematically if they have not been able to accommodate elements of justice. The rule of law concept stipulates that the purpose of the law is not limited to guaranteeing security and public order, but also to improve people's welfare, achieve legal goals, namely justice, and consistently apply the principles of Just law.

CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. Weaknesses of Indonesia's Current Land Dispute Regulations Fundamentally, is that land is an asset with high economic value and is very vital for human life so in this case, many parties seek to profit from various transactions related to land. Nowadays, Indonesia is experiencing an agrarian and land crisis, especially related to disparities in land tenure and ownership due to unfair land allocation policies inherited from the past. Ecological crises also occur as a result of land use which changes the natural landscape drastically. There is also a crisis of agricultural regeneration and reproduction which signals a shift in economic orientation to land-based reproduction. Government Regulation Number 24 of 1997 is an implementing regulation that explains that every citizen must first register his land in order to obtain guaranteed land rights, as stipulated in the 1945 Constitution and Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). The government will then issue a land certificate as proof of land ownership. Land certificates issued by the government will guarantee legal certainty on ownership rights to a land which includes: legal certainty of rights, legal certainty of the object, and legal certainty of the subject, including administration of registration and issuance of certificates. Despite the fact that

landowners are legally required to register their rights to their property, it is not uncommon to find a phenomenon nowadays of landowners who do not want to properly register their ownership rights to land. This usually happens due to various factors such as the process which is considered too long and will take up a lot of time and money they have.

2. Reconstruction of Indonesian Land Dispute Regulations Based on Pancasila Justice must be in accordance with the concept of natural law so that the availability of land is a right for every human being. The rule of law concept stipulates that the purpose of the law is not limited to guaranteeing security and public order (kamtibmas), but also to improve people's welfare, achieve legal goals, namely justice, and consistently apply the principles of fair law. The implementation of the concept of land law policy is fundamentally very dependent on the involvement of public leaders. This shows that public leaders are highly involved in formulating and implementing policies. Public leaders in government discourse can be identified by their ability to design policies with broad influence. Ideally, this opportunity should be used to respond to the aspirations of the residents, and the implemented policies should not discriminate against small groups. The policy design which includes organizational, analytical, executive, legislative, political, civil, and judicial leadership must be included in the policy design. Because the Policy cannot be considered successful if the underlying concept fails. This concept is presented as a reflection regarding how policy decisions must always be consistent with concepts that guarantee justice and people's welfare.

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