

LAND ASSET DISPUTE SETTLEMENT SCHEME LINKED TO THE PRINCIPLE OF JUSTICE

Riza Zulfikar

Program Studi Ilmu Hukum, Universitas Langlang Buana, Bandung

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Abstract. One of the existing land problems is land problems arising from the control and management of land by the Regional Government, both land that has become an asset and land that is recognized as Regional Asset Land. The purpose of this study is to understand the provisions of the law governing the authority of local governments in resolving regional land asset disputes. This dissertation research is normative legal research through statutory, conceptual, case and comparative approaches as well as the application of legal theory in assessing legal opportunity, justice and legal certainty, in the mechanism and process of settling disputes over land rights over assets. The results of the study show that the settlement of land asset disputes is one of the concurrent government affairs between the Central Government and Regional, Provincial, Regency/City Governments based on the principles of accountability, efficiency and externality, as well as national strategic interests. In settling disputes over land assets, the Regional Government is obliged to use and utilize and manage the land by securing and controlling the assets, both administratively and juridically according to the principles of justice and legal certainty. A comprehensive and effective mechanism is needed to prevent and resolve disputes over state/regional property land through an integrated, integrated and coordinated resolution of state/regional property land disputes between Ministries/Agencies, Regional Governments, Law Enforcement Officials, which is manifested in the form of a joint agreement that set forth in Regional Regulations, Governor/Mayor/Regent Decisions regarding Integrated and Coordinated Land Dispute Settlement Teams, so that joint agreements can encourage the recognition of these institutions for the results of asset land dispute resolution based on authority in the Dispute Settlement Scheme.

Email : rizazulfikar.bdg@gmail.com

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1. INTRODUCTION

Land as a legal object (rechtsobject) has material rights in the form of absolute rights, namely the legal relationship between a legal subject and a legal object which creates an obligation to respect this legal relationship. Hak arises when there is a legal event which eventually creates a conflict or dispute. In the civil law system, in terms of material rights, land is classified as immovable tangible object (lichamelijke zaken) and has material principles including the principle of forced law, the principle of transferability, the principle of individuality, the principle of totality, the principle of priority, the principle of mixing, the principle of arrangement, the principle of publicity and the principle of the nature of the agreement.

Land within the territory of the Republic of Indonesia is one of the main natural resources, apart from having deep spiritual values for the people of Indonesia, it also functions very strategically in meeting the needs of the country and its people which are increasingly diverse and increasing, both at the national level and in relation to the international community. Thus the importance of the use of land for human life and life, the intervention of the State through its apparatus in the land law order is absolute.

This was followed up with the provision of a legal basis for authority to act in regulating everything related to land, as formulated in Article 33 Paragraph (3) of the 1945 Constitution of the

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Republic of Indonesia, namely: "Earth and water and natural resources contained it is controlled by the State and used for the greatest prosperity of the people". Article 1 Paragraph (2) of the Basic Agrarian Law Number 5 of 1960, namely "All the earth, water and space, including the natural wealth contained therein within the territory of the Republic of Indonesia as a gift from God Almighty, is earth, water and space the Indonesian nation and is a national wealth." Therefore, with the control of land, water and natural resources by the State, distribution of the results of the management of this land, water and natural wealth can be achieved. Within the framework of agrarian affairs, this principle was later elaborated in Law Number 5 of 1960 concerning the Basic Agrarian Regulations.

Thus, regional governments with the power of law can have HMN authority which is held and placed on their regional heads, and for customary community alliances can be given HMN, as long as the customary community still exists and the ulayat rights of the community are acknowledged. Implicitly, the provisions of Article 2 Paragraph (4) UUPA explain that land affairs are the authority of the central government. However, authority can be delegated to regions by law.

The land in question is not to regulate from all aspects but land in a juridical sense, which is called the right to control over land. One of the rights to control land in the UUPA is the state's right to control land which is contained in Article 2 of the UUPA and its implementation can also be delegated to local governments. But the reality does not change the authority of land affairs. The issuance of several related regulations in the land sector has led to various interpretations of what matters fall under the authority of the central government, provincial government and district/city government.

Various land conflicts occur frequently. The mandate of the law that prioritizes the interests of the people must eventually be eroded by investment and commercial interests that benefit some groups so that the interests of the people at large which should have top priority end up being neglected. Apart from that, disputes over authority in the land sector involving government agencies since the enactment of the regional autonomy era in recent years have become an issue that deserves close attention. In the UUPA, the settlement of land disputes is carried out by the government. However, in terms of authority in the land sector, the enactment of regional autonomy through Law Number 23 of 2014 also gives very large powers to each region to manage its own household affairs including settling disputes over authority in the land sector. Here it can be seen that the resolution of disputes over land authority can be carried out by both the government and local governments.

Law Number 32 of 2004 which gives enormous power to each region to manage its own household affairs has led to various interpretations of the authority in the land sector. The granting of autonomy in the land sector to districts/municipalities constitutes a basic change in the implementation of national land law, but still has to pay attention to the conformity of regulations so as not to create new, more complex problems.

With the enactment of Law Number 23 of 2014, there was a norm conflict with the UUPA. UUPA emphasizes that authority in the field of land is centralized in the Central Government, while Law Number 23 of 2014 emphasizes that authority in the field of land services is decentralized from the Central Government to the Regional Governments. In fact, there is overlapping land dispute resolution activities between the government (BPN) and local governments. This fact indicates that land disputes are handled by the government and regional governments. Because of this, it is urgent to carry out studies related to the authority of the regional government to resolve land disputes.

Factors that give rise to land disputes and conflicts, including the ratio of land area and population, inequality of control over land ownership, abandoned land, perception and awareness of the law, negligence of officials, land administration system, pluralism of rights, court decisions, legislation, no management of land assets of government agencies, as well as synchronization of central, provincial and regional policies.

West Java, which consists of 27 districts and cities, owns and controls land assets. However, the management of land assets is not free from problems, especially related to land rights and this always happens every year which results in disputes. These problems include problems in land rights disputes that have or have not been certified. Several cases have been litigation in court. However,

with various process stages through which the problems related to the dispute can be resolved. Settlement of land rights issues needs to be carried out in accordance with applicable laws and regulations. Based on the things mentioned above, the researcher feels the need to conduct research and draw the problem "How is the authority of the Regional Government in resolving land asset disputes linked to the principle of justice".

2. METHOD

The research was carried out in an analytical descriptive manner, namely in the form of describing, studying, and analyzing the applicable provisions where this method has the aim of providing a systematic, factual and accurate picture of the research object itself. This study uses a normative juridical approach, which is a type of approach using statutory provisions applicable to a country or a doctrinal legal approach, namely legal theories and opinions of legal scientists, especially those related to the issues discussed.

The juridical-normative approach used in this research is the approach through positive law. The approach to the problem will then be sharpened by a conceptual approach, which is an approach that is carried out using concepts understood from the thoughts of experts or experts in fields related to the issues discussed.

3. RESULTS AND DISCUSSION

The substance of regional government authority includes all government sectoral authorities, except for authority in the areas of defense and security, justice, monetary and fiscal, and religion. Through the authority in the land sector which is as wide as real and accountable to the regions by granting their rights and obligations, the local government through its policies and regional apparatus can effectively and efficiently organize, manage and utilize the lands in the regions in order to improve the welfare of the community because the land sector is a source of finance for the region (explanation of Article 2 paragraph (4) of the Basic Agrarian Law/ UUPA).

Land has economic rights for everyone, and therefore it is prone to creating conflicts or disputes. The emergence of land disputes stems from a complaint by a party (person or legal entity) which contains objections and demands for land rights, both regarding land status, priority and ownership, in the hope of obtaining administrative adjustments in accordance with the applicable legal provisions. This land dispute will eventually lead to the demand that "someone" is more entitled than others (priority) over the disputed land. From the standpoint of the conflict approach, the term land dispute is categorized as manifest conflict and emerging conflicts. In a dispute, the parties have been identified, are dealing directly in an ongoing or ongoing dispute and a solution that satisfies both parties is not reached (deadlock). These land disputes which have been and are currently taking place, may also continue to take place if no objective solution is sought.

Regional Assets Land must be differentiated from State Land. This is important, because there are still many different perceptions that confuse the two meanings. Regional Asset Land was born out of State Land. Regional Asset Land and State Land were born from the concept of State Ownership Rights as stipulated in Article 33 paragraph (3) of the 1945 Constitution which states that; "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

In the development of the use of the term government land, the term government land is often confused with the term state land, as exemplified by Maria SW. Sumardjono, regarding the Pertamina land case in Plumpang which was being sued by the landlords.

However, there has been an internal shift in the UUPA namely; a) The shifting of the principle of public legal relations (publiekrechtelijke) between the state and/or regions and land, into a relationship that is private legal relations (privaatrechtelijke) between the state and/or regions and land. Internal shifts occur due to internal shifts in the UUPA, namely; a) between UUPA and laws and regulations outside UUPA; b) and the farther the shift occurs in the subjects of implementing State

Ownership Rights over land, Use Rights, Management Rights with public law aspects, shifting to private law aspects in statutory regulations outside the UUPA.

The land issue reveals that the emergence of various land problems stems, among others, from confusion in the regulations and weaknesses in implementing various provisions in practice. The issue of guaranteeing legal certainty over ownership of land rights is a very important legal issue because it can trigger various problems if the government is not responsive in solving it.

Justice is the glue that binds civilized society. The law was created so that every individual member of society and state administrators take necessary actions to maintain social ties and achieve the goals of life together or vice versa so as not to take an action that could damage the order of justice. If the ordered action is not carried out or a prohibition is violated, the social order will be disrupted because justice is damaged. To restore the orderly life of society, justice must be upheld. Each violation will receive a penalty according to the level of the violation itself. According to Radbruch, law as the bearer of the value of justice is a measure of the fairness and unfairness of the legal system. Not only that, the value of justice also forms the basis of law as law. Thus, justice has a normative and constitutive nature for law. Justice is the basis for every positive law with dignity.

Justice is the moral foundation of law and at the same time the benchmark for a positive legal system. It is to justice that positive law originates. Meanwhile, constitutive value, because justice must be an absolute element for law as law. Without justice, a rule does not deserve to become a law. Gustav Radbruch said that the law is the bearer of the values of justice. Because justice has both normative and constitutive properties for law. Justice must be based on positive law and must also be an absolute element of law, without justice, a rule does not deserve to be law. However, when referring to the principle of priority, Gustav Radbruch argues that in order to apply the law appropriately and fairly in fulfilling the objectives of the law, what is prioritized is justice, then benefit, after that legal certainty..

Studies on justice are considered very general and broad. Therefore, it is necessary to have a more concise limitation regarding the concept of justice, especially the concept of justice in Indonesia. Indonesia, which adheres to the philosophy of Pancasila, has its own concept of justice, namely justice with dignity, as stated by Teguh Prasetyo. Dignified justice is "justice with dignity looking at the development of a legal system that is unique to Indonesia. How does the positive legal system give its identity, in the midst of a very strong influence from the existing world legal systems and very hard as if it is carrying it into the Indonesian nation's way of judging.

The theory of dignified justice records an attitude in developing a legal system based on Pancasila. It was argued that the Indonesian legal system does not absolutely adhere to the legal system of the statute law, and also does not absolutely adhere to the common law system, even though many support the opinion that the judge made law system upholds the dignity of judges as an institution or institution that creates law.

However, a prominent feature of the theory of dignified justice is that in carrying out investigations to find legal principles and principles through the layers of jurisprudence as stated above, the theory of dignified justice maintains a balance of different views on the layers of jurisprudence. as a conflict. The theory of dignified justice keeps internal conflicts as early as possible (conflict within the law).

According to John Stuart Mill, justice is rooted in the human instinct to reject and repay the damage suffered, both by oneself and by anyone who has sympathy from us. The feeling of justice will rebel against damage, suffering, not only on the basis of individual interests, but more broadly than that to other people whom we equate to ourselves, so that the nature of justice includes all moral requirements that are essential for the welfare of humanity.

The local government has the authority to regulate land relations in accordance with the Law on Regional Government, so one of the powers of the local government that is delegated is the authority in the field of land. Regional Government is an integral part of the Unitary State of the Republic of Indonesia as a party that has been given the authority to provide services in the land sector, including in this case making efforts to support the creation of legal certainty over land tenure and ownership by

regulating the relationship between the subject and land as an object so that Land disputes that occur in the future can be resolved in accordance with their authority in managing, securing and controlling regional property/assets in the form of land.

The National Land Agency has the authority to administer land registration in Indonesia in the framework of creating legal certainty as mandated by the Constitution and the LoGA, but this does not mean that efforts to achieve legal certainty are solely the responsibility of the National Land Agency. Legal certainty of certificates of land rights cannot be separated from the process and mechanism for issuing such certificates, including in this case the truth of the subject to which the rights will be granted and the validity and validity of the basic documents for the issuance of the certificate of rights.

The basis for issuing rights to land originating from state land is a document in the form of a statement from the local government that the land is not former customary land, information on the history of the land to determine consecutive tenure for 20 (twenty) years and information on land ownership by the applicant. These three documents are documents issued by the local government, in this case the village/kelurahan government and sub-district government, so that it can be said that these documents are issued by the regional government through instruments at the village/kelurahan and sub-district levels. Not being careful in issuing these documents can lead to problems and even cases.

Determining the status of land in a certain area is very important because a mistake in determining the status of land will lead to mistakes in the registration of rights, given that there are differences between the registration of land originating from state land and land originating from land formerly owned by adat. Therefore, the role of the regional government through the village head/lurah and sub-district heads is very urgent to determine the correctness of the land status in their area. In addition to determining the truth of land status in the area, local government officials have a very important role in determining the truth of land history and land tenure in an area. The truth of this history of land and tenure can only be ascertained if there is a system of recording or bookkeeping of tenure and its transitions and if these books or records do not exist it will be difficult to determine the actual history of tenure, especially if there is a change in village/kelurahan or sub-district government officials, then Conditions often arise in which two different Lurah give documents of ownership to two different people over the same location or parcel of land.

In relation to control, ownership, use and utilization of land which constitutes state land, apart from legal certainty, it is necessary to pay attention to the factor of justice. Justice is universal and is a dynamic process and always moves among various factors, including equality itself. Documents on state land tenure apart from containing certainty on land status, history of the land, current tenure, it is also important to pay attention to justice for the community, among others by providing limits on state land tenure to one individual so as not to cause an imbalance in control.

Realizing legal certainty, justice and benefits is an important part of the control over and administration of state lands in an area or a region. Legal certainty in this case relates to the correctness of documents related to the control of state land by one party. Justice relates to the determination of the limits of state land tenure by one party so that there is no inequality of control. Expenditure is closely related to the regulation of state land tenure which takes into account the benefits of such control for individuals, communities and for the area itself.

Efforts to realize the three things mentioned above cannot be implemented if they are not supported by a system and mechanism for regulating state land tenure which can be used as a reference by the village/kelurahan government, and sub-district heads in carrying out these arrangements so that they are related to state land arrangements that have not been attached to rights, it is important I hope the local government creates a legal umbrella for its officials so that they can make better arrangements and provide legal certainty and there will be no differences in interpretation that lead to differences in actions and impact on uncertainty for the community.

The legal umbrella in this case can be in the form of a Regional Regulation which provide arrangements regarding the control of state land that has not been attached to certain areas. In these local regulations, there are points that ideally become regulatory points, namely:

- a. Determination of locations or areas or points of land parcels in a village/kelurahan area which are land with state land status.
- b. Arrangements regarding the issuance of documents that provide state land labels on designated land parcels.
- c. Arrangements regarding the identification of control over state land in a village/kelurahan area, free state land, controlled state land, state land which is state asset, whether registered or not registered.
- d. Provision of documents to parties who physically control state land in a kelurahan area where these documents will also change hands to parties who later receive the transfer of rights over said state land and will become documents of the National Land Agency when the rights to the land are registered later. This document contains the land area, land boundaries, and land use.
- e. The tenure document referred to in letter d has a quote at the Village/Kelurahan office accompanied by a book which records transfers or data changes to the land and this book will later become the basis for the Village Head/Lurah to determine the history of the land for which rights will be applied for to the National Land Office.
- f. Carry out routine monitoring of state land tenure in their area to prevent transfer to other parties without the knowledge of local government officials. With these efforts, it is hoped that control over state land can be more orderly and orderly so that regional government officials in issuing documents relating to the process of issuing rights in the future will not cause problems or disputes.

4. CONCLUSION

Settlement of Asset Land Disputes is one of the concurrent government affairs between the Central Government and Regional Governments, based on the principles of accountability, efficiency and externality, as well as national strategic interests. In settling disputes over land assets, the Regional Government is obliged to use and utilize and manage land by securing and controlling assets, both administratively and juridically according to the principles of justice and legal certainty. Settlement of asset land disputes that occur and through mediation for their settlement contains a number of weaknesses; Thus it is important to establish a special and independent judiciary to handle land disputes, one of which can be in the form of an Ad-Hoc land mechanism, in which the panel of judges consists of ad-hoc judges and career judges. In addition, there is a need for a comprehensive and effective mechanism for preventing and resolving state/regional asset land disputes through an integrated, integrated and coordinated state/regional asset land dispute settlement between Ministries/Agencies, Regional Governments, Law Enforcement Officials (Attorney and Police), which is manifested in the form of a joint agreement set forth in Regional Regulations, Governor/Mayor/Regent Decrees concerning the Integrated and Coordinated Land Dispute Resolution Team, so that a joint agreement can encourage the recognition of these institutions regarding the results of asset land dispute resolution. based on authority in the Dispute Resolution Scheme.

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