

# Special Land Court: Land Resolution With Legal Certainty

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## Abstract

In Indonesia, the philosophical basis for establishing a special land court is to overcome the discrepancy between material and formal law used by judges. Justice seekers in the resolution of land disputes through the judiciary, both general courts and state administration are facing a reality that is far from expectations because the resolution of disputes from the first level, appeal, cassation, and review as a litigation process takes a long time. Through a special land court that examines the aspects of civil and administrative laws, it will provide legal certainty for the community, both from public and private aspects. The special land court will determine which party is most entitled to a land object in dispute based on the evidence by the parties before the panel of judges. If it turns out that there are parties who show evidence but the evidence is fake, then the person concerned can be subject to criminal sanctions due to the crime of forgery (false documents) or the crime of giving false statements under oath (false witness).

**Keywords:** Agrarian; Land Court; Land Resolution; Special Court

## INTRODUCTION

Nowadays, the issue of land disputes is unavoidable due to the increasing populations so that the need for land also increases while the available land is limited. It requires improvements in the arrangement and use of land for the welfare of the community and especially in terms of legal certainty, including the existence of a dispute resolution process. Therefore, various efforts made by the government are trying to resolve land disputes quickly to avoid accumulation of land disputes that can harm the community, for example land cannot be used because it is in the process of disputes.

Basically, the option of dispute resolution can be carried out with 2 (two) processes, namely dispute resolution through litigation and the court and through cooperation outside the court.

The litigation process results in agreements that are adversarial in nature and have not been able to achieve common interests, tend to create new problems and are slow in the process of dispute resolution. Conversely, in outside the court will result in a "win-win solution" agreement, avoiding a slow resolution process because it is related to procedural and administrative matters, and a comprehensive resolution in togetherness and while maintaining good relations.

Many agrarian law experts have initiated the establishment of a special land court because land cases have 2 (two) aspects, namely civil and the state administration. Former Chief Justice of the Constitutional Court Hamdan Zoelva has also said that an ad hoc court on land must become the concern of the State. However, this opinion turned out to be raw if it was responded to by a constitutional law expert, Bayu Dwi Anggono, in his opinion that what is needed is to improve the quality of judges, not to form a new institution. Therefore, what is urgent is the establishment of the Law on the Judge' Position. The idea of forming a special land court has developed greatly after the reformation, especially to meet the growing demand for justice that is increasingly complex in society.

Initially, problems related to land were thought to be able to be resolved by the general court, but this was not in line with reality, especially in modern times which are increasingly complex. The principle of simple, fast and low-cost dispute resolution is not used at all and tends to only become a slogan. The facts that exist today regarding the problem of handling land cases are almost unfinished by the general court.

According to Maria SW.Sumarjono, main problem of land dispute in Indonesia can generally be caused by: first, conflicts of interest caused by competing interests related to substantive interests (for example, rights to agrarian resources including land), procedural and psychological interests. Second, conflicts of structural caused by destructive patterns of behavior or interactions,

unequal control over the ownership or distribution of resources; unequal powers of authority, as well as geographical, physical or environmental factors that impede cooperation. Third, conflicts of value caused by differences in the criteria used to evaluate ideas or behavior, differences in lifestyles, ideology or religion/beliefs. Fourth, conflicts of relationship caused by excessive emotions, wrong perceptions, bad or wrong communication, negative behavior. Fifth, conflicts of data that caused by incomplete information, erroneous information, different opinions about relevant matters, different interpretations of data, and differences in assessment procedures.

There are many ways that can be taken by the disputing parties to resolve and obtain solutions to the land disputes they experience. In general, resolution of cases (including land dispute cases) can be reached through 2 (two) ways, namely litigation and/or non-litigation. Resolution of land disputes through litigation is the resolution of disputes through judicial institutions, namely the General Courts (with regard to material that has both criminal and civil elements) and through the State Administrative court (related to disputes over decrees issued by the National Land Agency relating to ownership/control rights on land that is concrete, individual and final).

Empirically, the use of civil procedural law in dealing with land ownership disputes has many drawbacks. For example, regarding proof, civil procedural law adheres to formal proof so that not a few individuals or the land mafia use fake evidence in court. The problem is that no party can claim whether or not the evidence is valid because there is an institution that has the authority to do so. Apart from that, there are also many complaints about procedural law by the public, for example regarding the formal examination of cases, namely related to the competence of the court, subject and object of the case where decisions related to these matters are often made in a final decision.

Therefore, it is necessary to make improvements to the procedural law in the context of settling land cases. As described above, the establishment of a special land court needs to be initiated to provide legal certainty for increasingly complex land cases. This study aims to formulate the concept of land court procedural law in Indonesia. This is intended to realize legal certainty and justice in the field of land law in Indonesia. Specifically, this concept can be the basis for the formulation of regulatory norms regarding special land courts in Indonesia.

## METHOD OF RESEARCH

The research is legal research aims to generate arguments, theories or new concepts as prescriptions in solving legal problems at hand. It was conducted by using several approaches, namely the statute, conceptual, and comparative. Sources of legal research can be in the form of primary and secondary legal materials. Primary legal material is legal material that is authoritative or means having authority. The collection of legal materials was carried out using the literature study method.

## RESULTS AND DISCUSSION

### Philosophical Basis for Establishment of Special Land Courts in Indonesia

In a prologue of the book written by Elza Syarif titled “Resolving Land Disputes through the Special Land Court” it was published in 2012, explained that the founding fathers paid so much attention to land, in 1948, three years after the proclamation of independence, they began to design a framework for national agrarian law. A special committee was formed in the nation’s capital at that time, Yogyakarta. They hope that the legal framework will be completed quickly so that the rules can be implemented immediately. It turns out that hope remains hope. It took 12 years before that wish became a reality. The legal framework is better known as the Basic Agrarian Law (UUPA – Undang-undang Pokok Agraria), came into force on September 24, 1960.

The spirit of UUPA is very nationalist and populist. Land disputes continue to increase in Indonesia. The reason is clear, namely Indonesia’s population continues to grow while the amount of land remains practically unchanged. A large population naturally requires more land for various purposes. High demand without being matched by equal supply will undoubtedly only give rise to crises and friction in the form of disputes.

Without reform, crises and disputes will undoubtedly get worse in the future because the rate of population growth tends to get out of control. Land disputes will lead to court (the General Court or State Administrative Court) if there are parties who propose it. However, in court often endless land cases, and in many cases, even decisions that have permanent legal force (inkracht van gewijsde) cannot be executed. The reason is that for the same dispute there can be several other decisions which also have permanent legal force. Unfortunately, the decisions are contradictory.

Letters or certificates of ownership rights can be genuine but fake. In addition, there is no single authoritative authority in handling disputes. Therefore, land brokers are free to fish in murky waters. This problem makes the dispute become non-stop. Land becomes abandoned, and cannot be utilized by any party. In Indonesia, the uncertainty over handling land disputes must end because too much money is spent on it. Resolution of cases completely with decisions that can be executed and with the

principles of simple, fast and low-cost as the principle of justice we need to realize as soon as possible.

Concrete steps need to be taken for that. According to the author, apart from needing a new law, it is also absolutely necessary to form a special court to deal with land disputes. The goal, among other things, is to prevent land abandonment due to prolonged land disputes. Therefore, the government needs to establish a special land court using procedural law in accordance with the UUPA and existing land regulations. Thus, dispute resolution is no longer protracted because the special court can produce a final and executable decision. So, the principle of simple, fast and cheap per justice can be fulfilled.

The special land court referred to is included in the sphere of general court. This court has the authority to examine, handle, adjudicate, and decide on all disputes related to land, whether civil, criminal or state administration. This court has its own procedural law with material evidence to defend the material law of the UUPA and other land regulations which are implementing provisions of the UUPA as its parent. This court also has its own specialty, that is in addition to judges, clerks, bailiffs, and secretaries, there are also commissioners, appraisers, and the National Land Agency officers who will provide land data to the judge at any time. The authority of the judge himself is quite large, he can hold a trial at the location, summon the parties involved in the dispute and officials from the competent authority. If there are no exceptions that lack parties or objections to the decision, then this special land court will be able to produce a strong decision. The decision can only be brought to the High Court specifically for lands for appeal. If there is new evidence (novum) a review can be submitted to the Supreme Court of the Republic of Indonesia.

With the existence of a special land court, it is hoped that land disputes can be resolved and can be executed so that legal certainty and justice are achieved. According to the author, in order for the handling of land disputes in Indonesia to be better in the future, there are several things to be noted: the first, it is necessary to make a law as soon as possible as the basis for establishing a special land court and its procedural law, with proof of material truth to defend the UUPA and other land regulations. The second, the position of the National Land Agency as a state institution that exercises authority over land tenure rights needs to be improved so that it is on a par with the Ministry of Forestry, Ministry of Agriculture and Ministry of Mining. The third, it is necessary to provide education and training for judges and elements of the special land court, namely advocates, prosecutors and police. The goal, so that they can proceed properly and correctly.

### **The Possibility of Establishing a Special Land Court with Legal Certainty**

So far, the issue of land settlement through public court institutions has not been in accordance with the inspiration of the community because of the lengthy trial process, requiring a lot of money for proceedings, there is an assumption that court decisions are judged to be in favor of those with strong economies, moreover the people are not supported by formal evidence of land ownership that has not fulfilled community's sense of justice, so that a special land court is needed to be able to resolve land dispute issues that can accommodate the realization of a rule of law and refers to the ideals of just law enforcement, certainty and benefit as the final capital that provides protection to the community. The idea of establishing a special land court was due to the decline in trust in the general court which has been adjudicating land issues. It is hoped that a special land court will be formed in order to be able to answer the challenges of the changes expected by the community, given the unresolved land disputes.

There are several reasons why a special land court needs to be formed – the first, most land dispute cases in Indonesia cannot be completely resolved by the General Court. The second, the principle of speedy justice and low cost is not implemented. The third, it can develop on other legal issues such as criminal law issues experienced by the parties. This special agrarian court is expected to be a real step towards realizing agrarian reform and providing guarantees for human rights related to people's access to agrarian resources, especially land. With the agrarian court, it is hoped that there will be access for the community to achieve justice in the agrarian sector. This agrarian court will later consist of legal staffs who are experts in the field of agrarian law who are expected to make a real contribution in resolving agrarian conflicts, so as to fulfill a sense of justice for the community.

As a comparison to this Special Agrarian Court, one can see similar courts as in South Africa. Based on the Restitution of Land Rights Act 22/1994 South Africa established the Commission on Restitution of Land Rights and the Land Claims Court. This regulation was formed as a step for South African to carry out a Land Restitution Program as an effort to restore the rights of a person or group of land that they controlled but were neglected as a result of racial discrimination policies. However, due to the complexity of the process for settling a claim, proceedings in court have been slow. This is proven that in the 3 years running of the court's existence there were 16.000 cases that were submitted, but only 5 were able to be submitted to the Land Court for the legal determination process and after 4 years running only 28 claims could be settled.

The urgency of the Special Agrarian Court is hoped to be able to resolve conflicts related to agrarian resources that have arisen so far while at the same time being able to anticipate potential conflicts in the future in order to ensure the implementation of law enforcement. In addition, access to justice will be perfectly fulfilled when a special agrarian court is formed. This is because agrarian disputes are not only disputes in the administrative field, but also in the civil field. The agrarian court is not only for the present interest in resolving conflicts (conflict resolution), but also has an interest in reducing and anticipating agrarian

conflicts in the future (conflict prevention).

The Special Agrarian Court will guarantee the fulfillment of two constitutional rights of citizens, namely fair legal protection and fair treatment before the law. Fair legal protection is realized by the agrarian court through its function as a forum that provides legal protection for citizens who are involved with agrarian or land issues, and the fulfillment of the principle of justice is contained in the process of resolving agrarian disputes. Dispute resolution that has been carried out technically and administratively is carried out by government officials who focus on formal truth will be replaced by dispute resolution through the judiciary which focuses on material truth.

A special judicial body (the Special Court) is a court that has the authority to examine, adjudicate and decide on certain cases, which can only be established within one of the judicial bodies under the Supreme Court as regulated by law. A special court can only be formed in one of the judicial environments which are under the Supreme Court and is regulated by law. Currently, the special courts in Indonesia include the Children's Court, Commercial Court, Human Rights Court, Corruption Court, Industrial Relations Court and Fisheries Court which are within the general court environment, as well as the tax court which is within the State administrative court.

General courts deemed unable to exercise judicial power should be transferred to special land courts. In the activities of the state, the position of judicial power, such as the special agrarian court, will be very special. In a triadic relationship between the States, the market and civil society, the position of the judge of the agraria court must be as a counterweight. Thus, in the midst of the swift currents of the global economic market in the Asean Economic Community (AEC), the special agrarian court can become a main pillar in agrarian law enforcement to provide legal certainty and justice in agrarian disputes.

The land issue has 2 (two) legal dimensions in it, namely private and public law. The dimension of private law in land matters is related to civil aspects, both general civil law and religious-specific civil law. Meanwhile, the dimensions of public law can be seen from land criminal matters and land administrative aspects. Each of the above aspects of land disputes is subject to the jurisdiction of a different judiciary. In general, the resolution of land disputes related to ownership disputes is submitted to the general court, disputes over decisions of the National Land Agency go through the State Administrative Court, while disputes involving waqf land are submitted to the religious courts.

Justice seekers in the resolution of land disputes through the courts, both general and State administrative courts, face a reality that is far from expectations because the resolution of disputes from the first level, appeal, cassation, and judicial review is a litigation process that takes a very long time. Sometimes also, after cassation or judicial review, the party wins, it turns out that the party's victory was based on genuine but false evidence so that the decision that has been fought for years at a high cost turns out to be in vain and the result is unclear land status.

Justice seekers who take legal action on land disputes can file a lawsuit to the general court regarding the ownership of rights and file a lawsuit against a decision letter from the National Land Agency (in this case the certificate of land rights) to the State administrative court which it can result in different decisions and conflicting between the two courts so that it also has implications for the execution. It certainly creates legal uncertainty for the community, where in essence the judiciary should provide legal certainty for disputes faced by the community.

Legal certainty refers to the application of a clear and consistent law whose implementation cannot be influenced by subjective circumstances. According to Hans Kelsen, law is a norm system. Norms are statements that emphasize the aspect of "should" or *dassollen* by including some rules about what to do. Norms are deliberative human products and actions. Laws that contain common rules serve as guidelines for individuals to behave in society, both in relationships with fellow individuals and society. These rules become limits for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules give rise to legal certainty.

In relation to the theory of legal certainty as mentioned above, the judiciary as a representative of the state must provide certainty on issues that are complained by the community because what is decided by a judge in court will be binding on all parties. With the existence of a special land court that examines the aspects of civil and State administrative law, it will provide legal certainty for the community, both from the public and private aspects. The special land court will determine which party is most entitled to a disputed land object based on the evidence carried out by the parties before the panel of judges. If it turns out that there is a party presenting evidence and it turns out that the evidence is false evidence, then the person concerned may also be subject to criminal sanctions for committing the crime of forgery (for fake documents) or the crime of giving false statements under oath (for false testimony).

In addition, the special land court will also determine whether a certificate of land rights contains administrative defects or not based on the evidence submitted by the parties before a panel of judges. If the panel of judges considers that the land title certificate issued by the Land Office contains administrative defects, the panel of judges can determine the cancellation of the land title certificate. Thus, the people who are in litigation will obtain legal certainty and clarity on the cases they face. The disputing parties only need one court process, both in civil, criminal, and State administration aspects.

## CONCLUSION

In Indonesia, the philosophical basis for establishing a special court is to resolve the incompatibility of material and formal laws used by judges. Resolution of land disputes in general courts is no longer relevant because the principle of simple, fast and low-cost dispute resolution is not maximized at all and tends to only become a slogan. At present, there are facts about the handling of land cases that have not been resolved and are not completed by the general court. Therefore, the government needs to establish a special land court using procedural law in accordance with the Basic Agrarian Law and existing land regulations. Thus, dispute resolution is no longer protracted because the special court can produce a final and executable decision. So, the principle of simple, fast and low-cost can be fulfilled.

The establishment of a special agrarian court will guarantee the fulfillment of two constitutional rights of citizens, namely fair legal protection and treatment before the law. Fair legal protection is realized by the Agrarian Court through its function as a forum that provides legal protection for citizens who are involved with agrarian or land issues, and the fulfillment of the principle of justice is contained in the process of resolving agrarian disputes. The special land court will determine which party is most entitled to a disputed land object based on the evidence carried out by the parties before the panel of judges. If it turns out that there are parties who show evidence and it turns out to be fake, then they can be subject to criminal sanctions for committing the crime of forging (false documents) or the crime of giving false statements under oath (false witness).

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