

## Land Dispute Resolution: Village Deliberation and Consensus to Establish Public Order

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### ABSTRACT

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Land disputes are common in society, and the village head, as witnessed by the family, resolved the matter in congruence with the parties' will and good intention. Purpose: to investigate the arrangement of land dispute resolution in Indonesia and to investigate its application through consensus deliberation in villages to realise public order. Methodology: a socio-legal approach involving primary data gathered from the interview. Furthermore, the study was also conducted in Kuningan Regency. Findings in Indonesia, land dispute resolution has been completely regulated, ranging from laws to derivative regulations, and is carried out through community discourse and consensus. However, the deliberation method is more common than going to court. The deliberations include bringing the parties together; if peace arrangements can be made, they will be made. It can, however, only function optimally if both sides (the family and the community) agree to deliberate. The method is thought to be more efficient in terms of time, cost, and mechanism. Conclusion: In the village, there are two procedures for resolving land conflicts through consensus deliberation: mediation and family negotiation. Recommendation at the village level, it is critical to provide a legal framework for deliberation so that the outcomes are more equitable and mutually beneficial to all parties.

### Introduction

Alternative Dispute Resolution (ADR) is a novel formula in Indonesian law—resolving conflicts or land disputes without resorting to judicial action. To resolve a conflict, legal advances in Indonesia have lately adapted to the needs of the community. The process is quite similar to how Indonesians commonly employ deliberation to reach a consensus when settling disputes or conflicts.<sup>1</sup> The National Land Agency is a non-departmental organization that plays a key role in land-related issues. In other words, in carrying out its job, it aids in the resolution of land disputes. The National Land Agency is founded on the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 3 of 2011 on Management of Assessment and Handling of Land Cases.<sup>2</sup> Due to the limitations of the courts' dispute resolution systems, parties have turned to ADR proceedings. A legal theory for civil procedures in court holds that settling civil matters by court rulings is the ultimum remedium, or last resort. In other words, family deliberation must be used to resolve as many civil issues as possible.<sup>3</sup>

<sup>1</sup> Hasnan Hasbi, "Alternatif Penyelesaian Sengketa Pertanahan Melalui Proses Mediasi di Badan Pertanahan Kota Makassar," *Pleno Jure* 9, no. 1 (2020): 36–46, <https://doi.org/10.37541/plenojure.v9i1.299>.

<sup>2</sup> Fingli A. Wowor, "Fungsi Badan Pertanahan Nasional Terhadap Penyelesaian Sengketa Tanah," *Lex Privatum* 2, no. 2 (2014): 95–104.

<sup>3</sup> Nia Kurniati, "Mediasi-Arbitrase" Untuk Penyelesaian Sengketa Tanah," *Sosiohumaniora* 18, no. 3 (2016): 197, <https://doi.org/10.24198/sosiohumaniora.v18i3.10008>.

It is critical to understand that discourse to establish a consensus has been in Pancasila culture for a long time. As a result, Indonesians are familiar with settling conflicts, disputes, differences of opinion, and disputes between two or more people. As Indonesian society is so diverse, it is almost inevitable that any decision or policy will face criticism both from the government and from other communities. The term "deliberation" appears in the fourth principle, which states, "Popularity led by wisdom in deliberation and representation." Deliberation is a dispute settlement strategy based on the Indonesian nation's native wisdom.<sup>4</sup> Peaceful dispute settlement by the village head is eminent type of dispute resolution in everyday life. As the system is self-regulated and remains heavily influenced by local norms, Dispute resolution in this manner is generally acceptable to the disputing parties. Everything that has been agreed upon is a joint decision of the disputing parties.<sup>5</sup> As a result, land disputes become the primary focus of attention. The study questions are as follows: What are the land dispute settlement arrangements in Indonesia like? In accordance with public order, how does village deliberation and consensus resolve land disputes?

### Research Methods

The research method is a process of accomplishing a goal through searching, recording, compiling, and analyzing data, generating a report. A legal research method, According to Soerjono Soekanto is defined as "a scientific activity, which involves specific methods, systematics, and thinking, aiming to study one or more specific legal phenomena by analyzing them".<sup>6</sup> The study employed socio-legal method which analyzes and studies the operation of law in society. The research specifications were analytical-descriptive legal research, which describes all conditions and facts and examines current implementation, relevant to the resolution of land disputes through village deliberation and consensus to realize public order. Purposive sampling, a non-random sample approach, was also utilized to get relevant and reliable data. The qualitative method was used in this study's analysis. The gathered data is examined using logic-based reasoning to draw logical conclusions before written as a research report.

### Results and Discussion

#### 1. *Arrangements: Land Disputes Resolution in Indonesia*

Pancasila serves as the Indonesian state's entire foundation. In fact, Pancasila becomes the basis of decision-making. The fourth principle encompasses everything concerning deliberation and democracy. The fourth principle provides principles for discourse in Indonesian society. The fourth Pancasila principle is Democracy Led by Wisdom in Representative Deliberations.

According to Article 28E paragraph 3 of the Republic of Indonesia's 1945 Constitution, "everyone has the right to freedom of association, assembly, and expression of opinion." Furthermore, Article 33 paragraph (3) of the 1945 Constitution states that the earth, water, and natural resources included therein are under the jurisdiction of the state and must be

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<sup>4</sup> Roy Andalan Pelawi, "Kedudukan Hukum Simantek Kuta dalam Penyelesaian Sengketa Tanah Adat Suku Karo di Kabupaten Karo," *Multiverse: Open Multidisciplinary Journal* 2, no. 1 (2023): 24-38, <https://doi.org/10.57251/multiverse.v2i1.872>.

<sup>5</sup> Rosita, "Alternatif dalam Penyelesaian Sengketa (Litigasi dan Non Litigasi)," *Al-Bayyinah: Journal of Islamic Law* VI, no. 2 (2017): 99-113.

<sup>6</sup> Darmawati Andi Esse, Sumiyati B, "Peran Pemerintah dalam Memberikan Kepastian Hukum Bagi Masyarakat Suku Boja di Desa Torosiaje Laut," *Jurnal Restorative Justice* 7, no. 1 (2023): 18-29.

used for the greatest benefit of the people. Law No. 5 of 1960 Concerning Fundamental Agrarian Principles (UUPA) Law No. 5 of 1960 (UUPA) is a substantive legal instrument that serves as the foundation for all elements of land regulation, ownership, and exploitation<sup>7</sup>.

Law of the Republic of Indonesia No. 30 of 1999–Arbitration and Alternative dispute resolution explains that, arbitration is a person or more chosen by the parties to the dispute or appointed by a district court or arbitration institution–to provide a decision regarding a particular dispute which is submitted for resolution through arbitration. Apart from the arbitration process, non-litigation dispute resolution can also be accomplished using alternative dispute resolution (ADR). According to Article 1 No. 10 of Law No. 30 of 1999, an alternative dispute resolution institution is one that is responsible for resolving disputes or differences of opinion through procedures agreed upon by the parties, such as settlement outside of court through consultation, negotiation, mediation, conciliation, or expert judgment<sup>8</sup>.

The Village Head has the authority to address communal issues in the Village under Article 26 (4) of Law Number 6 of 2014. Based on its effectiveness, Mediation becomes the most appropriate endeavor to address difficulties between the two conflicting parties. During mediation, all parties are able to express their views and opinions about what they want for peace to be broadly opened and the issue to be resolved<sup>9</sup>. Articles 1; paragraph 1, 2, and 3–Government Regulation No. 24 of 1997. Paragraph (1) Land registration is continuous, sustainable, and regular activities carried out by the government; collecting, processing, bookkeeping, and presenting and maintaining physical and juridical data. It is in the form of maps and lists, pertaining plots of land and apartment units, as well as ownership proof certificates which stating existing and ownership rights to apartment units. (2) A land plot is a bounded area of land on the earth's surface. (3) State land or land directly held by the State is land that is not the subject of any land rights<sup>10</sup>. The PP indicates that the adjudication of waqf land disputes is carried out by the local Religious Court in compliance with applicable rules and regulations in Government Regulation No. 28 of 1997 respecting Waqf of Owned Land. Meanwhile, Article 62 of Law Number 41 of 2004 Concerning Waqf confirms that waqf conflicts are settled through discourse to reach consensus; if this is not effective, they can be resolved through mediation, arbitration, or court<sup>11</sup>.

Presidential Regulation No. 63 of 2013 – the National Land Agency of the Republic of Indonesia – is consistent with Law No. 5 of 1960, which was written and has content that includes, among other things, the principle that authority over the land sector belongs only to the central government, as well as the authority to resolve land disputes at the national and

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<sup>7</sup> Noenik Soekarin, Christiano Rici Walujo, “Tanggung Jawab Pidana Terhadap Pengalihan Hak atas Tanah yang Dilakukan dengan Cara Melawan Hukum,” *Jurnal Kajian Hukum dan Pendidikan Kewarganegaraan* 2, no. 1 (2023).

<sup>8</sup> Agus Ariana Putra, “Konflik dan Penyelesaian Sengketa Tanah Pelaba di Desa Adat Kerobokan Kabupaten Badang Perspektif Hukum Adat Bali,” *Indonesian Journal of Law Research* 1, no. 1 (2023): 16–22.

<sup>9</sup> M. Febry Saputra Yurizal Ath Thaariq, “Penyelesaian Sengketa Tanah di Desa Bitahan Baru Kabupaten Tapin Melalui Mediasi oleh Kepala Desa,” *Jurnal Penegakan Hukum Indonesia (JPHI)* 4, no. 1 (2023): 1–13.

<sup>10</sup> Ananda Prawira, Putra Amoury, Adi Sudiro, “Kepastian Hukum Terhadap Hak Atas Pendaftaran Tanah dan Hak Kepemilikan Atas Tanah yang Telah di Daftarkan,” *Jurnal Magister Ilmu Hukum* V, no. 1 (2020): 36–46, <https://www.google.co.id/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&v>.

<sup>11</sup> Khoirun Nisa dan Rufi'ah, “Penyelesaian Sengketa Wakaf: Studi Kasus di Desa Sungai Ruan Kabupaten Batang Hari,” *al-Mizan* 7, no. 1 (2023): 64–87.

regional levels. The regional government owns land authority in its implementation, based on delegation of authority and assistance responsibilities<sup>12</sup>.

Regulation of the Minister of Agrarian Affairs of the Head of the National Land Agency of the Republic of Indonesia No. 11 of 2016, which defines land cases as disputes, conflicts, or land cases to be resolved in accordance with the provisions of laws and/or land policies. Kuningan Regency Regional Regulation No. 5 of 2019; Village Consultative Body, Article 1 paragraph (13) and (14), which contains (13) Village Consultative Body or BPD is BPD in Kuningan Regency-- an institution that carries out government functions whose members are representatives from the Village population based on regional representation and determined democratically. (14) Village Deliberation or also known by multiple names, is a deliberation between the Village Consultative Body, the Village Government, and elements of society held by the Village Consultative Body to agree on strategic matters<sup>13</sup>. The theory of *rechtsstaat* and the rule of law become the concept. A rule of law state, in general, is one in which the activities of the government and its people are governed by law, preventing arbitrary actions by the government and the people based on their own free will..

## **2. *The Implementation of Land Dispute Resolution through Village Deliberation and Consensus: Realizing Public Order***

Long-term development will expand the importance of land in meeting varied demands, both as a place to reside and for corporate activity. In connection with this, the demand for assistance in the form of legal certainty assurances in the land sector will grow<sup>14</sup>. In the case of resolving land disputes, there are several things that become land disputes, including several cases that will be explained, namely: Land disputes can arise from a multiple factors as follows:

### **a. Conflicting ownership certificates in Sindangagung Village, specifically**

The conflict arose as a result of overlapping Ownership Rights Certificates (SHM) between two parties from the Sindangagung Village community, where land measuring resulted in overlapping land boundaries. Historically, land boundaries were solely defined by rocks or trees, demonstrating the normative lack of clarity in regional boundaries, which has resulted in conflicting interpretations by local governments. Referring to the result of the interview with Diding Tajudin, Conflicts develop when both sides are present only if a land measurement is ready for approval. If they are in that spot, however, everything is settled and completed amicably. Land disputes are regularly found following measurements, and both parties are usually invited. It is settled by deliberation in the immediate region and in a polite manner, preventing the problem from extending<sup>15</sup>.

### **b. Settlement: Inherited Land Cases in Mekarmukti Village**

In this case, the two heirs live apart, with the first residing in Jakarta and the second in Mekarmukti Village. The second heir sold the land belonging to the first heir

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<sup>12</sup> Raras Verawati, Wimbi Vania Riezqa Salshadilla, dan Sholahuddin Al-Fatih, "Kewenangan dan peran peraturan daerah dalam menyelesaikan sengketa agraria," *EKSPOSE: Jurnal Penelitian Ilmu Hukum dan Pendidikan* 19, no. 2 (2020): 127-28.

<sup>13</sup> Christine Ayu Setyaningrum dan Fifiana Wisnaeni, "Pelaksanaan Fungsi Badan Permusyawaratan Desa Terhadap Penyelenggaraan Pemerintahan Desa," *Jurnal Pembangunan Hukum Indonesia* 1, no. 2 (2019): 158-70, <https://doi.org/10.14710/jphi.vii2.158-170>.

<sup>14</sup> Siti Hijrah Sulaeman Sagoni, Rahmi, "Efektifitas Hukum Terhadap Mediasi dalam Penyelesaian Sengketa Tanah di Kelurahan Cina Kecamatan Pammana Kabupaten Wajo," *LEGAL: Journal of Law* 2, no. 1 (2023): 79-90.

<sup>15</sup> Asep Roy Yoga Gunawan, Interview with Village Secretary Sindangagung, Mr Diding Tajudin (n.d.).

without the first heir's knowledge or consent, resulting in a conflict between the two heirs. An interview with Mr. Sodikin stated that the case began when the first party borrowed money from the second party without any agreement to hand over the land in this manner; however, the first party rarely returned home, and the second party eventually sold the land. The first person dismissed it, and the case was eventually resolved through family discussion. It does not go to the court since it can still be settled<sup>16</sup>. In summary, the negotiation occurs when the first party requests compensation for the proceeds of the sale and buy, and the second party pays the first party.

c. Dispute resolution: dual certificate cases in Cisantana Village

A duplicate certificate was discovered in Cisantana Village, where the previous landowner refused to accept it because the land had already been sold and the certificate had been turned over to the new owner. Multiple certifications occur when a plot of property has more than one certificate, resulting in entirely or partially overlapping ownership of land rights. An interview with Mr. Ade Kusmar S.E. found that there is a duplicate certificate between the old certificate and the new certificate, where the old certificate does not have coordinate points but the new certificate has coordinate points. Finally, BPN Kuningan district confirmed the coordinates of the land, and the results were consistent with the new certificate. In this situation, the old certificate was deleted, but the party requested reimbursement, which both parties agreed to<sup>17</sup>. According to Indonesian tradition, all problems, particularly land disputes in communities, are resolved through discourse and consensus before proceeding to the legal sphere. However, frequently, consensual deliberation is sufficient to achieve justice for the disputing parties.

## Conclusion

In conclusion, the legal framework for land disputes has been entirely controlled. Philosophically, the dispute resolution strategy is based on the values of the Indonesian nation's native wisdom, and everything linked to discussion and democracy can be found in the fourth principle. The fourth principle provides principles for discourse in Indonesian society. The fourth Pancasila principle is Democracy Led by Wisdom in Representative Deliberations. There are two means of achieving public order: mediation and familial negotiations. In Mekarmukti Village, it was resolved with compensation agreement made by the second party to the first party. In Cisantana Village, it was resolved at the Village Head's Office with the help of BPN in deciding the certificates validity. Meanwhile, at the Cisantana village, the head's office handled the issue by removing one of the certificates.

## Suggestion

A rule governing legal basis deliberation is extremely desirable since it is consistent with Indonesian culture which is not far from addressing a problem through discourse and consensus. Thus, it cannot be eliminated as it produces a more equitable result than alternative settlements. Furthermore, it is a mutual decision, which means that neither party feels victorious nor vanquished.

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<sup>16</sup> Asep Roy Yoga Gunawan, Interview with Village Head Mekarmukti, Mr. Sodikin (n.d.).

<sup>17</sup> Asep Roy Yoga Gunawan, Interview with Village Head Cisantana, Mr Kusmar, SE (n.d.).

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