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A Juridical Review of Efforts to Resolve Land Ownership Disputes within the Constitutional Framework of Indonesian Constitutional Law

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ABSTRACT

Indonesia is one of the manifestations of an agrarian country because it has extensive agricultural land. The government provides protection under Article 33 paragraph (3) of the 1945 Constitution. The Basic Agrarian Law (UUPA) is one of the laws and regulations that serves as an implementing instrument of that article. The UUPA contains provisions governing land ownership. Although legal certainty has been guaranteed through the UUPA, disputes over land ownership rights remain a social problem that has never subsided. Therefore, this study formulates two research questions. First, a juridical review of efforts to resolve land ownership disputes under Indonesian law. Second, the relationship between efforts to resolve land ownership disputes and the constitution within Indonesian constitutional law. To address these issues, the researcher employs normative legal research (*legal research*) and a statutory approach (*statute approach*). Efforts to resolve land ownership disputes under Indonesian law can be undertaken through non-litigation channels, administrative procedures at the National Land Agency (BPN), litigation through the judicial system, and *Alternative Dispute Resolution*. The legal instruments used as references in resolving these disputes are Book II of the *Burgerlijk Wetboek* (BW), the Basic Agrarian Law (UUPA), the *Herzien Inlandsch Reglement* (HIR), the *Rechtsreglement voor de Buitengewesten* (RBG), and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. When associated with the concept of the constitution in Indonesian constitutional law, the establishment of all these legal instruments is based on Pancasila. This refers to the theories of absolutism, *stufentheorie*, and *theorie von Stufenbau*.

ARTICLE INFORMATION

Land Ownership Disputes, Basic Agrarian Law (UUPA), Constitution.

1. Introduction

In human life, land is one of the crucial elements. This is because land is closely associated with welfare. In essence, land has a strong correlation with economic value. A person's ownership of land can indicate their social status. In other words, the more land a person owns and/or controls, the higher their social status. This stigma can be regarded as an achievement within the sociocultural life of society in Indonesia. However, there are restrictions on land ownership established by the state under Indonesia's written law.

Indonesia is a manifestation of an agrarian country. This is because Indonesia has extensive agricultural land. Therefore, land affairs in Indonesia are highly essential. Accordingly, the government has established written legal provisions in the

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Constitution to protect them. This form of protection is explicitly stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which provides as follows (Undang-UUndang Dasar Negara Republik Indonesia 1945, 1945). Chapter 33: "(3) The land, the waters, and the natural resources contained therein shall be controlled by the state and utilized to the greatest extent possible for the prosperity of the people."

When related to land ownership, the right to control land rests entirely in the hands of the state. This is intended to promote the prosperity of the people. Further elaboration of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is provided through the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as the Basic Agrarian Law), State Gazette of the Republic of Indonesia of 1960 Number 104, Supplement to the State Gazette of the Republic of Indonesia Number 2043, on September 24, 1960.

The Basic Agrarian Law is one of the laws and regulations that serves as an implementing instrument of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The government's considerations in enacting the Basic Agrarian Law were that Indonesia is an agrarian country, the prevailing colonial agrarian law was contrary to the interests of the people, the prevailing colonial agrarian law was characterized by legal dualism, and the colonial agrarian law did not guarantee legal certainty. Based on these considerations, the government enacted the Basic Agrarian Law to ensure legal certainty oriented toward Indonesia's development.

2. Literature Review

2.1 A Juridical Review of Dispute Resolution Efforts Regarding Land Ownership Rights Under Indonesian Law

Land ownership disputes can be resolved through several means, namely non-litigation dispute resolution, administrative procedures at the National Land Agency (BPN), litigation through the judicial system, and Alternative Dispute Resolution (ADR) mechanisms. Each of these means may be pursued according to the characteristics of the dispute, the applicable legal provisions, and the needs of the parties in obtaining a fair resolution that ensures legal certainty (Muhaimin, 2020).

First, non-litigation proceedings or mediation may be pursued as an initial step in resolving land ownership disputes. The parties to the dispute, namely the applicant and the respondent, meet to resolve the issue with the assistance of a mediator acting as a neutral party. Second, land ownership disputes may be addressed through administrative procedures within the authority of the National Land Agency (BPN). Third, if the two alternative dispute resolution methods mentioned above fail to produce a resolution, the disputing parties may pursue litigation through the General Court. Fourth, in addition to the aforementioned methods, land ownership disputes may also be resolved through Arbitration and Alternative Dispute Resolution. This form of dispute resolution serves as an alternative in consideration of the costs, time, and potential negative consequences associated with filing a lawsuit before the general courts. Therefore, alternative dispute resolution provides an option for resolving disputes outside the general court system (Mokodongan et al., 2020; Murad, 1991).

Out-of-court dispute resolution through alternative dispute resolution is conducted pursuant to the laws governing arbitration and alternative dispute resolution. The definition of arbitration is set out in Article 1 point 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as follows:

Chapter 1: "1. Arbitration is a method of resolving a civil dispute outside the general courts based on an arbitration agreement made in writing by the parties to the dispute." (Anggriawan et al., 2024; Murad, 1991; Syarief, 2012)

The characteristics of arbitration as a means of dispute resolution are confidentiality, informality, effectiveness, and efficiency. These characteristics enable this method to meet expectations, facilitate the process, and expedite the resolution of disputes between the parties concerned. The basis for resolving land ownership disputes through arbitration is the applicable legislation or positive law, while continuing to safeguard the rights of the parties to the dispute.

The types of disputes that may be resolved through non-litigation mechanisms, namely arbitration, are stipulated in Article 5 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as follows:

Chapter 5: "(1) Disputes that may be resolved through arbitration are limited to disputes in the field of trade and disputes concerning rights that, under the law and applicable legislation, are fully controlled by the parties concerned; (2) Disputes that cannot be resolved through arbitration are those which, under the applicable legislation, cannot be settled by means of an amicable agreement.". (Kasim, 2018; Kurniati, 2016; Mokodongan et al., 2020)

2.2 *The Relationship Between Land Ownership Dispute Resolution and the Indonesian Constitution*

In Ancient Greek terminology, the constitution holds the same position or has the same meaning as *politeia*. Meanwhile, in Latin, the term constitution is referred to as *constitutio* or *jus*. The meaning of *politeia* in Ancient Greek terminology refers to an infinite number of characteristics that determine the condition of a state, including its economic and social conditions, as well as its governmental interests (McIlwan, 1966).

Aristotle also presented a classification of constitutions. This classification was based on the ends pursued by states and the kind of authority exercised by the government. Therefore, Aristotle argued that there are two types of constitutions, namely right constitutions and wrong constitutions. If a constitution is directed toward the common interest, it can be classified as a right constitution, and vice versa (Asshiddique, 2006).

The task of legislative members is not only to enact laws but also to implement legal norms that have previously emerged and developed within society (living norms). Therefore, it can be concluded that a constitution does not merely contain fundamental norms concerning the structure of the state and the relationships among state organs, but also encompasses the realities of social life, or *de reele machsfactoren* (Mau & Ditisrama, 2025).

According to Karl Loewenstein, there are three types of constitutional values, namely normative value, nominal value, and semantical value (Costa, 2024). In every state constitution, there are two important aspects. First, the constitution as the ideal nature of a theory. Second, the constitution as it actually exists in practice. This means that the constitution, as the supreme law of a state, contains ideal values as das sollen. However, in reality, these ideal values in the constitution do not always correspond with actual conditions in practice, or *das sein*.

Normative value, as a constitutional value according to Loewenstein, relates to a binding norm that can be understood, recognized, accepted, and obeyed by legal subjects who are bound by it. If the majority of legal subjects bound by the constitution implement or comply with it, the constitution can be said to possess value in the normative sense.

However, if some or all of the provisions of the constitution, as the

supreme law of a state, are not observed or obeyed by the relevant legal subjects, the constitution is said to possess value in the nominal sense, or nominal value. A constitution regarded as having nominal value also means that the supreme law is not used as a reference or guide for decision-making in the conduct of government activities. In other words, if a constitution as written law is not applied, the norm is considered "dead." (Addi Fauzani et al., 2020)

Meanwhile, a constitution as the supreme law, which serves as the complete standard for relevant legal subjects in carrying out constitutional functions and systems, is referred to as a constitution in the semantic sense, or semantical value. In other words, every norm written in a state's constitution serves as the basis for conducting all governmental affairs and managing relations with the people.

In addition to containing values, a constitution also possesses several characteristics. The characteristics of a constitution in a state are as follows: A constitution that is formal and material, a constitution that is flexible and rigid, and A written and unwritten constitution (Asshiddique, 2006).

All written laws used by legal experts as references in resolving land ownership disputes form part of the constitution of the Indonesian state. In the absolute sense, the constitution is defined as the grundnorm, or basic norm, based on the Stufentheorie proposed by Hans Kelsen. This theory was developed by Hans Nawiasky through the Theorie von Stufenbau, which states that the grundnorm can be equated with the staatsfundamentalnorm. When related to the Indonesian state, the constitution of Indonesia is *Pancasila*.

Therefore, the drafting and enactment of all written laws in Indonesia, particularly legislation concerning the resolution of land ownership disputes, are based on *Pancasila*. This must be carried out by legislators because *Pancasila* serves as the highest norm. Its position provides guidance, a foundation, and a benchmark for lawmakers in determining the content of legislation.

When considered in relation to the values embodied in the constitution, Pancasila, as the *staatsfundamentalnorm* underlying the formulation of legislation concerning land ownership disputes, indicates that the Indonesian constitution possesses semantic value. This is because the entire substantive content of legislation concerning the resolution of land ownership disputes is based on *Pancasila*.

3. Methodology

The type of research used in this study is normative legal research. Ronny Hanitijo Soemitro states that normative research or legal research includes research on the inventory of positive law, the identification of principles and doctrines of positive law, and the discovery of law *in concreto* to resolve the problems under investigation. The research approach used in this study is the statutory approach or statute approach. The researcher uses laws and regulations as the primary objects of the approach (Muhaimin, 2020; Zikriadi et al., 2023). The examination of these laws and regulations is intended to resolve the legal issues to be discussed. In relation to this study, the researcher employs the statute approach because the study analyzes laws and regulations to address issues concerning efforts to resolve land ownership disputes and their relationship to the constitution within the framework of Indonesian constitutional law.

4. Results and Discussion

4.1 Legal Mechanisms for Resolving Land Ownership Disputes under Indonesian Law

The analysis indicates that the resolution of land ownership disputes under Indonesian law involves several legal mechanisms, namely non-litigation settlement, administrative procedures through the National Land Agency (Badan Pertanahan Nasional/BPN), litigation before the courts, and Alternative Dispute Resolution (ADR). These mechanisms provide different avenues for addressing disputes arising from competing claims to land ownership. Their application must be considered in light of the nature of the dispute, the applicable legal provisions, and the legal rights of the parties concerned. Accordingly, the availability of multiple settlement mechanisms reflects the need for a legal framework capable of addressing different forms of land disputes while maintaining legal certainty.

Non-litigation settlement, particularly mediation, provides an opportunity for disputing parties to seek an agreement without immediately initiating court proceedings. With the assistance of a neutral mediator, the parties can communicate their respective claims and explore a mutually acceptable solution. This mechanism may reduce the financial and procedural burdens associated with litigation. Nevertheless, its effectiveness depends on the willingness of the parties to negotiate and the extent to which the resulting agreement is consistent with applicable law. Therefore, non-litigation settlement should not be understood as replacing formal legal procedures in every case, but rather as an alternative that may be appropriate for disputes capable of being resolved through agreement.

Administrative procedures through BPN constitute another mechanism for addressing land ownership disputes. This avenue is relevant to disputes involving land administration and the exercise of the agency's legal authority. Its role must be distinguished from that of the judicial system, particularly where the dispute requires a determination of civil ownership rights or judicial review of an administrative decision. When an administrative procedure does not resolve the dispute, the parties may consider pursuing the appropriate judicial remedy, subject to the jurisdiction of the court and the applicable procedural requirements. This distinction demonstrates that administrative settlement and litigation have different functions within the broader framework of land dispute resolution.

Litigation provides a formal mechanism through which a court examines the parties' claims and the relevant legal evidence in accordance with applicable procedural law. The article identifies Book II of the Burgerlijk Wetboek (BW), the Basic Agrarian Law (Law Number 5 of 1960), the Herzien Inlandsch Reglement (HIR), and the Rechtsreglement voor de Buitengewesten (RBG) as legal instruments relevant to the settlement of land ownership disputes. These instruments must be understood according to their respective functions: substantive law provides a basis for assessing legal rights, while procedural law governs the conduct of judicial proceedings. Their application should also take account of the applicable agrarian legislation and the specific legal issues presented by each dispute.

In addition to mediation and litigation, the article identifies arbitration and other forms of Alternative Dispute Resolution as possible mechanisms for settling disputes outside the general court system. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution provides a legal basis for these mechanisms. However, Article 5 of this law limits arbitration to disputes in the field of trade and disputes concerning rights that are fully controlled by the parties under the applicable legislation. Disputes that cannot be settled by an amicable agreement are excluded from arbitration. Consequently, arbitration should not automatically be treated as an appropriate mechanism for

every land ownership dispute. Its applicability must be assessed in accordance with the statutory requirements and the legal nature of the dispute.

Based on this analysis, the principal finding is that Indonesian law provides several avenues for resolving land ownership disputes, but these avenues are not interchangeable in every situation. The appropriate mechanism depends on the characteristics of the dispute, the authority of the institution involved, the applicable substantive and procedural rules, and the legal rights that may be determined or settled. The existence of different mechanisms therefore needs to be accompanied by a clear understanding of their respective scope and limitations. Such an approach is important to ensure that dispute resolution is not only procedurally available but also consistent with the principle of legal certainty underlying Indonesian agrarian law.

4.2 The Relationship between Land Ownership Dispute Resolution and the Indonesian Constitutional Framework

The resolution of land ownership disputes is closely connected to the constitutional framework of Indonesia, particularly Article 33 paragraph (3) of the 1945 Constitution. This provision establishes that the land, waters, and natural resources contained therein are controlled by the state and utilized to the greatest extent possible for the prosperity of the people. Within this constitutional framework, land regulation cannot be viewed solely as a matter of private ownership. It must also be understood in relation to the state's responsibility to regulate the use and control of land in accordance with the public interest. Accordingly, the legal settlement of land ownership disputes forms part of the broader effort to implement the constitutional principles governing land and natural resources.

The Basic Agrarian Law (Law Number 5 of 1960) serves as an important legislative instrument for implementing the constitutional mandate concerning land. Its role is particularly significant in establishing a national agrarian legal framework and providing a basis for legal certainty in land matters. The relationship between the Constitution and the Basic Agrarian Law demonstrates that the resolution of land ownership disputes requires more than the examination of competing claims between individuals. It also requires consideration of the legal framework governing land rights, the authority of the state, and the public interest. Therefore, the settlement of such disputes should be directed toward protecting legally recognized rights while ensuring that the administration and use of land remain consistent with the constitutional order.

The constitutional relationship can also be examined through the position of Pancasila in the Indonesian legal system. As discussed in the article, Pancasila functions as the fundamental normative foundation for the formulation of legislation. This position is explained through the theory of the hierarchy of legal norms associated with Hans Kelsen's Stufentheorie and Hans Nawiasky's Theorie von Stufenbau. Within this theoretical framework, legal rules are understood as forming a structured hierarchy in which lower-level norms derive their validity from higher-level norms. The article places Pancasila at the foundational level of Indonesia's legal order. Consequently, statutory provisions governing the settlement of land ownership disputes should be understood within the normative framework established by Pancasila and the 1945 Constitution.

This hierarchical relationship has implications for both substantive and procedural law. Substantive provisions concerning land rights must be interpreted within the broader legal framework governing land ownership and state control,

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while procedural provisions must provide legitimate avenues for enforcing and protecting those rights. The article identifies the Burgerlijk Wetboek, the Basic Agrarian Law, the HIR, the RBG, and Law Number 30 of 1999 as legal instruments relevant to land dispute resolution. Their application, however, should not be considered independently of the constitutional principles underlying the Indonesian legal system. Instead, the interpretation and application of these instruments must remain consistent with the applicable hierarchy of norms and the respective functions of each legal provision.

The article also discusses Karl Loewenstein's distinction between normative, nominal, and semantic constitutional values. This distinction provides a theoretical basis for examining the relationship between constitutional norms and their implementation in legal practice. A normative constitution operates effectively when constitutional provisions guide the conduct of state institutions and relevant legal subjects. A nominal constitution refers to a situation in which constitutional provisions do not fully correspond to actual practice, whereas a semantic constitution describes the use of constitutional provisions primarily as instruments through which political power is exercised. These categories can help frame a discussion of the implementation of constitutional principles in land governance. However, identifying the constitutional value of Indonesia requires a more specific assessment of how constitutional norms operate in practice, rather than relying solely on the existence of legislation based on Pancasila.

On the basis of the foregoing analysis, the relationship between land ownership dispute resolution and Indonesian constitutional law lies in the constitutional foundation, hierarchical structure, and implementation of the applicable legal rules. Article 33 paragraph (3) of the 1945 Constitution provides the constitutional mandate concerning state control and the utilization of land for public prosperity, while the Basic Agrarian Law elaborates this mandate within the field of agrarian law. The applicable substantive and procedural provisions then provide legal mechanisms for resolving disputes arising from land ownership claims. The principal implication is that the resolution of land ownership disputes should be understood not merely as a procedural matter but also as part of the implementation of the constitutional legal order. Ensuring consistency between dispute resolution mechanisms, agrarian legislation, and constitutional principles is therefore essential to maintaining legal certainty and protecting legally recognized rights within the Indonesian legal system.

5. Conclution

Efforts to resolve land ownership disputes under Indonesian law can be pursued through non-litigation channels, administrative procedures at the National Land Agency (BPN), litigation through the judicial system, and Alternative Dispute Resolution. The legal instruments serving as formal law in the resolution of land ownership disputes are Book II of the *Burgerlijk Wetboek* (BW), or the Indonesian Civil Code, and the Basic Agrarian Law (UUPA). Meanwhile, the procedural laws governing the resolution of land ownership disputes are the *Herzien Inlandsch Reglement* (HIR), the *Rechtsreglement voor de Buitengewesten* (RBG), and Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

When examined in relation to the concept of the constitution within Indonesian constitutional law, the establishment of all legal provisions, both substantive and procedural, used in resolving land ownership disputes is based on *Pancasila*. This is grounded in the theory

of absolutism, Stufentheorie, and Theorie von Stufenbau.

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