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Research Article

Resolution of Disputes on the Use of Regional Government Property Land Managed by Individuals in the Community Linked to Principles of Justice

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Abstract.
Land problems cannot be resolved, but it is hoped that they can be reduced or prevented from an early stage. One of the existing land problems is that it arises as a result of control and management of land by the Regional Government, both land that has become an asset and land that is recognized as a Regional Land Asset. This research aims to formulate a resolution for land disputes over regional assets that are used by the community. This research uses normative legal research methods through statutory, conceptual, case, and comparative approaches as well as the application of legal theories in assessing legal opportunities and justice in the mechanism and process of resolving land rights disputes over assets. The research results show that there are provisions that specifically determine the area of resolving regional land asset disputes. To achieve legal certainty and justice, it is necessary to increase the effectiveness of resolving state/regional land asset disputes through an integrated and coordinated dispute resolution scheme. Settlement of local asset land disputes can be done through mediation or justice. The government, in safeguarding assets used by individuals, must prioritize the common interest, in the sense of not harming individuals or society. In resolving land property disputes, the Regional Government is obliged to use, utilize, and manage the land by securing and controlling the property, both administratively and juridically in accordance with the principles of justice and legal certainty. Apart from that, in the revision of the UUPA, state control rights in the field of land law need to be limited by prioritizing the principle of respect for individual property rights which are protected by the 1945 Constitution.

Keywords: disputes, justice, land assets

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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. Rights arise when there is a legal event that eventually creates a conflict or dispute. In the civil law system, in terms of material rights, the land is classified as a tangible object (*lichamelijke zaken*) that is immovable 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 arrangements, the principle of publicity and the principle regarding 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 Indonesian people, it also has a very strategic function in meeting the increasingly diverse and increasing needs of the country and people, both at the national level and in relation to the international community. Thus the importance of the use of land for life and human life, the intervention of the State through its apparatus in the land law order is absolute [1].

This was followed up with the provision of legal authority to act in regulating everything related to land, as formulated in Article 33 Paragraph of the 1945 Constitution of the Republic of Indonesia and Article 1 Paragraph of the Basic Agrarian Law Number 5 of 1960 [2], [3], namely:

"Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people".

"All 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 the earth, water, and space of the Indonesian nation and constitute national wealth.

From the two statements above, with the control of land, water, and natural wealth by the State, the results of the management of land, water, and natural wealth can be evenly distributed. In principle, in line with Islamic views, the moral-spiritual message contained in it is that the earth (land) is managed with full responsibility in order to realize mutual welfare and prosperity and at the same time be responsible to God who has bestowed it on and for all human beings and other creatures [4]. Within the framework of land use, these principles are then spelled out in Article 2 paragraph 2, paragraph

3, and paragraph 4 of Law Number 5 of 1960 concerning Basic Agrarian Regulations which are then called the Basic Agrarian Law (UUPA) [2], [3], [5]:

The right to control from the State referred to in paragraph 1 of this article gives authority to:

Regulate and administer the allotment, use, supply, and maintenance of the earth, water, and space;

Determine and regulate the legal relations between people and the earth, water, and space;

Determine and regulate legal relations between people and legal actions concerning the earth, water, and space.

The authority originating from the right to control the State referred to in paragraph 2 of this article is used to achieve the greatest possible prosperity for the people in the sense of nationality, prosperity, and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous [3].

The implementation of the aforementioned rights of control from the State can be delegated to autonomous regions and customary law communities, only necessary and not contrary to national interests, according to the provisions of Government Regulations [5].

Thus, regional governments with the power of law can have authority that is held and assigned to their regional heads, and customary community alliances can be granted, as long as the customary community still exists and the customary rights of the community are recognized. Implicitly, the provisions of Article 2 Paragraph [5] of the UUPA explain that land affairs are the authority of the central government. However, the authority can be delegated to the regions by law.

The land is meant not to regulate from all aspects but land in a juridical sense, which is called land tenure rights. 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 regional governments [6].

In line with the statement above, the implementation of regional autonomy in Indonesia has formally been going on since the 1945 Constitution of the Republic of Indonesia came into effect, at the beginning of the independence of the State of the Republic of Indonesia where the regulation of regional autonomy lay in laws governing regional government that were constantly changing, and finally, the arrangement is based on Law Number 23 of 2014 concerning Regional Government [7]. This law gives enormous

powers to each region to manage its own household affairs, including the authority in the land sector which is one of the most important and strategic fields.

However, the reality is that changes to the Regional Government Law do not change the authority of land affairs. The issuance of several regulations related to land affairs has led to various interpretations of what matters fall under the authority of the central government, provincial governments, and district/city governments [8]. The emergence of these problems is at least related to a misunderstanding in understanding the provisions of laws and regulations related to government authority in the land sector.

The division of government authority between the government, provincial government, and district/city government is a crucial issue in the implementation of regional autonomy. The distribution of these functions, which has not been completed in recent years since the birth of the regional autonomy era, separated the gray area which often resulted in disharmony between the central government, provincial governments, and district/city governments [9].

Various land conflicts often occur, and the mandate of the law which 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 who should receive top priority end up being neglected [10]. In addition, 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 enormous powers to each region to manage its own household affairs including resolving disputes over authority in the land sector. Here it can be seen that the settlement of land authority disputes can be carried out by both the government and regional governments.

The authority in the land sector, the implementation of regional autonomy through Law Number 22 of 1999 concerning Regional Government which was then refined again by Law Number 32 of 2004 which gave enormous powers to each region to manage their own household affairs has led to various interpretations regarding the authority of the land sector. In its most recent development, there has been Law Number 23 of 2014 concerning Regional Government [11]. It should be acknowledged that the granting of autonomy in the land sector to districts/municipalities constitutes a fundamental change

in the implementation of national land law, but still has to pay attention to compliance with regulations so as not to create new, more complex problems [12].

With the enactment of Law Number 23 of 2014, there is a norm conflict with the UUPA. UUPA emphasizes that authority in the land sector 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 Regional Governments [13].

The issuance of various laws and regulations in the land sector should have been intended to bring order to land tenure, but in reality, it shows the existence of disputes or disputes and even these disputes tend to increase both in number and level of complexity. In this regard, various statutory provisions have also been issued that give authority to government administrators to resolve these disputes, in addition to going through the courts [14].

Based on Article 2 of Law Number 5 of 1960 concerning Basic Agrarian Regulations that land affairs are government affairs carried out by the Government, therefore the settlement of land disputes is also the authority of the Government. This is emphasized again in Presidential Regulation Number 63 of 2013 concerning the National Land Agency, which explicitly states that the National Land Agency (BPN) as a non-departmental government institution has the task of carrying out government tasks in the land sector nationally, regionally, and sectorally. It was further stated that in order to carry out this task, BPN has functions covering 14 fields, one of which is the handling and resolution of land disputes.

However, based on Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector, which states that part of the government's authority in the land sector is carried out by district/city regional governments which include among other matters the settlement of certain land disputes. In reality, there is an overlap in land dispute settlement activities between the government (BPN) and local governments. This fact shows 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 local governments to resolve land disputes.

According to the Ministry of Home Affairs of the Republic of Indonesia, the conditions and issues related to the implementation of local governance in the land sector include:

Land Affairs in the regions are carried out by the Regional Land Apparatuses, which are dominated by Public Works and Spatial Planning, but there are still areas of land that are carried out by the Regional Secretariat;

There needs to be a priority for the implementation of the land sub-sector according to conditions in the region;

Implementation of regional government affairs including settlement of arable land disputes, matters of dispute resolution, conflicts and cases in general is under the authority of BPN according to Presidential Regulation Number 48 of 2020 concerning the National Land Agency;

The time for settlement of land cases in the regions has not been optimal;

Not involving various parties in the process of resolving land conflicts and implementing agrarian reform programs in the regions;

Strengthening coordination and the role of regional/national planning offices as technical supervisors in the implementation of regional government affairs

Furthermore, in order to provide legal certainty and justice regarding control, ownership, use, and utilization of land in order to carry out land policies which is one of the tasks and functions of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, a Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the Land Agency has been stipulated. National Land Case Number 11 of 2016 concerning the Settlement of Land Cases, but the provisions regarding the settlement of land cases in its implementation are still not effective so it needs to be replaced and stipulate the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases.

One of the strategic land issues in the National Medium-Term Development Plan (RPJMN) is the low rate of settlement of land cases that have not been processed or those that have been decided by the courts, Article 4 of Presidential Regulation Number 47 of 2020 concerning the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency stipulates that The Ministry of Agrarian Affairs and Spatial Planning has the task of administering governmental affairs in the agrarian/land and spatial planning sector to assist the President in administering state administration. In practice, the Directorate General of Land Dispute Resolution and Conflict has the function of formulating and implementing policies in the field of handling dispute resolution, conflicts, and land cases, compiling norms, standards, procedures, and criteria in the field of conflict dispute resolution and land cases, providing technical guidance, supervision, evaluation,

reporting in the field of conflict resolution and land cases, administrative implementation of the Directorate General of Dispute and Conflict Resolution.

Factors that give rise to land disputes and conflicts, including the comparison 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 maintenance of government agency land assets, as well as synchronization of central, provincial and regional policies.

Typology of Land Disputes includes:

Mastery and ownership of BUMN land assets and forest area land;

Determination of rights and registration of land;

Determination of boundaries and location of fields;

Land acquisition;

Land objects are land-reform;

Claims for compensation for private land;

Communal/communal land of customary law communities;

Implementation of court decisions;

Registration of transfer of rights;

Determination of abandoned land.

Regulation of the Minister of Home Affairs of the Republic of Indonesia Number 90 of 2019 concerning Classification, Codification, and Nomenclature of Regional Development and Financial Planning, one of the Government Affairs in the Land Sector is the Program for Handling Land Conflicts, Disputes, and Cases through Activities to Facilitate the Settlement of Land Conflicts and Inventory Activities and Settlement of Disputes, Conflicts and Land Cases in one Regency/City area as well as the Arable Land Settlement Program through the Activity of Settlement of Arable Land in a Regency/City Area.

Local government support in implementing national policies are Agrarian Reform including legalization to ensure legal certainty of land rights, redistribution to ensure fairness and equality of land ownership, settlement of land tenure in forest areas through optimizing the role of the Inventory Team to identify patterns of forest area release to avoid land conflicts in forest areas, as well as settlement of land conflicts with a target of 167 cases that are prioritized for resolution in 2021 by involving various

parties/stakeholders, such as disputing parties, relevant ministries/agencies, regional offices/BPN offices, regional governments, and community leaders [15].

Due to the large number of regulations governing land authority, it is necessary to examine it proportionally so that erroneous interpretations in understanding statutory regulations can be minimized. The authority and role of the government in carrying out its position in the land sector, especially in resolving land disputes and conflicts, can be understood correctly [16]. It is impossible to solve land problems, but it is hoped that they can be reduced or prevented early on. One of the land problems that exist in Indonesia is land problems that arise from the control and management of land by the Regional Government, both lands that have become assets or lands that are claimed as Regional Asset Lands.

Studies on the development of Regional Asset Land arrangements are urgently needed because, in the era of regional autonomy Regional, Asset Land has very important economic value as an asset that can be utilized effectively and efficiently in order to increase Regional Original Income (PAD). In this context, it is increasingly important and strategic to find out the legal basis for tenure, the granting of rights over Regional Land Assets to other parties along with the legal consequences and their management policies [14].

Availability of regulatory software and clear and firm policies, such as; the definition of Regional Assets, the legal basis for their control, the rights that can be owned, the procedures for managing them, and so on, may be able to provide order, legal certainty, even legal protection and in the end, can minimize or prevent the occurrence of land cases.

From a macro perspective, the causes for the emergence of these land cases are very varied, partly because land prices are increasing rapidly as a result of development developments. The condition of people who are increasingly aware of and concerned about their interests and rights, in addition to that there is a climate of openness outlined by the government. In essence, a land case is a conflict of interest in the field of land between who and whom as a concrete example between individuals and individuals; individuals with legal entities; a legal entity with a legal entity, and so on.

According to the KPK-RI Supervision and Prevention Coordination Team (Korsupgah), the critical points in managing asset management which can lead to asset disputes in the future can be caused by several factors:

There is the abandonment of assets so that they are prone to be controlled by third parties;

Assets are not physically secured;

Assets are not/have not been certified;

Documents for the acquisition of assets are incomplete/lost;

Misuse of asset ownership documents;

Assets have cooperated but the evaluation is only a formality;

Supervision of the assets in partnership is low;

Control and supervision are not carried out optimally.

In an effort to prevent corruption against Regional Property in the form of problematic land assets with the potential for disputes, the following activities need to be carried out: land asset certification, asset land control, asset land restoration, and utility infrastructure control (PSU). Current agrarian problems based on the 2020-2024 RPJMN data source from the Ministry of Home Affairs are as follows: a). land base map coverage of 49.05%; b) the coverage of land parcels with a digitized certificate is 20.91% and resolved land disputes, conflicts, and cases in 4,031 cases out of a total of 10,802 cases handled.

In a limited meeting on accelerating the settlement of land issues in North Sumatra at the President's Office, President Joko Widodo ordered all ministries/agencies to the local government to regulate administration and manage assets owned. This is necessary so that land issues do not drag on, let alone cause conflicts between residents, residents, and the government, or residents and BUMN. In particular, the President asked the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (BPN) to develop a scheme for settling problems or disputed land assets to become a common reference, a guideline by central and regional agencies throughout Indonesia.

According to ATR/BPN Deputy Minister Surya Tjandra, to find a solution to land dispute resolution, all parties must be open-minded and try a settlement prototype through the Land Dispute Settlement Scheme by mapping criteria and grouping to find out the land status.

Some examples of cases of land asset disputes that occurred in several big cities, among others, were due to problems with the granting of land rights/certificates over management rights, such as the object of a dispute over Wisma Persebaya in Surabaya City, the Surabaya City Government, and PT. Persebaya Indonesia is fighting over the field and Wisma Persebaya. The assets are claimed to belong to Persebaya but are controlled by the Surabaya City Government. Even this case ended in a civil lawsuit

regarding the issuance of a usufructuary certificate (SHP) for Wisma Surabaya on Jalan Kranggayam, which has now been executed by the Surabaya Prosecutor's Office based on a special power of attorney from the Surabaya City Government. The Panel of Judges granted PT. Persebaya Indonesia over the right to use Wisma Persebaya in a decision hearing at the Surabaya District Court.

One example of a case of land dispute over state land rights/assets over management rights that has occurred in the City of Bandung is the existence of falsification of *verponding* by those who claim to be heirs with the Bandung City Government as the holder of a certificate of management rights (HPL) Number 5/ Kebonwaru and HPL Number 6/Kebonwaru. The Bandung City Government won in court and the plaintiff was arrested.

West Java, which consists of 27 regencies and cities, owns and controls land assets. However, the management of these land assets is not free from problems, especially related to land rights, and always occurs in 27 Regencies and Cities in West Java every year resulting in disputes. These problems include problems in disputes over land rights that have or have not been certified. Several cases have been litigation in court. However, with various stages of the process through which the problems related to the dispute can be resolved. Settlement of land rights issues needs to be carried out in accordance with the applicable regulations and laws.

This fact shows that land disputes need attention to be immediately handled and resolved by the government, both the central government and local governments, therefore it is very important to conduct research related to the authority of local governments in resolving land disputes over these assets.

Some of Samad Soemarga's previous research discussed the State's Legal Position in Granting Land Rights over Management Land, which put more emphasis on the state's legal position on land management rights which are state assets associated with state control rights closely related to the regulatory authority attached to the state. The substance of the state's control over land assets is that behind the rights, powers, or authority granted, there is an obligation to use, utilize and manage land as an economic resource for the greatest prosperity of the people. The state's legal position should prioritize the principles of respect for personal rights protected by the 1945 Constitution.

Based on the things mentioned above, researchers feel the need to conduct research and draw the problem of "How to Resolve Disputes on the Use of Local Government Land Assets Managed by Individual Communities Linked to the Principle of Justice"

2. METHOD

This study uses a positivistic paradigm. Law is conceptualized as norms (commands and prohibitions) which are products of law-forming institutions that are binding (law in books) or specifically laws that are positive norms in the national legislation system. In addition, in this study, the law is also interpreted as a judge's decision/decision, namely the settlement of land disputes over local government assets. Thus, the approach uses a normative/doctrinal approach. The data used includes secondary data as the main data and primary data as supporting data. Data collection techniques are carried out by conducting documentary studies literature studies and interviews to get primary. The analysis in this study uses qualitative analysis with an interactive model. The object of this research is the implementation of local government asset land dispute resolution, which is then analyzed regarding the contents of the agreement, whether those who express agreement to settle local government asset land disputes.

3. RESULT AND DISCUSSION

Government has two meanings, namely in a broad sense and in a narrow sense. Governance in a broad sense, namely as the implementation of the duties of all agencies, institutions, and officers who are entrusted with the authority to achieve the state. In other words, the government here includes legislative, executive, and judicial powers or all the organs of the state. Meanwhile, the government in a narrow sense *(bestuurvoering*) includes the organization of functions that carry out governmental tasks, which are only related to powers that carry out executive functions.

Van Poelje defines government in a narrow sense as " an organ/agency/tool of the state entrusted to the government (government/spoke). Whereas in a broad sense, the government is a function that includes all actions, deeds, and decisions by government tools to achieve government goals. According to Hadjon, the government can be understood through two meanings, namely on the one hand as a "government function" (government activities), and another hand as a "government organization" (a collection of government units).

The function of the government as a whole consists of various kinds of governmental acts, decisions, decisions of a general nature, civil law acts, and concrete actions. Only legislation from political and judicial authorities is not included in it. So the focus of Hadjon's opinion is a government in a broad sense, both as a function and as an

organization, apart from the statutory powers of political (legislative) and judicial (judicial) powers.

The substance of regional government authority includes all government sector authorities, except for authority in the fields of defense and security, justice, monetary and fiscal, and religion. Through the authority in the land sector which is as wide as real and responsible 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 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).

According to Rusmadi Murad, a land dispute is the emergence of a complaint from a party, either a person or a legal entity, which contains objections and demands for land rights regarding land status, priority, and ownership in the hope of obtaining an administrative settlement in accordance with the provisions of the applicable regulations. Finding solutions to land cases that have already occurred clearly requires effort which is not easy. Because of that, an understanding of the root causes, supporting factors, and triggering factors is needed so that strategies and solutions can be formulated. With efforts to resolve the root causes of the problem, it is hoped that land cases can be suppressed as much as possible while at the same time creating a conducive atmosphere and realizing legal certainty and prosperous agrarian justice.

The land has economic rights for everyone, therefore it is prone to conflict or disputes. According to Moore if a conflict has manifested, then it becomes a dispute 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 land sector. The 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 the 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 order to create 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. The 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, a description of the history of the land to determine consecutive tenure for 20 (twenty) years and a statement of land ownership by the applicant. These three documents are documents issued by the local government, in this, case the village government and sub-district government, so it can be said that these documents are issued by the local government through instruments at the village and sub-district levels. Not being careful in issuing these documents can cause 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 former customary land. Therefore, the role of the regional government through the village head and sub-district heads is very urgent to determine the correct status of land in their area. In addition to determining the truth of land status in the area, local govern

4. CONCLUSION

The research results show that there are provisions that specifically determine the area of resolving regional land asset disputes. To achieve legal certainty and justice, it is necessary to increase the effectiveness of resolving state/regional land asset disputes through an integrated and coordinated dispute resolution scheme. Settlement of local asset land disputes can be done through mediation or justice. The government, in safeguarding assets used by individuals, must prioritize the common interest, in the sense of not harming individuals or society. In resolving land property disputes, the Regional Government is obliged to use, utilize, and manage the land by securing and controlling the property, both administratively and juridically in accordance with the principles of justice and legal certainty. Apart from that, in the revision of the UUPA, state control rights in the field of land law need to be limited by prioritizing the principle of respect for individual property rights which are protected by the 1945 Constitution.

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