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An Idea of Forming the Commission of Agrarian Dispute Resolution in Indonesia

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ABSTRACT

The research focuses on the idea of forming a commission for solving Indonesia's agrarian disputes. For a legal certainty of land rights, Article 19, Indonesian Law of Agrarian Basic Principles (UUPA), and article 32, Government Regulation (PP) of 1997 state that a certificate is strong and legal evidence of right. If there is an appeal, it can be processed through a judiciary, namely the Commission of Agrarian Dispute Resolution. The research applies a normative research method with qualitative secondary legal material as the sources. The research shows that a land certificate issued for evidence and legal certainty can be canceled by the State Administrative Court (PTUN) if a subjective flaw is found in the process of issuing the certificate. The court with the competence to solve the land dispute is the State Court (PN) and State Administrative Court (PTUN). PN is authorized to scrutinize, adjudicate, and settle land disputes in Indonesia from the perspective of the civil aspect and its relation to rights, while PTUN is authorized to scrutinize, adjudicate, and settle from the perspective of the administrative side or the registration procedure of the land. In solving land disputes in Indonesia, the two courts mentioned have not tackled the problem optimally. It can be seen from the high number of unsolved land dispute cases and cases that are still in the resolution process.

Keywords: *Committee of Dispute Resolution, Certificate, Land Dispute.*

I. INTRODUCTION

The land is meaningful and essential for human lives. In reality, the relationship between humans and land can be seen from human efforts to use and give values to the land, ranging from social, economic, cultural to religious values. Land, which previously was seen socially, covered by customary laws, has been seen economically. This is the background for which The United Nations stated that current land issues are issues related to communities and have developed into economic issues [1]. Therefore, the land-related problem is included in Article 22, Paragraph 2, the Indonesian Constitution of 1945. The article has been the philosophical basis of land regulation in Indonesia, specified in Law Number 5 of 1960 regarding Agrarian

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Basic Principles, which is subsequently well known as the Law of Agrarian Basic Principles (UUPA).

UUPA wishes that the people can have land as their agrarian livelihood. Under the scope of land rights, as written in Article 16, Paragraph 1; Article 4, Paragraph 1; and Paragraph 19, UUPA, a registration complying with the Government Regulation, Number 24 of 1997, regarding Land Registration, is a must to guarantee legal certainty and legal protection. The institution for land registration, which is “rechts kadaster” in nature, has provided flexibility for people who have the right of lands but have not registered yet to register their rights through the National Land Agency (BPN), with the help of Land Title Registrar (PPAT) and other officials figuring in performing other tasks [2]. In land-related problems, apart from the registration process, other things that should be a concern is disputes due to problems in the process of attestation of the land object, which can be solved by a discussion or through the judicial system [3].

Generally, a land dispute occurring in Indonesia can be grouped into four classifications of problems: problems related to acknowledgment of land possession, transferring land rights, imposition of rights, and occupation of formerly private land [4]. In contrast, from the disputing subjects, land disputes can be grouped into a dispute among residents, between local government and residents, and disputes related to natural resources management [5].

Principally, a choice to settle a land dispute can be made through litigation in the court or cooperation outside the court. The process to solve this dispute through litigation can be done with, for disputes among residents, State Court (PN) and, for disputes in state administrations, State Administrative Court (PTUN). The problem is, juridically, a land dispute is not simple. A mapping of the origin of land disputes is needed. A land conflict in society is a reason judiciary as an institution decides the land right of the disputed land.

Judiciary is demanded to provide legal certainty towards their rights which conflict correctly and fairly. However, in solving land disputes in Indonesia, PTUN and PN have not been able to address the problem optimally. It can be seen from the high number of land disputes which is very high. Based on statistics from the Ministry of Agrarian Affairs and Spatial Planning of Republic Indonesia issued in January 2020, Indonesia’s number of land disputes in 2019 accounted for 4.431 cases, with 3.230 cases have been solved and 1.201 cases until now have not, and in the process of resolution.

The number originates from unresolved land disputes both in PTUN and PN. Consequently, the lands have no legal certainty since the process has gone too long. In addition, the resolution

of land disputes nowadays adopts a duality of jurisdiction system, which may even produce new problems [6]. There are a few cases in which there is dualism in the decision of PTUN and PN toward the same object of the land dispute. As a result, the resolution process becomes not comprehensive. A special judiciary is needed to deal with this problem to reduce the number of Indonesia's land disputes [7].

In settling land disputes, those who adjudicate land disputes in PTUN and PN are judges with general law knowledge, while land disputes are special cases that need special legal knowledge regarding land. If there is a land dispute processed in the court, judges with land or agrarian knowledge should scrutinize and adjudicate the issue for justice seeker to receive their rights [8]. Those judges will be able to alter laws that have prevailed now to adjust them to people's interests which is dynamic and fluid. Considering the problems from the land disputes, the Commission of Agrarian Dispute Resolution is needed to establish efficiency and effectiveness in solving land disputes in Indonesia and create justice for the Indonesian people in general and justice seekers in land disputes in particular

II. LAND RIGHT

Land rights are manifold. Firstly, the land rights of Indonesia as a nation; this right is the highest land right and a manifestation of all citizens of Indonesia. However, the right of a nation also has a civil element. This is because the land is national wealth which requires civil elements, namely the relationship between the nation of Indonesia and the shared land. Secondly, right from the state. The right and the mandate bearer in its highest level in controlling land rights are delegated to the State Republic of Indonesia. UUPA gives authentic interpretation regarding the right to control from the state as a relation that is only public. Consequently, there will be no more other interpretations besides the interpretation of control in UUD 1945. As in customary rights, the delegation of the nation's rights with legal and public aspects does not include and affect its legal aspect, which has a civil aspect [10].

Thirdly, customary right of customary law includes two elements, ownership (not ownership in the perspective of technical juridical) and responsibility to manage, plan, and lead, which in modern law is a part of public law. Customary rights have been lifted to the right of nations as stated in Article 3 of UUPA. Fourthly, primary rights as land rights that can be owned or controlled directly by someone or a legal entity that is valid for a long time and can be transferred to other people or successors or heirs, such as ownership right, cultivation right, building right, and usufructuary right which the state gives (Article 6, UUPA). Fifthly, secondary rights as temporary land rights. This is because the right is limited and owned by

other people as stated by Article 53 UUPA which regulate temporary land right, such as lien, profit-sharing rights, staying rights, renting rights, water use right, maintenance and collection of forest resources.

The required procedure to own land depends on the status of the available land. First, it should be known whether the land is state land. If it is state land, the procedure is through the right application mechanism. If the land available is right land (primary rights), the procedure is through agreement with the owner or transfer of right (sell and purchase, gift, or exchange), exemption of right, or revocation of right with the new right application (dependent on their interests). However, the procedure should also consider the aim and the use of the land (the planology of the region) regulated by the regional government according to the procedure of having land rights.

III. RESEARCH METHODOLOGY

The research specification is normative juridical [11]. The approaches that are used are historical in the context of statutory and statute approach with a case of one law. The historical approach was used to analyze relevant laws and regulations. The legal resource used is primary and secondary legal materials [12]. The researcher used a technique of legal material collection consisting of document or literature studies and interviews. Then, the legal material collected was classified into eight categories of problems analyzed in the research. Meanwhile, classification of the legal material can be distinguished into categories (1) relevant legal materials with land disputes through Commission of Agrarian Dispute Resolution and (2) relevant legal materials with the concept of land dispute resolution through Commission of Agrarian Dispute Resolution. The research performed a prescriptive analysis through legal interpretation toward available legal materials based on the clarification.

IV. RESEARCH RESULTS

(A) Dispute resolution through litigation and non-litigation

Land dispute resolution can be made through litigation and non-litigation attempts. Litigation can be performed by PN and PTUN. Meanwhile, non-litigation is done through BPN and court. State Court has the authority to scrutinize, adjudicate, and settle land disputes in Indonesia from civil aspects [13]. Land aspect from civil aspect judged by PN is a dispute that has a relationship with the validity of land right, right exemption toward land, right transfer toward land, violation toward rules by officials, such as state agency or state administrative officials that have involvement with land dispute [14]. Meanwhile, PTUN has the authority to scrutinize,

adjudicate, and Settle land disputes in Indonesia through administrative aspects [15].

In settling a land dispute in Indonesia, PN and PTUN should provide regulations ensuring that the land dispute resolution process can give justice seekers legal certainty, merits, and justice. Some ways are ensuring that the process and the verdict are fair, the cost is inexpensive, and the time needed is as short as possible. Consequently, PN and PTUN can give effective, efficient, total, and final land dispute resolution and satisfy disputed parties [16]. However, due to the duality of the jurisdiction system to solve land disputes in Indonesia, PN and PTUN have not been able to solve the problems optimally. It can be seen from the high number of land dispute cases.

Duality of jurisdiction sometimes engenders a new problem: the possibility of two courts' institution decisions, PN and PTUN, that are different or contradictory regarding land disputes for the same land object. If it happens, it will cause legal problems regarding the implementation of the decision. It will also affect the legal products of the land itself, such as the land right of disputed land objects [17]. Therefore, a special court dealing with land disputes is needed.

As stated by a judge of North Jakarta State Court, Djuyamto, S.H., land disputes never end highly related to the people's substance, structure, and culture. In accordance with what is initiated in legal system theory by Lawrence M. Friedman, the success of law enforcement is highly affected by the law, namely the substance, structure, and culture of the people. That three-factor should go hand-in-hand and harmoniously to achieve the objective of the law [18].

(B) Commission of Agrarian Dispute Resolution

Based on Montesquieu, the power to defend laws and regulations or legislative power is under the judiciary, independent of legislative and executive powers. Judiciary is anything or process performed in the court and plays a role in scrutinizing and adjudicating cases by applying and finding laws "in concreto" (the judges apply regulations towards things that are real and faced to them to be judged and adjudicated). The aim is to maintain and guarantee that material law is obeyed using procedural methods determined by formal laws. Meanwhile, courts are agencies or official institutions that carry out the judiciary system by scrutinizing, judging, and adjudicating cases. The form and system of judiciary based on procedural laws valid in Indonesia is done to solve disputes and find justice in civil, labor, administration, and criminal cases. Each person has the same right to bring their cases to court, whether to solve a dispute or look for protection in court for those accused of committing a crime. Laws Number 2 of 1986 regarding General Justice, which has been changed with Laws Number 8 of 2004

regarding Changes of Laws Number 2 of 1986 regarding General Justice, regulate the justice environment under the Supreme Court, which is one of the executors.

Dissatisfaction toward the performance of state institutions has given birth to a few commissions. Unfortunately, in the context of state administration, the foundation and conception of the establishment of the commissions are not clear and require rearrangement. Existing institutions have not been ready to face the demands. Consequently, some commissions are formed by the state to fulfill the demands hopefully.

Against that background, the Consortium of National Law Reformation (KRHN) proposes a few recommendations. Firstly, there should be a rearrangement of the existing commission by analyzing whether the commission is effective for legal reformation and update in Indonesia. Secondly, there should be the same standard in the recruitment process of the commission and their accountability to the public. This step is necessary since all commissions are formed to fulfil people's interests. Thirdly, there should be regulations that regulate the definition and roles of government institutions. This is because some state commissions claim themselves as state institutions. In addition, some commissions seem to have relatively similar functions and overlap with each other. Their distinctions should be made distinct and refer to the doctrine of *trias politica* embraced by Indonesia. Responding to the above recommendation, an expert in statutory studies of Universitas Indonesia, Maria Farida, states that the initiation of regulation regulating state institutions is critical. This is because there is ambiguity regarding which one is a state institution and which one is not. Additionally, for this expert, some currently recognized institutions seem to have the same and equal authorities, although if further tracking is done regarding its legal foundation, these state institutions can be seen as different.

Commission of dispute resolution figure in implementing laws and regulations. It also aims to solve disputes. The responsibility of the Commission of Land Dispute Resolution is receiving, analyzing, and adjudicating applications proposed by disputed parties based on reasons regulated by laws. In addition, the commission is also responsible for regulating public policy regarding the service of solving the dispute, instruction of implementation, and technical guidance. Regulating procedure of implementation of solving disputes through the Commission of Agrarian Dispute Resolution receive, analyze, adjudicate, and solve disputes in the province that have not been formed; and provide annual reports regarding the implementation based on laws to the President and House of Representative of Republic Indonesia or anytime when it is demanded. In the province, the role is to receive, analyze, and adjudicate land disputes.

In doing its authority, the commission can summon and/or meet disputed parties and ask for notes or other relevant material owned by each party disputing before deciding to solve the dispute. The commission is also possible to ask for an explanation or summon officials or other related parties as a witness in solving agrarian disputes. Another responsibility is to take an oath for each witness in adjudication non-litigation of agrarian dispute resolution. They are also authorized to formulate ethical codes to be published to the public to evaluate the performance.

The agrarian dispute, in this case, is a complex problem. This is because this problem is entangled with three essential dimensions, politics, society, and economics. Agrarian issues are often not only horizontal in nature but also vertical. Many times the people should face those who have power. Consequently, an imbalanced contestation put people in a weaker position, although “Indonesia is based on the rule of law”, as stated in Article 1, Paragraph 3, Indonesian Constitution (UUD) of 1945.

It shows that Indonesia is not a country run by power only. The problem is that it is often not represented in the resolution of agrarian cases. A spirit of Law Number 5 of 1960 with its Five Principle of Agrarian is to stop *exploitation de l'homme par l'homme*. However, it has not been manifested well. Previously, the concept was interpreted as oppression related to colonialism. Now, people are suffering because of oppression by capitalist and development paradigms insensitive to people's misery. According to Franz Magnis Suseno, the role of a state to fulfill the state's objective is to bolster and complete people's efforts to build a welfare life in which people can live sufficiently and fairly. In light of that, a state's objective should be to realize people's well-being. A desire to control land, livelihood, and natural resources, are regrettable inheritance caused by greed, avarice, imperialism, monopoly, domination, and humiliation of one's pride and dignity, including loss of conscience and inclination to colonize people of the same nationality. A set of conflicts that trigger disputes about land rights can be summarized as a bitter experience and should not happen: conflict at Kedung Ombo, Tanah Alas Tlogo, Meruyo, Meunasah Kulam Aceh Besar between the residents and TNI. Those conflicts which are still happening demonstrate that agrarians' problems are a vulnerable problem and need special care from the government

V. CONCLUSION

The courts that have the competence to settle a land dispute are State Court (PN) and Administrative State Court (PTUN). PN has the authority to scrutinize, judge, and solve a land dispute in Indonesia from the perspective of civil and rights aspects. Meanwhile, PTUN has

the authority to scrutinize, judge, and solve a land dispute from the land's administration and registration procedure. To address a land dispute in Indonesia, PN and PTUN have not been able to complete the task optimally. It can be seen from a high percentage of land disputes that have not been solved and are still in the resolution process,

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