



Legal reconstruction on land dispute settlement on state administrative court based on justice value

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Abstract

The State Administrative Court has the authority to examine, adjudicate, and decide on a decision equipped with considerations. In land disputes *dismissal process* as regulated in Article 62 paragraph (1) letter a of Law no. 5 of 1986 jo. Law no. 9 of 2004 jo. Law no. 51 of 2009 concerning the State Administrative Court still does not provide legal certainty and justice because it is not uncommon to find that in first-level decisions, appeals, and cassation, the panel of judges differs in their understanding, some state the absolute competence of the district court and some state otherwise that it remains the court—state administration which has the authority to examine and decide land disputes. The objectives of this research include: (1) to understand and analyze the weaknesses in resolving land disputes in the State Administrative Court which is not yet fair, (2) to understand and analyze the reconstruction of land dispute resolution in the State Administrative Court based on the value of justice. This research uses a juridical-empirical approach method using primary data and secondary data (primary, secondary, and tertiary legal materials) then analyzed using a descriptive-analytical approach. The research results show that the weaknesses in resolving land disputes in the State Administrative Court are due to differences in the interpretation of one panel of judges at the first level, appeal, and cassation. Reconstruction of land dispute resolution in the State Administrative Court can be carried out by reconstructing the norms of Article 62 paragraph (1) of Law no. 5 of 1986 concerning State Administrative Courts regarding improvements to the dismissal process in determining absolute competency.

Keywords: *Dismissal process*, land disputes, reconstruction

Introduction

Indonesia is a rule of law country (*legal state*) as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945. This is in line with the opinion of Julius Stahl who states about the characteristics of the rule of law (*legal state*) that is:

1. Guarantee of human rights
2. There is a separation or division of power
3. Government based on statutory regulations
4. The existence of Administrative Justice

The characteristics of the rule of law above show that the Indonesian State has implemented them in the process of resolving administrative disputes in Indonesia. The State Administrative Court is a judicial environment that was formed after the enactment of Law No. 5 of 1986 concerning State Administrative Courts on 29 December 1986.

Initially, the rule of law was a state system in which the law limited the state's acts so that they were not arbitrary in their treatment of citizens. However, the concept of a welfare state, whether liberal, social-democratic, or conservative,² imposes an obligation on the state to take "all" actions to ensure the well-being of society. Thus, on the one hand, state actions are restricted by law, but on the other hand, the state is required to act (Suparto, *et al.*, 2024) ^[1].

The State Administrative Court has the task and authority: "To examine, decide and resolve State Administrative disputes, namely a dispute that arises in the field of TUN law between individuals or civil legal entities (members of the community) and TUN bodies or officials (government) both at the center and in the region as a result of the issuance of a TUN Decree (*beschikking*), including employment disputes based on applicable laws and

regulations (vide Article 50 Jo. Article 1 number 4 Law Number 5 of 1986 Jo. Law Number 9 of 2004 Jo. Law -Law Number 51 of 2009)".

In Act No. 5 of 1986, which has undergone several amendments and was last revised by Act No. 51 of 2009 concerning the Administrative Court (abbreviated as UUPTUN), there is no mention of the authority of the Administrative Court to receive, examine, and decide on land disputes. The subject listed in the Administrative Dispute Settlement (TUN) is a person or a civil legal entity against the state institution or official TUN (Article 53 of the UUPTUN). In the development of TUN court practices, a state institution or TUN official can act as the plaintiff in defending the civil rights of an institution, and conversely, in practice, a person or civil legal entity can be the defendant through an intervention institution (Rauzi and Hadi, 2024) ^[2].

The subject in the State Administrative Court is a Person or Civil Legal Entity as the Plaintiff, and a State Administrative Agency or Official as the Defendant. Meanwhile, the object in the State Administrative Court is the State Administrative Decree (*order*).

Whereas according to Law Number 5 of 1986 concerning State Administrative Courts, in Article 62 paragraph (1) in a deliberative meeting, the Chairman of the Court has the authority to decide with a determination accompanied by considerations that the lawsuit submitted is declared unacceptable or baseless, in terms of :

1. The subject matter of the lawsuit is not within the authority of the Court;
2. The requirements of the lawsuit as intended in Article 56 are not fulfilled by the plaintiff even though he has been informed and warned;
3. The lawsuit is not based on proper reasons;

The laws and regulations do not provide a definition related to the dismissal process. However, the dismissal process can be interpreted as the research process of a lawsuit submitted to the State Administrative Court by the Chief Justice. The lawsuit research process carried out by the Chairman of the State Administrative Court is regulated in the provisions of Article 62 of Law Number 5 of 1986 concerning State Administrative Courts which has undergone 2 (two) amendments in Law Number 9 of 2004 concerning Amendments to Laws. -Law Number 5 of 1986 concerning the State Administrative Court and Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court.

Land administration disputes are one species of the genus of absolute authority of the State Administrative Court. In essence, the absolute competence of state administrative courts in the land sector is to resolve administrative disputes in the land sector (Simanjuntak, 2017).

Regarding the resolution of land disputes in the State Administrative Court, it is not uncommon to examine and decide dispute cases in the land sector related to the process of issuing certificates over the same object, so that the Land Office is deemed to have issued the object of a State Administrative Decree with procedural defects. In the process of resolving land disputes, it is not uncommon to find judges with different opinions at the first level, appeal level, or cassation level, for example, the first level panel of judges in one court differs from another panel of judges in deciding land cases, namely one accepts the Plaintiff's claim in the final decision. as in the Decision of the Banjarmasin State Administrative Court Number: 31/G/2018/PTUN.BJM dated 11 October 2019 and some did not accept the Plaintiff's claim on the grounds of absolute competency of the district court as in the Decision of the Banjarmasin State Administrative Court Number: 6/G/2017/PTUN.BJM dated 22 August 2017.

That the Jurisprudence of the Supreme Court of the Republic of Indonesia There are differences which state the absolute competence of district courts in relation to the object of property rights certificate disputes as stated in Supreme Court Jurisprudence of the Republic of Indonesia Number 88/K/1993 dated 7 September 1994, which reads: *"Even though a dispute in a case is the result of an Official Decree, if the case concerns ownership or rights then a lawsuit regarding the dispute must first be submitted to the General Court"*, Jurisprudence of the Supreme Court of the Republic of Indonesia Number 22/K/TUN/1998, dated 27 July 2001 with the legal rule: *"that State Administrative decisions relating to ownership issues do not include the authority of the State Administrative Court to examine and adjudicate, but are instead the authority of the general judiciary involving all interested parties"*, Supreme Court of the Republic of Indonesia Jurisprudence Number 131/K/TUN/2013 dated 7 May 2014 whose legal considerations essentially read: *"That because there are differences in the acquisition of land rights between the Plaintiff and the Intervening Defendant II, it must first be proven who has the right to the land, and it is the authority of the District Court to examine and try it"*.

The difference in views of judges in examining and deciding the quo case will cause losses to justice seekers both in terms of costs and finances. If the district court had absolute competence, it should not have passed dismissal, but this

has passed dismissal and even reached the high court. The State Administrative Court declares the authority of the State Administrative Court, but when appealed to the Supreme Court, it is not uncommon for the Supreme Court to state the authority of the district court, even though the time taken has been long and the costs incurred have been large.

In the context of legal politics, the Regulation on the Resolution of Land Disputes in the State Administrative Court Based on Justice Values in the future is a strategic step that must be taken to create policies in the legal sector that are legal and fair.

The existence of Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts and Law Number 51 of 2009 concerning Second Amendments to Law Number 5 of 1986 concerning State Administrative Courts has the impact of providing protection, on the other hand, causes losses and uncertainty for society.

Based on the background above, the formulation of the problem in this study is:

1. What are the weaknesses in resolving land disputes in the State Administrative Court?
2. How is the reconstruction of land dispute resolution in the State Administrative Court based on the value of justice?

Method of Research

The research type used in writing this paper is qualitative research. Writing aims to describe a society or a certain group of people or a description of a symptom or between two or more symptoms.

The approach method used in this research is *Empirical-Juridical* (Ibrahim, 2005) ^[10], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

The sources of research used in this study are:

1. Primary Data is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data is an indirect source that can provide additional and reinforcement of research data. Sources of secondary data in the form of Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author uses data collection techniques, namely literature study, interviews, and documentation where the researcher is the key instrument which is the researcher himself who plans, collects, and interprets the data (Moleong, 2002) ^[11].

The specification of this legal research is in the form of analytical descriptive research. Descriptive means that the researcher in analyzing wants to provide an overview or explanation of the object of his research. Primary data collection was carried out by observation (direct observation) and interviews with several informants in this study. In terms of observation observation is an activity carried out by researchers in the context of collecting data by observing the phenomenon of a certain community at a certain time as well. This primary data is also through interviews with several sources. Deep interview (interview) is the process of obtaining information for research purposes using question and answer while face to face between interviewers and informants or interviewees, with or without

using guidelines (guide) interviews, where interviewers and informants are involved in social life for a relatively long time (Widodo *et al*, 2023) ^[12].

Research Result and Discussion

1. Weaknesses in the Settlement of Land Disputes in State Administrative Courts

According to Maria S.W. Sumardjono, some obstacles arise in resolving land disputes, namely that it is often difficult to execute court decisions if there are civil, criminal, and state administrative court decisions from the District Court or State Administrative Court to cassation and even judicial review that are inconsistent with each other. towards the same object of dispute (Sumardjono, 2008) ^[4].

Elza Syarif also stated that there are decisions that have permanent legal force in land disputes that conflict with each other even in the same judicial environment. For the same land, for example, it turns out that there can be several decisions at once that conflict with each other. The impact is that legal certainty is neglected, so Elza calls it an "Endless Dispute" (Syarif, 2017) ^[5].

Administrative law in Indonesia has several weaknesses, which have hindered its effectiveness in reducing legal violations committed by institutions or public officials. One of these weaknesses is the inability to enforce legal sanctions directly. The administrative law system lacks an authority responsible for enforcing the implementation of administrative court decisions, as is the case with the execution of criminal law carried out by the prosecutor's office (Yolanda and Setiyono, 2023) ^[13].

The weaknesses in resolving land disputes in the State Administrative Court which are not yet fair can be seen from the analysis of Legal System Theory (Lawrence M. Friedman). This theory examines 3 (three) components in the legal sub-system, namely:

a. Weaknesses of Legal Substance Components

Legal substance, concerns the rules, norms, and patterns of human behavior within the system, even including principles and ethics, as well as court decisions. Thus, what is called the legal substance component here is the entirety of legal rules (including legal principles and legal norms), both written and unwritten as well as court decisions which are guided by society and the government.

Based on the previous context, it can be interpreted that, court decisions that are supposed to resolve disputes, can sometimes actually become a source of new legal problems, namely problems that the National Land Agency refers to as differences in perceptions, values, or opinions, interests regarding the decisions of the judicial body relating to the subject or land rights objects or regarding procedures for issuing certain land rights.

Early detection regarding absolute authority in the State Administrative Court is regulated in Article 62 paragraph (1) of Law no. 5 of 1986 concerning State Administrative Courts as amended twice, namely Law no. 51 of 2009 concerning State Administrative Courts, known as the *dismissal process*. Unfortunately, the article does not clearly explain that land disputes are within the absolute competence of the state administrative judiciary so judges have different opinions.

b. Weaknesses of Legal Structure Components

The components of the legal structure are related to the law enforcement officers, in this case, namely the Judge and the Chief Justice in providing decisions on the results of the dismissal process.

Law enforcement in Indonesia is carried out by law enforcement officers who specialize in the quality of judges in resolving cases. The existence of conflicting State Administrative Courts is evidence of a weakness in the quality of judges in understanding applicable material and formal law, including a weakness in understanding the laws that exist in society.

The existence of Article 62 paragraph (1) of the State Administrative Court Law requires confirmation regarding land disputes regarding the absolute competence of state administrative courts so that there are no differences of opinion between the panel of judges. In this case, the Chief Justice of the Supreme Court must act immediately so that justice seekers do not lose time, energy, and costs in obtaining their rights, truth, and justice.

The ability to make good decisions and make legal breakthroughs can be achieved by exploring the legal resources that exist around one's daily environment. The resources in question can come from normative laws in several laws or unwritten ones, and live as norms and a sense of justice that grows in society. In this section, the judges are asked to recall the best decision they have ever made and the most memorable in their opinion.

Even though they are faced with several problems and obstacles in deciding cases, judges are still able to make the best or at least impressive decisions for themselves. Initially, it was quite difficult for them to name a decision that impressed them. This is caused by: 1) most of them reasoned that they had difficulty remembering the best decisions they made; 2) they do not realize that what they are doing is a legal breakthrough; and 3) a small number openly admitted that they did not feel they had a special decision and considered all the decisions they made to be of the same quality.

In general, judges are faced with a lack of access to information resources in the form of developments in legal science, the latest legal instruments, and books that support knowledge. Moreover, judges who are placed in remote areas experience a lack of work facilities.

To increase capacity judges have received education and training. However, the educational and training materials provided are sometimes not to the needs and dynamics of the communities where judges serve.

c. Weaknesses of Legal Culture Components

From Lawrence M. Friedman's explanation, legal culture is a vital thing in the legal system, namely a "demand", "request" or "need" that comes from the community or users of legal services. relating to ideas, attitudes, beliefs, hopes, and opinions regarding the law. Therefore, community legal culture can also be interpreted as the values, attitudes, and behavior of community members in legal life.

The legal culture of society is reflected by the behavior of officials (executive, legislative, and judicial), but also the behavior of society. Legal culture or the legal culture of society is also used to explain the legal system. For example, to explain why the legal system cannot be implemented as it should or its course is different from the original pattern. Community legal culture can also be given

the same boundaries as legal awareness (Darmodihardjo, Shidarta, 1996) ^[6].

In the community knowledge factor and the community awareness factor, the majority of people do not understand that the land they own cannot be owned, they are stubborn and do not want to make peace, they prioritize material gain over community and family harmony.

Land is a very important tool in human life and development. Viewed from the economic aspect, it is a means of production that can bring prosperity and assets (industry, agriculture, commercial. Meanwhile, the political aspect of land can determine a person's position in decisions for society.

Lastly, from a legal perspective, it is the basis of power for jurisdiction. Various aspects of the importance of land, often become a conflict in society which is characterized by land conflicts arising regarding land ownership status, land control status, compensation for land acquisition, and land use status, (Nurdin, 2018) ^[7] as well as inaccurate data (Sukmawati, 2022) ^[8].

Land issues are increasingly complicated and complicated because they involve mafias who carry out organized crimes so that their crimes are difficult to trace legally because they hide behind legal enforcement and services. Things that cause land rights disputes to occur:

1. People are increasingly aware and concerned about the interests of their rights to land;
2. The climate of openness outlined by the Government;
3. Land prices are increasing rapidly;
4. Human Actor;
5. It is. The gap is marked by the inconsistency between the mandate and the basic spirit of UUPA in its implementing regulations;
6. Overlapping permits granted by authorities;
7. Inadequate Compensation;
8. Unclear identity of the rights holder (certain legal subject);
9. Unclear landline boundaries, location, and area of land objects (legal object certainty)
10. Investment policy.
11. Case examples: Mesuji (Lampung), Bima (West Nusa Tenggara), Konawe (Southeast Sulawesi), Oki and Buba Regencies (South Sumatra), etc. (Tehupieory, 2021) ^[9].

Furthermore, the causes of land disputes on the other hand:

1. Incomplete land registration.
2. Regulatory disharmony.
3. Compensation for land acquisition.
4. Conflicting court decisions.
5. Land mafia.
6. Permitting overlapping land and space uses.

Apart from that, the cause of the land dispute is the land mafia. Factors that influence the causes of land mafia cases are:

1. There is no synchronization of regulations between institutions regarding land
2. There is a conspiracy in sectors related to land matters
3. Collaboration between perpetrators and law enforcement officers
4. People are less aware or do not have enough money to manage and register proof of ownership.

The key to breaking off the ecosystem and epicenter of the land mafia so that the actions of the land mafia do not happen again is the need to take open steps by revising land ownership data accurately and building an integrated system for land data collection so that errors can be prevented.

3. Reconstruction of Land Dispute Settlement Regulations in State Administrative Courts Based on Justice Value

Justice based on Pancasila adheres to several principles which include justice based on belief in the Almighty God, humanizing humans by prioritizing human rights, namely the right to obtain justice, unity in realizing justice, justice that can be recognized as true for all Indonesian people, and equal treatment before law.

Regarding the regulation of the dismissal process in Article 62 paragraph (1) of Law Number 5 of 1986 concerning the State Administrative Court, which is considered to be less capable of ensuring the absolute competence of the State Administrative Court in resolving land disputes, resulting in a conflict between the dismissal determination and the decision of the first level court. appeals and even up to the cassation level, which in the end does not provide certainty and injustice for the parties involved in the case. The main existence of law is to realize justice. Justice is placed as the basic basis of legal objectives. If justice is placed as a legal goal, it must be fulfilled and realized to the maximum. Therefore, in the future, Article 62 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts needs to reconstruct norms so that they are based on the value of justice.

The following is the substance of Article 62 paragraph (1) of Law no. 5 of 1986 concerning State Administrative Courts before reconstruction:

Article 62

(1) In a deliberative meeting, the Chairman of the Court has the authority to decide with a decision accompanied by considerations that the lawsuit submitted is declared inadmissible or baseless, if:

- a. The subject of the lawsuit is not included in the authority Court;
- b. The requirements for a lawsuit as intended in Article 56 are not fulfilled by the plaintiff even though he has been informed and warned;
- c. The lawsuit is not based on proper reasons;
- d. What is demanded in the lawsuit has been fulfilled by the State Administrative Decree being sued;
- e. It is. The lawsuit was filed prematurely or has expired.

The reason why Article 62 paragraph (1) was reconstructed is that having a panel of judges who determine the competence of the State Administrative Court in examining, adjudicating, and deciding a case, will give the quality of the determination regarding the competence of the State Administrative Court more weight than just being determined by the Chairman of the State Administrative Court.

Article 62 paragraph (1) of the State Administrative Court Law after being reconstructed becomes:

Article 62

(1) In a deliberative meeting, the **judging panel** has the authority to decide with a determination accompanied by

considerations that the claim submitted is declared inadmissible or baseless, if:

- a. The subject matter of the lawsuit is not within the authority of the Court;
- b. The requirements for a lawsuit as intended in Article 56 are not fulfilled by the plaintiff even though he has been informed and warned;
- c. The lawsuit is not based on proper reasons;
- d. What is demanded in the lawsuit has been fulfilled by the State Administrative Decree being sued;
- e. It is. The lawsuit was filed prematurely or has expired.

This additional provision is important to provide legal certainty regarding the authority of the State Administrative Court in examining, resolving, and deciding cases. In line with the principles of fast, simple, and low-cost justice. Additional Article 62 after being reconstructed becomes "(7) The panel of judges' determination as in paragraph (1) is not considered by the panel of judges in its decision".

Conclusion

Based on the discussion of the problems above, it can be concluded that:

1. Weaknesses in resolving land disputes in the State Administrative Court which results in injustice, namely
 - a) weaknesses in legal substance, namely Article 62 paragraph (1) of Law Number 5 of 1986 concerning State Administrative Courts, b) weaknesses in the legal structure, namely 1) problems with the quality of judges, and 2) the problem of monitoring court decisions. c) Weaknesses of Legal Culture, namely 1) Community legal knowledge and awareness, and 2) The existence of the Land Mafia.
2. Reconstruction of land dispute resolution in the State Administrative Court based on justice values can be carried out through reconstruction of justice values and reconstruction of norms of Article 62 paragraph (1) of Law no. 5 of 1986 concerning the State Administrative Court which regulates the dismissal process in determining the absolute competence of the State Administrative Court. The Pancasila principle of justice adheres to democratic principles in the regulation of dispute resolution in the State Administrative Court, namely accommodating the interests of the wider community. The principle of Pancasila justice provides justice for all citizens in dispute resolution arrangements in the State Administrative Court, namely arrangements that provide legal certainty and do not cause conflict between norms and higher regulations.

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