



Proceeding of 2nd Malikussaleh Internasional
Conference on Law, Legal Studies and Social
Science (MICoLLS) 2022

Settlement Of Uncertified Land Disputes Through Customary
Law (Research Study at Kampung Berhut Kecamatan Terangun
Kabupaten Gayo Lues)

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Settlement Of Uncertified Land Disputes Through Customary Law (Research Study at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues)

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Abstract

Article 19 paragraph (2) letter c of the UUPA states that certificates have many functions for their owners. The main and foremost function of the certificate is as a strong evidence. However, the problem of uncertified land often occurs in areas so that land disputes occur, one of which is at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues. The purpose of this study is to find out and explain the process of resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues, the obstacles faced and the legal consequences of resolving uncertified land disputes through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues. This type of research is empirical juridical with a case approach. Sources of data used are primary data in the form of interviews with respondents and informants. Based on the research results it is known that; The process of resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues, is that the Village Customary Court first asks the disputing parties to submit problems that become conflicts by providing existing evidence. The dispute between the two parties was resolved peacefully and the decision relied more on the nature of kinship and the statements of witnesses as evidence. Constraints faced in resolving uncertified land disputes through customary law are that the disputed land does not have a certificate, it is difficult to obtain accurate data, there is no clear sign as a land area limit, demands without clear evidence of ownership so that when During the deliberation, there was a cross of opinion between the disputing parties. The legal consequences of resolving land disputes that are not certified through customary law are for parties whose land area exceeds the original limit must return the part of land that does not belong to them to the rightful owner, land owners can make sales and purchases to third parties without any obstacles, land that is not clearly the boundaries become clear so that they can register the land to get a certificate and the disputing parties must obey and participate in implementing the decisions of the Village Customary Court from the results of joint deliberation. It is recommended to the Village Customary Court to be able to open the mindset of the disputing parties regarding peace efforts and various legal aspects as well as its scope.

Keywords

Settlement, Land Dispute, Customary Law

DOI: 10.29103/MICOLLS.V2I.104

1. Introduction

The Law Number 9 of 2015 concerning Guaranteeing legal clarity regarding land rights is needed to ensure equal distribution of land rights among various elements in the state. Land rights must be regulated for the benefit of small communities in order to create justice and legal clarity regarding ownership community land. The regulation of land rights aims to

establish justice, clarity of land law, and simplification of land law. The main guiding principle of this agreement is that all land rights must be exercised in order to achieve social and ecological justice.[1]

Provisions on land rights contain the contents of the law on land rights, the main provisions, principles and objectives, classification of land and types of rights, procedures, rights and obligations of land rights owners, registration, transfer, compensation, and revocation of human rights.[2]

Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) as the basis for regulating land rights only regulates matters that are classified as basic, so there are several provisions that should exist to regulate matters classified as land, such as laws and regulations, government regulations, and ministerial regulations. This needs to be reviewed, in order to provide protection of land rights, where through the draft law on land rights can function as *lex specialis* of the Basic Agrarian Law (UUPA) and Article 1963 of the Civil Code. So that it can properly regulate community access to land, including regulating land status, simplification of land rights, recognition of customary rights, protection of productive lands, and proof of ownership of land rights, as well as buying and selling land without certificates, resulting in no authentic proof of land ownership.[3]

The state policy on guaranteeing land ownership was strengthened and its rights and obligations were regulated in the Basic Agrarian Law (UUPA) issued in 1960. The national land law whose main provisions are in the provisions of the UUPA is the legal basis for owning and controlling land by people. and legal entities both for housing and agriculture in order to meet their needs. This means that the existence of individual rights to land is always rooted in the rights of the Indonesian people to land in Article 1 Paragraph (1) of the UUPA. The UUPA never mentions land certificates, but as found in Article 19 Paragraph (2) letter C there is a mention of "certificate of rights" in the everyday sense this certificate of evidence is often interpreted as a land certificate.[4]

Certificates have many functions for their owners. The main and foremost function of a certificate is as a strong evidence, as stated in Article 19 paragraph (2) letter c of the LoGA. Therefore, anyone can easily prove himself/herself as a land right holder if his/her name is listed in the certificate. The holder of land rights can then prove the conditions of the land, for example its area, boundaries or anything related to the plot of land in question. If in the future there is a lawsuit in court regarding the right of ownership or control over the land, then all the information contained in the certificate on the land has strong evidentiary power and therefore the judge must accept it as a true statement, as long as there is no other evidence that denies it. or prove otherwise.[5]

The study of the validity of certificates is very important, not least because; (a) The certificate provides legal certainty of land ownership for the person whose name is listed in the certificate. Issuance of certificates can prevent land disputes; (b) Ownership of a certificate will give you a feeling of calm and serenity because it is protected from arbitrary actions by anyone; (c) The issuance of certificates is intended to prevent land ownership disputes; (d) With the ownership of the certificate, the land owner can take any legal action as long as it does not conflict with the law, public order and morality.

Land conflicts and disputes in Indonesia are multi-dimensional which cannot be understood only as agrarian issues. Therefore, efforts to prevent, handle, and resolve disputes must take into account various aspects, both legal and non-legal. Otherwise, land disputes will continue, even with increasing levels of complexity. Because, the escalation of land disputes in Indonesia always increases every year.[6]

Settlement of land disputes in the form of negotiation, conciliation, mediation, and arbitration, as stated in Article 1 point 10 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The method of dispute resolution in land acquisition for the public interest is stipulated in Article 33 of Law Number 2 of 2012 concerning Land Procurement for Development in the Public Interest. Article 65 of the Presidential Regulation of the Republic of Indonesia Number 99 of 2014 concerning the Second Amendment to the Regulation of the President of the Republic of Indonesia Number 71 of 2012 concerning the Implementation of Land Procurement for Development in the Public Interest, Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 5 of 2012 concerning Technical Guidelines for the Implementation of Land Acquisition. Aceh Qanun Number 13 of 2016 concerning the Establishment and Composition of Aceh's Apparatus. In Article 3 paragraph 5 it is stated that the Aceh Land Office functions to carry out government affairs related to land services in Aceh Province".[7]

The use of customary law in the life of the Acehnese people is the embodiment of a unique soul in Acehnese culture. This is because customary law has special characteristics. The special nature of customary law is the unwritten law of the people. As people who regulate their own lives which are constantly changing and developing, customary law always undergoes continuous changes through decisions or settlements issued by the community as a result of meeting feelings and words about filling in something customary law in people's deliberation.[8]

The main reasons for indigenous peoples to resolve conflicts with customary law through the Kampung Adat Institution include; The problem of the implementation time which is not bound and can be carried out in a fast time, is carried out using customary rules mutually agreed between the disputing parties, and carried out peacefully using a deliberation and consensus approach. The presence of customary law that goes beyond the presence of formal law makes indigenous peoples never have doubts in its implementation.[9]

Based on the descriptions above, the author is interested in carrying out a study entitled "Uncertified Land Dispute Resolution through Customary Law (Research Study at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues)".

In connection with the background of the problem above, the formulation of the problem in this study is:

1. What is the mechanism for resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues?
2. What are the obstacles encountered in resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues?

3. What are the legal consequences of resolving uncertified land disputes through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues?

This type of study is empirical juridical or field study. The approach used in this study is a case approach. This study has a qualitative nature, the form of the study is descriptive analytical. The location chosen in this study is Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues.

2. Discussion

2.1 Uncertified Land Dispute Resolution Process Through Customary Law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues

The settlement of land disputes that are not recognized by customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues is carried out through deliberation between members of the village court, community leaders and the disputing parties. In the deliberation, the village general court asked the disputing parties for clarification and then held a joint deliberation to find the best way for both parties, which was peaceful and neither won nor lost.

Customary law in Aceh is now managed by a traditional institution called the Aceh Customary Council, this institution has come to life after the earthquake and tsunami experienced by Aceh in late 2004 and the issuance of Law Number 11 of 2006 concerning the Government of Aceh, which one of the contents of the article specifically contains customary law. and Customary Institutions. Then continued with the issuance of Qanun Number 10 of 2008 concerning Customary Institutions.[10]

Peradilan The Berhut Village Customary Court, Terangun District, Gayo Lues Regency includes "the Village Head, the Village Consultative Body (BPK), Imam Menasah, the Village Secretary, and other apparatus based on legal authorities based on the laws and regulations". The traditional dispute resolution procedure by the village customary court is a meeting place that aims to resolve disputes and problems that arise. Disputes between the two parties were resolved amicably. The head of the village court makes decisions based on the nature of the relationship and witness statements as evidence.

Penyelesaian adat atas sengketa tanah yang tidak Customary settlement of uncertified land disputes almost always leads to peaceful efforts. This is in accordance with Mahdi's findings that peace and balance are the final outpouring of the customary courts. Deliberation is the way to find peace. Consultations are carried out at all levels of the judiciary or the general court. Peace is always sought when criminal and civil matters are resolved at the family or village level. Every family member of the conflicting party always tries to resolve the dispute through family counseling, but if it fails, it is resolved at the Gampong level.[11]

Currently with the issuance of Qanun No. 9 of 2008 concerning Aceh Customs and Customs, the implementation of community dispute resolution is mainly carried out in customary courts by Gampong customary institutions. Gampong Customs Institution is an institution designed to handle all matters relating to the interests of the community itself,

and Gampong Customs Institution is empowered to take care of all interests of the local community according to its own initiative based on regulations. community aspirations.[12]

Impelementasi Qanun Nomor 9 Tahun 2008 Implementation of Qanun Number 9 of 2008 concerning Traditional Ways of Life and Procedures for Implementing Land Dispute Resolution by the Village Customary Court through Efforts for Harmony and Peace. The settlement of the disputed village general court is very good for both parties. This is because ordinary court settlements are not aimed at finding fault with one of the parties, but at the arbitration method between the parties. Forgiveness was requested from both parties, and at the end of the reconciliation agreement, advice and religious views were given so that neither side won or lost in resolving disputes through the village court.

The resolution of land disputes that have not been certified according to the customary law of Berhut Village, Terangun District, Gayo Lues Regency is the desire of the disputing parties. At the beginning of the trial, the village adat court tried to keep the atmosphere of the trial light, relaxed and serious rather than tense. For example, village general court judges always show a friendly face to the disputing parties, full of smiles, friendly greetings, and light jokes. In the forum, all common law practitioners consulted and in the end reached a common decision. Based on this decision, an official report will be made on the results of the settlement of land disputes that are not certified.

Article 15 of Aceh Qanun Number 9 of 2008 concerning the Guidance of Indigenous Life and Customs is stipulated that "the procedures and conditions for the settlement of disputes/disputes are carried out in accordance with local customary provisions". Disputes/disputes that arise at the village and mukim levels are light as contained in Article 13, Article 14, and Article 15 of Aceh Qanun Number 9 of 2008 which is "must be resolved first through the Village Customary Court. Customary institutions are traditional courts that seek to reconcile the conflicting parties. The settlement of cases through customary institutions is a peaceful settlement of cases, to reconcile the litigants and provide local customary sanctions.[13]

2.2 Obstacles Faced in Settlement of Uncertified Land Disputes Through Customary Law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues

The obstacles encountered in the settlement of land disputes that are not certified through customary law are:

a. Land does not have a certificate

The complainant does not have a certificate, accurate data is difficult to obtain, the reported land conditions do not match the requirements and the reality on the ground, and there is no clear definition of territorial boundaries, because there are no indications, the witness must turn out to be someone who knows this country well. good.

b. There is a difference of opinion between the reporting party and the reported party

Obstacles encountered in resolving land disputes that are not certified through customary law are the emergence of disputes or cross opinions between the reporting parties and the reported parties.

c. Disputing parties are difficult to consult

Disputing parties can be one of the obstacles in the consultation process, and this is related to their temperament. The disposition of indigenous peoples in the consultation process has a major impact on the consultation process. Deliberations can be interrupted because one or both parties want to argue emotionally rather than logically, don't want to hear what the other person has to say, or don't believe they are right.

d. The disputing parties have varied educational backgrounds, ages and livelihoods.

One of the obstacles to resolving land disputes that are not recognized by customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues is the difference in educational background, age and livelihoods of the disputing parties. There may still be parties involved so they will have to separate to reach a peace agreement. Disputing parties may have difficulty understanding what is being discussed, leading to more complex dispute resolution.

e. There is a third party provoking one of the parties.

The holding of deliberation on land disputes that have not been certified is strongly influenced by the perception of all parties to understand the importance of deliberation in resolving disputed issues. The presence of a third party who appears to know the details of the disputed property without having an accurate description of the disputed property and who does not have the right to discuss the disputed issue can be a useful tool in resolving the case.

Land eigendom refers to absolute ownership of property under applicable law in absolute or most complete control. The right to do anything, or the broadest right, to an object owned by an individual. After 30 years, the honest owner does not need to establish the basis of his rights in the form of a deed or other proof of ownership. This means that he can refuse any form of claim by simply showing the items that he is deemed to have owned for 30 consecutive years and that he also has a legal right to do so.[14]

2.3 Legal consequences of Uncertified Land Dispute Settlement Through Customary Lawat Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues

The legal consequences of land dispute resolution that are not recognized by customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues. Parties whose land area exceeds the initial limit must return part of the land to the rightful owner, so that the land owner buys and sells land with unclear boundaries to third parties and registers it .

Legal Consequences of Customary Law Land Dispute Resolution Uncertified The decision of the Village Customary Court is final in accordance with statutory regulations, protracted land disputes no longer exist and the status of the disputed land is the village customary court which reveals and punishes the parties as a result of joint deliberation , and the community trusts each other in their respective land tenure.

For residents of Berhut Village, Terangun District, Gayo Lues Regency, a written decision to resolve land disputes that are not recognized by customary law is a mandatory norm. Because the settlement of a case is a written agreement in the sense of an opinion,

which is a collective agreement from the settlement process. Both parties must comply with the peace agreement approved by the judge. A peace deed contains an agreement between the parties regarding the dispute. That is, the conflict ends, because the emergence of a peace deed is the end of the conflict.

3. Conclusion

In connection with the results of the study regarding "settlement of uncertified land disputes through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues it can be concluded that:

1. The process of resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues, namely, the Village Customary Court first asks the disputing parties to explain the issue that is the dispute by providing the available evidence. The dispute between the two parties was ended peacefully and the decision prioritized the nature of kinship and the statements of witnesses as evidence.
2. Obstacles encountered in the settlement of land disputes that are not certified through customary law, namely the disputed land does not have a certificate, has obtained the right data, there is no definite symbol as the limit of the land area, demands with no evidence of ownership. In addition, the disputing parties have varied educational backgrounds, ages and livelihoods.
3. The legal consequences of resolving land disputes that are not certified through customary law at Kampung Berhut Kecamatan Terangun Kabupaten Gayo Lues, namely for those whose land area is more than the initial limit, they must return the part of the land that they do not own to the official owner, the land owner can carry out a sale and purchase to the third party. thirdly, in the absence of any obstacles, land whose boundaries are not certain are certain so that it can carry out registration of the land in order to obtain a certificate and the disputing parties must obey and participate in carrying out the decisions of the Village Customary Court from the results of joint deliberation.

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