

# Juridical Review on Resolution of Land Disputes Outside the Courts

Rineke Sara<sup>1</sup>, Andhika Laksamana Putra<sup>2</sup>  
[rineke\\_sara@borobudur.ac.id](mailto:rineke_sara@borobudur.ac.id)<sup>1</sup>, [andhikawielands@gmail.com](mailto:andhikawielands@gmail.com)<sup>2</sup>

Universitas Borobudur<sup>1,2</sup>

**Abstract.** Human perception of land has slowly changed over time. Previously, land was only considered valuable as a resource to support agricultural activities, but from a better strategic perspective, particularly as an important resource for industry and human life. Currently, many lands are used for industrial and agricultural activities, including the construction of integrated housing complexes such as the housing complexes that have just emerged. Use of land without permission from a legal person or their legal representative is prohibited and punishable by crime, by Law Number 51 of 1960 article 2 and article 6 paragraph (1) letter a. However, in dealing with conflicts and land disputes that arise, we must consider them from various points of view while still prioritizing justice and not harming either party. For example, if the land is not being utilized optimally and even gives the impression that the owner has abandoned it for approximately 15 years, then, it should be considered. Deliberative dispute resolution using mediation is taken as a route to resolving land issues, bearing in mind that the main aim of mediation is to resolve problems, not just to apply norms or create order, but its implementation must also be based on general principles.

**Keywords:** Land Disputes; Settlement; Agrarian Regulations

## 1 Background

Human perception of land has slowly changed over time. Previously, land was only considered valuable as a resource to support agricultural activities, but is now seen from a more strategic perspective, especially as an important resource for industry and human life. Currently, a lot of land is used for industrial and agricultural activities, including the construction of integrated housing complexes such as the housing complexes that have just emerged.

People have difficulty getting land to meet their needs as the population increases and the demand for land also increases. The increasing need for land causes conflict between residents. Land disputes that arise in society take different forms. The dispute resolution process involves a large number of stakeholders, including government organizations (NGOs) and civil society institutions. However, dispute resolution procedures often stall, prolonging the problem. [1]

In Article 1 paragraph 1 a and b PERPU No. 51 of 1960 it is explained that: [2]

"Land is a basic human need, apart from clothing, food, and housing. "In government regulations in place of statute, what is meant by land is land that is directly controlled by the state and land that is owned by right by an individual or legal entity."

This is partly due to the still weak identification of the root causes of conflict and mapping of the social, political, economic, and cultural aspects involved in it. As a result, conflict resolution offers are often temporary formulas. Identification and in-depth research into the roots of conflict and accurate mapping of social, economic, political, and cultural aspects are very necessary to help resolve land disputes permanently.[3]

Land conflict is a process of interaction between two (or more) groups fighting over the same object, especially land and other objects related to it, including water, plants, mines, and the air above it. At the micro level, the causes of conflict can be a clash of values (culture), differences in the interpretation of information, and data, or an objective description of local land conditions (technical), or a conflict of economic interests. This is manifested in inconsistencies in land ownership and control.

Unresolved land disputes can cause the parties to feel disadvantaged and file a lawsuit in court. Land boundary disputes that often arise are caused by several factors, including the absence of land registration and the existence of third parties who have rights to the land.

Even though there is a big opportunity to sue through court, ordinary people tend to avoid it. Apart from that, there is an opinion in society that filing a lawsuit through court is relatively expensive, takes quite a long time, and is even complicated. Therefore, people try to resolve their disputes by taking non-litigation routes.

Land problems seen from a juridical perspective are not simple to solve. The emergence of legal disputes regarding land begins with a complaint from one party (person/entity) containing objections and demands for land rights regarding the status of the land or priority of ownership in the hope of obtaining an administrative resolution by the provisions of the applicable regulations.[4]

An out-of-court settlement is prioritized for peace in resolving conflicts that arise between disputing parties and does not look for parties who are right or wrong because settlement through court seeks to obtain justice and legal certainty. According to Law Number 9 of 1999 concerning Arbitration and Alternative Dispute Resolution, if you have to decide who is right and who is wrong, you will not come to a decision that benefits the parties to the dispute.

Along with population growth, development progress, and the widening access of various parties to land which is the basic model for various reasons, land problems in the agrarian realm always arise from time to time. Land problems can be reported directly, in writing, or often through community demonstrations. Apart from that, there are also land cases that are submitted to court through legal channels.

Land disputes are more difficult to resolve than you might imagine, especially if you do not have basic information or understanding of conflict management. If this happens then the conflict will never be resolved. To manage disputes effectively, there are two main priorities. Disputing parties must be ready to compromise, sit together, and accept each other.

## **2 Method**

This writing uses normative juridical research methods: namely research that is used to study or analyze secondary data in the form of primary legal materials and secondary legal materials, carried out by approaching problems from a legal perspective, discussing and then reviewing books, existing statutory provisions that are related to the issue to be discussed.[5] The issues that will be studied refer to the provisions of the 1945 Constitution and all regulations related to this discussion.

### 3 Results and Discussion

#### 3.1 The emergence of land disputes

The land is a very fundamental necessity for human life. The land is interpreted as a source of life for humans because this is where humans live, continue their descendants, and always carry out various activities on the land so that humans are always in contact with the land. Every person needs land not only during their lifetime but even when they die, humans need land for their resting place or burial. Apart from that, if viewed from an economic perspective, land is a commodity that has very high economic value because land has permanent properties and can be used in the future.

The occurrence of land conflicts as a result of the impact of industrial activities which are closely related to the form of social relations that exist between stakeholders, namely the community, government, industrial authorities, and other agencies (including non-governmental organizations and religious institutions) whose activities are directly related to all three.[6]

According to Christopher More, the root causes of land disputes in general can be caused by the following things:[7]

- a. conflict of interest, namely the existence of competing interests related to substantive interests, procedural interests, or psychological interests;
- b. structural conflict, caused by destructive behavior patterns, and unbalanced control over resource ownership;
- c. value conflict, due to differences in criteria used to evaluate ideas or behavior, differences in lifestyle, ideology, religion, or belief;
- d. Relationship conflict, due to excessive emotions, wrong perceptions, poor or wrong communication, and repetition of negative behavior;
- e. data conflicts, due to incomplete information, misinformation, different opinions on relevant matters, different interpretations of data, and differences in assessment procedures.

Various opinions about the roots of land problems which ultimately become land disputes that occur in Indonesia are caused by:

- a. lack of order in land administration in the past;
- b. inequality in land tenure and ownership structures;
- c. negative land registration publication system;
- d. increasing demand for land, so that land prices cannot be controlled due to the actions of the land mafia;
- e. legal regulations overlap, both horizontally and vertically, as do the substances regulated;
- f. there is still a lot of abandoned land;
- g. notaries and land deed officials are not careful in carrying out their duties;
- h. there has been no implementation of the perceptions or interpretations of law enforcers, especially judges, regarding laws and regulations in the land sector; And
- i. law enforcers are less committed to implementing laws and regulations in a consumer and consistent manner.

Disputes of a political nature are usually characterized by: involving many people, giving rise to public unrest and vulnerability, giving rise to distrust of the government or state officials, disrupting the implementation of national development, and giving rise to the danger of national disintegration. These political disputes are caused, among other things, by 1) Exploitation and dramatizing inequalities in conditions of control and ownership among economically weak groups; and 2) Demands for justice and partiality for economically weak groups. Strategic forms of land disputes include:

- a. Demand for land return as a result of land abiding during the colonial government era;
- b. Claims for the return of occupied land which is currently controlled by another party;
- c. Confiscation of plantation lands;
- d. Occupation of land assets of government agencies;
- e. Demand for granting rights to former private land occupied by the people;
- f. Claims for the return of land whose use does not comply with the location permit;
- g. Problems that arise as a result of land acquisition activities for large-scale development/etc

### **3.2 Legal Sources, Principles and Conditions for Settlement of Land Disputes**

Land settlements are generally regulated in Procedural Law (Formal Law), for parties in dispute, by the Government, Arbitration Bodies, and Judicial Bodies, they need to pay attention to and utilize it and serve as a guide in resolving land disputes, the principles and provisions of material law, namely the National Land Law, namely Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA).

- a. The first and main source is Pancasila;
- b. The 1945 Constitution of the Republic of Indonesia because the UUPA is a direct implementation, especially article 33 paragraph 3;
- c. National Land Law is prepared based on Customary Law regarding land and that National Land Law is Customary Law (Considerations UUPA jo article 5 UUPA) which means that Customary Law regarding land is the main source for the development of National Land Law and also functions as a complement to National Land Law (especially norms- the norm);

The concept of customary law was changed to the concept of national land law, namely a religious communalistic concept that allows individual ownership of land with private ownership rights while still containing community elements which are described as having a social function in Article 6 of the Land Law. UUPA.

The explanation of the 1945 Constitution states that the applicable principles of control and ownership of land as well as the protection provided to property rights holders based on our National Land Law are "a state based on law".:

- a. A person's control and use of land must be based on land rights guaranteed by our National Land Law;
- b. control and use of land without a legal basis is not justified and can even be subject to criminal sanctions (Law Number 51/Prp of 1960 concerning Prohibition of Land Use Without Authorized Permit); And

- c. control and land usage must be based on the rights guaranteed by our National Land Law.
- d. Control and use of land based on rights provided by the National Land Law, is protected by law against interference by anyone, whether by fellow members of the community or even by the authorities/government if the interference has no legal basis;
- e. The law provides various legal means to overcome existing disturbances:
  - interference by fellow society members with civil lawsuits through the General Court or requesting protection from the Regent/Mayor as regulated by Law no. 51 / Prp / 1960 above;
  - interference by the Authorities: lawsuit through the General Court or State Administrative Court;
- f. Normally, when acquiring land to which another person has rights for any reason (including public interest initiatives), this should be done after careful consideration and mutual agreement, both in the distribution of land to parties in need and in terms of compensation that the owner of the land rights in question is entitled to receive;
- g. In connection with the foregoing, under normal circumstances, to obtain the necessary land, there is no justification for coercion in any form by anyone on the right holder to hand over the land he owns and/or accept compensation that he does not agree to;
- h. In compelling circumstances, if the land in question is needed for the implementation of public interests, where it is impossible to use other land, it can be taken by force. In the sense that it does not require the consent of the rights holder. The possibility was opened by Law 20 / 1961 mentioned above, using the so-called revocation procedure;
- i. In acquiring or taking land, either based on a mutual agreement or through revocation of rights, the land owner has the right to receive compensation or compensation;
- j. The type and amount of compensation should be chosen in such a way that the former landowner does not suffer socially and economically. The General Explanation of Government Regulation 39 of 1973 concerning Procedures for Determining Compensation by the High Court in Connection with Revocation of Rights to Land and Other Objects Thereon specifically states that this is a universal norm. The PP's confirmation shows how this rule can be applied when wanting to buy land to carry out public interests. The size of the land being cultivated does not influence determining compensation as compensation for losses is necessary for the implementation of the public interest or not.

### **3.3 Settlement of land disputes outside the courts**

Use of land without permission from the legal owner or their legal representative is prohibited and punishable by crime, by Law Number 51 of 1960 articles 2 and 6 paragraph (1) letter a. However, in dealing with conflicts and land disputes that arise, we must consider them from various points of view while still prioritizing justice and not harming either party. For example, if the land is not being utilized optimally and even

gives the impression that the owner has abandoned it for approximately 15 years, this should be considered.

Therefore, as a form of the government's desire and concern to handle land conflicts and disputes that have direct implications for "victims" in the land sector, the National Land Agency has the mandate to manage the land sector by Article 2 of the priority regulation (PERPRES) Number 10 of the year 2006 concerning the National Land Agency having the task of carrying out government duties in the land sector nationally, regionally and sectorally, forming Deputy V for the study and handling of land disputes and conflicts (article 343 of the Head of BPN Regulation Number 3 of 2006 concerning the Organization and Work Procedures of the National Land Agency of the Republic Indonesia).

The specialist lex Law No. 30 of 1999 is the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency for Settlement of Land Cases No. 11 of 2016. According to Ministerial Regulation Number 16 of 2016 Article 37 Paragraph (1), "Settlement of disputes or conflicts as intended in Article 12 paragraph (5) can be done through mediation," The Land Agency is an institution appointed to resolve land disputes.

Considering that the main purpose of mediation is to resolve conflicts and not simply apply rules or create order, mediation is considered a method of resolving land disputes. However, this method should also be applied according to the general principles listed below:

- a. Volunteer  
This principle is very important because the parties have free will to carry out legal actions against the object of the dispute. This is intended so that in the future there will be no objections to the agreement that has been taken in the context of resolving the dispute.
- b. Independent and impartial  
Dispute resolution through mediation must be free from influence from any party, whether from each party, the mediator, or third parties. For this reason, the mediator must be independent and neutral.
- c. Personal relationship between parties  
Dispute resolution will always be focused on the substance of the problem, to discover a better solution than solely crafting a reasonable agreement.

In Article 6 paragraph (2) of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 1 of 1999 concerning How to Handle Land Disputes, it is stated that the handling of resolving land problems/disputes at the Regency/Municipality land office level is assigned to the Head of the Land Rights Section with assistance. by relevant officials/officers from the Land Office.

By Article 1 Number 21 of Ministerial Regulation Number 11 of 2016, the division head carries out duties as a regional land office employee, including preparing documents and carrying out actions to resolve disputes, conflicts, and land problems. According to Ministerial Regulation Number 11 of 2016 concerning the Settlement of Land Cases, the Land Agency is an institution appointed to resolve land case disputes. A written request from a community member outlining the complaint, along with the identity of the complainant and a summary of the problem, is submitted to the Head of the Land Office to begin the mediation process. If the complaint file meets the requirements, the officer is tasked with managing the complaint after it is received. The officer then gives the

complaint file to the official in charge of resolving disputes and enters the complaint into the complaint receipt record.

Furthermore, Mediation activities are carried out based on the agreement of the parties to the dispute by Article 38 paragraph (1) of Ministerial Regulation No. 11 of 2016. Furthermore, based on the decision of the Head of the National Land Agency of the Republic of Indonesia Number 34 of 2007 concerning Technical Instructions for Handling and Resolving Land Problems Number 05 /JUKNIS/D.V/2007 concerning Mediation Stages, it is explained that the mediation mechanism consists of three stages, namely pre-mediation, mediation stage, and post-mediation mechanism.

The process of resolving land disputes outside of court can generally be carried out in various ways as follows:

a. Negotiation

Negotiation is one of the major patterns or steps in Alternative Disputes Resolution (ADR). Negotiations involve two or more interested parties. The goal is to reach an agreement. That way they can work together again. Negotiations often occur in the business world because the essence is communication and bargaining.[8]

b. Mediation

The concept of language in English specifically is mediation. Then, like other utterances we know, Indonesian writers and academics chose to Indonesianize it into "mediation"; for example, negotiations become negotiations, arbitration evolves arbitration, and so on.[9] According to Prof. Dr. Takdir Rahmadi, mediation is a process of resolving disputes between two or more parties through negotiation or consensus with the help of a neutral party who does not have the authority to decide. The success of a mediation process depends on the parties' willingness to talk to each other and set discussion targets to find a solution that is acceptable to each party.

c. Conciliation Process

Conciliation can be understood as an effort to balance the interests of conflicting parties to settle. According to Oppenheim, conciliation is "the process of resolving a dispute by referring it to a commission consisting of individuals whose role is to sketch or explain the facts and usually after hearing the parties and trying to reach an agreement to provide a solution to resolve the problem. However, this possibility is not legally mandatory."[10]

d. Facility

In cases involving more than two parties, a third party is required to act as a facilitator. His job is to help the litigants by finding a solution together. In this case, the facilitator only provides facilities so that communication between the parties is effective. The facilities in question include liaisons, translators, joint secretariats, or meeting places.

e. Independent Appraisal Process

An independent appraisal is the use of an impartial third-party service. Independent appraisal is a process that can be used in resolving a case, especially land cases that are disputed between one party and another party.

f. Arbitrage

Civil procedural regulations, also called RV, define arbitration as a judicial system supported by and based on the will and good faith of the parties to the dispute, where their disputes are resolved by the judge they appoint and

themselves, with the understanding that the judge's decision is the final decision (decision at the final level) and binds both parties to implement it.[11] Meanwhile, according to Article 1 Paragraph 1 of Law No. 30 of 1999, arbitration is a method of resolving a civil case outside the general court based on an arbitration agreement made in writing by the parties to the dispute. The dispute resolution process through arbitration can be divided into two types, scilicet:

- Ad, Hoc Arbitration This arbitration is also called volunteer arbitration. This special type of arbitration was created to analyze and resolve certain conflicts outside of court by today's demands. If the arbitrator or arbitration panel has completed its duties, then the arbitration is complete.
- Institutional arbitration, namely an arbitrator body that is formed permanently and formally to resolve legal disputes between parties outside of court. Utilizing Traditional Institutions

Customary rights such as customary rights give customary law communities the authority to regulate and carry out land use. This includes the authority to regulate and determine the legal relationship between people and land as well as the legal relationship between people and laws relating to land.

Of course, there will be challenges in carrying out the mediation process; The challenges that are often faced are the challenge of combining the desires and interests of both parties as well as the diverse skills of each mediator. The biggest challenge faced by mediators is to bring the parties together because both parties to the dispute still have rights and do not want to be subject to sanctions if these rights are revoked. In the mediation process, the mediator's task is to find the problems that cause conflict between the two parties to the dispute. This requires a variety of skills from the mediator. For the mediator is a place for the parties to ask questions, the mediator must be able to foster free dialogue between the parties. Considering the current policies in the land sector, current land issues require careful study and consideration.

Obstacles that often occur when mediation is carried out to resolve land boundary disputes are that it takes quite a long time, the mechanism is difficult, it depends on the good faith of the parties to be able to resolve the dispute to completion, mediation cannot run well if sufficient authority and information are not provided.

## **4 Closing**

According to PERPU Number 51 of 1960, a plot of land can only be used legally if it has strong proof of ownership obtained from the National Land Agency or other institutions under it. Certificates are an excellent example of proof of ownership. Land conflicts that arise as a result of industrial activities have an impact on the types of social relations between stakeholders—community, government, industrial authorities, and other institutions (such as non-governmental organizations and religious institutions) whose functioning movements are directly related to all three—are closely related to each other.

Settlement of land dispute cases as regulated in Law Number 51 of 1960, in article 2 and article 6 paragraph (1) letter (a) that use of land without permission from the rightful person or their legal representative is prohibited and punishable by criminal penalties. However, in



responding to conflicts and land disputes that arise, we must look at it from several points of view while still prioritizing justice and not harming both parties, so it is not only seen from the perspective of the occupation but also from the aspect of the use and use of the land by the owner if, in terms of utilization, the land is not utilized optimally and even appears to have been abandoned by the owner for approximately 15 years. Considering that the main purpose of mediation is to resolve conflicts and not simply implement rules or enforce order, mediation is considered a method of resolving land disputes. However, this method must also be implemented by comprehensive principles.

## References

- [1] Limbong, Bernhard. *Konflik Pertanahan*. Jakarta: Margareta Pustaka, 2012.
- [2] Tim Redaksi Pustaka Yustisia, *Kompilasi Hukum Agraria*. Yogyakarta: Pustaka Yustisia, 2010.
- [3] Harsono, B. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. 2008: Djambatan, 2008.
- [4] Murad, Rusmadi. *Penyelesaian Sengketa Hukum Atas Tanah*. Bandung: Alumni, 1991.
- [5] Soemitro, Ronny Hanitijo. *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta: Ghalia, 1988.
- [6] Usman, Suyono. "Rekognisi Sebagai Alternatif Penyelesaian Konflik Pertanahan Tinjauan Sosiologis Lingkungan", Makalah, disampaikan pada Seminar dan Loka karya Rekognisi sebagai Penyelesaian Konflik Pertanahan: Tinjauan Hukum, Sosial, Politik dan Pelestarian Sumber daya," 1999.
- [7] S.W, Maria. *Tanah dalam Perspektif Hak Ekonomi, Sosial dan Budaya*. Jakarta: Buku Kompas, 2008.
- [8] Yusriyadi. *Industrialisasi dan Perubahan Fungsi Sosial Hak Milik Atas Tanah*. Yogyakarta: Genta Publishing, 2010.
- [9] Rahmadi, Takdir. *Mediasi Penyelesaian Sengketa Melalui Pendekatan Mufakat*. Jakarta: Raja Grafindo Persada, 2011.
- [10] Abdurrasyid, Priyatna. *Arbitrase dan Alternatif Penyelesaian Sengketa*. Jakarta: Fikahati Aneska, 2002.
- [11] Widjaja, Gunawan, and Ahmad Yani. *Hukum Arbitrase*. Jakarta: Raja Grafindo Persada, 2003.