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## Settlement of Land Dispute in Pancur Batu District by Land Office Based on Regulation of the Minister of ATR/BPN Number 11 Year 2016

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### **Abstract:**

*The purpose of this study is to know the rule of land office in solving land disputes arable according to the regulation of agrarian minister and national land agency number 11 of 2016.*

*The method used in this research is the method of normative legal research by analyzing the various regulations related to land disputes, especially the Regulation of the Minister of Agrarian Affairs and Spatial / Head of National Land Agency. 11 Year 2016, besides also used method of empirical law research that is by looking directly behavior of society in social relation.*

*The result of the research shows that the settlement of land dispute in Pancur Batu district conducted by Deli Serdang Land Office has been conducted by deliberation by bringing the dispute party five times by means of mediation in front of the authorized official and the stage of settlement of land dispute has been implemented in accordance with the Regulation Minister of Agriculture and Spatial / National Land Agency Number 11 of 2016.*

**Keywords:** *Dispute Settlement, Land of Cultivation, Land Office*

### **1. Introduction**

The problem of land disputes in Indonesia has caused many problems, because land is the main resource and production factor in human life, both for development and for meeting the needs of community members. In the present, land issues are increasingly complex, as the existing land area tends to decrease, whereas people who need more land and the land will never increase. Besides, also because of economic progress and development, socio-culture and technology, also want the availability of large land for purposes such as plantations, farms, industrial areas, offices, roads, and others. In relation to these matters, it is appropriate that the regulations in the field of land always be able to follow the development that exist in the midst of society.

The development of science and technology has given the consequence that the relationship between man and the land is absolutely necessary for more structuring and more precise arrangements, especially with respect to the control, appropriation and use, inventory and maintenance.

The development of the agricultural sector in addition to achieving and enlarging agricultural production is also to improve the living standards of farmers, this is because farmers are a pillar of national development. Farmers are those whose work is the main cause of farming, but in reality, in the ups and downs of people (peasants) sometimes becomes the scapegoat between the reality and the policies of the government in this case the policy of unpopular officials.

In fact, peasants, not landowners who have hereditary land for cultivation of land as a foundation of life for their offspring, now without realizing by the community (farmers) it turns out that the land cultivated is including protected forest areas or other parties, while the farmers have been directed Meat with its surroundings (the land it cultivates).

The basic arrangements concerning the implementation of land in Indonesia are based on Article 33 Paragraph (3) of the 1945 Constitution which states that: "The earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". In order to achieve the objectives of Article 33 Paragraph (3) of the 1945 Constitution namely to work on the earth, water and natural resources contained therein for the benefit of the people of Indonesia, Law No. 5 of 1960 on Basic Agrarian Laws (UUPA) Set on September 24, 1960.

UUPA No.5 Year 1960 as a new law on basic agrarian provisions, known as UUPA, acts as the parent of all land regulations in Indonesia. The BAL contains the principle that all land rights are controlled by the state, and the principle that land ownership "may be repealed for public benefit". Both of these principles have been firmly articulated in article 2 and article 18 of the UUPA.

Based on article 2 of this UUPA the state becomes the successor of all parties claiming to be the legitimate land rulers. The state in this case is a legal institution as an organization of all Indonesian people. The government as the implementing institution of the state law in this process acts as the party implementing and implementing the provisions contained in article 2 of BAL is stipulated in the general explanation of UUPA no. 5 years 1960.

The state power in question is about all the earth, water and space, whether it has been hijacked by someone or not. The state power of the land already owned by a person with a right is limited by the content of that right, that is to say how much power the state has to exercise its right, until that is the limit of the State's power.

Thus, the government becomes a party that is obliged and authorized to overcome and mediate the dispute over land rights that arise as well as being a facilitator for the parties involved in the dispute.

Various cases often occur in the community with various problems, among which the most prominent is the issue of land disputes between the community versus the plantation is about the cultivation of land either licensed or cultivation by the wild by the community, Besides, the community eviction on the disputed land either by the government or by the plantation either by force or compensation but the form and amount of compensation given by the plantation to the people is considered not feasible. In fact, this process has made many people poorer than before, because the compensation money is not enough to buy new land or to earn a living according to its original state. Thus, from an economic point of view the action is very detrimental to the people. The people are forced to withdraw from the land that has been freed for the benefit of plantation crops and must find new land that is inconsistent with the demands of the cultivation of their food crops.

Legal certainty of land rights, especially regarding land ownership and control will provide clarification of the person or legal entity who holds the land rights, as well as the certainty of the location, its limits, its extent and so on.

Conflict arising from land issues, both horizontal and vertical conflicts between the public and private parties or even the government concerning the plantation lands continue to roll and never finish. Each party to the conflict is equally claiming who is most entitled to the land that is the source of the conflict. The tension between the people and the government and the managers of these lands continues to occur, so that in the future there will be radical and anarchical actions in the form of destruction of crops and the forced occupation of land by the people.

In reality, there are still many land tenure rights owned by PTPN II on the outskirts or directly adjacent to Medan City which is controlled by the community. This has led to prolonged land conflicts, because on the one hand the community declares that the land belongs to them, while on the other hand PTPN II also claims that the land is owned and occupied / controlled by the community.

Legal settlement has not or even cannot solve the conflict, it is caused by the many technical factors that not only concerning legal aspect but also social, cultural, economic and political aspects. In some cases, there are parties who deliberately provoke the community to occupy and even plunder the land belonging to another party for various reasons, such as the landowner does not contribute to the community around the land is located. Whereas in fact the legitimate land owners have contributed in accordance with the applicable provisions or in accordance with the initial agreement between the landowner and the surrounding community.

Based on the background of the problem then the problem in this research is how the settlement of land disputes claimed in Pancurbatu district which has been controlled by the Land Office by Regulation of the Minister of ATR / BPN No. 11 of 2016

This research is a descriptive analysis that is by providing a comprehensive picture of the object of research. The method used in this study is the method of juridical normative research, i.e. by tracing various laws related to the settlement of land disputes claimed, in particular Ministerial Regulation ATR / BPN Number 11 Year 2016 then also conducted an empirical juridical approach that is by making observations Directly to the research site in Pancurbatu district After all the required data is collected, then the next analysis to be able to provide answers to the problems posed in this study.

## 2. Discussion

The right to land is a right which authorizes the owner to use and or take advantage of the land. The authority possessed by the land owner is derived from the law granted by the government. Given authority by the government to the landowner then on this basis has created a legal relationship between land and its owner.

Based on the right of control of the state, the State in this case is the government may grant the rights to the land to a person, several persons jointly or a body of law. The granting of that right means the authorization to use the land within the limits prescribed by the law.

The right to the surface of the Earth, called the right to land, derives from the right of state control over the land. The right to land may be granted to and owned by an individual, whether an Indonesian citizen or a foreigner domiciled in Indonesia, a group of persons jointly and a legal entity established under Indonesian Law and domiciled in Indonesia or a foreign legal entity having a representative in Indonesia, Private legal entities or public legal entities

With the granting of such land rights, then between the person or legal entity has created a legal relationship. With the legal relationship, it can be done legal actions by those who have the right to the land to another party, for example, can perform legal acts in the form of buying and selling, exchange, and others.

Regulation of the Minister of ATR / BPN Number 11 Year 2016 concerning Settlement of Land Cases in Article 1 of this regulation states that land disputes are land disputes between individuals, legal entities or non-impacting institutions.

"The dispute is a continuation of the conflict, while the conflict itself is a dispute between two parties, but the dispute is only buried and not shown and if the dispute is notified to the other it will be disputed."

Maria S.W. Sumardjono states, in general the map of land problems can be grouped into 5 parts, namely:

1. The problem of cultivating the people on the land of estate, forestry, abandoned housing projects and others;
2. Issues relating to violations of land reform provisions;
3. Excesses in the provision of land for development purposes;
4. Civil disputes concerning land issues;
5. Issues pertaining to the Ulayat Right of Indigenous and Tribal Peoples

Conflicts in the legal sense are disagreements, disputes between parties on rights and obligations at the same time and circumstances. In general, conflicts or disagreements, disputes, are interpreted with differing opinions between two parties on a particular issue at the same time and circumstances

Furthermore, Rusmadi Murad, states, the nature of the problem of a dispute in general there are several kinds, among others:

1. Issues concerning priorities may be established as holders of legal rights over land of rights, or on land which has no right
2. A denial of any right of title / proof of acquisition used as a basis for granting the right
3. The mistake of granting rights due to the improper or incorrect application of regulations
4. Disputes or other issues containing practical social aspects.

The real reason being the ultimate objective of the dispute that there is a party who is more entitled than the other (priority) to the disputed land, therefore the settlement of a legal dispute over the dispute depends on the nature of the proposed problem and the process will require certain stages before it is acquired decision.

Concerning the procedures and procedures for settling legal disputes over land have not been regulated concretely, such as land rights applying mechanism (Regulation of the Minister of Agrarian Affairs Number 9 Year 1999), therefore the settlement of cases is not done with a uniform settlement pattern but from some experiences, this handling has been seen to be institutionalized although still vague.

There are various regulations that can be used as legal basis for the settlement of land law disputes, namely Government Regulation No. 24 of 1997, Minister of Home Affairs Regulation No. 3 of 1999 and Regulation of the Minister of Home Affairs No. 9 of 1999 and operational basis in the Decree of the Minister of Home Affairs No. 72/1981 on the Organizational Structure and Working Procedure of the Provincial Agrarian Directorate and Regency / Municipal Agrarian Office, in particular Article 35 Concerning the Establishment of Technical Guidance and Legal Settlement Section which is assigned to provide technical guidance in the field of land rights management and resolve legal disputes related to Land rights.

Rusmadi Murad stated that the mechanism of handling legal disputes over land is usually organized with the following pattern:

#### A. Complaint

In the complaint containing matters and events which indicate that the applicant / claimant is the party entitled to the disputed land with enclosed evidence and request the settlement with the hope that the land can be prevented from mutation so as not to harm the applicant.

#### B. Research

The next mechanism after the complaint is the research in the form of data collection or administration as well as the results of physical research in the field regarding his mastery. The results of the research can be concluded while that whether the complaint is justified or not for further processing.

#### C. Mutation Prevention

Follow-up of dispute resolution is based on the instructions or orders of the superior or in accordance with the initiative of the Head of the Agrarian Office concerned to the land of the dispute, safeguards may be taken as temporary prevention of any form of change or mutation. The purpose of prevention or mutation is to temporarily stop any form of change to the disputed land.

#### D. discussion

Approaches to dispute parties through deliberations often succeed in resolving disputes, and usually place government agencies which in this case are the Directorate General of Agrarian Affairs to act as mediators in resolving grievance in a familial way.

#### E. Settlement Through Courts

If the business through the deliberation process does not produce results then the dispute must be resolved by the competent agency that is the court.

So, in general the nature of the dispute is the existence of a complaint containing a conflict of rights over land or other rights to an opportunity / priority or the existence of a provision that harms him. The parties require the settlement of a dispute based on or observe the applicable rules, paying attention to the balance of the parties' interests, upholding the legal justice and the settlement shall be subject to the applicable regulations.

### 3. Settlement of Land Dispute Settled

In relation to land disputes, the government issued Presidential Decree No. 34/2003 on National Policy in the Land Affairs, is one of the implementation of the principles mandated in the MPR Decree IX / MPR / 2001 on Agrarian Reform and Management Natural resources. This Presidential Decree assigns BPN to take steps to accelerate the development of information systems and land management. And in the context of the implementation of Regional Autonomy to the Regency / City Government is assigned to implement some of the authority of the government in the field of land. There are 9 areas of land authority granted to the Regency / City Government, one of which is about Clarifying the Land Dispute.

Land disputes constitute conflicts of interest related to land concession by unauthorized parties, on land directly controlled by the State or on the land of another party, as defined in Law Number 51 Prp Year 1960 and Presidential Decree Number 32 Year 1979 regarding Principles of Wisdom in the Framework of Granting New Rights to the Land of Conversion of the Rights of the West.

According to Ana Silviana, "The Bupati is very instrumental in this regard, as efforts to realize food security have a close relationship with efforts to strengthen land rights with the settlement of land disputes. While the Head of Land Office of the Regency / City only assist the efforts made by the Regent / Mayor by coordinating and providing the necessary technical data and operational support field. Furthermore, the results of the researcher's consultation to Pancur Batu district, it is obtained that information has been found many people who control the rights of land claimed by PTPN II as their rights, especially the lands located in Dusun IV Keloni Kuta Kepar

and Dusun V Tebing Ganjang, The village of Durin Tonggal, but by the community who controlled the land stated that the land they controlled is the land that comes from the hereditary heritage that there are already up to three generations residing in the village. Since each party is a community on the one hand and PTPN II on the other who declare the right to the disputed land, then as a consequence has caused conflict between the parties that each claimed to have rights over the land. What is even more surprising to the public is that on the disputed land a certificate has been issued on behalf of the other party both on behalf of the company and the name of the legal entity.

Realizing that the farms they have been working on have also issued certificates of other parties and people are also often get threats from the party who said as the owner, then to increase the sense of unity among the citizens, then they formed a group called by the name of Farmers Arih Ersada Aron bolon abbreviated with AEAB.

The publication of certificates of land rights of other parties on land which have been dominated by the villagers are feared could trigger a horizontal conflict which in reality has happened repeatedly and widely covered by the mass media and became the head line of the mass media in North Sumatra. So that became the talk of many people.

The birth of the Reform Order in 1988 which began with social unrest has brought fresh air to the people, especially the farming community. This is because President Abdurrahman Wahid, known as Gus Dur, invites and gives opportunities to the community to grow crops on plantation lands that have not or not planted by plantation companies to increase employment when it was felt very difficult called the term era Famine that is the economic condition of society is very difficult.

The community took advantage of the opportunity and as a result of the Gus Dur president's statement, the farmers in Keloni Village, Tebing Ganjang Village and Durin Tonggal Village re-planted on their existing agricultural lands both owned by PTPN II and owned by another legal entity. People who plant crops on the farm because they think the land was formerly the village community land that was seized or taken over by the state plantation company.

Land disputes arising in Pancurbatu district continued between village communities, legal entities supported by communities from outside the village and PTPN II as holders of tenure. As a result, it has caused repeated mass clashes that have even killed people. Therefore, if this is not resolved, then it is feared will cause a worse impact and will dimension wide.

To prevent the occurrence of increasingly chaotic conditions in the dispute over land, it is expected that the role and efforts of the government as officials authorized to call the parties to the conflict to provide solutions to problems encountered and simultaneously can end a land dispute that has been running for a very long time and Has exhausted all parties to be immediately resolved under the prevailing laws and regulations.

The efforts that have been made by the North Sumatra Provincial Government to resolve and end the disputed land disputes are by meeting with the parties to the dispute. The meeting has been conducted several times in the Hall of the Regional Office of the National Land Agency of North Sumatra, namely: 1. On November 12, 2012, 2. On December 6, 2012, 3. On December 20, 2012, 4. On December 27, 2012 and 5 On 17 January 1998 and attended by Governor of North Sumatra, Pangdam I Bukit Barisan, POLDA Sumatera Utara, Local Government Langkat and Pemda Deli Serdang and Commission I DPRD North Sumatra.

The Government of North Sumatra Province has made various efforts to resolve the Physical clashes that occurred between the parties to the conflict to defend their respective rights to the disputed land. Physical clashes can be overcome and among the parties made an agreement to no longer provoke to avoid a clash. However, the principal issue of the issue has not been resolved, namely the status of the ownership of the disputed land, so to finish it is submitted to the Regional Office of the National Land Agency of North Sumatra Province.

To resolve the dispute over land cases in Indonesia, the Government has issued Regulation of the Minister of Agrarian Affairs and Spatial / Head of National Land Affairs No. 11 of 2016 on the Settlement of Land Cases. In relation to the arable land disputes in Pancurbatu district, the main problem is that on the community land claimed by the Regional Office of the National Land Agency of North Sumatra has also been issued certificate of right on behalf of the legal entity (company). Though the land is clearly controlled and done by villagers as agricultural land.

Settlement of land disputes can be done through two ways:

- A. Initiatives from the ministry
- B. Community complaints. "

Settlement of disputes originating from ministerial initiatives, the ministry conducts monitoring to find out the disputes occurring within a particular area. Such monitoring shall be conducted routinely by the Head of the Land Affairs Office, Head of the Regional Office of the BPN or the Director General of the complaint or reporting on the related newspaper of the dispute. Furthermore, the Head of Land Affairs Office reports the monitoring results to the Head of Regional Office of BPN every 4 (four) months and sent to the Minister. In the event that monitoring results need to be followed up, the Minister or Head of Regional Office of BPN shall instruct the Head of Land Office to carry out dispute and conflict resolution activities.

In addition to ministerial initiatives, land dispute resolution may also be conducted by the Head of the Land Office, the Head of the Regional Office of the BPN or the Minister based on the public complaint. Only complaints eligible are registered for further follow up by officials who are given the responsibility to resolve them.

Based on the results of monitoring and / or public complaints, the officials responsible for conducting data collection activities. The data collected can be:

- A. Physical data and juridical data;
- B. Judgment of the judiciary. News of the investigation by the police, the Attorney General's Office, the Corruption Eradication Commission or other documents;

- C. Data discharged by authorized officials;
- D. Other relevant data and may influence and clarify sit-in issues of dispute, and / or
- E. Witness's information.

After all the required data is collected, then the validation is done by the authorized official, then perform an analysis of the data and the results of the analysis are delivered to the Land Office. The head of the land office submits a written explanation to the claimant.

The people who control the land in Pancurbatu district apply to the Land Office for the Land Office to cancel the certificate that has been issued on behalf of other parties above Land that is owned by the community. However, the request of the community was rejected by the Land Office on the grounds that the issuance of a certificate conducted by the Land Office has been in accordance with Government Regulation No. 24/1007 on Land Registration. The climax of this dispute has been a clash between communities who controlled land with other parties who have certificates of land disputes.

To address the recurrence of clashes between communities, the Land Office took the initiative to facilitate the settlement of disputes or conflicts through "mediation". But if one party refuses to mediate, the dispute resolution shall be submitted to the parties in accordance with the provisions of the law.

#### 4. Conclusion

The emergence of a legal dispute over ownership of the land originated from complaints one party to another that contains objections and demands of land rights to the status of land and ownership of land.

Arable land dispute resolution based on Regulation of the Minister of Agrarian and Spatial Planning / National Land Agency No. 11 of 2016 by the Land Office can be grouped into 2 (two), namely:

A. Settlement of disputes and conflicts which are the authorities of the ministry. In this case land dispute resolution is only done by the Land Office itself without any assistance from third parties.

B. Settlement of disputes and conflicts that are not the authority of the ministry. In this case the settlement of land disputes and conflicts is mediated. Similarly, settlement of disputes a claim in the Pancurbatu district conducted mediation meetings were held between the parties to the dispute in the Land of North Sumatra Regional Office five times, However, such mediation has not resulted or has not been reached, since the Land Affairs Office is unwilling to cancel the issued certificate

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