LEGAL CERTAINTY FOR LAND DISPUTE SETTLEMENT IN REGULATION OF THE MINISTER OF AGRARIA NUMBER 21 OF 2020 REGARDING HANDLING AND SETTLEMENT OF LAND CASES

Muhamad Irayadi
Sekolah Tinggi Ilmu Hukum IBLAM, Jakarta, Indonesia
muhammadirayadi@gmail.com

Abstract
Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Settlement of Land Cases in which dispute resolution through the BPN aims to provide justice and legal certainty to the community regarding land tenure, ownership, use and utilization. In this research, the author uses normative/juridical legal research methods and the results of the discussion. No. 21 of 2020 concerning Handling and Settlement of Land Cases.

Keywords: Dispute Settlement, Land

INTRODUCTION

Soil is an element where living things cannot be separated from it. And every living creature, including humans, is one with the land where they live or live. Land is a place for humans to carry out various activities to be able to meet their needs, both social activities and economic activities. Even when humans die, they still need land as a burial place. So that in general land is a source of life and life for the community which has a very strategic function both as a natural resource and as a space for development.

Soil can be interpreted as the surface of the earth or the layer of the earth that is above it; the state of the earth somewhere; the earth's surface that is given a boundary; as well as materials from the earth, the earth as a substance (sand, rock, etc.).[1]Whereas land in a juridical sense is land rights that can be owned or controlled by individuals who come from Indonesian citizens or foreigners domiciled in Indonesia, which can also be controlled by legal entities, namely private legal entities or public legal entities, Indonesian legal entities or foreign legal entity that has a representative in Indonesia.[2]

In the context of land, land is the surface of the earth in the form of land where humans stand, live, grow crops and all kinds of businesses to maintain their survival. The most important thing is the place where a country stands to protect, protect its people and to achieve the goal of life, namely prosperity. and welfare through the efforts made by the government.[3]

This is also in accordance with the basic principles as well as being a national responsibility to realize ways of exploiting, using, exploiting and owning land for the greatest possible prosperity of the people as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that:

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

This article gives authority to the government through the right to control from the State so that it becomes the basis and juridical basis in establishing various kinds of land rights, both to land that can be controlled and owned individually, or to land for legal entities that can own privately. jointly (collectively) while continuing to provide evidence of ownership and control over the land according to the applicable legal provisions in the fairest manner. However, land ownership by the state does not mean that it is owned, but as the owner of the land, the state only provides arrangements regarding land rights, provision, utilization, designation, control, use and maintenance, actions and legal relations that can be carried out on land. -the land, in order to provide legal certainty and legal protection for the people. This is an obligation for the state which has the authority to support various obligations and rights of citizens, namely by issuing policies, making arrangements, administering, managing and supervising land.

Philosophically, as a form of embodiment of the concept of the Unitary State of the Republic of Indonesia, namely the rule of law as stated in the 1945 Constitution of the Republic of Indonesia, in the land sector it was realized by the establishment of Law Number 5 of 1960 concerning the Fundamentals of Agrarian Affairs, hereinafter referred to as UUPA. . The BAL determines the types of land rights that can be owned by Indonesian citizens or legal entities. The land rights referred to according to Article 16 paragraph UUPA namely, ownership rights, usufructuary rights, building use rights, usufructuary rights, rental rights, land clearing rights, rights to collect forest products and other rights that are not included in the rights mentioned

1Big Indonesian Dictionary (Department of Cultural Education, 1994).

2Urip Santoso, Land Acquisition by Local Government Derived from Freehold Land, Perspective Journal, Volume 20, Number 1, 2015, p. 1

3Asep Hidayat, Engkus, Hasna Afra. N, Implementation of the Policy of the Minister of Agrarian Affairs and Spatial Planning Regarding Accelerating the Implementation of Complete Systematic Land Registration in the City of Bandung, Journal of Social Development, Volume 1, Number 1, 2018, p. 100-101.

above will be stipulated by law as well as temporary rights such as lien rights, profit-sharing business rights,

It should be noted that the need for land is increasing day by day, partly due to the increasing population and rampant development, which requires land as its main means. Meanwhile, land is a limited component. So that along with the increasing need for land, land problems often arise in society whose object is land.

The National Land Agency is a non-ministerial government agency that has duties in the land sector with its work units, namely the Regional Offices of the National Land Agency in each Province, Regency and City which carry out the registration of land rights and maintenance of the general register of land registration. The National Land Agency was formed based on the Decree of the President of the Republic of Indonesia Number 26 of 1988 which is tasked with assisting the president in managing and developing land administration, both based on the UUPA and other laws and regulations which include regulating the use, control and ownership of land, control of land rights, measurement and registration of land and other matters related to land issues based on policies stipulated by the President.

Disputes in the land sector are land disputes between individuals, legal entities or institutions that do not have a broad socio-political impact. An event that can be referred to as a land dispute, of course, must fulfill several elements of the dispute. In understanding what is meant by land disputes, it is sometimes confused with land issues which are generally referred to as disputes.[4]

Settlement of land disputes can be divided into 2 (two), namely through non-litigation/non-litigation channels (negotiations/deliberations, conciliation, mediation/mediation, arbitration/arbitration) and judicial/litigation pathways.[5]If deliberation efforts cannot find the desired agreement, then the person concerned/disputing parties can submit their case to the Court (District Court or State Administrative Court).

The Land Office, which actually has the task of carrying out government affairs in the agrarian or land sector, has the authority to resolve land disputes in accordance with Presidential Regulation Number 48 of 2020 concerning the National Land Agency which was issued with due regard to aspects of community aspirations and participation in order to improve general welfare, the role of the Land Agency National Land Affairs, hereinafter referred to as BPN, namely serving and helping the community to obtain their rights in the land sector, and directing them to be able to find a way out of solving land problems between communities.

Likewise with the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Settlement of Land Cases in which dispute resolution through the BPN aims to provide justice and legal certainty to the community regarding land tenure, ownership, use and utilization. In more detail, the authority of BPN in resolving land disputes is contained in Article 2 of Presidential Regulation Number 48 of 2020 concerning the National Land Agency which states that:

"BPN has the task of carrying out government duties in the land sector in accordance with statutory provisions."

In Article 3 letter g it is stated that:

"In carrying out the tasks referred to in Article 2, BPN carries out the function of formulating and implementing policies in the field of handling and preventing disputes and conflicts as well as handling land cases."

4Marsella, M. Perspective of Handling Land Disputes at the National Land Agency, Law Enforcement Scientific Journal, 2015, 2(2), p. 101-107.

5Wowor, F. Functions of the National Land Agency for Land Dispute Resolution, Lex Privatum, 2014, 2(2), p. 95-104.

The implementation of the dispute resolution carried out by the BPN is carried out with an Alternative Dispute Resolution by mediation, this is adjusted to the mandate of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Settlement of Land Cases Article 43 paragraph (1) which states that:

"Case Settlement can be resolved through Mediation."

Basically, there are lots of land disputes that occur not only in urban areas but also in rural areas. And this land dispute is also a dispute that is handled a lot not only by courts, but also by BPN to be resolved through mediation. As mediation at BPN aims to increase the success of peace against the parties involved in disputes, especially in land cases. In addition, the purpose of carrying out mediation is also to reduce the increase in the number of land cases in the District Court and to be able to resolve these land disputes amicably.

However, in practice, peace is rarely found and mediation at BPN has a low success rate, even though the provisions for mediation at BPN are very clear, as stated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Settlement of Land Cases. If this land dispute is not immediately handled carefully or seriously, it will cause other, more complicated problems that cannot be resolved easily.

RESEARCH METHODS

In this study, the author uses normative/juridical-normative legal research methods, namely legal research that examines related to the object of research. Normative legal writing, also known as library research, is research conducted by tracing or studying and analyzing library materials or ready-to-use document materials. To be able to find out as much as possible the opinions and or concepts of experts who have conducted research or written in advance regarding land disputes. Then carried out data collection techniques by collecting materials in the form of books and other library materials that have something to do with the problem of unlawful acts. The main data source of this research is literature study, namely by observing, studying.[6]

RESULT AND DISCUSSION

Agrarian Dispute Settlement Mechanism

Land disputes that accumulate into land cases that go to the Supreme Court every year show an increasing intensity, which is estimated to range from 65% to 70% annually. This number does not include cases that have been decided at the first level or at the appellate level. Most land cases originate from the general court environment, in addition to originating from the religious court environment (such as disputes over inherited land and waqf land) and within the state administrative court environment.

Dispute Settlement Through the Courts

The court forum is a choice of dispute resolution methods chosen by the parties to the dispute to achieve their goals. The court is a place for members of the public to ask for protection if they feel that their rights and interests have been violated by both the authorities and fellow members of the community.

Courts are highly expected by justice seekers, who can function as:

a. As a pressure valve or pressure valve for all violations of law, public order and violations of public order;

6 Bambang Sunggono, Legal Research Methodology, Jakarta: PT RajaGrafindo, 2003, p. 32.

b. The judiciary is still expected to play a role as the last freesort, namely as the last place to seek truth and justice, so that the court is still relied upon as a body that functions to uphold truth and justice (to enforce the truth and to enforce justice).

Thus, its existence is still recognized as:[7]

a. Guarding the freedom of society (in guarding the freedom of society);
b. Also considered as a guardian of society (are regarding as a costudian of society);
c. Also considered as executors of law enforcement, which is commonly referred to in the expression judiciary as the upholders of the rule of law.

The position of the courts in Indonesia as bearers of judicial power has a classic problem that is always hotly discussed, namely "independence" or the independence of the judiciary as mandated by Article 24 of the 1945 Constitution, which contains the main demands of the independence of the judiciary, namely:[8]

a) In addition to upholding an impartial trial in the sense that it is completely free from the influence of the litigants;
b) It must also be free from the influence and grip of the executive or independence from the executive power.

Litigation in court is generally perceived as a process that takes time, is not simple and is not cheap[9]This description is not only limited to Indonesia, but is comprehensive in all countries in the world. The settlement of disputes in court is generally slow or is called a waste of time resulting from a very formalistic and technical examination process. Apart from that, the flow of cases is getting heavier so that the judiciary is overloaded. The description of the slow resolution of cases from the first level to the cassation level is also shown in other countries, such as in America it takes 5 to 15 years, in Japan, 5 to 17 years, in South Korea it takes 5 to 7 years.

Some people are also of the opinion that resolving disputes through the courts "does not solve the problem", instead it is alleged that it can complicate the problem. This is due to objective reality, the court's decision is unable to provide a satisfactory settlement to the parties. The court decision is unable to provide peace and tranquility to the parties to the dispute, because what emerges from the court decision is:[10]

a. One party is sure to win (winning) and the other party is bound to lose (loosing), in fact losing or winning will be the same situation, because in general to get a win it costs far more to be incurred than the value of the winnings.
b. Win-lose situations in litigation never bring peace, but grow seeds of revenge and enmity and hatred. Revenge, enmity, and hatred born of court decisions have never brought peace and harmony between the litigants. Therefore, court decisions generally destroy family and brotherly relations or destroy a relationship.
c. Court rulings are confusing;
d. Court decisions often do not provide legal certainty (uncertainty) and are unpredictable (unpredictable); as a result of fluctuating circumstances and tends to be disparity between decisions with one another. That is why criticism emerged in the form of the expression different judge different sentence: different judges have different decisions.

The administration of justice in Indonesia is carried out by the judiciary within the General Courts, Religious Courts, Military Courts, and State Administrative Courts. The four judicial spheres which are under the Supreme Court, are the administrators of state power in the judicial

7Yahya Harahap, Several Reviews Regarding the Judicial System and Dispute Resolution, Bandung: Citra Aditya Bakti, 1997, p. 238.
8Ibid., p. 5.
9Maria SW Sumardjono, Defense Land Policy Between Regulation and Implementation, Jakarta: Kompas Book, 2008, p. 198.
10Yahya Harahap, Some Reviews Regarding the System.... Op.cit., p. 244-245

sector. Therefore, constitutionally, it acts to administer justice in order to uphold law and justice in its position as a state court.

General Court Competency Land Disputes

Civil disputes regarding land have had their place of settlement in the general court in the event that the parties to the dispute are persons or legal entities, or between persons or legal entities and the government. For land disputes involving or between individuals or civil legal entities and State Administrative Agencies or Officials as a result of the issuance of a State Administrative decision, it shall be resolved within the scope of the State Administrative court. Land disputes are civil disputes that occur between two parties, namely the Plaintiff and the Defendant in the dispute. Anyone who feels that his personal rights have been violated by another person, if he wants a settlement through the court, according to Article 118 HIR/Article 142 RBG must file a lawsuit with request for the court to summon both parties to appear before a court hearing to examine the dispute on the basis of the lawsuit.

Claims for rights which in Article 118 paragraph (1) HIR (Article 142 paragraph (1) Rbg) are referred to as civil claims (burgerlijke vordering) are none other than claims that contain disputes and are usually called lawsuits. Claims can be filed in writing (Article 118 paragraph 1 HIR, Article 142 paragraph 1 Rbg) or orally (Article 120 HIR, Article 144 paragraph 1 Rbg). HIR and Rbg only regulate how to file a lawsuit, while there are no requirements regarding the content of a lawsuit. Requirements regarding the contents of the lawsuit are found in Article 8 No. 3 RV which requires a lawsuit in essence contains:[11]

a. Identity of the parties;
b. Concrete arguments regarding the existence of a legal relationship which is the basis and reason for the claim or better known as the fundamentalum petendi;
c. Claims or petitions.

People who have claims to court have an interest in obtaining legal protection. A right claim having sufficient legal importance is the main requirement for the court to accept that right claim for examination. If the demand for rights is proven to be based on a right, it will surely be granted.[12]

Competency Land Dispute of the State Administrative Court

Legal disputes in the field of land which are the authority of the State Administrative Court involve between individuals or civil legal entities with State Administrative Agencies or Officials as a result of the issuance of State Administrative decisions, entering the State Administrative court environment, especially with regard to cancellation of certificates as State Administrative agency products. Land disputes which are state administrative disputes arise as a result of the issuance of decisions that result in disputes. Decisions that often cause disputes are generally administrative (legal) actions that contain deficiencies (errors, mistakes, delays, oddities, oddities) in their decisions.

Administrative law actions that contain these deficiencies take various forms which can be classified as follows:[13]

a. The legal action is carried out under his authority, but does not comply with the methods or forms determined by the rules or basic provisions (procedure);
b. The legal action is carried out under his authority, and in accordance with the methods or forms determined by the rules or basic provisions, but the contents are contrary to law/violates morals/ethics/ethics;

11Sudikno Mertokusumo, Indonesian Civil Procedure Code, Yogjakarta: Liberty 2006, p. 113
12Ibid.
13Rusmadi Murad, Settlement of Legal Disputes Over Land, Bandung: Alumni, 1991, p.8.

c. Legal actions are carried out under their authority, and in accordance with the methods or forms determined by the regulations or basic provisions, but the decisions taken contain elements of coercion, fraud, oversight, and negative influence from third parties.
d. The legal action is carried out under his authority, and in accordance with the ways or forms determined by the rules or basic provisions, but only decides a part of the whole affair;
e. The legal action is carried out under his authority, and in accordance with the methods or forms determined by the rules or basic provisions, but added to the conditions which turn out to be not included in his authority;
f. Legal actions carried out by the administrative organs are not clear on their authority, both regarding the matter or the affairs that are decided.

Dispute resolution through the courts raises many complaints, it is necessary to make efforts so that this court institution can function optimally, besides that it is necessary to seriously strive to improve the quality of its human resources and the quality of its services, it is necessary to avoid third party interference with any motivation which will have a negative impact on court decision.[14]

Out of Court Dispute Resolution

Dispute settlement outside the court is a dispute settlement that is carried out based on the agreement of the parties and the procedure for resolving a dispute is fully left to the parties to the dispute.[15]

Settlement of disputes outside the court is also known as non-litigation settlement. Litigation (English) means court. Non-litigation dispute resolution is an out-of-court dispute settlement based on law, and this settlement can be classified as high-quality dispute resolution, because disputes resolved in this way can be resolved completely without leaving residue of hatred and resentment.[16]

Thus, non-litigation dispute resolution or deterrence is essentially the settlement of legal issues, legally and conscientiously, so that there the law can be won and people's consciences are also subject to voluntary compliance or peace, without anyone feeling defeated.[17]

The non-litigation route (extra ordinary court) is a mechanism for resolving disputes outside the court, but using mechanisms that live in society whose forms and types vary widely, such as deliberation, peace, kinship, customary settlements, and others. One way that is currently developing and in demand by business people is through ADR (Alternative Disute Resolution) institutions. In general, settlement mechanisms through non-litigation channels are considered as premium remedium or first resort in resolving disputes, while litigation channels are only used when efforts to resolve amicable or peaceful settlements are unsuccessful.[18]

In Indonesia the term ADR (alternative dispute resolution) is relatively new to know, but in fact dispute resolution by consensus has long been carried out by the community, which essentially emphasizes efforts to reach consensus, kinship, peace, and so on.[19]ADR is a foreign term that needs to find its equivalent in Indonesian. Various terms in Indonesian have been introduced in various forums by various parties, such as alternative dispute resolution mechanisms (PPS), alternative dispute resolution mechanisms (MAPS), and cooperative

14Maria SW Sumardjono, Land Policy.... Op.cit, page 195.
15Jimmy Joses Sembiring, How to Resolve Disputes Out of Court (negotiation, Mediation, Conciliation and Arbitration), Jakarta: Vision Media, 2011, p. 2.
16Wayan Wiryawan, Out of Court Dispute Resolution, Denpasar: Udayana University Press, 2010, p. 5.
17ibid.,
18Bambang Sutiyoso, Arbitration Law: Alternative Dispute Resolution, Yogyakarta: Gama Media, 2010, p.6.
19Sophar Maru Hutagalung, Civil Court Actor and Alternative Dispute Resolution, Jakarta: Sinar Graphic, 2012, p.311.

dispute resolution mechanisms. And there are also those who interpret it by managing contacts cooperatively (Cooperation Conflict Management).[20]Thus, seen from the several terms above, in fact Alternative Dispute Resolution (ADR) is a settlement of disputes outside the Court which is carried out peacefully.

Alternative dispute resolution(ADR) is often interpreted as an alternative to litigation and an alternative to adjudication. The choice of one of the two meanings has different implications. If the first meaning is (alternative to litigation), all out-of-court dispute settlement mechanisms including arbitration are part of ADR. However, if ADR is an alternative to adjudication, it means a consensus or cooperative dispute resolution mechanism, not through a procedure for filing a lawsuit against a third party who has the authority to make a decision. Included as part of ADR are negotiation, mediation, conciliation, and expert opinion, while Arbitration is not included in ADR.[21]

The definition of ADR as an alternative to edjudication is the equivalent of the terms MAPS, PPS, or cooperative dispute resolution mechanism, which are three terms to be considered as equivalents to Indonesian terms. If ADR is defined as an alternative to litigation, the arbitration mechanism can be included or classified in the ADR group, so that MAPS (alternative dispute resolution mechanisms) and PPS (dispute resolution options) are two equivalent terms that can be considered.

To get an overview of what is meant by ADR, Geogre Applebay in his writing An Overview of Alternative Dispute Resolution, argues that ADR is first of all an experiment to find new models in dispute resolution, new applications to old methods. , new forums for dispute resolution, and a different emphasis on legal education.[22]

Meanwhile, the Black's Law Dictonary defines APS as a procedure for settling a dispute by means other than litigation, such as arbitration or mediation. The definition of APS in the Black's Law Dictionary has a different definition from the definition of APS stipulated in Law No. 3 of 1999. Where article 1 number 10 of Law No. 3 of 1999 defines APS as an institution for settling disputes or dissent through procedures agreed upon by the parties, i.e. settlement out of court by way of consultation, negotiation, mediation, conciliation or expert judgment. It can be seen that the Black's Law Dictonary includes arbitration in APS, while Law No. 3 of 1999 distinguishes arbitration from APS. the term APS in English is called Alternative Dispute Resolution,

In drafting Law No. 3 of 1999, Sudargo Gautama stated that there are two schools of APS, namely schools which state that arbitration is separate from APS and schools which state that arbitration is included in APS. However, when it was ratified and enacted into law No. 30 of 1999, arbitration was separated from APS.[23]This ADR is an out-of-court dispute settlement based on the agreement of the parties. As a consequence the agreement of the ADR parties is voluntary and not forced by either party or other party.[24]

The nature of this out-of-court dispute resolution is closed to the public (close door session) and the confidentiality of the parties is guaranteed (confidentiality), the proceedings are faster and more efficient. This out-of-court dispute resolution process avoids delays caused by procedural and administrative procedures as in general courts and a win-win solution.[25]

20Suyud Margono, Alternative dispute resolution (ADR) and Arbitration, Jakarta: Ghalia Indonesia, 2000, p. 35-36.

21Suyud Margono, ADR & Arbitration process of institutionalization and legal aspects, Bogor: Galia Indonesia, 2004, p. 37.

22Sophar Maru Hutagalung, Civil Court Actor and Alternative Dispute Resolution, Jakarta: Sinar Graphic, 2012, p. 312.

23Frans Hendra Winarta, law on National Arbitration Dispute Resolution in Indonesia and Internationally, p. 15.

24Bambang Sutiyoso, Arbitration Law: Alternative Dispute Resolution, Yogyakarta: Gama Media, p. 72.

25Frans, Hendra Winarta, law…, Op.Cit., p. 11.

Legal Certainty for Land Dispute Resolution in the Minister of Agrarian Regulation Number 21 of 2020 concerning Handling and Settlement of Land Cases

In the land sector, land cases can occur between one community and another and even between the community and the state. Inter-community land cases can occur, among others, due to land grabbing by one party, inheritance problems and problems with land ownership claims due to multiple certificates. Land cases between the community and the state are common due to the arbitrary power of the state taking community land for reasons of public interest but not accompanied by commensurate compensation.[26]

KemenATR/BPN as an institution that regulates and handles the land sector in Indonesia must play an active role in handling land cases. The Ministry of ATR/BPN has the authority to seek solutions for handling land cases based on applicable regulations by taking into account the sense of justice and respecting the rights and obligations of each party. Theoretically, authority originating from laws and regulations can be obtained in three ways:

1. Attribution, in legal terms, attribution is translated as "sharing (power). Regarding the notion of attribution, it is the granting of new government authority by a provision in legislation, whether it is carried out by original legislators or delegated legislators.
2. Delegative, in legal terms what is meant by delegation is the transfer of authority from a higher official to a lower agency or official.
3. Mandates are different from delegations, regarding mandates, the mandate giver remains authorized to carry out his own authority if he wants, and gives instructions to the mandater about what he wants. The mandater or the mandate giver remains responsible for the actions taken by the mandater.

Every Land Case ultimately requires a settlement method, the hope of the parties to the dispute is of course that there will be a fair and equitable settlement. The authority to handle land cases by the Ministry of Home Affairs/BPN outside the court in this case is classified into 3 (three) classifications, namely Serious Cases, Moderate Cases and Mild Cases.

Technically, the handling of land disputes by the Ministry of ATR/BPN is sequentially carried out in the following mechanism/stages:

1. Case Review.
   The study of land cases is carried out to describe the subject of the dispute, the objections or demands of the complainant, the location, extent and status of the object of the case; Case history; available data or documents; Case classification; and other things that are considered important so as to facilitate understanding of the cases being handled and become the basis for carrying out the Preliminary Case Title.[27]
2. Initial Degree.
   Preliminary Case Titles are conducted with the aim of determining the parties concerned; formulate a Treatment plan; determine applicable laws; determine juridical data, physical data, field data and materials needed; prepare a research work plan; and determine the target and time of Completion so that it becomes the basis for notification to other agencies if the Case is the authority of other agencies; prepare responses or answers to complainants; or prepare research working papers as a basis for conducting research.[28]
3. Study.
   The research was carried out with the aim of, First, collecting physical data showing the location, area and boundaries of land, etc. related to the case being handled. Second, collect juridical data. Third, field data are facts that describe the actual conditions, control and utilization of land use which is the object of the case. In the event that the Research does not find physical data and juridical data, then a search is carried out on the process

26Bernhard Limbong, Land Conflicts, Jakarta: Margaretha Pustaka, 2012, p. 28.
27Article 7 paragraph (1), (2) and (3) PermenATR/Ka.BPN No. 21 of 2020.
28Article 8 paragraph (1), (2) and (3) PermenATR/Ka.BPN No. 21 of 2020.

of issuing land rights in the list/public register; ask for information from the official who processes the issuance of land rights; request information from the parties; and/or request information from the village head/lurah or related agencies or other parties as needed. Research results are made into studies and outlined in the form of research results reports that describe the typology of the problem, the root of the problem, the main problem,[29]

4. Expose the results of Research and Coordination Meetings.
   Exposure to research results will produce conclusions in the form of case resolution or recommendations or instructions, data or additional information is still needed to arrive at conclusions by completing the data and conducting further research. If the data or additional information material is sufficient then the final degree will be carried out.[30]
5. Final Degree.
   The Final Degree is intended to evaluate the handling that has been carried out, ensure conformity between evidence data and witness and/or expert testimony, refine case files, and determine whether or not the application of law and statutory provisions is appropriate for the cases handled. The results of the final degree are the basis for decision making for Case Settlement in the form of recommendations and proposals for resolving cases.[31]
6. Case Resolution.
   Settlement of cases in the form of a report on the handling of land cases which is an integral part of the file for handling land cases starting from the Complaint, up to the notification letter. After receiving the results of Case Completion, Case Handling is declared complete with the following criteria:[32]
   a. Criterion One (K1) if the settlement is final, in the form of a decision on cancellation, reconciliation, or a letter of refusal the application cannot be granted.
   b. Criterion Two (K2) in the form of:
      1) Instruction letter for Settlement of a Case or letter of determination of the party entitled but has not been able to follow up on a decision on settlement because there are conditions that must be met which are the authority of other agencies;
      2) letter of recommendation for Settlement of Cases from the Ministry to Regional Offices or Land Offices in accordance with their authority and Regional Offices to Land Offices or proposals for Settlement from Land Offices to Regional Offices and Regional Offices to the Minister.
   c. Criterion Three (K3) in the form of a notification letter is not the authority of the Ministry.

Settlement of land cases in Indonesia has been protracted in the realm of courts. It is suspected that the protracted settlement of land disputes in the realm of courts occurred because each judicial institution has absolute (certain) competence in deciding a case. There are three courts that have authority when it comes to land disputes, namely the Civil Court (general), the State Administrative Court (PTUN), and the Religious Court (PA). However, the authority of each judicial institution means that the settlement of land disputes must take a long way and the process is not very simple. In Civil Courts, has the competence to adjudicate related disputes over ownership rights. In the TUN Judiciary, having the competence of SHAT validity as a decision issued by a state official.[33]

29Article 9 paragraph (1), (2) and (3) PermenATR/Ka.BPN No. 21 of 2020.
30Articles 13 and 14 of PermenATR/Ka.BPN No. 21 of 2020.
31Articles 15 and 16 PermenATR/Ka.BPN No. 21 of 2020.
32Article 17 letters a, b, and c PermenATR/Ka.BPN No. 21 of 2020.
33Moch Iqbal, https:// https://bldk.mahkamahagung.go.id/id/43- puslitbang-kumdil/dok-keg-litbang/1599-iqbal-lebih-dari-60-tahun-pembelesaian-kasuspertanahan-di -indonesia-protracted, accessed on 8 June 2023.

A lawsuit to the Court can be filed by anyone who feels entitled to own land rights so that it can be stated that a certificate already in the name of another party is invalid and canceled through a judge's decision, in the interests of the Plaintiff. Through the Court will be proven as to who is the most entitled party to the property rights. A land certificate can be canceled based on a Court decision that has obtained permanent legal force. With this in mind, certificates of ownership rights to land that are issued, in reality contain weaknesses in the certainty of their rights because they can still be questioned by the public in the judiciary. Therefore, land ownership certificates have permanent legal force after obtaining a judge's decision.[34]

The permanent legal force of the judge's decision is the binding force of the court's decision which has a material legal nature because it makes changes to civil authorities and obligations: determines, abolishes or changes. Therefore a court decision can create or abolish a legal relationship.[35]

Case handling carried out by the Ministry of ATRBPN is contained in CHAPTER IV PermenATR/Ka.BPN No. 21 of 2020 concerning Handling and Settlement of Land Cases. The main technical point is that the Ministry, Regional Office, Land Office in accordance with their authority notifies the right holder about a lawsuit in the event that the object of the lawsuit is a Legal Product and the party who becomes the defendant is the Ministry, Regional Office and/or Land Office if the right holder does not participate being sued and asked to enter as an intervening party.

In the case handling process, reconciliation can be carried out to end the case process and if it ends in peace, a conciliation decision is requested by the competent court. Settlement cannot be carried out if: 1. Concerning State-Owned Goods (BMN), Regional-Owned Goods (BMD), Goods belonging to State-Owned Enterprises or Goods belonging to Regional-Owned Enterprises; 2. Not approved by all parties to the dispute; 3. Not approved by the holder of land rights over the object of the case who is not a party to the case; 4. There are problems or other cases regarding the same subject and/or object; or; 5. Did not receive written permission from the Official who issued the decision which became the object of the lawsuit according to authority.

The emergence of various land problems need to be resolved immediately. The enactment of PermenATR/Ka.BPN No. 21 of 2020 concerning Handling and Settlement of Land Cases, can resolve cases in the land sector. Cancellation of certificates with defects in administrative law is a legal effort to prevent, supervise and take action to prevent conflicts of interest in land rights which can cause harm to parties with an interest in land.

CONCLUSION

The agrarian dispute settlement mechanism can be carried out by resolving disputes through the Court and Dispute Settlement outside the Court. Settlement of disputes through the Courts Court forums are one of the options for dispute settlement methods chosen by the disputing parties to achieve their goals. outside the Court is a mechanism for resolving disputes outside the court, but using mechanisms that live in society whose forms and types vary widely, such as deliberation, peace, kinship, customary settlements, and others.

Legal certainty in handling cases carried out by the Ministry of ATRBPN is contained in CHAPTER IV PermenATR/Ka.BPN No. 21 of 2020 concerning Handling and Settlement of Land Cases. The main technical point is that the Ministry, Regional Office, Land Office in accordance with their authority notifies the right holder about a lawsuit in the event that the object of the lawsuit is a Legal Product and the party who becomes the defendant is the

34Muchtar Wahid, Interpreting the Legal Certainty of Land Ownership Rights, Jakarta: Republika, 2008, p. 112
35Sudikno Mertokusumo, Indonesian Civil Procedure Code, Yogyakarta: Liberty, 1985, p. 76

Ministry, Regional Office and/or Land Office if the right holder does not participate being sued and asked to enter as an intervening party.

REFERENCES

Book

Bambang Sunggono, Legal Research Methodology, Jakarta: PT RajaGrafindo, 2003.

Bambang Sutiyoso, Arbitration Law: Alternative Dispute Resolution, Yogyakarta: Gama Media, 2010.

Bernhard Limbong, Land Conflicts, Jakarta: Margaretha Pustaka, 2012.

Frans Hendra Winarta, Law of National Arbitration Dispute Resolution in Indonesia and International.

Jimmy Joses Sembiring, How to Resolve Disputes Out of Court (negotiation, Mediation, Conciliation and Arbitration), Jakarta: Visi Media, 2011.

Big Indonesian Dictionary, Ministry of Education and Culture, 1994.

Maria SW Sumardjono, Defense Land Policy Between Regulation and Implementation, Jakarta: Kompas Book, 2008.

Muchtar Wahid, Interpreting the Legal Certainty of Land Ownership Rights, Jakarta: Republika, 2008.

Rusmadi Murad, Settlement of Legal Disputes Over Land, Bandung: Alumni, 1991.

Sophar Maru Hutagalung, Civil Court Actor and Alternative Dispute Resolution, Jakarta: Sinar Graphic, 2012.

Sudikno Mertokusumo, Indonesian Civil Procedure Code, Yogjakarta: Liberty 2006.

Suyud Margono, ADR & Arbitration process of institutionalization and legal aspects, Bogor: Galia Indonesia, 2004.

_____, Alternative dispute resolution (ADR) and Arbitration, Jakarta: Ghalia Indonesia, 2000.

Wayan Wiryawan, Out of Court Dispute Resolution, Denpasar: Udayana University Press, 2010.

Yahya Harahap, Several Reviews Regarding the Judicial System and Dispute Resolution, Bandung: Citra Aditya Bakti, 1997.

Constitution

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Settlement of Land Cases.

Journal

Asep Hidayat, Engkus, Hasna Afra. N, Implementation of the Policy of the Minister of Agrarian Affairs and Spatial Planning Concerning the Acceleration of Complete Systematic Land Registration in the City of Bandung, Journal of Social Development, Volume 1, Number 1, 2018.

Marsella, M. Perspective of Handling Land Disputes at the National Land Agency, Law Enforcement Scientific Journal, 2015.

Urip Santoso, Land Acquisition by Local Government Derived from Freehold Land, Perspective Journal, Volume 20, Number 1, 2015.

Wowor, F. Functions of the National Land Agency for Land Dispute Settlement, Lex Privatum, 2014.