

Juridical Analysis of Land Disputes Through The Role of Custom Institutions As Mediators

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Abstract. Command over land can be utilized in a physical and juridical sense. claimed land is leased to different gatherings and inhabitants who control it truly or the land is constrained by different gatherings without freedoms. For this situation, the land proprietor, in light of his juridical residency freedoms, has the option to request that the land being referred to is genuinely gotten back to him. The review utilizes a sort of examination approach regulating research. The methodology utilized is a legal methodology and a reasonable methodology. The wellspring of information utilized is auxiliary information. Information examination was done in a subjective distinct way. Concluding is carried out using the deductive method from the general to the specific, especially those related to the research topic, namely Juridical Analysis of Land Disputes through the Role of Customary Institutions. This research found that the imbalance between land supply and the need for land will automatically cause land problems as stated above. It is not uncommon for people to have land disputes that are owned or controlled, both between owners and even non-owners who want the land, as well as with other parties who have felt that the land once belonged to them, or even with the government.

Keywords: Juridical Analysis; Land Disputes; Customary Institutions; Mediators

1. Background

Land for human existence has a significant position on the grounds that practically all parts of life, particularly for the Indonesian public, can't be isolated from the presence of land, which truth be told can't be seen from a financial viewpoint however covers all life and jobs. The land has numerous qualities, so the terms country and country are utilized by the Indonesian nation to allude to the domain of the nation by portraying regions overwhelmed by sovereign land, water, and land. The significance of land for people as people and the state as the most noteworthy social association, is naturally directed in Article 33 passage (3) of the 1945 Constitution which expresses that: "Earth, water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people". As a development to Article 33 section (3) of the 1945 Constitution connecting with land or land, Regulation Number 5 of 1960 concerning Essential Agrarian Guidelines was given, which hereinafter became known as UUPA [1].

Command over land can be utilized in a physical and juridical sense. claimed land is leased to different gatherings and inhabitants who control it genuinely or the land is constrained by different gatherings without privileges. For this situation, the land proprietor, in light of his juridical residency privileges, has the option to request that the land being referred to is genuinely gotten back to him. Moreover, it is likewise realized that juridical command over land

doesn't give position to genuinely control the land being referred to, for instance, a leaser holding insurance freedoms over land has juridical residency privileges over land that is utilized as guarantee, yet actual control stays with the proprietor of the land. The origination of dominance of land privileges contains the thought of a progression of specialists, commitments, or preclusions for the holder of the option to take care of the land being guaranteed. Something permissible, obligatory, or prohibited to do which is the content of tenure rights is the criterion [2]. Developing a Non-Litigation Dispute Resolution Paradigm in the Context of Utilizing Alternative Business/Wealth Dispute Resolutions is the benchmark for differentiating between land tenure rights. Based on Law no. 5 of 1960 concerning Basic Agrarian Regulations or what is often called UUPA (Basic Agrarian Law) land tenure rights include: Business Use Rights (article 28 UUPA); Building use rights (article 35 UUPA); Right of Use (article 41); and other rights regulated by the UUPA and other implementing regulations. These rights contain authority and are granted by law to the holder of the right to use land that does not belong to him, namely state land or land belonging to other people, for a certain period and certain purposes. So the right to control the land is a permit from the state (as an organization of power) to use the land with certain authority[3].

In the 1945 Constitution Article 18 B section (2), it is made sense of that the state perceives and regards standard regulation local area units alongside the conventional privileges contained in that, Article 28 I paragraph (3) further emphasizes state recognition of cultural identity and traditional community rights. Based on this, customary law and its rights related to customary law have gained a primary place in the legal system in Indonesia. In principle, the recognition of customary law is certainly related to the recognition of all existing customary rights. One aspect of customary law that is important to study is customary land rights, especially property rights. Property rights are the strongest and most fulfilled rights of all existing land rights. The concept of a customary property right is formed from the rationale regarding the utilization of this right in the form of a scientific study of customary property rights. With time, to provide certainty about the status of ownership of the land parcels they are cultivating, the land cultivators are given a certificate of land ownership in the form of a land "rights" made or issued by the Kelurahan which is known to the Head of the District (District), and functions as a proof letter of land ownership. Efforts to resolve ulayat land disputes that occur in an alliance of all parties deal with these problems by deliberating with the assistance of the customary head as a mediating judge and a conciliating judge who will help both parties make decisions and restore balance in the partnership. The role of the customary head is a way of knowing the efforts made by the customary head in resolving customary land disputes that occur [4]. The aim is to find out the role of the customary head in solving customary land disputes, to find out the causes of customary land disputes and what obstacles are encountered in efforts to resolve the disputes that occur.

In solving the problems they face they have their way which they think is more effective. Even though there are court institutions provided by the Government to resolve disputes that arise, they choose another way, namely through out-of-court or non-litigation settlements. The non-litigation settlement was chosen by the community because in terms of time it can be realized relatively quickly, costs are low, and problem-solving is carried out in a peaceful way, namely through deliberations. Historically, the culture of Indonesian society has highly upheld the consensus approach. The development of customary law in Indonesia appears to be stronger than the reasons for the inefficiency of the judicial process. The settlement process through customary law is not something new in the cultural values of our nation which has a cooperative spirit [5]. Efforts to resolve communal land disputes that occur in an alliance of all parties deal with these problems by deliberating with the assistance of customary heads as mediating judges

and conciliating judges who will help both parties make decisions and restore balance in the partnership. Figures that often conflict over land disputes are from the community itself when they want to buy and sell with other parties, even between families regarding the division of land area that is not by expectations of those who get an inheritance, even though in customary land there is no right to buy and sell let alone be fought over because it has been by the distribution that has been done in front of the customary head. The role of the customary head in resolving customary land disputes that occur. Where the customary head provides a solution to solving the problems faced by conflicting communities due to communal land disputes so that the problems that occur do not go on continuously, let alone cause disputes between the two disputing parties[6].

2. Methodology

This sort of exploration is standardizing research. The methodology utilized is a legal methodology (rule approach) and a calculated methodology (reasonable methodology). The wellspring of information utilized is optional information. Information examination was completed in an illustrative subjective [7]. Concluding is carried out using the deductive method, namely concluding the general to the specific, especially those related to the research topic, namely Juridical Analysis of Land Disputes through the Role of Customary Institutions. Subjective information examination is done on the off chance that the observational information got is as an assortment of words and not in that frame of mind of a progression of numbers and can't be set up into classifications. Information can be gathered in different ways (perception interviews, archive cases, and tape accounts) [8]. Also, normally handled first prior to being utilized in subjective exploration including the consequences of interview records, information decrease, examination, information translation, and triangulation.

3. Result And Discussion

3.1. Juridical Analysis of Land Disputes Through the Role of Customary Institutions as Mediators

The imbalance between land supply and the need for land will automatically cause land problems as stated above. It is not uncommon for people to have land disputes that are owned or controlled, both between owners and even non-owners who want the land, as well as with other parties who have felt that the land once belonged to them, or even with the government. Disputes can arise due to unclear land ownership status, illegal land tenure, and so on. Legal certainty about land is something that absolutely must exist to maintain the stability of land use in development and to realize legal certainty over land ownership for fellow people who want to have a relationship with the land. The legal certainty referred to in land registration will result in the provision of a letter of proof of land rights (certificate) by the BPN as a state administrative agency to those who are entitled and can be relied on by the owners of their property to act as a strong means of proof of land rights. that person [9].

Settlement of customary land disputes in those carried out through the "Mediation" route is generally carried out through customary courts or village courts which are commonly known as "*Kerta Desa*". The settlement of customary land disputes that are pursued through the customary court (*kerta desa*) is generally led by the leader from the *Pakraman village* (in this

case *Bendesa Adat*) himself. *Pakraman* village leaders can also be called "*prajuru desa pakraman*" who have the duties and powers of witnessing marriages, arranging death ceremonies, holding regular and incidental Banjar (*sangkepan*) meetings, holding work services (*ngayah*) for ceremonial purposes, and resolving conflicts related to issues marriage, divorce, inheritance, and neighborly conflicts regarding stray cattle, yard boundaries, and others [10]. Elective settlement of land debates through Intervention is for sure normally utilized in common case questions, particularly standard land questions. The settlement of land debates is done by the experience of intervention professionals and master research. The shortfall of guideline of the intervention cycle in regulation is a strength as well as a shortcoming of the intercession cycle which is essential for public activity, will always be present along with human existence in carrying out their activities which are always in contact with each other individually or in groups. Moreover, disputes related to land issues. Because land is important for social life.

There are several ways to resolve disputes, especially land disputes, namely: Dispute Resolution Through Courts (Litigation) Basically, the parties to the dispute have options in choosing procedures, institutions, and settlement models regarding their disputes. One of the institutions that are formally considered the most representative for resolving a quarrel is a court institution, both in the general court, state managerial court, military court, strict court, and protected court. It is accentuated in Article 2 of Regulation Number 4 of 2004 concerning Legal Power [11].

3.2. Optimizing Land Dispute Resolution through the Role of Traditional Institutions as Mediators

The study of dispute resolution outside the court or Alternative Dispute Resolution or often known as Alternative Dispute Resolution (hereinafter abbreviated as ADR) in Indonesia is considered interesting and significant when it is associated with the views of the Indonesian political elite and the thoughts of some Indonesian legal experts who wish to actualize various institutions or values that live in the customary law community to answer various societal problems of the Indonesian nation today. Deliberation to reach a consensus is a process of dispute resolution and decision-making that is considered embedded in various customary law communities. Article 1 point 10 of Regulation Number 30 of 1999 characterizes an elective debate settlement as a foundation for resolving questions or contrasts of assessment through methods settled upon by the gatherings, to be specific out-of-court settlements via Interview, Exchange, Intercession, Mollification, or Master Appraisal. It is completely free will of the parties. The freedom to choose the form of settlement that distinguishes between dispute resolution outside the court and dispute resolution through the court [1].

In this way, the presence of "Intervention" as a type of elective question goal component (Elective Debate Goal) isn't something unfamiliar, in light of the fact that compromise is important professionally normal practice, or possibly, has existed in the public eye. This condition can be followed from the way that individuals' lives are more situated towards equilibrium and agreement, the substance of which is that everybody feels regarded, esteemed, and nobody's inclinations are crushed. That equilibrium and concordance have encountered disintegration during the interaction. There are many legal considerations in resolving customary land disputes which are often referred to as customary land rights. In the Public Guidelines, Ulayat Freedoms have additionally been directed in the Guideline of the Pastor of Agrarian Undertakings to the Public Land Organization Number 5 of 1999 as per Article 1 passage (1) what is implied is the power that as per standard regulation has a place with specific standard regulation networks over specific regions which comprise the residing climate. its residents to exploit regular assets, including land, an in the area, for their endurance and

presence, emerging from an outward and internal relationship that has been genetic and continuous between the standard regulation local area concerned. Various considerations in resolving disputes, especially customary land disputes, make the disputing parties think about various ways so that their disputes can be resolved with the hope that their disputes will be resolved in a short time, the costs incurred are relatively much cheaper, and more efficient when compared to resolving disputes in Court [5]. For this reason, people tend to choose to resolve their land disputes through alternative dispute resolution, namely through mediation. So perplexing is the issue of standard land in Indonesia and there are not many composed rules with respect to it, Intercession is an option in contrast to settling standard land questions.

Customary lands that are still in the form of plains or vacant land if they are not followed by clear control both physically and internally or juridically, give the impression of being state customary rights which are currently better known as "state lands" even though the land is in the area (*wewengkon*) traditional village. If this ambiguity is then used physically by the community individually or in groups for years, it will be able to create an inner attitude to permanently be able to control the land that is used, especially in the development of the land in question has a promising economic value. So that this often causes disputes between traditional villages and communities or traditional villages with other traditional villages. Mediation is a process of resolving disputes with a third-party intermediary (mediator), namely a party who provides input to the disputing parties to resolve their dispute [6]. Mediation has been applied to the settlement of land cases using third parties, to convey suggestions desired by the parties that are unable to convey themselves.

In mediation, the mediator provides an innovative solution through a form of settlement that cannot be carried out by the court, but the disputing parties obtain mutually beneficial benefits. Talking about Mediation in Court, after the mediator who will handle the case has been selected, the disputing parties will go through the stages of the Mediation process as stipulated in Article 13 PERMA Number 1 of 2008, namely: Inside a limit of 5 (five) working days after the gatherings select a concurred middle person, each party can submit case synopses to each other and the go between [9]. Inside a limit of 5 (five) working days, after the gatherings neglect to choose a middle person, each party might present a resume of the case to the delegated go between judge. The intercession cycle endures a limit of 40 (forty) working days after the middle person is chosen by the gatherings or designated by the director of the board of judges as alluded to in Article 11 sections (5) and (6). In view of the understanding of the gatherings, the intervention time frame can be reached out for a limit of 14 (fourteen) working days from the finish of the 40 (forty) day term alluded to in section (3). The time of the intercession cycle does exclude the time of case assessment. In the event that essential and in view of the understanding of the gatherings, intervention can be done remotely utilizing a specialized gadget[4].

4. Conclusion

1. An imbalance between land supply and the need for land will automatically cause land problems as stated above. It is not uncommon for people to have land disputes that are owned or controlled, both between owners and even non-owners who want the land, as well as with other parties who have felt that the land once belonged to them, or even with the government.
2. Control over land can be utilized in a physical and juridical sense. claimed land is leased to different gatherings and occupants who control it truly or the land is

constrained by different gatherings without privileges. For this situation, the landowner, in light of his juridical residency freedoms, has the privilege to request the actual return of the land being referred to him.

3. In principle, the recognition of customary law is certainly related to the recognition of all existing customary rights. One aspect of customary law that is important to study is customary land rights, especially property rights. Property rights are the strongest and most fulfilled rights of all existing land rights.

5. Suggestion

1. In taking care of a crook case, the party liable for policing lay out great coordination with the goal that issues don't happen from now on, for example, the timeframe the case is dealt with which brings about the rule of a quick, straightforward, and minimal expense preliminary not being understood.
2. Optimizing the existence of stronger benchmark boundaries, so that they are not easily shifted or lost so that the sign of land ownership becomes more certain
3. It is better if there are considerations in resolving disputes, especially customary land disputes, making the parties to the dispute really think about various ways so that their disputes can be resolved with the hope that their disputes will be resolved in a short time, the costs incurred are relatively much cheaper and more efficient if it compares resolving disputes in court.

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