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Legal Review of Regional Government Authority in Land Disputes Based on the Principle of Justice

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Abstract
The population growth in urban areas in the last decade has been increasing. Apart from the migration flow of people from outside the city into urban areas, there is also a process of urbanization which especially affects suburban areas (fringe areas). The Preamble to the 1945 Constitution contains Pancasila (State of Belief in God), basic principles of human rights, justice (Rule of Law), people's sovereignty (Democratic State), as well as the duties and obligations of the Government (all state institutions) to create a Welfare State which includes protecting Indonesia's bloodshed. This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively and qualitatively. Concluding is conducted by using a deductive method, namely concluding from general to specific, especially those related to the research topic, namely Legal Review of Regional Government Authority in Land Disputes Based on the Principle of Shared Justice. the basic values it describes. This elaboration can be carried out creatively and dynamically in new forms to embody the same spirit and within the limits permitted by these basic values. This explanation clearly must not conflict with basic values. The basic values in question are values taken from Pancasila. Law is a tool for creating justice. Justice in the law is justice that is desired for all people who live within the framework of the law itself.

1. Introduction

Regarding land acquisition for public purposes, authority is divided between the Central and Provincial Governments. This is by the provisions of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest, State Gazette of the Republic of Indonesia of 2012 Number 22, (Addition to State Gazette of the Republic of Indonesia Number 5280), hereinafter referred to as the Land Acquisition Law divides authority regarding land acquisition between the Central and Provincial Governments. In Article 21 paragraph (3) of the Land Acquisition Law, the Regent can only be involved as a member of the assessment team regarding objections to development site plans. In Law 32 of 2004 concerning Regional Government, Regencies or Cities still have the authority to acquire land for the public interest, including the authority to determine locations, form land procurement committees, form land price assessment teams, and resolve disputes over compensation. This division of authority still needs to be further regulated in derivative regulations such as government regulations, presidential regulations, and/or ministerial regulations (Hamidah, 2014).

The reality that has occurred to date indicates that the government has its orientation, and is too advanced (with a global vision), while the majority of society is not yet ready for this vision. As a result, many laws and regulations issued by the government are considered not to be in favor of the interests of the people, but rather in favor of the world of global trade/free trade, and investors. The government should really. paying attention to the actual conditions of Indonesian society, whose levels of development vary greatly. Furthermore, Law Number 23 of 2014 concerning Regional Government as a substitute for Law Number 32 of 2004 concerning Regional Government states in Article 12 paragraph (2) about the areas within which regional government has the authority which includes land services. The implementation delegated to the regions within the framework of regional autonomy is the implementation of national land law. This is confirmed in Article 2 paragraph (4) of Law Number. 5 of 1960 concerning Basic Regulations on Agrarian Principles (State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2034); hereinafter referred to as the UUPA, the right to control from the State, the implementation of which can be authorized by autonomous regions and customary law communities, is only necessary and not contradictory (Ujan, 2007).

Paying close attention to the laws and regulations that regulate matters of authority in the land sector, it is clear that there is a lack of synchrony between Law Number 5 of 1960 and Law Number 23 of 2014. Article 2 of the Basic Agrarian Law expressly states that land affairs are matters of government, whereas according to Law Number 23 of 2014 Article 12, land affairs are matters that are decentralized to the regions and are the affairs of the regional government. At the level of implementing regulations, there appears to be a hierarchical conflict between the regulations issued by the government and Law Number 23 of 2014. Land ownership in Indonesia itself, if traced from its history, can be divided into two periods, namely land ownership before and after the promulgation of the Basic Agrarian Law (UUPA) (Adrian Sutedi, 2023). Land ownership in the period before the promulgation of the UUPA gave rise to a legal dualism governing land in Indonesia, on the one hand, Dutch colonial land law applied or adhered to the Western Civil Law system, and on the one hand, the Customary Law system also applied which applies to native people who do not have written evidence, which is often called customary land or ulayat land. Then, in the period after the promulgation of Law Number 5 of 1960 concerning Basic Agrarian Regulations, the dualism of land law in Indonesia ended and land law in Indonesia experienced uniformity. Of course, this UUPA provides a major change in the land regulations in Indonesia which were very complex before the enactment of the UUPA. As developments progress, there are now problems with land registration in Indonesia considering that there was legal dualism in force, namely before the promulgation of the UUPA, this still left new problems, especially in terms of recording land ownership.

Every ownership of land has legal force within it, both legal force regarding the ownership of land rights and legal protection regarding the legal owner for land disputes owned. In the provisions of Government Regulation Number 24 of 1997 Article (3) explains that a land registration aims to provide guarantees for legal certainty and protection in the land sector. What is meant by land registration can be seen in Article 1 number (1) of Government Regulation Number 24 1997 which explains that "Land registration is a series of activities carried out by the Government continuously, constantly and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding areas land and apartment units, including the provision of certificates of proof of title to plots of land to which there are already existing rights and ownership rights to apartment units as well as certain rights that encumber them." Apart from that, Article 19 paragraph (1) of the Basic Agrarian Law outlines that the purpose of land registration is to obtain legal certainty regarding the subject of rights and their objects (Sumardjono, 2008) (Arwana & Arifin, 2019).

To ensure legal certainty, resolving disputes over multiple land certificates can be carried out using legal protection efforts in the form of repressive legal protection and preventive legal protection. Repressive legal protection here means that in carrying out a settlement it can be done by trying to resolve a dispute that has already occurred. Meanwhile, preventive legal protection efforts mean that the public is allowed to provide objections or submit opinions that they wish to express before a government decision receives an accurate form. In this case, the government, or more precisely BPN provides preventive protection, which aims to provide prevention before a violation occurs, one of which is by issuing UUPA, PP, and other regulations governing land registration.

The above land rights dispute arises for several reasons which are used as the basis for a lawsuit in court. A lawsuit in the form of a claim for rights to land aims to obtain legal protection provided by the court to prevent eigenrichting from taking the law into their own hands. This land dispute can be sued at the State Administrative Court or District Court up to the Supreme Court level, this case even involves a third party with derdenverzet (third-party resistance). Resolving these disputes is an important key to closing the shock in social life. A civil dispute is a problem involving interests between individuals and individuals regarding personal interests. A prosperous, peaceful, just, and

prosperous social life is certainly highly desired by the government of any country in the world, including Indonesia. This situation will not be realized without continuity between several supporting and supporting factors. The supporting factors in realizing a safe and peaceful life are very diverse, including economic, social, political, and cultural factors. Meanwhile, the most important supporting factor in creating prosperity is the security factor.

The emergence of prolonged disputes encourages humanity to look for humanist, easy, and fair solutions, where both parties do not feel disadvantaged (win-win solution). However, in reality, the existing continental legal mechanisms are unable to accommodate human desires, so almost every dispute that is resolved through court tends to benefit one party (win and lose solution) and is also expensive. Various research and innovations have been carried out by many legal experts to express various models of dispute resolution as noble ideals for achieving peace, including the following: "The 1945 Constitution states, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Constitutionally, in the 1945 Constitution, Article 33 paragraph (3) provides the basis that the earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people" (Ginting, 2017) (Putra & Suryono, 2020).

2. Materials and Methods

This type of research is Normative research. The approaches used are a statutory approach and a conceptual approach. The data source used is secondary data. Data analysis was carried out descriptively qualitatively (Rukajat, 2018). Concluding is carried out using a deductive method from general to specific, especially those related to the research topic, namely Legal Review of Regional Government Authority in Land Disputes Based on the Principle of Mutual Justice. Qualitative data analysis is carried out if the empirical data obtained is a collection of words and cannot be arranged into categories. Data can be collected in various ways (interview observations, document instances, and recording tapes). It is usually processed first before being used in qualitative research, including the results of interview transcripts, data reduction, analysis, data interpretation, and triangulation.

3. Results and Discussions

Implications of a Legal Review of Regional Government Authority in Land Disputes Based on the Principle of Shared Justice.

The consideration of giving these shared justice values to land or areas is of course very likely to be different in various regions, depending on the social structure of a particular population which gives priority to certain functions of land. Giving value to the land occupied by a certain community of people incorrectly will result in conflict between the people themselves (horizontal conflict), or between the people who hold the rights and the authorities (vertical conflict), so that in turn the cornerstones of the community's life will be damaged. This especially happens on land in rural areas, which is of course different from land use in urban areas. For example, land in rural areas is used for social and economic life. Social life, such as having a family, going to school, worship, recreation, and sports are carried out in the village; while economic activities such as farming, gardening, animal husbandry, and cutting wood in the forest are carried out outside the village. However, on the other hand, in urban areas, because the value of land is economically valuable, land use is carried out as efficiently and effectively as possible, therefore mixing of uses can occur. The trend of population growth in urban areas in the last decade has been increasing. Apart from the migration flow of people from outside the city into urban areas, there is also an urbanization process that especially affects suburban areas (fringe areas) (Arba & SH, 2022).

The Preamble to the 1945 Constitution contains Pancasila (State of Belief in God), the basic principles of human rights, justice (Rule of Law), people's sovereignty (Democratic State), as well as the duties and obligations of the Government (all state institutions) to realize the State. Welfare includes protecting Indonesia's bloodshed, improving the welfare of the people, making the nation's life intelligent, and participating in implementing world order. The values of Pancasila as stated in MPRS Decree No. XX/MPRS/1966, is essentially a view of life, awareness, and legal ideals as well as noble moral ideals which include the psychological atmosphere and character of the Indonesian nation. Judging from its position, Pancasila is the highest source of law, which means that Pancasila is the standard for assessing our laws. Legal rules applied in society must reflect awareness and a sense of justice by the personality and philosophy of life of the Indonesian people (Samad, 2014) (Irama, Fakrulloh, & Budianto, 2023).

Behind it all, the need for land is increasing all the time, where there is an imbalance between humans and available land because the population is increasing but land availability is still limited. So this causes individual interests to arise which can lead to disputes. A plot of land with dual certificates can result in legal uncertainty for the parties holding land rights, which is certainly not expected in land registration in Indonesia. Cases of double certificates still frequently occur in several regions in Indonesia, resulting in land certificate holders accusing each other that the

certificates they hold are real even though one of the double certificates is fake where the object stated on the certificate is not the real thing, so that to obtain legal certainty regarding the land title certificate, one of the dual certificate holders submits a complaint to the National Land Agency as the institution with authority in the land sector. If the proof process through the National Land Agency does not conclude, then the authority to prove multiple certificates of land rights continues to the court which is deemed to have competence in providing legal certainty to the rights holder and canceling one of the certificates.

The instrumental basis for resolving land disputes must still refer to the basic values it describes. This elaboration can be carried out creatively and dynamically in new forms to embody the same spirit and within the limits permitted by these basic values. This explanation clearly must not conflict with basic values. The basic values in question are values taken from Pancasila. Law is a tool for creating justice. Justice in the law is justice that is desired for all people who live within the framework of the law itself. Therefore, the law needs a basis for establishing justice that can be accepted by the general public. The many problems regarding the law, especially problems in the formation of laws and regulations, give rise to problems in achieving justice. Law is still only a political desire, not the desire of society[10]. By using the fundamental norm, namely Pancasila, in the formation of good laws, Pancasila is always and must be used as the main pillar in forming laws and regulations that are by the soul of the Indonesian nation which is humane, just, and civilized, and has social justice for all Indonesian people. Therefore, it is necessary to understand Pancasila justice to provide a common perception of justice which will be the basis for the formation of good laws.

Urgency of Legal Review of Regional Government Authority in Land Disputes Based on the Principle of Shared Justice.

In the second and fifth principles, the values of the State's goals are stated to create justice in the context of shared life. The meaning of second principle and the fifth principle contain the meaning of justice in the form of values, which of course must be realized in life together. This justice is based on and inspired by the essence of social justice, namely justice in human relationships with themselves, human relationships with others, human relationships with their nation and state, and finally the relationship between humans and their God. Even though many opinions provide the same perception between social justice and Marxism, by the flexibility of Pancasila, this ideology can no longer be actualized in the current era of reform. Social justice in the reform era is justice for society because social justice is not a Marxist ideology. Social is something related to society, not the ideology of Marxism as glorified by communists. Pancasila as the root of the legal ideals of the Indonesian nation has the consequence that in the dynamics of national and state life, as a way of life adopted, it will provide direction to thoughts and actions. Legal ideas are ideas, intentions, creations, and thoughts regarding the law or perceptions about the meaning of the law, which essentially consists of three elements, namely justice, effectiveness or benefits, and legal certainty (Yulia, 2019).

Normatively, BPN is the only institution/institution in Indonesia that has been given the authority to carry out the mandate to manage the land sector and BPN carries out duties in the land sector nationally, regionally, and sectorally. BPN was formed based on Presidential Decree Number 26 of 1988 concerning the Land Agency. As per BPN's operational guidelines, the leadership of this institution then issued Decree No.11/KBPN/1988 in conjunction with BPN Decree No. 1 of 1989 concerning the organization and work procedures of BPN in provinces and districts/cities. Then the position and role of the BPN Agency was strengthened by the Government through the formation of Deputy V who specifically reviews and resolves land disputes and conflicts. As regulated in the regulation of the Head of BPN-RI Number 3 of 2006 concerning the Organization and Work Procedures of BPN-RI, the study and handling of land disputes and conflicts is the authority of Deputy V (five) and also supervises the directorate of conflicts, disputes and land cases.

In general courts, there is competence to adjudicate land disputes related to ownership rights disputes due to civil reasons. Meanwhile, the State Administrative Court has the competence to judge the validity of a land certificate as a decision made by a state administrative official. On the other hand, the Religious Courts also have the competence to adjudicate land ownership disputes based on inheritance conflicts. Even though the three courts have their respective competencies and their respective scopes, all decisions are intended to lead to a resolution point where the value of justice, legal certainty, and benefits for justice seekers can be felt (Moho, 2019).

In practice, the resolution of land disputes is not only carried out by the National Land Agency but can also be resolved by the General Courts and State Administrative Courts. If the General Courts focus more on civil and criminal matters in land disputes, this is different from the State Administrative Courts which resolve land disputes relating to decision letters issued by the National Land Agency or other regional officials relating to land. Article 53 Number 1 of Law No. 5 of 1986 concerning State Administrative Courts, namely: "A person or civil legal entity who feels that their interests have been harmed by a State Administrative Decision may submit a written lawsuit to the competent

Court containing a demand that the disputed State Administrative Decision be it is declared void or invalid, with or without a claim for compensation and/or rehabilitation".

In the 1945 Constitution, it is expressly stated in Article 33 paragraph (3) that "Earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". In this case, Law Number 5 of 1960 concerning Agrarian Principles explains that the meaning of the earth is apart from the surface of the earth, including the body of the earth beneath it and that which is under water. This definition of earth means that it includes the surface of the earth (which is then called land) along with what is beneath it (the body of the earth) as well as what is under water. Meanwhile, the UUPA separates the meaning of earth and land, where the meaning of land is "Based on the right to control from the state, it is determined that there are various kinds of rights to the surface of the earth, which are called land which can be given and owned by people either individually or together with other persons or legal entities". From this article, we can see that the existence of land.

Legal goals that are close to realistic are legal certainty and legal benefits. Positivists place more emphasis on legal certainty, while Functionalists prioritize the benefits of the law, and it can be stated that "summum ius, summa injuria, summa lex, summa crux" which means harsh laws can hurt, unless justice can help them, thus Although justice is not the only goal of the law, the most substantive goal of the law is justice. According to Aristotle, without a good social-ethical inclination in citizens, there is no hope of achieving the highest justice in the state even if those who rule are wise people with quality laws (Wulandari, 2021) (Sihombing, 2021).

4. Conclusion

The instrumental basis for resolving land disputes must still refer to the ground values it describes. This elaboration can be carried out creatively and dynamically in new forms to embody the same spirit and within the limits permitted by these basic values. This explanation clearly must not conflict with basic values. The basic values in question are values taken from Pancasila. Law is a tool for creating justice. Justice in the law is justice that is desired for all people who live within the framework of the law itself.

Settlement of land disputes through the principles of Pancasila justice as the root of the legal ideals of the Indonesian nation has the consequence that in the dynamics of national and state life, as a way of life adopted, it will provide direction to thoughts and actions. Legal ideas are ideas, intentions, creations, and thoughts regarding the law or perceptions about the meaning of the law, which essentially consist of three elements, namely justice, effectiveness or benefits, and legal certainty.

If the value of land occupied by a particular community is given incorrectly, there will be a chance of conflict between the community itself (horizontal conflict), or between the community holding the rights and the authorities (vertical conflict), so that in turn the foundations of life society will be damaged. This especially happens on land in rural areas, which is of course different from land use in urban areas.

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