

Juridical Review of Using Criminal Law in Settlement of Land Disputes Based On Government Regulation Number 24 Year 1997 on Land Registration

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Abstract

The National Land Agency (abbreviated as BPN) is a non-ministerial government agency in Indonesia that has the task of implementing national, regional and sectoral land governance so as to facilitate BPN linkages that require an important role in its resolution. This study uses normative juridical data so that the data used is sourced from legal literature and literature. The conclusion of this research is that in the realm of law it can be said that disputes are a problem between two or more people where both are concerned about one another in certain objects. This happens because of a misunderstanding or difference of opinion or perception between the two which then causes legal consequences for both. In criminal law, land disputes are usually included in land grabbing as regulated in Article 385 of the Criminal Code which explains that "someone who unlawfully sells, exchanges land that is not his property to another party and gains profits from his actions, is liable to a maximum of four years in prison."

Keywords:

Criminal law, Government Regulation Number 24 Year 1997, Land disputes.

1. Introduction

Indonesia is an agrarian country, where most of its people have a livelihood as farmers. What cannot be separated from farmers is land used as rice fields. So basically, humans and land have a very close relationship, very natural and inseparable. This can be understood and understood, because the land is a place to live, a place to feed, where they are born, where they are buried and even where their ancestors are, there is always a human pair with the land, between the community and the land (Ismaya, 2015).

Article 4 of the Basic Agrarian Law states that, "With the basic rights of control from the state, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people". Thus it is clear that land in the juridical sense is the surface of the earth, while land rights are the rights to a limited part of the earth's surface, with two dimensions of length and width. Land is given to and owned by people with rights provided by the Basic Agrarian Law to be used or used. Granting land with these rights will not be meaningful if its use is limited to land as the surface of the earth. (Harsono, Hukum Agraria Indonesia: Sejarah Pembentukan Undang- Undang Pokok agrarian, Isi, dan Pelaksanaannya, 2018)

The definition of land in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (LoGA) is "the surface of the earth which in its use includes parts of the earth's body beneath and parts of space above it in accordance with the intended use (Harsono, Hukum Agraria Indonesia, Himpunan Peraturan Hukum Tanah, 2013).

Once the importance of land for human life while the supply of land is very limited. This situation causes land prices to surge and is difficult to obtain. In addition to having a positive impact that is by providing increased welfare and benefits for their owners, it also has a negative impact, namely the emergence of various cases and problems in the land sector. Land disputes in Indonesia are not new and are still happening today. Initially, land disputes only occurred between private parties, but currently land disputes have occurred in all sectors of community life, such as the forestry sector, the mining sector and even coastal areas (Syahrief, 2015).

One of the many disputes that occur is a dispute over land boundaries caused by many things, because land that has not been registered could also be due to a third party controlling the land, a protracted land dispute resolution and no good resolution can lead to a party harmed and brought a lawsuit to court. Although there are wide opportunities to sue through the court, but the layman tends to avoid it, other than that there is an assumption in the

community that filing a lawsuit through the court is relatively expensive, takes a long time even complicated. Therefore the community is trying to resolve their dispute by taking the non-litigation route. (Agustina, 2019)

Settlement through the court is aimed at obtaining justice and legal certainty, so the settlement outside the court is precisely the priority of peace in resolving disputes that occur between disputes and not looking for the right or wrong parties. If you have to find out who is right and who is wrong, it will not produce a decision that benefits the parties to the dispute resolution of non-litigation disputes or alternatives that are better known as Alternative Dispute Resolution (ADR) regulated in Law Number 9 of 1999 concerning Arbitration and Alternative Dispute Resolution. Dispute resolution mechanism in this way is classified in non-litigation media, which is a concept of cooperative conflict resolution or dispute directed at a one-way solution to conflict or dispute that is a win-win solution. ADR was developed by legal practitioners and academics as a way to resolve disputes that have more access to justice (Usman R. , 2014).

Some land issues can be resolved properly by the Land Office (National Land Agency) through "mediation". Mediation is an effort to resolve disputes through negotiations with the help of a neutral third party (mediator) to find a form of settlement that can be agreed by the parties (Herwandi, 2010).

The Basic Agrarian Law lays the foundation for realizing legal certainty and legal protection for all Indonesian people. According to Article 19 of UUPA Number 5 of 1960 followed up by Article 3 letter (a) of Government Regulation Number 24 of 1997 (hereinafter referred to as PP 24/1997) concerning the Purpose of Land Registration. "To provide certainty and legal protection to the holders of rights on a plot of land, a flat and other rights that are registered so that it can easily prove itself as the holder of the relevant rights".

Land registration will bring the result of a legal certificate of proof of land rights which is referred to as a land certificate to the holder of the relevant land rights acting as a strong proof. As mentioned in Article 32 paragraph (1) PP 24/1997 concerning land registration that:

"The certificate is a proof of rights which acts as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant land certificate and land book."

Issuance of land title certificates issued by the Land Office in the form of land title certificates involving the applicant, contiguous landowners, village officials and related agencies to obtain an explanation of the documents as the basis for rights relating to the certificate application, so an explanation from the related party has an opportunity to arise as a certificate of legal defects. The certificate of land rights as evidence of the letter has not been able to meet the wishes of the community, because in the process often disputes / conflicts occur in terms of determining who is entitled to the object of the land. The process of resolving land disputes / conflicts requires quite a long time if it cannot be resolved through mediation between the disputing parties and the Land Office as the mediator. Not infrequently land disputes end in cases on a court (court). In practice, the issuance of certificates of land rights there is still legal uncertainty in protecting objects (land) and subjects (individual rights / legal entities) from certificates of land rights. In general, disputes / conflicts that occur and are known after the issuance of a double certificate in the community.

The Basic Agrarian Law is the oldest positive land law in force in Indonesia to date also regulates various types of land rights as contained in Article 16 and Article 53 of the BAL which are then grouped into 3 (three) fields, namely:

1. Permanent land rights These land rights will remain as long as the LoGA is still valid or has not been revoked with the new law. These types of rights are also regulated in the LoGA itself, including ownership rights, land use rights, building rights, use rights, land opening rights, rental rights for buildings, and rights to collect forest products.
2. Temporary land rights on land that will be abolished shortly because they contain extortion, feudal characteristics, and are contrary to the spirit of the LoGA. These types of land rights are Liens (Land Pledges), Production Sharing Business Rights (Production Sharing Agreements), Passenger Rights, and Agricultural Land Leases.
3. Land rights to be determined by law Land rights to be determined by law are land rights that will be born later and will be determined through laws, such as management rights and ownership rights of apartment units. (Santoso, 2013)

The current sources of land conflicts are caused by: (Nasoetion, 2014)

1. Unequal and uneven land ownership / control;
2. Discrepancy in the use of agricultural and non-agricultural land;
3. Lack of alignments for the weak economic groups;
4. Lack of recognition of the rights of indigenous and tribal peoples to land (ulayat rights);
5. Weak position of community holders of land rights in land acquisition;

6. Land issues in the issuance of certificates, including:
 - a. The process of issuing land certificates is long and expensive;
 - b. Fake certificate;
 - c. Certificate of Overlapping (Overlapping);
 - d. Revocation of certificate.

Land problems that often arise in the midst of communities are related to the granting of land rights, both with the same or different types of land rights on one parcel of land, which is commonly known as overlapping land rights. The result is that legal uncertainty will arise for holders of land rights, which will lead to disputes between the holders of these land rights. If two land rights are issued, which in this case is marked by the issuance of two land titles on the same field, of course there are differences in juridical data and physical data in the submission of the registration of the land rights. Differences related to physical data usually occur due to differences in land area and boundaries that exist in the field. Whereas the difference in juridical data regarding the basis of rights or proof of acquisition of the land. The cause of the certificate in question can be sourced from the applicant's dishonesty in providing technical data or juridical data. This phenomenon shows that there is still low legal awareness of landowners and limited access for officials to obtain material data truth and information submitted by the applicant at the time of land registration. Legal certainty regarding the right object depends on the truth of the data provided by the rights applicant and the existence of an agreement on land boundaries with the boundary owner (*contradictoire delimitatie*) which is physically marked by the installation of stakes in the field.

In the case of legal certainty of the subject of land rights, the right holder has the authority to act on his property, as long as it is not contrary to the law or violates the rights of the interests of others. In addition to the rights and authorities possessed, also attached obligations, both to the state and to society. In enjoying the rights and authorities, the owner needs peace and legal protection that is born from the existence of legal certainty of his land rights. Based on the background, the problems to be examined are:

1. How is the implementation of criminal law in settlement of land disputes based on government regulation number 24 of 1997 concerning land registration?
2. What is the role of the land office in dispute resolution in the city of Palembang?

2. Literature Review

2.1. Rule of Law Theory

The State of Law The state is identical with the law, where there is an order there is a state; or vice versa where there is a state there is a rule of law. So the state is in principle Zwangs-Ordnung, a coercive legal order. In Indonesian literature, the term "rule of law" is a direct translation of rechtsstaat. The term rechtsstaat became popular in Europe since the 19th century, although the idea of that has been around for a long time. (Jurdi, 2019) The initial idea about the rule of law was put forward by Plato, when he introduced the concept of *nomoi*, as the third paper written in his old age. Meanwhile, in the first two writings, *politeia* and *politicos*, a rule of law has not yet emerged. In *nomoi*, Plato revealed that in the implementation of a good state is based on good legal arrangements. Plato's notion of a rule of law is even more pronounced when it is supported by his student Aristotle, according to Aristotle, a good state is a state that is ordered by the constitution and rule of law. (Tjandra, 2018). According to Aristotle that by giving a place for the law to govern (law as the basis of power) means that it has provided reason and intelligence to govern. Thus the law deserves the highest sovereignty and deserves to be a source of power in a country.

2.2. National Legal Theory

Land Ownership In this study, one of the juridical basis used is Article 33 Paragraph (3) of the 1945 Constitution which states that "The earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people ". This is related to the land of the Republic of Indonesia. Article 33 of the 1945 Constitution is the basis for the establishment of the Agrarian Basic Law No. 5 of 1960 concerning Basic Agrarian Regulations. In the Basic Agrarian Law, the definition of ownership rights as formulated in Article 20 of the LoGA mentioned in paragraph (1), property rights are hereditary rights, the strongest and most fulfilled, which can be owned by people over the land; paragraph (2), ownership rights can be transferred and transferred to another person. Understanding property rights can also be interpreted as rights that can be inherited from generation to generation continuously with no need to reclaim their rights if there is a transfer of rights (Soedharyo, 2014).

Property rights are defined as the strongest rights among the various existing rights, in Article 570 of the Civil Code, these property rights are formulated that property rights are the rights to enjoy the usefulness of a material thing freely, and to act free of that material, with full sovereignty, as long as it does not conflict with the law or general regulations determined by a power that has the right to set it, and does not interfere with the rights of

others, all of which do not reduce the possibility of revocation of rights in the public interest based on the provisions of the law and payment of compensation. Then in Article 28 H paragraph (4) of the 1945 Constitution states that "every person has the right to have private property rights and such property rights may not be taken arbitrarily by anyone". From the sound of the Article, it can be concluded that ownership rights can be owned by every person or every citizen, including ownership rights to land. Whereas Human Rights are regulated in MPR Decree No. XVII / MPR / 1998 concerning Human Rights. The 1945 Constitution also regulates citizenship, as stated in Article 26 of the 1945 Constitution states that:

1. Paragraph (1); "The citizens of the country are the people of the original Indonesian people and the people of other nations who are ratified by law as citizens".
2. Paragraph (2); "Residents are Indonesian citizens and foreigners residing in Indonesia".
3. Paragraph (3); "Matters regarding citizens and residents are regulated by law."

The 1945 Constitution is a written basic law (basic law), the current constitution of the government of the Republic of Indonesia. As a basic right, land rights are very meaningful as a person's existence, freedom, and dignity as a human being. Fulfillment of these basic rights is a condition for the growth and development of political rights, because control of a piece of land symbolizes the values of honor, pride, and personal success. Political democracy can develop more easily among those who besides having a job also have access to land resources (Iskandar, 2019).

4. Methodology

A juridical normative approach (library research) is an approach that is based on the main legal material, examines several theoretical matters concerning legal principles, legal conceptions, views, and legal doctrines, legal regulations and legal systems regarding with the thesis being discussed or using secondary data including the principles, rules, norms, and legal rules contained in the legislation and other regulations. This approach is known as the library approach, namely by studying books, legislation, and other documents related to this research. (Sugiyono, 2012) The statute approach is carried out by examining all relevant legal regulations relating to the legal issues to be written, namely research on norms contained in the Criminal Procedure Code, the Criminal Law Code.

4. Result and Discussion

4.1. The implementation of criminal law in settlement of land disputes based on government regulation number 24 of 1997 concerning land registration

The implementation of various functions of BPN services including implementation of land registration BPN already has an organization and is clear and regular, so that each stage can be carried out in accordance with applicable regulations. Although in carrying out land registration BPN has the authority that starts from the entry of the application file from the community until the issuance of documents in the form of SK Land rights, but in its implementation BPN still involves the Village Government where the location of the land proposed by the applicant. Therefore, the organization of land registration activities at the lower level, namely the Village Government, must also be regulated properly. Organizing is needed in the form of cooperation between the BPN and the Village Government so that the land registration process can run well and in accordance with the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Service Standards and Land Arrangements. The existence of the Village Government has a central role to support the implementation of land registration, at least as stated in the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning Land Service Standards and Arrangements that for people who will register land must have a non-dispute statement and be controlled in a controlled manner the physical results of the examination of Committee A which included the signature of the local Village Head. Thus, the requirements to process land registration are also inseparable from the important role of the Village Head.

Furthermore, in the implementation of land registration, the existence of the PPAT also has an important role as the party who issued the land sale and purchase certificate. as required by Article 1 PP Number 37 of 1998 concerning the Regulation of the Official Position of Land Deed Maker, which states that the PPAT deed is a deed made by PPAT as evidence of certain legal actions regarding land rights. Therefore, the buyer is legally the owner and can immediately register his land at the local Land Office. PPAT also has an important role in the process of implementing land registration policies, without proof of deed, registration cannot be processed. Thus, it can be said that in terms of organization, each of the most powerful parties has been given their respective authority, although it is still the leading sector, namely BPN. The organization in the land registration activity has been well established. Of course, the hope of organizing this will accelerate the process of land registration to get a Decree of ownership which is felt still requires a long time by the community.

According to Mudzakkir, land and dispute issues mass land can affect development efforts and strengthen the Unitary State of the Republic of Indonesia and can disrupt national stability in the unity of the Unity in Diversity (Baho, 2017).

In the Decree of the Head of BPN RI Number: 34 of 2007 concerning Technical Guidelines on Handling and Settlement of Land Issues include technical problems, disputes, conflicts, and land cases that require resolution or resolution. In the decision, it was also mentioned that technical problems are problems faced by the community and the National Land Agency of the Republic of Indonesia, both at the center and in the regions related to legislation, land administration, or imperfect handling mechanisms.

Whereas Regulation of the Head of BPN RI Number: 3 of 2011 concerning the management of Land Case Studies and Handling sets limits on what land cases are. Article 1 number 1 of the Perka BPN states that land cases are disputes, conflicts or land cases that are submitted to the National Land Agency of the Republic of Indonesia to get a handler, settlement in accordance with statutory provisions and / or national land policy.

1. Land Dispute.

In the legal shutter it can be said that disputes are a problem between two or more people where the two are concerned about each other a certain object. This happened because of a misunderstanding or differences of opinion or perception between the two later cause legal consequences for both.

Article 385 of the Criminal Code which explains about "someone who opposes the law, sells, exchanges land that does not belong to someone else and gets better results, is threatened with death sentence".

Based on the Decree of the Head of BPN RI Number: 34 of 2007 regarding Technical Instructions on Handling and Troubleshooting Land, land disputes are differences in values, interests, opinions and or perceptions between individuals and or bodies law (private or public) regarding the status of control and or status ownership and or status of use or utilization of the field certain parcels of land, or the status of administrative decisions The state concerns mastery, ownership and use or use of certain parcels of land. Land disputes can be in the form of administrative disputes, disputes civil, criminal disputes related to ownership, transactions, registration, guarantee, utilization, control and rights dispute ulayat.

2. Land Conflict

Conflict means there is a conflict between people, groups or organizations against an object problem. According to the decision of BPN RI Number: 34 of 2007 concerning Technical Guidance on Handling and Settlement of Land Issues, Conflict is the difference in values, interests, opinions and or perceptions between citizens or community groups and or citizens or community groups with legal entities (private or public), the community with the community regarding the status of ownership and / or ownership status and or the status of use or utilization of certain parcels of land by certain parties, or the status of the State Administration Decree concerning the control, ownership and use or use of certain parcels of land, as well as containing political, economic and social cultural aspects.

3. Emphasis 'contains political, economic and social cultural aspects'

This is what distinguishes the definition of land disputes with land conflicts in the version of the Decree of the Head of BPN Number: 34 of 2007, as well as the definition of land conflicts according to the Regulation of the Head of BPN Number: 3 of 2011 concerning Management of the Study and Supervision of Land Cases, which emphasizes that land conflicts are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have a wide social and political impact.

Rachmadi Usman, stated that both the words conflict and dispute both contain the notion of differences in interests between two or more parties, but both can be distinguished. The word conflict has been absorbed into Indonesian into conflict, while the word dispute can be translated with said dispute. (Usman R. , 2014) Disputes (dispute difference) or conflicts in essence are a form of actualization of a difference and or conflict between two or more parties. (Sutiyoso, 2016)

4. Land Case.

Whereas the case definition according to Decree of the Head of BPN Number 34 of 2007 is land disputes and / or conflicts the settlement is done through a judicial body. In line with This definition, Regulation of the Head of BPN RI number 3 of 2011 concerning Management of the Study and Handling of Land Cases is a land dispute whose settlement is carried out by a judicial institution or a judicial institution's ruling which is still the dispute handler was requested at RI National Land Agency. From these two senses, it can be said that a conflict or a dispute develops into a case if the party feels the injured has expressed his dissatisfaction or concern, by making complaints

or lawsuits through the judiciary general, both directly and through legal representation to the party considered to be the cause of the loss.

5. Settlement of Land Disputes / Conflicts.

To handle and resolve a dispute / conflict land in this republic requires the right framework and effective. There are three parts that are very urgent before dealing with land conflicts that we need to study in depth namely conflict assessment, conflict management, and resolution of land conflicts. The purpose of the study, handling, and resolution of land conflict problems is to provide legal certainty over the control, ownership, use and use of land in the country that is full of these resources.

6. Conflict Assessment.

There are two conflict theories namely structural functionalism theory and conflict approach theory.

First, structural functional theory which states that society is basically integrated on the basis of the 'agreement' of its members on certain community values. This theory has the power to overcome differences of opinion and interests among community members.

Society must be seen as a system of parts that are interconnected to one another. Therefore, the interplay between these parts is dual and reciprocal. In this theory it is said that even though social integration can never be achieved perfectly, fundamentally social systems always tend to move towards dynamic equilibrium which means that circumstances do not have equilibrium to become strong forces because of the balance) so that social integration can respond to changes -the changes are come from outside with a tendency to maintain that changes that occur in the system as a result will only reach a minimum level.

Social change occurs because of three possibilities, namely adaptation to changes that come from outside, growth through a process of structural and functional differentiation, as well as new discoveries from members. Second, the Conflict Theory Approach which assumes the following points: every society is constantly changing and the change never ends because social change is an inherent phenomenon in every society; every society has a conflict within itself because conflict is an inherent phenomenon in every community; every element in society contributes to disintegration and social changes; and each society is integrated into the control and domination of some people over a number of other people.

In other words, conflict comes from factors that exist in the community itself. It arises from the reality of conflicting elements in every society. And internal opposition occurs because the division of authority is carried out unevenly. Therefore, there is a pattern of separation between people who have authority and those who do not have authority in a society. Those who have authority tend to strengthen their status quo, while those without authority will try to change their *status quo*.

In relation to the land conflict, the theory of conflict above is very relevant, because the land problem is one of the land problems which is very strong to be the center of attention of all republicans.

In the process of assessing land conflicts, the goals are wanted achieved is to find out the factors causing conflict; in addition, through this process, we can get a picture to resolve the land conflict. To conduct an assessment, the first thing to do is to examine and analyze the data of the conflict that is happening. Based on the data from the analysis, the main issues in the conflict can be mapped. The results of the conflict map, of course, make it easier for us to find the right format in the resolution stage later.

This review process is the result of a legal review of land conflicts based on juridical data, physical data and or other supporting data. The results of the study are then examined in the application of the law to produce recommendations for handling land conflicts.

4.2. The Role of The Land Office In Dispute Resolution In The City of Palembang

In the Regulation of the Head of the Land Agency of the Republic of Indonesia No. 4 of 2006 JO the regulation of the Head of the National Land Agency of the Republic of Indonesia No. 5 of 2006 in the 13th part, it is stated that the function of BPN in the context of handling land disputes, conflicts and cases (SKP) is to realize a land policy for justice and the welfare of the community. BPN has a role to handle and resolve land cases, problems, disputes and conflicts throughout Indonesia systematically.

1. Settlement of land conflicts based on the Head of BPN Regulation No. 3 of 2011 concerning Management of Assessment and Handling of Land Cases consists of:
 - a. Settlement of land disputes and conflicts to carry out court decisions; Semarang City BPN is obliged to implement a court decision that has obtained permanent legal force.

- b. Settlement of land disputes and conflicts outside the court; can be in the form of land administration legal actions include:
 - 1) Cancellation of land rights due to legal defects administration;
 - 2) Recording in Land Certificates and / or Land Books as well Other Public Lists; and
 - 3) Issuance of land administration documents or decisions others because there are administrative legal defects in the publication.
2. The target of development in the land sector is the realization of the Land Chess Rules which include:
 - a. Orderly Land Law
Nowadays there are a lot of ownership and use of land by people / legal entities that violate the provisions of applicable agrarian legislation, therefore steps need to be taken:
 - 1) Conduct counseling / information to the public regarding the Land Law Regulations in order to achieve Legal Certainty which includes controlling the control and ownership of land based on the applicable Agrarian Laws. In the understanding of the orderly implementation of agricultural law, the implementation of the orderly documentation and administration of land has been covered;
 - 2) Regarding legal sanctions for violations that occur;
 - 3) Completing the legislation in agriculture;
 - 4) Improve internal supervision in the field of carrying out tasks diagramming;
 - 5) Take decisive action against persons who deliberately misuse;
 - 6) Togetherness holds introspection.
 - b. With these efforts, the rule of law will be realized Land which gives rise to Legal Certainty Land and Rights as well its use, which will create an atmosphere of tranquility in the community and the community's protection from arbitrary actions and disputes, thereby encouraging workplace passion.

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Biography

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