

Conflict Resolution Model and Land Use Dispute in Plantation

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Abstract: *Conflicts and land disputes between the plantation companies and the cultivating communities, still cannot be resolved completely. Settlement of conflicts and plantation land disputes pursued through court proceedings (litigation) or by means of deliberation outside the court (non-litigation), have not been successful. The plantation company is trying to get the cultivated land on the plantation to be quickly resolved. "Suguh Hati" a model for resolving conflicts and arable land disputes used by plantation companies.*

Keywords: Conflict and dispute over plantation land.

1. Introduction

1.1 Conflict and Disputes

1.1.1 Conflict

The term conflict can be traced from the opinion of Webster (1996), in Dean G. Pruitt and Jeffrey Z. Rubin, Helly P. Sutjipto and Sri Mulyantini Soetjipto, which states that the term "conflict" in the original language means "fighting, or struggle", ie in the form of a physical confrontation between several parties. Which then means developing into "a sharp disagreement or opposition to various interests, ideas, etc.". Meanwhile, according to Dean G. Pruitt and Jeffrey Z. Rubin, conflict means perception of perceived divergence of interest or a belief that the aspirations of conflicting parties can not be achieved simultaneously.

Rachmadi Usman in Sarjita describes the term conflict that comes from the word "conflict" which is juxtaposed with the word "dispute". Both words contain an understanding of the existence of different interests between both parties or more but both can be distinguished. The vocabulary of "conflict" has been absorbed into the Indonesian language into conflict while the "dispute" vocabulary can be translated with the vocabulary of the dispute. A conflict will not develop into a dispute, if the party who feels aggrieved just holds in a feeling of dissatisfaction or concern. Conversely, a conflict will develop into a dispute, if the offending party has voiced his dissatisfaction or concern "either directly to the parties deemed to be the cause of the loss or the other party.

So many misunderstandings, the norm began to be obeyed. many deviant members, weak sanctions. While at the stage of disintegration, emotion, hatred, anger, want to destroy, want to attack.

In relation to the causes of conflict Dean G. Pruitt and Jeffrey Z. Rubin mentioned that there are three determinants of the causes of conflict, namely: the level of aspiration of a party, the perception of one party on the aspirations of the other party, and the absence of integrative alternatives. This is different from his opinion, in Adi Kerasiyono, which states that there are 3 (three) factors attached to the parties who are in conflict with the three factors that will influence the approach to be used. These three factors are: interests,

rights and power status. Furthermore, ury described 2 (two) kinds of hierarchies regarding which factors were the most dominant. First, it is called Distressed System, it is a situation in which the power status factor becomes the dominant factor, above the rights and interests. The second is called the Effective System, that is, if the dominant interest factor and the power status factor are weak.

To resolve differences of interests between conflicting parties and the dispute according to Maria Galanter, in Adi Sutistiyono people can get justice through official forums provided by the state (court), as well as the deepest unofficial forum in the community. The mechanism of conflict resolution or dispute through legal channels or forums is called "legal centralism," or "paradigm of legal centralism." Conversely, dispute resolution or dispute through unofficial forums in the community based on people's law or native law is called " legal decentralization "or" legal decentralization paradigm ".

The definition of conflict is also contained in the Appendix 01 / Juknis / DV / 2007 Roman Number II number 4 of the Decree of the Head of the National Land Agency Number 34 Year 2007 concerning the Technical Guidelines for Handling and Resolving Land Issues which states that the conflict is " different values, interests, / or perception between citizens or community groups or citizens or community groups recognize the status of control and / or ownership and / or status of use or utilization of certain parcels by a particular party or state administrative decision status concerning the control, ownership and use or utilization of the field certain land and contains political, economic and social cultural aspects ".

To end the discussion of the term conflict, the writer gives the following example: "Vertical conflict between the people and the State or the people with the owners of capital supported by the State". In this case, the State acts as a provider of facilities and infrastructure needed by the capital owner in developing its business, especially in the form of land and acts quickly to minimize all obstacles that prevent the owners of capital from opening their business in Indonesia. The main source of the vertical conflict was triggered by the struggle for natural resources in the form of forests, mining and agricultural land, between the people and

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the owners of capital and the state. This struggle was won by the capital and state investors "causing mass evictions. People who were based on adat law (traditional law) were forced if necessary by means of violence assisted by the military to leave their land. Coercion by force could cause physical clashes between the people which defends its rights with the military, which often causes casualties among the people, for example the occurrence of violence that caused the victims.

1.1.2 Dispute

Today, disputes often arise in the life of the community, the causes are very diverse, it can be due to economic, political, religious, and class problems, tribes, even self-esteem and so forth. Disputes are actualizations of differences and / or conflicts between two or more parties.

Rusmadi Murad, in Sarjita the definition of land dispute is a dispute between two or more parties who feel or are harmed by those parties for the use and control of their land rights which are resolved through deliberation or through the court:

Another understanding of land disputes can be quoted from Article 1 of the Regulation of the Minister of State for Agrarian Affairs / Head of the National Land Agency No. 1 of 1999 concerning Procedures for Land Dispute Handling, namely differences of opinion regarding: 1) the validity of a right; 2) granting land rights; and 3) registration of land rights including the transfer and issuance of proof of rights between the parties concerned and between interested parties with the National Land Agency.

Based on the above definition of dispute, clarification can be made based on the parties involved in the dispute. Based on the clarification, the parties can be divided into: 1) Individuals with individuals, 2) Individuals with private legal entities; 3) Private legal entities with private legal entities 4) Individuals with Public Legal Entities (Government Agencies / BuMN / BUMD / BHMN). 5) Private legal entities with Public Legal Entities; 6) Public legal entity with public legal entity; and 7) Individuals with Private Legal Entities or Public Legal Entities.

Based on the substance or subject matter of the issue, it can be differentiated into: 1) allotment and / or use and utilization and control / ownership of land rights; 2) validity of proof of land rights (certificate. Girik, Leter c36, etc.); 3) procedure of giving.

The difference between the notions of conflict and dispute is clearly evident from the understanding given by Nader and Todd, in Adi Sulistiyono that distinguishes between pre-conflict, which is an underlying condition because it requires the dissatisfaction of someone because they are treated unfairly. Conflict is a situation in which the parties realize or are aware of a dispute between them. Whereas a dispute is a situation where the conflict is stated in public or by involving a third party.

According to Ibn Khaldun, in Hakimul Ikhwan Affandi, p25; explained that conflict is seen as something that is macro-socially, due to structures in society that fail to deal with various fields of life. The implication of conflict is seen as

something that can be ended if social, economic, political and cultural problems can be answered.

In discussing the perspective of conflict, Ibn Khaldun, in the aforementioned Justice of the Muslim Brotherhood, also emphasized the need to pay attention to the three main pillars of the causative factor that need to be addressed: First, the psychological character which is the basis of sentiments and ideas that build social relationships among various human groups family, tribe, etc.); Second, is a political phenomenon that is related to the struggle for power and sovereignty that gave birth to empires, dynasties, and states; Third, economic phenomena related to meeting economic needs at the individual, family, community and state level.

Loekman Soetrisno, stated that anywhere in the world, there is no human being who always lives in harmony and peace. Even in the smallest unit of a nation, the family. conflicts between husband and wife, or children and parents often occur. The same thing was stated by Weber in Sabian Utsman ""which states that conflict cannot be separated from social life.

In interpreting the conflict "Loekman Soetrisno mentioned that the conflict is not always dysfunctional, the conflict can be functional, it can be a vehicle to encourage a change to a better condition, and then he differentiates the conflict into two types: : First, destructive conflict "This happens when conflicts arise, but they are not accompanied by a mechanism to reduce conflict. Both types of conflict are functional, namely conflicts that produce new changes or consensus that lead to improvement.

Based on the source of the conflict occurs because: (1) competition, one party seeks to achieve something at the expense of the other; (2) domination, one party attempts to regulate the other so that they feel their rights are limited and violated; (3) failure, blame certain parties in the event of failure to achieve the goals; (4) provocation, one party often alludes to the other's companies; 5) the difference in value, there is a different benchmark in setting the default error of a problem.

1.2 Conflict and Land Land Dispute

With a variety of backgrounds, conflicts and land disputes in the area of plantation use rights in various ways to resolve them, by several agencies in accordance with the authority granted legislation in force but still failing.

Efforts to resolve conflicts and arable land disputes are carried out in various ways, namely resolved by the plantations by means of consensus consensus. Cultivators are willing to accept heart treats and then leave the area they work on, but not all groups of cultivators are willing to accept heart treats. Differences of opinion from each group of cultivators so that they still have survived working in the garden area. The settlement through the legal process of the court's decision does not guarantee that the cultivated land can be re-controlled by the plantation. Failure to settle arable land disputes in plantation areas due to several reasons, namely; the cultivators are not willing to accept the treats /

compensation, the cultivators want to own the land they are working on, regarding the area of cultivated land there is no similarity between the cultivator and the plantation, then the problem of the number of cultivator groups that will be completed is inaccurate / invalid population data. Regarding court decisions are considered unfair by cultivators, favoring plantation decisions Court decisions that have permanent legal force (inkracht) are difficult to carry out (execution).

Handling of conflicts and land disputes based on the applicable regulations can be taken through the means and several agencies or institutions authorized to complete them, namely:

- 1) Justice Line (Litigation), General Justice and State Administrative Court (TUN) as stipulated in Law Number 48 of 2009 concerning Judicial Power
- 2) Non-Judicial Path (Non-Litigation), settlement can be done through - Mediation, Arbitration as stipulated in Law Number 30 of 2009 concerning Arbitration and Law No. 17 concerning RPJPN Chapter III, point IV 1.5 number 14 al. increasing efforts to resolve land disputes through the authority of the administration of justice and alternative dispute resolution. The authority of the land agency as stipulated in Presidential Decree 26/1988 jo. Perpres 10/2006. The authority of the Regional Government in accordance with Presidential Decree 34 Year 2003
- 3) Special Lines, through the BPN Ad Hoc Team - National Police in accordance with BPN MoU with the National Police SKB No, 10 / SKB / XII / 2010-B / 31 / XII / 2010 dated 3 December 2010 concerning Sidik Dispute if there is a criminal indication (Agency National Land of North Sumatra, 2012).

Agencies that have authority in resolving disputes in the land sector include the Regional Government based on Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector, that the land dispute settlement is carried out by the District / City Government and that is cross Regency / City in one Province carried out by the relevant Provincial Government.

According to the Decree of the Head of BPN RI No. 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Problems, it is stated that land issues include technical problems, disputes, conflicts and land matters that require resolution or settlement. Whereas land disputes are differences in values, interests, opinions and or perceptions between individuals and or legal entities (private or public) regarding the status of ownership and or ownership and use or utilization of certain part of the land.

Occurrence of conflicts and land disputes plantations there are several reasons, namely:

- 1) That the lands formerly occupied and controlled by the community or belonging to the community are hereditary taken over to be planted without being completely resolved.
- 2) The process of compensation has not been completed, and the value of the compensation is considered too low by the public, but because the process of compensation is accompanied by intimidation, the people are forced to

release the land. When the HGU ends, it is demanded by the community again.

- 3) Differences in the size of the results of the size of land rights of use (HGU) in the field, there is a difference in the extent to the reality in the field so that there are community lands that enter the plantation area. Plantations as HGU holders insist on proof of their HGU certificate.
- 4) Plantation land is customary land / customary land or inheritance of a particular sultanate or community; Plantation land recognized as customary land / customary land, is a local indigenous community taken over by entrepreneurs without the permission of their customary elders or the land is inherited from the Sultan / Raja's descendants, so that the heirs feel they have the rights to the plantation land.
- 5) Plantation land that is not managed properly; the land seems abandoned or considered as a sleeping area, so it is planted by the community with crops and some plant hardwoods. (PT. Perkebunan Nusantara III, 2015).

A paradigm is needed to resolve plantation land disputes by using an alternative paradigm of alternative dispute resolution. Such a conflict resolution is based on a philosophy that conflict does not have to be resolved by win-lose solution, but conflict can be ended by making all parties involved (desputans) a win-win solution (Abu Rohmad, 2008) The expected resolution of the dispute will certainly result in a new policy in the land that is a form of settlement of land disputes that can accelerate the completion of land dispute in the area of North Sumatra.

2. Model of Settlement of Plantation land Disputes

The absence of a firm attitude in law enforcement by law enforcement officials has led to the failure to resolve conflicts and land disputes. If it is guided by evidence of plantation rights, it has official legality in other words, formally the legality is clear to the land being cultivated, while the peasant community is in the area, in reality, controls the land but does not have legal rights based on the law, which means that the community's land is formally weak legal evidence.

Philosophically, land disputes occur not merely a matter of law. Essentially what happens is the difference in the concept of land tenure rights between those adopted by the community and the legal views of plantation companies. In the view of society, human relations with their land are determined by the intensity of the de facto use or cultivation of the land. The more intense the utilization, the more powerful the ownership rights are. This is reinforced by their religious belief that the land is a gift of God that can be owned by anyone who wants to work and work hard to take advantage of it.

While the logic of plantation companies is different, on the other hand, work on land no matter how large and heavy it will not issue rights to the land. The European land ownership concept personifies ownership of land as ownership which was initially in the hands of the government. Every land ownership and control rights by the

community, ipso jure must start from the government over land alias domein, in this case the governmental domain has the right to control the State as the regulator of the right to the right). Ipso facto, from the reality of control, land placement, settlement, occupation or exploitation of land does not automatically become his right no matter how heavy and long. (Sutandyo Wignjosoebroto in Aburohmad, 2008, 70-710).

Simon Fisher, et al. proposed six theories that examine and analyze the causes of the dispute, namely:

- 1) The theory of public relations argues that the cause of the dispute is by the ongoing polarization, opposition and hostility among different groups within a society. The objective of this theory is to improve communication and mutual understanding between groups experiencing disputes and striving for tolerance and for the community to be more receptive to the diversity that exists within it.
- 2) The principle of negotiation theory assumes that the cause of the dispute arises because of the unfair position and disagreements about the dispute by the parties to the dispute.
- 3) Theory of assumed identity (assumes), that the occurrence of a dispute caused by an identity that is threatened, which is often rooted in the loss of something or the suffering of the past that is not resolved.
- 4) The theory of intercultural misunderstanding assumes that disputes occur due to incompatibility in ways of communicating among the various cultures in dispute.
- 5) Disputed transformation theory assumes that disputes occur due to problems of inequality and injustice which are social, cultural and economic problems.
- 6) The human needs theory assumes that the causes of disputes are basic human needs, both physical, mental and social which are not fulfilled or obstructed. The issues of security, identity, recognition, participation and autonomy are the subject of discussion. (Salim HS, Erlies Septiana Nurbani, 2013; 144).

3. Completely of Arable Area in Plantation

Model of the settlement area at PT. Nusantara III Plantation is carried out through Litigation and Non Litigation channels, in order to fulfill land needs and land optimization, it is necessary to conduct land dispute settlement activities using the Sugu Hati pattern.

Completion through non-litigation through the Sugu Hati pattern is considered to be quite effective in resolving the problem arising from PT. Nusantara Plantation III.

For the process of accelerating the giving of Sugu Hati to the cultivators, it was deemed necessary to form a Team that would formulate alternative steps and patterns of settlement as well as giving sugu hati.

In order to create legal certainty, a TEAM SETTLEMENT OF LAND PROBLEMS IS THROUGH THROUGH THE PATTERN OF SUGU HATI, IN THE PLANTATION / UNIT PT. PLANTATION NUSANTARA III (PERSERO). As a legal basis for the establishment of the Cultivated Land Problem Resolution Team, namely: Directors' Decree 2014 which is guided by Presidential Regulation No. 71 Year

2012 on the Implementation of Sugu Hati for Development for the Public Interest.

In the Decree of the Board of Directors shall be regulated in terms of the Problem Solving Team, namely:

- 1) Settlement of Sugu Hati in the Plantation/ Unit is an activity to recover the land owned by PTPN III which is conducted compensation of compensation value by the Sugu Hati Implementation Settlement Team on the plantation / Unit of PTPN III;
- 2) Sugu Hati Team PTPN III is an employee of PTPN III who is deemed capable and capable to perform the duties as a team formed under the Decree of the Board of Directors to implement Sugu Hati PTPN III;
- 3) Land Appraiser, hereinafter referred to as an Appraiser, is an individual who conducts independent and professional appraisal that has been granted license of assessment practice from the Minister of Finance and / or has obtained a license from the Land Agency to calculate the value / value of the Sugu Hati object.
- 4) Cultivators are people who work, cultivate land in an area specifically used for agriculture by PTPN III's plantation business.
- 5) The area is related to the area that is part of the earth's surface that is used for special purposes for agriculture.
- 6) Sugu Hati is a proper compensation / compensation for cultivator plants, based on the calculation of the Appraiser (KJPP)
- 7) Compensation is the provision of a sum of money by PTPN III to the holder of the right to plants and / or other objects found on the ground.

4. Scope

Scope of Sugu Hati is compensation for compensation given by PTPN III to community / Farmer Group based on the value determined by Appraisal Institute.

Sugu Hati Implementation Planning

- 1) PTPN III Gardens / Units make Sugu Hati Planning according to the provisions of the legislation after collecting data / surveys;
- 2) Sugu Hati Planning as intended, prepared in the form of planning documents for the Sugu Hati Implementation, which at least contains:
 - a) A statement from the cultivator to receive a sugu hati;
 - b) the location of the land;
 - c) land area;
 - d) types of plants;

Sugu Hati Team

The Sugu Hati team as intended, was formed based on the Directors' Decree of PTPN III which consisted of PTPN III employees and if needed membership the Sugu Hati Team could involve agencies from outside PTPN III.

5. Duties and Responsibilities

The Sugu Hati team has the following duties and responsibilities:

- a) Calling and giving explanations or counseling to the community / farmer groups that will be given the Sugu Hati;

- b) Conduct an inventory of land, buildings, plants and other objects that are above the PTPN III area that will be given a Sugu Hati;
- c) Conduct research on the legal status of the land that will be given a sugu hati;
- d) Request and receive the results of the assessment of the price of land and / or buildings and / or plants and / or other objects related to the land from the appraiser.
- e) Holding deliberations with owners / holders of land rights in order to determine the form and / or amount of compensation.
- f) Propose the determination of the form and / or amount of compensation for land rights whose rights will be released or handed over to the Director or one-level official below the Director or General Manager / Head of Unit in the form of a nominative list to obtain approval.
- g) Make minutes of release or delivery of land rights including receiving and examining all documents related to ownership of land rights, buildings, plants, and other objects on the ground.
- h) Accompany the implementation of payment or surrender of compensation to the legal owners or their representatives or holders of rights to land, buildings, plants and other objects on the land.
- i) Administering, documenting every stages of Sugu Hati process and reporting the results of team duty implementation and submitting all Sugu Hati files to Director.

6. Compensation Assessment

- 1) In determining the price of land at the time of the process of conscience as intended, the Sugu Hati Settlement Team is guided by the results of the assessment or estimated price made by the appraiser.
- 2) Determination of the value of the price of plant compensation made by the appraiser is valid for 6 months and every 2 years is revised.
- 3) The costs incurred by the implementation of the Sugu Hati is charged to PT. Nusantara Plantation III.

7. Conclusion

- 1) The process of settling the land dispute that was carried out was ultimately carried out by giving a heartfelt gift by the plantation company. Giving Sugu Hati can improve social relationships with the community around the plantation.
- 2) Produce legal certainty to the land of disputed object in plantation area.

References

- [1] Abu Rohmad, 2008, Paradigm of Resolution of Agrarian Conflict, Walisongo Press, Semarang.
- [2] Aminuddin Ilmar, 2012, State Ownership Rights in Privatization of BUMN, Kencana, Jakarta.
- [3] Boedi Harsono, 1982, Indonesian Agrarian Law, Association of Land Law Regulations, Jambat Publishers, Jakarta.
- [4] C.F.G. Sunaryati Hartono, 1991, Law Politics Towards a National Law System, Alumni Publisher, Bandung.
- [5] Eddy Pranyoto WS, 2006, Antinomy of Legal Norms Cancellation of Land Rights by State Administrative Court and National Land Agency, Sutomo CV, Bandung
- [6] Elza Syarif, 2012, Resolving Land Disputes through the Pertanahan Special Court, Gramedia, Jakarta ..
- [7] H.L.H. Hart, 2009, Law Liberty And Morality, Law, Freedom And Morality, Genta Publishing.
- [8] Karl J. Pelzer, 1977, Toeian Keboen And Colonial Political Farmers and Agrarian Struggle in East Sumatra 1863-1947, Publisher of Sinar Harapan, Jakarta.
- [9] Lawrence M. Friedman, 2009, LEGAL SYSTEM: Perspective of Social Sciences, Nusa Media Publisher, Bandung.
- [10] Lexy J. Moleong, 2010, Qualitative Research Methodology, Published by PT. Youth Rosdakarya, Bandung.
- [11] Lili Rasjidi, Ira Thania Rasjidi, 2007, Fundamentals of Legal Philosophy and Legal Theory, Citra Aditya Bakti, Bandung.
- [12] Lili Rasjidi, Liza Sonia Rasjidi, 2005, Monograph: Philosophy of Science, Research Methods, and Scientific Writing,
- [13] Limbong Bernhard, 2012, Land Conflict, Publisher Margaretha Pustaka, Jakarta
- [14] Lubis M. Solly, 1994, Philosophy of Law and Research, Mandar Maju, Bandung.
- [15] Lubis M. Solly, 2011, Legal Research, Faculty of Law USU.
- [16] Mahadi, 1991, Philosophy of Law An Introduction, Publisher Alumni Bandung.
- [17] Muhammad Yamin, Abd. Rahim Lubis, 2011, Revocation of Rights, Liberation, and Land Procurement, Mandar Maju, Bandung.
- [18] Muhammad Tauchid, 1952, Agrarian Issues as the Problem of Livelihood and Prosperity of the Indonesian People, Publisher Tjakrawala, Djakarta.
- [19] Mulyana, Agung, 2006, "Protection of the Rights of Indigenous Peoples in the Framework of the Development of Unity and National Unity", a paper presented at the Consultative Assembly of the Malay Rumpun customary body of Sumatra on 14-17 April 200, in Riau.
- [20] Nasution Bahder Johan, 2008, Research Methods Legal Science, Publishers Mandar Maju, Bandung.
- [21] Parsons, Talcott, 1951 The Social System: The Major Exposition of the Author & Conceptual Schema or the Analysis of Dynamics of the Social System. Canada: Collier Macmillan, Ltd.
- [22] Parsudi Suparlan (Ed.), 1993, Integrated and Sustainable Development: Integration of the Utilization of Community Resources and Potentials for the Promotion and Development of Sustainable Rural Community Development. Jakarta: The publication of the Balitbangsos Ministry of Social Affairs RI.
- [23] Radcliffe-Brown, 1980, Structure and Function in Primitive Societies. Malaysia Kuala Lumpur: Language Board and Library of the Ministry of Lessons.
- [24] Roscoe Pound, 1989, Introduction to Legal Philosophy, Bhratara Niaga Media Publisher, Jakarta.
- [25] R. Subekti, R. Tjitrosudibio, 2006, Book of Civil Law, PT. Pradnya Paramita, Jakarta.

- [26] Satjipto Rahardjo, 2008, Let the Law Flow, Critical Notes on Human and Legal Struggle, Kompas Bambang Publishers, Jakarta.
- [27] Simarmata, Rikarda, 2006, Legal Recognition of Indigenous Peoples in Indonesia. The UNDP Regional Initiative on Indigenous Peoples' Rights and Development (RIPP) in Bangkok.
- [28] Soerjono Soekanto, Sri Mamudji, 1995, NORMATIVE LEGAL RESEARCH A Brief Review, PT. Raja Grafindo Persada, Jakarta.
- [29] Sri Rahayu Oktoberina, Niken Savitri, 2008, Points of Thought in Law - Commemorating 70 Years Prof. Dr., B. Arief Sidharta, Refika Aditama, Bandung.
- [30] Suwanto (dkk), 2006, Raising the Existence of Traditional Indigenous Peoples Rights of Malay Rumpun Se-Sumatra, Pekanbaru: Unri Press.
- [31] Takdir Rahmadi, 2010, Mediation of Dispute Settlement Through Mufakat Approach, Rajagarfindo Persada, Jakarta.
- [32] Widjaja, A.W. (Ed.) 1986 Indonesian Man: Individual, Family and Society. Jakarta: Publishers of Akademika Pressindo C.V.

