

LEGAL PROTECTION FOR THE COMMUNITY IN RESOLUTION OF LAND DISPUTES

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Abstract

This study discusses the resolution of land disputes, which are a complex and ongoing problem in Indonesia, especially when community rights to land conflict with state or corporate interests. This problem often leads to injustice, criminalization, and even human rights violations, especially against vulnerable groups such as farmers and indigenous peoples. This study aims to analyze the forms of legal protection provided to communities in resolving land disputes and evaluate the legal mechanisms available under the Indonesian legal system. Legal protection for communities has been regulated in various regulations, such as the Basic Agrarian Law (UUPA), the Human Rights Law, and the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency (BPN). However, its implementation still faces serious challenges, particularly in terms of accessibility, bias by officials, and transparency. Meanwhile, dispute resolution mechanisms are divided into litigation and non-litigation channels, including mediation by land offices, customary deliberations, and resolution through independent institutions such as the National Commission on Human Rights (Komnas HAM) and the Ombudsman. Unfortunately, the effectiveness of these mechanisms depends heavily on the government's commitment and the capacity of relevant institutions to ensure substantive justice.

Keywords: Legal Protection, Land Disputes, Community, Legal Mechanisms

INTRODUCTION

Land is an essential part of human survival, functioning not only as a support for economic and social activities, but also as the basis for the existence of a nation and state. The relationship between humans and land has been established since the beginning of civilization, making it a vital resource that is often the object of struggle and conflict. In Indonesia, an archipelago with cultural diversity and abundant natural resources, agrarian problems are a classic issue that keeps recurring from Sabang to Merauke. The complexity of this issue is rooted in a long history of agrarian regulation influenced by various legal systems, ranging from customary law, colonial legal heritage, to post-independence national law. Overlaps between legal systems, plus the management of land administration that has not been optimally organized, often trigger disputes (Harsono, 2003).

Land disputes in Indonesia are not a new phenomenon. They range from unclear legal status, overlapping ownership or certificates, boundary disputes, to conflicts between communities and the government or companies in development projects (Sumardjono, 2007). One prominent root cause is the legacy of colonial land tenure structures that are not aligned with social justice values and local wisdom (Safitri, 2011). Many customary lands and hereditary holdings have not been formally registered or recognized, opening the gap for other parties to claim or utilize them. The situation is further complicated by the acceleration of development and investment in the agriculture, plantation, mining and infrastructure sectors, which often leads to evictions without fair procedures or adequate compensation.

The impact of land disputes is multidimensional. In addition to material losses, these conflicts have social, economic and even psychological impacts, especially on vulnerable groups such as farmers, indigenous peoples and the urban poor. Their lack of legal understanding, limited access to information, and the high cost of litigation make their position unbalanced when dealing with large corporations or state apparatus. This inequality reflects the disparity of power that hinders access to justice for economically and socially weak parties.

Therefore, the existence of effective legal protection is an urgent need. Such protection does not simply stop at regulations that favor the community, but also requires a dispute resolution mechanism that is easily accessible, transparent, fair, and provides legal certainty. Although Indonesia has various land regulations, implementation in the field is often not optimal. Many disputes are protracted, create legal uncertainty, and even trigger violence (Hadjon, 1987).

Land in Indonesia has a meaning that goes beyond economic value; it is also full of social and cultural meaning. Its management and utilization should be based on the principles of justice, benefit and sustainability. However, reality shows that there are still frequent conflicts between communities and other parties, whether the government, companies or individuals. Disputes usually arise due to overlapping rights, unclear ownership status, or expropriation without legal procedures. In these conditions, the state plays an important role in protecting the rights of the community, especially groups that are economically and legally in a weak position.

Agrarian law includes all norms, both written and unwritten, that regulate legal relations in the field of natural resources, including land, water, mining, fisheries, and other natural elements. In the Indonesian context, Law No. 5/1960 on Agrarian Principles is the main juridical footing, with the aim of distributing land fairly to poor farmers, upholding the social function of land, and preventing private domination in the agrarian sector. Article 2 paragraph (1) of the UUPA emphasizes that all land in the territory of Indonesia is controlled by the state to be utilized to the greatest extent for the prosperity of the people.

However, practices in the field often show an imbalance between investment interests and community protection. Although technical regulations such as the Regulation of the

Minister of ATR/Head of BPN No. 21/2020 have established dispute resolution mechanisms, obstacles such as bureaucratic red tape and limited access to information remain. Industrial, plantation and mining expansions also often lead to conflicts with indigenous communities or farmers, which can even lead to criminalization. The weak role of law enforcement agencies and land agencies in resolving cases quickly and fairly adds to the long list of problems (Aminah, 2015). In fact, the constitution has guaranteed land rights as part of human rights, as stipulated in Article 28H paragraph (4) of the 1945 Constitution.

The fact that unscrupulous officials can take advantage of weaknesses in the legal system, coupled with the high demand for land amidst limited land, makes land disputes difficult to avoid. Therefore, this research is relevant to comprehensively examine the form of legal protection for the community in land disputes and assess the extent to which the existing legal mechanisms are able to guarantee justice and legal certainty for all parties involved.

RESEARCH METHODS

This research uses a normative or doctrinal legal method that focuses on literature review and analysis of legal documents related to employment agreements containing standard clauses in Indonesia, especially in the context of land disputes. The approach used is normative juridical by relying on secondary data which includes laws and regulations, legal literature, and official documents (Soekanto & Mamudji, 2004). The nature of this research is prescriptive, with the aim of answering legal issues through an in-depth study of agrarian regulations, the causes of land disputes, and their resolution mechanisms.

The legal materials used include primary legal materials such as the 1945 Constitution, Civil Code, UUPA, as well as various laws and regulations related to land dispute resolution; secondary legal materials in the form of relevant literature, journals, articles, and online sources; and tertiary legal materials such as legal dictionaries and encyclopedias. Data collection was conducted through literature studies and online source searches, while the processing of legal materials was carried out by classifying and compiling data according to the formulation of the problem, to produce an analysis that answers the legal issues that have been formulated (Erliyani, 2021).

RESULT AND DISCUSSION

Land Dispute Settlement Through Court and Outside the Court

Land disputes arise when there are conflicting claims or control of land by two or more parties, both in formal law and customary law. The cause can be overlapping certificates, weak land administration, or official decisions that are detrimental to certain parties. This issue is also often triggered by different interpretations of customary rights, development interests, and the expansion of large companies on community land (Harsono, 2003).

Conflicts can occur horizontally between citizens, vertically between citizens and the state or corporations, and even internally within indigenous communities. Legal protection is a fundamental aspect of the rule of law, which ensures that everyone gets their rights through a fair mechanism. Philipus M. Hadjon distinguishes legal protection into two forms: preventive, which is provided before a dispute occurs through information transparency and clear procedures; and repressive, which is provided after rights are violated through a judicial process or dispute resolution institution. In the land sector, these two approaches should go hand in hand, for example information services at the BPN as a preventive measure, and mediation or litigation as a repressive measure.

The legal basis of land in Indonesia is rooted in a combination of customary law, western law and the principles of nationalism. The 1945 Constitution Article 33 paragraph (3) emphasizes state control over the earth, water and natural resources for the prosperity of the

people. UUPA 1960 is the main legal umbrella that regulates the state's authority in managing land. In addition, Regulation of the Minister of ATR/BPN No. 21 of 2020 regulates procedures for handling land cases, and Law No. 30 of 2014 on Government Administration provides legal protection for the actions of public officials in the land sector. However, in practice, the implementation of these rules is often ineffective.

Land tenure rights are divided into several forms of primary rights, such as Hak Milik, Hak Guna Usaha, Hak Guna Bangunan, and Hak Pakai. Hak Milik is the strongest and fullest right that can be owned by Indonesian citizens, is hereditary, and is not limited in time. This right can be transferred, mortgaged, or donated. In contrast, Building Rights Title has a certain period of time, granted to construct buildings on state land, management rights land, or freehold land with provisions regulated by laws and regulations. Both types of rights can be nullified due to expiration, revocation, voluntary relinquishment, abandonment, or destruction of the land (Badudu, 1994).

Settlement of land disputes in Indonesia can be pursued through two main channels, namely litigation in court and non-litigation outside the court. Civil disputes are generally resolved through the general courts, while those relating to state administrative decisions can be brought to the State Administrative Court. Settlement through the courts rests on the principle of the independence of judicial power, which is free from interference from other powers in order to uphold justice and legal certainty.

The process of resolving land disputes through the courts includes several stages, starting from filing a lawsuit, trial examination, proof, to the decision. The advantage of this route is that there is a legally binding decision, but the disadvantages lie in the long process, high costs, and potential psychological burden for the parties. Complex land disputes often take years before legal certainty is achieved.

Alternative out-of-court (non-litigation) dispute resolution includes mediation at the Land Office, customary deliberation, arbitration, and facilitation by independent institutions such as Komnas HAM or the Ombudsman. These mechanisms are considered faster, cheaper, and able to maintain good relations between parties. In the context of indigenous peoples, deliberative settlements are often more acceptable because they are in line with local values. Both litigation and non-litigation dispute resolution channels have advantages and disadvantages. The litigation route provides formal legal certainty, while the non-litigation route emphasizes flexibility and reconciliation. However, if both channels fail to provide a solution, a non-ideal situation occurs that can exacerbate conflict and legal uncertainty. Therefore, it is necessary to strengthen the capacity of dispute resolution institutions, improve regulations, and increase the transparency of the process.

Thus, the channels for resolving land disputes in Indonesia need to be integrated. stronger between legal, institutional and local wisdom aspects. Legal protection for the community must be realized not only through written regulations, but also through consistent and fair implementation. That way, land dispute resolution can provide certainty, justice and benefits for all parties involved.

Protection Of The Community In Land Dispute Resolution Steps

1. Land Dispute Settlement Mechanism According to Indonesian Law

Land dispute resolution in Indonesia is based on the principles of the rule of law that prioritize certainty, justice and expediency. The applicable mechanisms are regulated through various laws and regulations, ranging from the 1945 Constitution, UUPA 1960, the Civil Code, to technical regulations of the Ministry of ATR / BPN. Disputes can be resolved through litigation in court or non-litigation outside of court, with the choice of path depending on the type of dispute, the position of the parties, and the expected effectiveness (Amriani, 2017).

The litigation route is a formal mechanism conducted through a judicial institution. In civil cases, the settlement is under the jurisdiction of the general court, while disputes resulting from state administrative decisions are resolved at the State Administrative Court (PTUN) (Sumarto, 2012). Filing a lawsuit requires authentic evidence, such as land certificates or tenure documents, which are then examined by a judge in a hearing open to the public (Azam, 2003).

The judicial process begins with the registration of the case, summoning the parties, hearing the examination, evidence, and reading the decision. Court decisions are binding and executable, although dissatisfied parties can still pursue further legal remedies such as appeal, cassation or judicial review. The advantage of this route is the resulting legal certainty, but the disadvantages lie in the long settlement time and relatively high costs.

On the other hand, the non-litigation route prioritizes deliberation, mediation, or arbitration approaches. This mechanism is regulated in Law No. 30/1999 on Arbitration and Alternative Dispute Resolution, as well as BPN's internal regulations on land mediation. This route is usually chosen to save time, costs, and maintain good relations between parties, especially in cases involving indigenous peoples or local communities.

Land mediation at the Land Office is an effective measure for administrative disputes, such as overlapping certificates or differences in land parcel boundaries. The process involves a mediator from the BPN facilitating a meeting of the parties, collecting juridical and physical land data, and finding common ground that can be outlined in a joint agreement. The results of this agreement can be the basis for data changes in the land book and certificate.

In disputes involving customary rights of indigenous communities, settlement is often done by prioritizing customary law. Customary deliberations have high social legitimacy and are more easily accepted by the local community. However, agreements resulting from deliberations need to be synchronized with national legal provisions in order to have formal legal force.

Protection of the community in land dispute resolution is also regulated through the principles of openness and participation. The government is obliged to provide accurate land information, open access to administrative processes, and provide space for the community to submit objections or appeals before a final decision is taken. This is a form of preventive legal protection.

Repressive legal protection is provided when people's rights have been violated, for example through execution or revocation of rights without proper procedures. In such a situation, the community can file a lawsuit to the court or report to a watchdog institution such as the Ombudsman RI or Komnas HAM. This mechanism ensures control over abuse of power by public officials or private parties.

Thus, the land dispute resolution mechanism in Indonesia requires the integration of litigation and non-litigation channels, along with the strengthening of institutions, regulations and human resources. An approach that combines formal legal certainty with local wisdom is believed to be able to provide optimal protection for the community while minimizing the potential for recurring conflicts.

2. Legal Steps for Communities in Failed Land Dispute Settlements

The case of the land dispute in Lamandau Regency between the people of Kujan Village and PT Menthobi Makmur Lestari (MML) is a clear example of agrarian conflict involving a plantation company and indigenous peoples. There are two main routes to resolution: litigation through the courts and non-litigation through mediation, customary law or administrative mechanisms.

In this case, the community chose the district court route and successfully won the lawsuit, so that the 35.67 hectares of land was recognized as belonging to the community

based on proof of control since 2003-2005 (Sembiring, 2010).

Litigation efforts have binding legal force and become a strong basis for the execution of rights or requests for revocation of the company's HGU. However, the process requires a long time, significant costs, and readiness of formal evidence. On the other hand, the non-litigation route aims to avoid protracted legal processes by prioritizing deliberation for consensus. Ideally, the settlement starts with mediation, negotiation, or conciliation, but if no agreement is reached, this path will shift to litigation. Examples of non-litigation settlements in Lamandau include a mediation facilitated by Kodim 1017 in 2023, which resulted in an agreement on an IDR 800 million customary fine, compensation, and rehabilitation of ancestral graves. Dayak customary mechanisms also play an important role, prioritizing collective agreement and social harmony. In addition, communities can involve state institutions such as Komnas HAM or the Ombudsman, as well as NGOs such as LBH to put moral and political pressure on companies. In fact, cancellation of the HGU can be filed if there is an overlap with community certificates.

Mediation is declared a failure if one of the parties rejects the agreement or refuses to attend. Causes of failure can include distrust, too great a difference of interest, lack of good faith, or third party intervention. The mediation failure letter issued by the mediator becomes the basis for proceeding to litigation. At this stage, the strategic focus shifts to formally proving rights in court.

Alternative non-litigation dispute resolution is governed by fundamental principles: good faith, contractual, binding, freedom of contract, and confidentiality. Among them, the principle of good faith is the most crucial, because without the sincerity of the parties, the settlement process will be difficult to achieve results. Article 6 paragraph (1) of Law No. 30 Year 1999 emphasizes that civil disputes can be resolved by prioritizing good faith and overriding litigation.

Mediation has advantages in terms of cost, time, and party satisfaction over litigation. The process is relatively short, does not require high costs, and provides space for active participation by the disputing parties. Good relations between the parties are also better maintained because it is collaborative. However, mediation depends on the willingness of both parties, and the mediator does not have the authority to decide the case, so if one party is reluctant to negotiate, the process will fail.

Total failure of both litigation and non-litigation poses serious risks, including: prolonged disputes without legal certainty, the potential for social conflict and violence, economic losses due to dead assets, investment barriers, social divisions, third-party intervention, and environmental damage. In a deadlock, the problem can be temporarily frozen, but it still has the potential to explode again.

The last resort includes high-level mediation by influential figures, filing for judicial review with new evidence, involving Komnas HAM or the Ombudsman, and public advocacy through the media and civil society organizations. The government can even issue ad-hoc policies or new legislation to resolve specific cases to prevent mass unrest.

In relation to community protection, a combination of legal and non-legal channels has proven effective if implemented consistently. BPN plays an important role in facilitating mediation, while the courts provide legal legitimacy. In the future, it is necessary to strengthen regulations, increase the capacity of mediators, and socialize to the public about fair and transparent dispute resolution mechanisms, so that cases like the one in Lamandau do not continue to be repeated and protracted.

CONCLUSIONS

Normatively, the legal framework in Indonesia-including the 1945 Constitution, the Basic Agrarian Law (UUPA), and Minister of Agrarian and Spatial Planning Regulation Number 21 of 2020-has in principle recognized and attempted to protect community rights to land. The principle of the social function of land rights, recognition of the existence of customary rights, and proportional compensation arrangements in land acquisition reflect the state's commitment. However, at the implementation level, there are still problems such as overlapping regulations, inconsistency of norms, and regulatory vagueness. This condition results in a gap between legal ideality and practice in the field, thus reducing the effectiveness of community rights protection.

Settlement of community land disputes can be pursued through two main channels: (a) Litigation, which is a judicial process in the district court to assert and protect ownership rights, as has happened in Lamandau District; (b) Non-litigation, which includes mediation, customary deliberation, or peace agreements. Adat-based settlements, such as the imposition of fines and the restoration of ancestral sites, have proven effective within Dayak communities.

Where these two channels fail, land disputes have the potential to develop into serious social and justice crises. In such situations, alternative approaches beyond formal legal mechanisms are needed, such as political, moral, social interventions or through public opinion pressure. Although this does not guarantee success, it can be a last resort to prevent the escalation of physical conflict and protracted legal uncertainty.

REFERENCES

- Aminah, S. (2015). Akses keadilan bagi masyarakat miskin dalam sengketa pertanahan. *Jurnal Hukum dan Pembangunan*, 45(1), 120–135.
- Azam, S. (2003). *Eksistensi hukum tanah dalam mewujudkan tertib hukum agraria* [Makalah Fakultas Hukum USU – Digitized by USU Digital Library].
- Badudu, Y. (1994). *Kamus Besar Bahasa Indonesia*. Jakarta: Pusat Pembinaan dan Pengembangan Bahasa.
- Harsono, B. (2003). *Hukum agraria Indonesia: Sejarah pembentukan Undang-Undang Pokok Agraria, isi dan pelaksanaannya*. Jakarta: Djambatan.
- Erliyani, R. (2021). *Metode penelitian dan penulisan hukum* (Cet. ke-3). Yogyakarta: Magnum Pustaka Utama.
- Hadjon, P. M. (1987). *Perlindungan hukum bagi rakyat di Indonesia*. Surabaya: Bina Ilmu.
- Khotibul Umam. (2010). *Penyelesaian sengketa di luar pengadilan*. Yogyakarta: Pustaka Yustisia.
- Nurnaningsih Amriani. (2017). *Teori sengketa*. Yogyakarta: Genta Publishing.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 16 Tahun 2021 tentang Perubahan Ketiga atas Peraturan Menteri Negara Agraria/Kepala BPN Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 21 Tahun 2020 tentang Penanganan dan Penyelesaian Kasus Pertanahan.
- Peraturan Pemerintah Nomor 18 Tahun 2021 tentang Hak Pengelolaan, Hak atas Tanah, Satuan Rumah Susun, dan Pendaftaran Tanah.
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Safitri, M. A. (2011). *Hukum dan konflik agraria*. Jakarta: PT RajaGrafindo Persada.
- Soekanto, S., & Mamudji, S. (2004). *Penelitian hukum normatif*. Jakarta: PT RajaGrafindo Persada.

- Sumardjono, M. S. W. (2007). *Kebijakan pertanahan: Antara regulasi dan implementasi*. Jakarta: Kompas.
- Sumarto. (2012, September 19). *Penanganan dan penyelesaian konflik pertanahan dengan prinsip win-win solution oleh Badan Pertanahan Nasional RI* [Bahan Diklat Direktorat Konflik Pertanahan Kemendagri RI].
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Nomor 2 Tahun 2012 tentang Pengadaan Tanah bagi Pembangunan untuk Kepentingan Umum.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa.