



Land Dispute Resolution System a Comparison

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Abstract

There is always something interesting to discuss about land and systematic dispute resolution. Making a comparison of land dispute resolution systems is one way to find land dispute settlement points. This paper uses a method of solving the comparison based on the customary method adopted by each country by focusing on the points of similarity and difference. As a result of the dispute resolution process, an interesting variety of results have been produced.

Keywords: *Land; Dispute Resolution; Comparative Law; Customary Law; Environmental Law*

Introduction

A development project has wide-ranging implications for the quality of human life. This is due to the fact that development construction is based on a series of activities that have been planned to improve human living conditions. By using this analogy, it implies that the structured development work that has taken place in various fields of life so far has been a means for the Indonesian nation to enter a new era with various effects. Developing a society that values equality as part of social welfare is tied to national development, and also takes a role in improving the quality of life of Indonesians.

The Preamble of the 1945 Constitution and Pancasila have been established as grundnorm or rechts idee in every implementation of every rule in Indonesia. In this sense, renewing policy is irrelevant and is a reference to the basic determinant of state administration, namely Pancasila, which can still be interpreted as partially effective since it still enables law development policy to be carried out. Having a rule of law and democratic principles, Indonesia must also directly organize its government on democratic principles. As a result, the Indonesian nation will develop a democratic and law-based order of living together within the framework of an Indonesian state. As such, the Indonesian nation will integrate democratic principles with legal principles as a symbiotic-mutualistic synergy that will allow for the creation of a national legal order of a democratic nation. [1]

Keeping and maintaining public order is the purpose of law. A conservative nature focuses on maintaining what has been achieved. In human life, the law has a function to regulate all interests and to maintain order, for that in the end the law also aims to assist humans in the process of changing society which we are familiar with as law as social engineering. [2]

The government must be able to give affirmation to the community, the law that is made leads to the interests of the community and is oriented towards social justice. [3] This means that when problems with laws and regulations arise, the government must be able to provide affirmation to the community that the regulations passed are indeed based on social justice and common interests. Many regulations in legal politics are often formed on the basis of the interests of political experts and are therefore opposed by society, resulting in these rules not functioning effectively.

The form of action that forms legal awareness in society determines the legal awareness, so legal issues can be categorized as behavior rather than law as rules, norms or principles. [4] As building legal awareness is not an easy process, we need an institution that can help people comprehend their legal awareness, in order to accomplish this. Law is an important element in the development of politics and it creates a relationship with government policy clearers. Through legislation, the Government determines what it can do and what not to do. Law defined as legislation is a system of norms in which the rule of law is arranged in unity within a hierarchical manner. The lower legal norms should not be contradictory to the higher legal norms, [5] laws are important to life so as to facilitate political development of a country and to build relationships between society and government.

As a social controller, the law must of course be applied fairly efficiently and well within the midst of community life for its role to be effective. life of the community. The law also deserves to be able to change and be implemented voluntarily by society when a law itself is recognized by society. A good understanding and good acknowledgment of the existence of a rule of law will certainly be able to maintain a good life in society.

On the other hand, if society has behaved contrary to the law, then the role of law as a social controller can be said to have failed and it is appropriate to re-examine how these rules can live in society. With developments in every community's life with the support of current developments, the community will certainly easily get daily information, including knowing what legal issues are currently happening.

It has been more than 60 years since Indonesia issued regulations related to law in the field of agriculture, namely Law Number 5 of 1960 which we are usually familiar with as the Basic Agrarian Regulations. Long before the law was passed, even now after more than 60 years of the law being passed, in Indonesia there are still many agrarian problems. Based on data collected at KPA, throughout 2020 there were 359 agrarian cases consisting of various sectors, starting from the plantation sector which increased by 28 percent from the previous year, the forestry sector which also rose 100 percent from the previous number to the infrastructure, property, mines and others. [6]

The total area of land affected by this agrarian conflict throughout in 2020 is around 624,272 hectares. This portrait of the problem refers to land issues that exist in Indonesia, starting from the system to practices in sectors associated with the economy. [7] One of the reasons for the rapid rise and increase in agrarian problems is the National Strategic Project (PSN). The problem with this National Strategy Project is often caused by [8] Indonesia's problems as a developing country, which for the sake of carrying out development and increasing economic value, often ignores environmental and agrarian aspects, especially in terms of land use.

Discussions related to land and natural resources are now increasingly lively and more interesting to discuss after the Job Creation Bill began. [9] The rejection regarding the draft legislation has further enlivened the discussion on land and natural resources, even though in November 2020 this bill officially became Law Number 11/2020 concerning Job Creation. With the enactment of Law Number 11/2020

concerning Job Creation, it certainly has an impact on environmental and agrarian aspects, especially land.

Previously, in 2019, there were problems with the bill related to land, which was then postponed due to the many things that were considered crucial which could not allow this bill to continue to be discussed. The detailed problem relates to one of the articles considered vulnerable to criminalization in article 91, which reads:

Everyone who obstructs law enforcement officials and/or officials from carrying out tasks on a plot of land owned by him or someone entrusted to him, shall be punished with imprisonment for a maximum of 2 years and a fine of up to a maximum IDR 500 million. [10]

The alignment of this regulation to one of the parties can then give the apparatus legitimacy to convict the public and it is assumed that the government is ready to open the biggest scenario so that investment can be wide open in the bill. This means that in the future even if there are disputes in the land sector, the government will prioritize the economic aspect. It is true that this is not a wrong solution, but in terms of legal provisions, the aspect of justice to all parties is an aspect that must be put forward. The problems of the economy and development of developing countries are one of the dilemmas to decide.

For this reason, related to agrarian problems, especially land, it is necessary to carry out a comparative study of land dispute resolution between three countries, namely: Indonesia, the Philippines and Cambodia as developing countries in the Asian region and Ghana as a developing country which is on the border of European countries.

Discussion

A conflict, as defined by sociologists, is a social fact in which at least two parties are involved and whose origins are differences either in interests or in the social position of the parties. [11] Sociologists define that conflict is a social fact that occurs at least 2 parties involved and is based on different interests or similarities of interests on the same object, so conflict cannot be avoided.

There have been many land conflicts since ancient times. These conflicts occur both between individuals and groups, occur because of historical problems, can be in the form of inheritance and then must be resolved by conflict dispute resolution. Some of these land problems do not only occur in Indonesia, the complexity of existing land problems causes land conflicts to always occur in every country. In Brazil, for example, in 2014 there were land problems in a remote area called Raposa Serra in the Amazon region. There was a struggle for land in that area, where the Indian entity had lived. The conflict started when the white people felt that they had rights over the area, so they tried to expel the Indians who were in the area. The existence of the Indians has been going on for a long time, in fact their existence has been hereditary and has lived in the area for several generations. White people, who at that time were very influential in Brazil, then invited farmers and ranchers to participate in evictions. This problem was then taken to the court level to provide an appropriate solution, bearing in mind that any other solution apart from the court would not produce results. [12]

Indonesia through the Ministry of Agrarian Affairs and Spatial Planning/State Land Agency (ATR/BPN) notes that there are around 9,000 land conflicts in Indonesia, most of which are caused by land abandonment, so land rights are nullified. [13] The existence of ownerless land is the main focus of land problems in Indonesia. This land issue can then disrupt the investment climate which is being seriously pursued by the Indonesian government, because Indonesia is trying to pursue national development by prioritizing its economic aspects.

Dispute resolution in Indonesia and internationally is divided into two ways of resolving disputes, the first is peaceful dispute resolution and dispute resolution through courts. Dispute resolution in the Philippines as one of the two comparator countries for Indonesia in the Asian region in resolving the land issues is also carried out in two ways, namely peaceful conflict resolution and by court.

Settlement of Land Problems in the Philippines

The way to peacefully resolve land conflicts in the Philippines can be said to be unique, because there is a special method given by the government specifically for customary land settlement, namely using an ethnographic approach system. [14] Since 1997, Indigenous peoples in the Philippines have had the right to claim their ancestral rights, but since then there have also been other rights granted by state institutions to stakeholders for certain purposes, such as conservation, agriculture, etc. related to an area or land. As a result, conflicts over overlapping ownership power have arisen until now so that later fulfilling land rights there has become difficult. [15]

After a long period of research, a unique conflict resolution system emerged. This conflict resolution is referred to as ethnographic conflict resolution. By using this approach, the government then describes the land or domain that is claimed through ancestral domain claims. Where in this case the proof of ownership and claims of ownership of ancestral territories are seen based on the ancestral history. The resolution of this conflict is also focused on the claimants of the indigenous culture of a region (ICC) or indigenous peoples in an area (IP) and their ancestral domains. This method exploits the social structure which is broad in nature and the cultural context and the meaning contained in an object so that it will then describe a very basic conclusion in resolving existing land disputes, besides that in resolving this conflict it also opens up the possibility for a combination of participation based on academic studies. A dispute resolution process here focuses on the dynamic relationship between indigenous cultural communities and their ancestral territories and how conflicts arise from time to time.

With such a conflict resolution system, then there will be accurate data. Ethnographic conflict resolution is also used by the government in describing ancestral territories and ancestral claims if there are problems between indigenous peoples in the Philippines and the government. The government can also carry out settlements related to land in this way if it is in preparation for land use and land planning. When it is ethnographically proven that the land belongs to a group, then that group can apply for a certificate of ancestral land ownership rights or what is known as a *Certificate of Ancestral Domain Titles (CADT)*. [16]

Settlement of Land Disputes in Cambodia

Basically in Cambodia there is indigenous peoples whose position and ownership rights over their land are also recognized by the Government. But, since 2001, the government in Cambodia is considered to have routinely violated the provisions of their rights and has made many efforts towards economic policy, this has been proven because there has been forest clearing for commercial interests to foreign development.

Cambodia in resolving its land conflict has seven types of conflict resolution methods: [17]

1. Conflict resolution *Facilitation/moderation* in this settlement the parties are given facilities to clarify and resolve minor differences, the issues that form the basis of the dispute, if agreed in this settlement then moderation will be carried out so that it is hoped that the situation will improve;
2. *Process Guidance*: this one dispute resolution process is typical of dispute resolution in Cambodia, because neither Indonesia nor the Philippines has this settlement process. Basically this dispute resolution is presented by someone as a guide for the course of dispute resolution, this is almost similar to the first process earlier, but what makes this dispute resolution different is that in

practice the guide must accompany all the processes, work on perceptions, attitudes, intentions and behavior that does not support one of the parties, in fact it must be internalized deeply to calm the disputing parties. This process is used after the first process does not produce results, and in its stages *process guidance* can also be used as a forum for consultation between the parties which is hoped that the consultation can stop the possibility of a conflict developing.

This process is also useful for reconciling the parties from the prejudices that exist in their hearts.

3. *Socio-therapeutic process guidance*: this dispute resolution process is again specified as a form of government attention to the parties which specifically focuses explicitly on behavior related to psychological disorders. Land problems often occur to those who experience multiple problems, meaning that they have been holding them in for a long time and the buildup of emotions causes a person to be unstable, making problems difficult to solve. With a conflict resolution process that specifically focuses on the psychological problems of the person in conflict, the reasons behind the conflict will be known properly, so that the best solution will be born. In Indonesia and in the Philippines, there is no such system. In Indonesia, someone who is in conflict can be examined for psychological disorders only if he has entered the realm of litigation.

In resolving this conflict it is also hoped that it can help the parties to gain self-peace, maintain and develop a sense of peace in their souls, so that it will help in understanding their own behavior and the behavior of the opponent and is expected to be able to create understanding and a willingness to forgive each other, so that conflicts can be resolved.

4. *Conciliation*: this dispute resolution system is a mixture of consultation and mediation systems. In this case there is the conciliator's assistance to negotiate temporarily, he can even be a party that translates the perceptions, attitudes, intentions and behavior of the conflicting parties, the goal is always the same, namely to reduce the existence of prejudice and hostility that exists on the parties. This settlement is certainly no longer surprising to hear, because this settlement has been recognized in international law, namely article 2 of the *UN Chapter* regarding peaceful dispute resolution.

5. *Mediation*: mediation also requires that the parties must be willing to face each other to find solutions and compromises. In the mediation process there is also a mediator. The mediator must provide an opportunity for the parties to explain their respective perceptions and express what they feel, if one party does not listen, the mediator must also make directions so that the other parties must listen and discuss. The mediator may not propose a solution, the mediator is only obliged to lead the way for the parties to make peace.

6. *Arbitration and litigation*; In this arbitration process, there are also those who serve as arbitrators, arbitrators have the authority to make decisions and decide conflicts that exist between the parties based on their judgment. Therefore the arbitrator has more influence than the others. Due to its strong influence, the arbitration process is only taken if the conflict is considered to be very difficult to resolve and the previous dispute resolution processes are considered to be no longer able to resolve disputes that have occurred, for example the parties do not want to talk to each other at all. Then there is litigation, litigation is a formal process and is commonly known as a court process.

7. *Forcible intervention is required when escalation is at its peak*: the process of intervention on the parties can be carried out by state authorities if the conflict is not resolved, for example if there is a land dispute between two parties which will then affect the course of public interest.

This dispute resolution process also does not exist in Indonesia or in the Philippines.

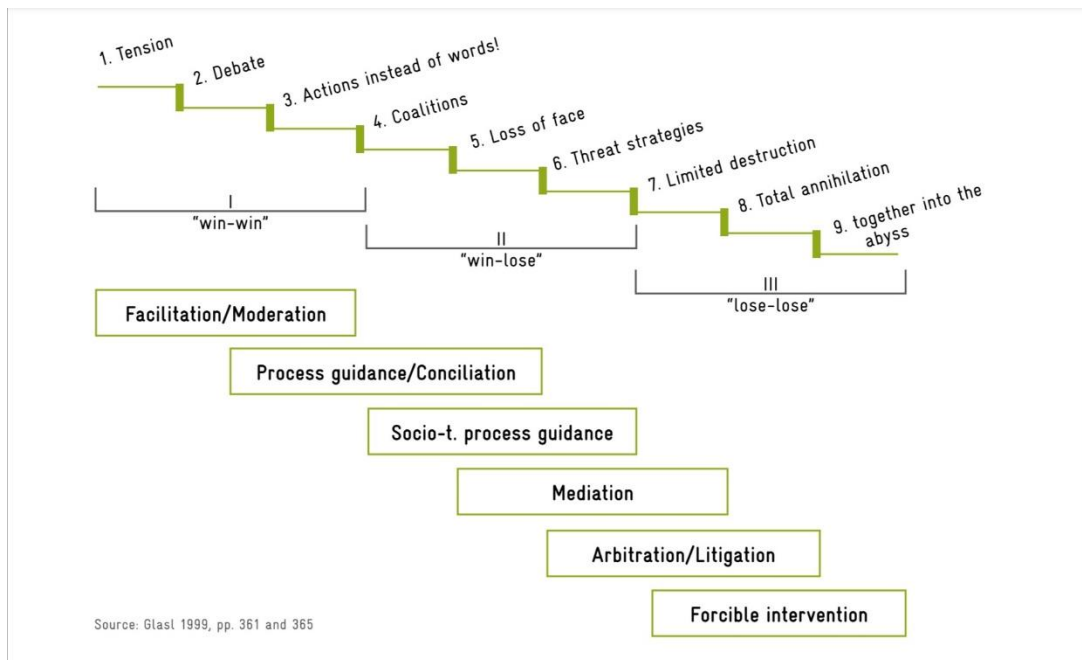


Table of Settlement of Land Disputes in Cambodia

Meanwhile in Indonesia, the dispute settlement system on customary land is resolved using a peaceful dispute resolution method, which in this case is deliberation. This deliberation has almost different names for each indigenous community. For example, in the Karo customary community, dispute resolution by deliberation is called *runggun*. *Runggun* is one of the dispute resolution methods using deliberation.

In principle, conflict resolution in Indonesia and the Philippines has similarities, namely starting from what lives in society, this may be because Indonesia and the Philippines are in the Asian region. Indonesia and the Philippines have the same culture of addressing problems through community-based methods.

We should appreciate that ethnography in dispute resolution can be considered as an innovative method, because in practice they really need real data, but on the other hand they embrace the community and government as policy makers together.

Dispute Resolution in Ghana

Basically, dispute resolution in Ghana also consists of two types of dispute resolution, namely peaceful and litigation. Starting in 2007, Ghana is estimated to have had more than 35,000 land dispute cases which were resolved through litigation. [18] In this case, the public complained that the litigation process was very tiring. Due to this complaint, the government of Ghana began announcing that there was a peaceful settlement of disputes, commonly known as *Alternative Dispute Resolution*. Aside from that, public complaints are also caused by complaints that the court system is becoming redundant and easily corrupted.

In Ghana there are eight types of alternative [19] dispute resolutions that have been identified by the government in dealing with land conflicts, including:

1. Formal arbitration by respected persons
2. Alternative dispute resolution sponsored by the state which is carried out to encourage dispute resolution outside the courts
3. Dispute resolution is not litigation but is handled by judges in resolving conflict solutions
4. Settlement of disputes by a special land administration committee to help resolve certain land conflicts
5. Dispute resolution by land management experts who are usually members of *the Ghana Institution of Surveyors*
6. Settlement of land conflicts by state officials who are elected and according to their expertise
7. Settlement of religious disputes, namely Islamic religious courts where disputes are caused by religious leaders based on religious sanction code
8. Dispute resolution by professional mediators and arbitrators at private mediation centers based on international standards

According to Ghana's available options, none of the methods for resolving disputes are in accordance with those used in Indonesia, the Philippines and Cambodia. Dispute resolution in Ghana shows that it is purely a government policy as a result of complaints made by the public. The arbitration system carried out by the Ghana government is not similar with the dispute resolution system adopted by international law.

Another unique thing about the dispute resolution system adopted by Ghana is the existence of a dispute resolution system based on the concept of religion (*religious*) [20] it's interesting because that is so different with Indonesia, even though Indonesia is the most biggest Islamic country in the world, there are more than 207 Million people. However, the implementation of a religion-based court system does not even exist.

In general, Indonesia adheres to a dispute resolution system that is almost the same as in the Philippines. International dispute resolution consists of several types, including:

1. *Nonconsensual approaches;*
2. *Alternative dispute resolutions;*
3. *The cultural dimension of conflict resolution. [21]*

Conclusion

All land conflicts, no matter how peaceful or violent they are, produce negative consequences for individual people as well and as for the entire society. [22] All land conflicts, no matter how prosperous a country is, how big or small the conflict is, will definitely produce negative consequences, both for individuals in a place and for society as a whole. The problem of land conflicts that causes many people to lose their shelter, such as in Africa which is dominated by conflicts over ownership of a land that is claimed as the owner of the area.

Conceptually, the ADR concept is implemented with the aim of providing a decision that is a *win-win solution*, so that in its implementation it does not require a court process where the final decision is a *win-lose solution*. Based on a *win-win solution decision*, when the decision comes out it is hoped that all parties will not feel disadvantaged, both materially and non-materially. In addition to the ADR concept contained in international law, actually the application of ethnological concepts or other indigenous peoples' concepts in Indonesia in resolving conflicts can be used as long as both parties agree and are consistent in carrying out these settlement activities.

The ADR conflict resolution solution is then no longer useful if one of the parties has violated what was promised, then with this, a conflict resolution approach can be taken which uses state institutions in the form of courts. These provisions clearly apply to Indonesia, the Philippines and other countries.

The various kinds of dispute resolution offered by each country open our eyes that there are so many ways to settle disputes peacefully in each country and we can also adopt a way of solving that looks towards society as offered by the Philippines in Indonesia, or a dispute resolution system in Cambodia, which is considered unique because it pays attention to the health aspects of the conflicting parties, is something that really deserves thumbs up and often escapes the attention of other parties.

Conflict is actually a buildup of suppressed feelings that can be resolved by adopting the mental health concept.

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