

# The Role of Agrarian Law in the Settlement of Land Disputes in the Perspective of Law No. 5 Years 1960

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**Abstract.** Agrarian law is something that influences people's lives because in agrarian law there are regulations regarding land where the people live. In reality, there are still many individuals who take advantage of conditions where there are weaknesses in law enforcement, increasing the number of land disputes. Land disputes cannot be avoided nowadays caused by weak law enforcement officers and very high demand for land while the number of land parcels is limited. This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively. Concluding is carried out using a deductive method, namely concluding from general to specific, especially those related to the research topic, namely the Role of Agrarian Law in Settlement of Land Disputes in the Perspective of Law no. 5 of 1960. The research showed that land plays such an important role in the lives of Indonesian citizens that it is regulated in the Indonesian Constitution. In this case, it can be described that the relationship between humans and land is very close because land is human life capital. The large number of institutions that have the authority to resolve agrarian disputes, which often results in overlapping institutional policies or decisions, is one of the factors causing the lack of guaranteed legal certainty in resolving agrarian disputes in Indonesia.

**Keywords:** Agrarian Law, Land Disputes, Law No. 5 of 1960

## 1 Introduction

To exploit and use land as an agrarian resource in a fair, transparent, and productive manner, the existence of customary rights and customary communities needs to be taken into account. Apart from that, complete data regarding the existence, amount/area of land, and its control status must be complete and up to date, so that a harmonious and balanced regional spatial plan will be created. Even if a dispute occurs over land in an area, it can be resolved immediately by local officials and the results of the dispute resolution will be more acceptable to the conflicting parties. This condition will later create land law reform and at the same time the development of society. Land law reform which is preceded by the development of land policy must of course begin with the development of land law as part of the national legal system. However, this development should still be guided by the basic principles contained in the UUPA as the main provisions of national land law [1].

As an effort to resolve land disputes, efforts should be made to make the best possible use of mediation channels, so that a win-win solution can be achieved between the disputing parties. Intercession is a question goal process that is quicker, less expensive, and can likewise give more noteworthy admittance to equity to parties in figuring out how to determine debates that is palatable and gives a feeling of equity. Integrating mediation into court proceedings can be an instrument that is quite effective in overcoming the problem of backlogs of cases in court and also strengthening and maximizing the function of non-judicial institutions for resolving disputes in addition to adjudicative court proceedings. People who feel that other people have harmed them and want to get their rights back must try through applicable procedures, either through court litigation or alternative dispute resolution (Alternative Dispute Resolution/ADR), and must not take the judge into their own hands (eigerichting). In court, case resolution begins by filing a lawsuit with the competent court. Settlement of legal disputes through the courts is carried out in several stages. The initial stage is from filing a lawsuit up to a legal response. The determination stage starts from proof to the decision, and the implementation stage is the implementation of the decision. Each of these stages requires a relatively long time, is expensive, and is quite a complicated procedure [2].

The takeover of land by other nations as a result of colonialism and the many land conflicts that arise within the country will damage the economic, social, and political growth of the country concerned. The limited availability of land is not balanced with human needs. This is what triggers land conflicts. In Indonesia, existing land disputes are resolved through the General Court and State Administrative Court. However, of the many cases that have been submitted to the judiciary, many have been resolved with unsatisfactory results, resulting in a growing view in society that the judiciary is not optimal in resolving land disputes. As a result, the sense of justice and legal certainty that society hopes for is not fulfilled there are only new problems whose impact worsens the existing conditions. As a statutory regulation that is lower in level than the 1945 Constitution and TAP MPR but more specifically regulates land, the UUPA embodies the objectives/missions contained in the two statutory regulations above it by establishing several rules regarding the basic principles of land control and its structure. his rights[3]. For example, Article 7 of the UUPA contains a prohibition on land control that exceeds limits, Article 10 of the UUPA requires agricultural land owners to work on their land actively to prevent extortion, Article 17 of the UUPA which regulates the minimum and maximum area of land ownership by one family or legal entities to create equal distribution of land control, and so on.

One of the practices of acquiring land rights that originates from a dispute is land ownership of land that is encumbered with security rights. In cases like this, the property of the defendant or debtor can be used as collateral to fulfill a debt due to a broken promise which results in real losses for the plaintiff or creditor. This means that in the event of a default, the rights to the property can be transferred to the plaintiff or creditor. The transfer of land rights can be obtained starting from the mechanism for determining it as collateral contained in civil law practice. Efforts to fulfill the material losses suffered by the Plaintiff or Creditor can be taken as legal action by filing a lawsuit civil suit at the local District Court with the contents of the Posita and Petitum regarding the confiscation of collateral belonging to the Defendant or Debtor (Concervatoir Beslag).

The execution of guidelines containing legitimate standards is fundamentally essential for policing a work to guarantee that the law is complied. Infringement of material regulation will be liable to sanctions by the arrangements directed in regulation, consequently criminal regulation is utilized as a work to reestablish request to society. The meaning of policing likewise be seen according to the viewpoint of the item, in particular according to the legitimate

viewpoint. For this situation, the importance likewise incorporates expansive and thin implications. From a wide perspective, maintaining the law likewise incorporates the upsides of equity contained in the sound of formal principles and the upsides of equity that exist in the public eye. Be that as it may, from a limited perspective, policing includes upholding formal and composed guidelines [4].

Settlement of land disputes in principle prioritizes resolution through deliberation to reach a consensus between the parties. However, the bill being discussed in the DPR RI by the DPR RI and the Government mandates the establishment of a land court to handle land cases. The establishment of a land court as a special court within the general court environment is an idea that needs to be considered, considering that land cases that occur today are increasingly complex, have broad impacts, and are cross-sectoral. It is hoped that through land courts, the handling of land cases can be resolved effectively, efficiently, and professionally so that the interests of the community can be optimally protected. Land disputes in Indonesia are resolved in the usual way through the General Court and State Administrative Court with incomplete and suboptimal results. This is caused by overlapping decisions that have been determined by each judicial body, the difficulty of executing decisions of judicial bodies that have permanent legal force, and the lack of clarity regarding which laws and regulations are competent to resolve land cases in Indonesia [5]. As a result, injustice arises, legal uncertainty, land grabbing, disruption to the rate of economic growth and development due to investors being reluctant to invest their capital in Indonesia, and social and political conflicts arising.

Agrarian law is something that influences people's lives because in agrarian law there are regulations regarding land where the people live. Law Number 5 of 1960 concerning Agrarian Principles is the juridical foundation and bulwark of national agrarian law, especially in prioritizing the redistribution of land to poor farmers, upholding the social function of land, and prohibiting the domination of private parties in the agrarian sector. Land plays such an important role in the lives of the Indonesian people that it is regulated in the Indonesian Constitution. For human life, land has a very important role because in reality there will be an eternal connection between humans and land. In this case, it can be described that the relationship between humans and land is very close because land is human life capital. In Law Number 1 of 1960 concerning Agrarian Principles, land is defined as the surface of the earth. However, in reality, there are still many individuals who take advantage of conditions where there are weaknesses in law enforcement, increasing the number of land disputes. Land disputes cannot be avoided nowadays, apart from being caused by weak law enforcement officers, they are also caused by the very high demand for land nowadays while the number of plots of land is limited [6].

Although the idea of using arbitration is still limited to disputes regarding investment, this mechanism is the best legal option that can be taken. Because one of the parties to the dispute is not impossible to be the general public, or the personal rights of someone who is dealing with another party as an investor, whether foreign investors or national private investors. The realization of land arbitration as an extra-judicial body for resolving land disputes in Indonesia refers to the provisions of Article 24 (4th amendment) paragraph (3) of the 1945 Constitution, namely the mention of "bodies whose functions are related to judicial power".<sup>33</sup> Law no. 48 of 2009 concerning Judicial Power of 2009, in conjunction with Law no. 30 of 1999 makes it possible to institutionalize Land Arbitration as the Indonesian Land Arbitration Body. In its development, demands for speed, confidentiality, efficiency, and effectiveness as well as to maintain the continuity of relations between the parties to the dispute, as long as the institution cannot respond to litigation (court), so it received a lot of criticism [7]. In its operations, the court is considered slow, expensive, wastes energy, time, and money, and is a win-win solution.

For this reason, alternative dispute resolution has received a positive response, especially in the business world which requires efficiency, confidentiality, and the preservation of cooperative associations is not formalistic and requires resolution that places greater emphasis on justice. The alternative in question is mediation before the case is submitted to the court.

## **2 Methodology**

This kind of exploration is Regularizing research. The methodologies utilized are a legal methodology and a reasonable methodology. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively [8]. Concluding is carried out using a deductive method, concluding from broad to narrow, especially those related to the research topic, namely Law Enforcement. The Role of Agrarian Law in Settlement of Land Disputes in the Perspective of Law No. 5 of 1960. Qualitative data investigation is carried out if the empirical data obtained is in the collection of mentions and not a series of digits and cannot be organized into categories. Data can be collected in various ways (interviews, observations, document instances, and recording tapes). It is processed first before being used in qualitative research, including the results of interview records, information decrease, investigation, information translation, and triangulation.[9].

## **3 Results and Discussion**

### **3.1 The Role of Agrarian Law in Settlement of Land Disputes in the Perspective of Law no. 5 of 1960**

Agrarian law is something that influences people's lives because in agrarian law there are regulations regarding land where the people live. Law Number 5 of 1960 concerning Agrarian Principles is the juridical foundation and bulwark of national agrarian law, especially in prioritizing the redistribution of land to poor farmers, upholding the social function of land, and prohibiting the domination of private parties in the agrarian sector. Land plays such an important role in the lives of the Indonesian people that it is regulated in the Indonesian Constitution. For human life, land has a very important role because in reality there will be an eternal connection between humans and land. In this case, it can be described that the relationship between humans and land is very close because land is human life capital. In Law Number 1 of 1960 concerning Agrarian Principles, land is defined as the surface of the earth. However, in reality, there are still many individuals who take advantage of conditions where there are weaknesses in law enforcement, increasing the number of land disputes. Land disputes cannot be avoided nowadays, apart from being caused by weak law enforcement officers, they are also caused by the very high demand for land nowadays while the number of plots of land is limited [10].

Agrarian conflicts are often experienced by vulnerable groups who depend on land and natural resources for their livelihood, such as farmers, fishermen, and indigenous communities. There are so many injustices experienced by these groups in the form of exclusion, exploitation, and oppression, whether carried out by state officials,

corporations, or collaboration between the two parties. 3 This is certainly contrary to the spirit of agrarian reform which has now been formalized in Presidential Decree (Presidential Regulation) no. 86 of 2018 which is a mandate from UUPA and MPR TAP (Decree) No. IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management. In Article 2 letter (b) of the *a quo* Presidential Decree, it is stated that one of the aims of agrarian reform is to resolve agrarian disputes and conflicts.

The term earth is also called land, based on the formulation of Article 1 paragraph (4) UUPA jo. Article 4 paragraph (1) UUPA refers to the surface of the earth and the body of the earth beneath it as well as those underwater. Water in Article 1 paragraph (5) of the UUPA includes both inland waters and water located in Indonesian maritime areas. Based on Article 1 paragraph (6) of the UUPA, space is space above the surface of the earth and water in the territory of Indonesia. Meanwhile, what is meant by natural wealth contained in it is the wealth contained in the bowels of the earth which is called minerals, including chemical elements, minerals, ores, and all kinds of rocks. Based on this, the law must be enforced repressively by law enforcement agencies who are given judicial duties [3]. In authorizing the law, we should focus on its advantages or convenience for society, on the grounds that the law is made to help society, so the execution and implementation of the law doesn't happen. detrimental to society which will ultimately cause unrest. Law enforcement is also a social process that involves the environment, therefore law enforcement will exchange actions with the environment which can be called an exchange of actions with human elements. In social culture, politics, and so on, law enforcement is influenced by various realities and circumstances that occur in society.

The large number of institutions that have the authority to resolve agrarian disputes, which often results in overlapping institutional policies or decisions, is one of the factors causing the lack of guaranteed legal certainty in resolving agrarian disputes in Indonesia. In addition, the process of resolving agrarian disputes, especially through litigation in court, has been time-consuming, complicated, and relatively expensive. This indicates that even though there are regulations and court decisions, it does not guarantee that agrarian conflicts will subside and that agrarian disputes can be resolved properly. So the establishment of a special agrarian court is a progressive step in creating agrarian justice, which is guaranteed in Article 33 of the 1945 NRI Constitution[4]. If the concept of law as a means of social reform and development is linked to the practice of courts handling land disputes in Indonesia today, it can be said that the judiciary, through its decisions, should be a medium for creating order in the land sector. Therefore, upholding the principles of justice and economic democracy needs to be accompanied by concern for the weak, exploring the nation's potential, both as consumers, entrepreneurs, and workers without distinction of ethnicity, religion, and gender to obtain opportunities, protection, and rights to enhance their standard of living and to take an active position in myriad economic activities, including in utilizing and maintaining land as one of Indonesia's natural resources.

### **3.2 The Urgency of the Role of Agrarian Law in Settlement of Land Disputes in the Perspective of Law No. 5 of 1960**

Land, as a natural resource bestowed by a higher power, is an essential element for human existence. Being the foundation on which human activities, reproduction, and livelihood depend, it is a fundamental requirement for the sustenance of life. Land also

plays an important role as a source of livelihood and income. Indonesia is a country where the majority of its people depend on the agricultural sector for their living, both in plantations, agriculture, and so on. Land and humans cannot be separated from the time humans are born until humans die. The land is directed in Regulation Number 5 of 1960 concerning Fundamental Agrarian Essential Guidelines, which is otherwise called the Fundamental Agrarian Regulation (UUPA). Article 19 section (1) of the Essential Agrarian Regulation (UUPA) states "To ensure lawful conviction "By the public authority, land enlistment is a completed all through the area of the Republic of Indonesia as indicated by the arrangements directed by Unofficial laws." To give lawful sureness and insurance to the land freedoms holders concerned, they are given an endorsement of land privileges. A declaration is a letter of verification of title to land freedoms, the executives privileges, waqf land, possession freedoms to loft units, and home loan freedoms, every one of which has been kept in the significant land book [5].

Revocation of land rights is the taking of land belonging to a party by the State by force which results in the right to the land being extinguished without the person concerned committing any violation or neglecting to fulfill any legal obligation. The legitimate reason for the repudiation of land freedoms is Article 18 of the UUPA (UU No. 5 of 1960). In Article 18 it is expressed that: in the public interest, including the interests of the country and state along with the normal interests of individuals, land privileges can be disavowed, by giving satisfactory remuneration and as per the technique controlled by regulation. Revocation of rights in the public interest is possible, but is bound by certain conditions, conditions which apart from being stipulated in article 18 are also in a law which will regulate the methods of revoking land rights. Article 18 emphasizes that revocation of land rights must be carried out in the manner regulated by law. The law in question is Law Number 20 of 1961 concerning "Revocation of Rights to Land and Objects on it" which came into effect on 26 September 1961[1].

Land disputes are disputes that arise due to conflicts of interest over land. Land disputes cannot be avoided nowadays. This requires improvements in the field of planning and use of land for the welfare of society and most importantly legal certainty therein. Land dispute resolution can be done through two processes. Namely litigation and non-litigation. The process of resolving disputes through the litigation process is resolving disputes through court. Meanwhile, non-litigation settlement is a dispute resolution process carried out outside of court. Settlement of land debate cases is managed in the Guideline of the Clergyman of Agrarian Undertakings and Spatial Preparation/Top of the Public Land Organization Number 21 of 2020 concerning Dealing with and Settlement of Land Cases. The law makes sense of that a land case is a question, struggle, or land case that is submitted to the Service of Agrarian Undertakings and Spatial Preparation/Public Land Organization, Territorial Office of the Public Land Organization, land office by its position to get taking care of and goal by the arrangements of legal guidelines. [11].

To exploit and use land as an agrarian resource in a fair, transparent, and productive manner, the existence of customary rights and customary communities needs to be taken into account. Apart from that, complete data regarding the existence, amount/area of land, and its control status must be complete and updated, so that a harmonious and balanced regional spatial plan will be created. Even if a dispute occurs over land in an area, it can be resolved immediately by local officials and the results of the dispute resolution will be more acceptable to the conflicting parties [2]. This condition will later create land law reform and at the same time the development of society. Land law reform

which is preceded by the development of land policy must begin with the development of land law as part of the national legal system. However, this development should still be guided by the basic principles contained in the UUPA as the main provisions of national land law.

#### **4 Conclusion**

1. Land plays a crucial role in the lives of the Indonesian people, so it is regulated in the Indonesian Constitution. For human life, land has a vital role because in reality there will be an eternal connection between humans and land. In this case, it can be described that the relationship between humans and land is very close because land is human life capital.
2. The large number of institutions that have the authority to resolve agrarian disputes, which often results in overlapping institutional policies or decisions, is one of the factors causing the lack of guaranteed legal certainty in resolving agrarian disputes in Indonesia.
3. Land and people can't be isolated from the time people are brought into the world until people bite the dust. The land is directed in Regulation Number 5 of 1960 concerning Fundamental Agrarian Essential Guidelines, which is otherwise called the Fundamental Agrarian Regulation (UUPA). Article 19 section (1) of the Essential Agrarian Regulation (UUPA) states "To ensure legitimate assurance "By the public authority, land enlistment is a done all through the area of the Republic of Indonesia as indicated by the arrangements managed by Unofficial laws."

#### **5 Suggestion**

1. It is expected that in land disputes, . People who feel that other people have harmed them and want to get their rights back must try through applicable procedures, either through court litigation or alternative dispute resolution (Alternative Dispute Resolution/ADR), and must not take the judge into their own hands (eigerichting). In court, case resolution begins by filing a lawsuit with the competent court. Settlement of legal disputes through court.
2. It is hoped that the establishment of a special agrarian court is a progressive step in creating agrarian justice, which is guaranteed in Article 33 of the 1945 NRI Constitution. If the concept of law as a means of social reform and development is linked to the practice of courts dealing with land disputes in Indonesia today, it is said that the judiciary, through its decisions, should be a medium for creating order in the land sector.
3. It is hoped that there will be a reform of land law which is preceded by the development of land policy, of course, it must begin with the development of land law as part of the national legal system. However, this development should still be guided by the basic principles contained in the UUPA as the main provisions of national land law.

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