



## Legal Analysis Of Land Dispute Settlement In Tlogoretno Village Based On Restorative Justice

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### ABSTRACT

Land disputes in Indonesia, including in Tlogoreto Village, are complex and often protracted problems when resolved through conventional litigation. The lengthy and costly legal process makes alternative approaches, such as *Restorative Justice*, an increasingly relevant solution. *Restorative Justice* emphasizes the restoration of relations between the parties to the dispute through dialogue and mutual agreement. In this context, *the restorative approach* is expected to be able to provide a more effective and harmonious settlement of land disputes in Tlogoreto Village.

This study uses a normative juridical method with an analysis of applicable laws and regulations, as well as legal doctrines related to land dispute resolution and the application of *Restorative Justice*.

The Restorative Justice approach in resolving land disputes in Tlogoreto Village focuses on mediation involving all parties to the dispute, as well as community leaders as mediators. This process aims to reach a fair agreement for all parties, by prioritizing the restoration of social relations. The analysis shows that the application of *Restorative Justice* is more effective in reducing tensions and producing sustainable solutions than resolving disputes through the courts. However, the challenge in applying this method lies in the lack of public understanding of *Restorative Justice* and the limited formal recognition of the results.

Restorative Justice offers an alternative to resolving land disputes that is faster, cheaper, and able to improve relations between the parties to the dispute in Tlogoreto Village. This approach is in line with the principle of restorative justice which focuses on recovery rather than punishment. Although its application has not yet been fully formally recognized in Indonesia's legal system, Restorative Justice can be an important step in land dispute settlement reform, especially at the local level.

**Keywords:** Legal Analysis, Land Disputes, Restorative Justice.

### Introduction

Indonesia is a country based on law. Everything related to general welfare has been regulated in the law in the form of written regulations. Thus, a legal certainty for a person has essentially been guaranteed by the constitution in Indonesia. In the context of modern world life, it seems that several things often occur that often trigger the birth of disputes between people and people, between the government and society. Land is a very large state asset, the source of state income is also mostly from taxes and one of the taxes is the tax from land, both building taxes and other taxes such as rent, use



rights, and so on<sup>1</sup>. Land will inevitably run out over time with every land owned or inhabited because of the increasing population of Indonesia. It could be that over time our land runs out and all to be used there is no vacant or abandoned land.

Therefore, a legal regulation or legal method is needed, namely the regulation of community life that regulates and coerces to ensure order in society. The law must be in the form of a clear law in order to provide legal certainty for the legitimate owners and voters of certain land. That is one way to minimize conflicts from the community and from the government that are background to land disputes<sup>2</sup>.

Macro-wise, the causes of the emergence of these land cases are very varied, which include rapidly increasing land prices. The condition of the community is increasingly aware and concerned about their interests and rights. The climate of openness outlined by the government. In essence, land cases are a conflict of *interest* in the field of land between who and who as a concrete example between individuals and individuals; individuals with legal entities; legal entity with legal entity and so on.

Land registration is a series of activities carried out by the government on a continuous, and regular basis, including the collection and management of physical and legal data in the form of maps and lists of land plots; including bookkeeping, research, and maintenance. Existing rights and ownership of the flats and certain rights that encumber them. (Government Regulation No. 24 of 2009) The implementation of land registration allows the parties involved to know the legal status of the particular land that they are transacting, its location, extent, boundaries, and to whom the owner easily knows whether it is on it<sup>3</sup>.

Legal acts of the Government/BPN that register and issue certificates as legal acts that create new legal conditions and give rise to new rights and obligations for certain persons/entities must be eligible may contain elements of the following two errors: Regarding the technical and legal aspects of land registration registration. This natural error will or may cause cancellation. The inaccuracy of physical and legal data at the time of land registration eliminates the element of legal certainty of land rights and harms people who have land rights. Any mistake will result in incorrect information entered into BPN as a national institution, thus causing chaos in land administration<sup>4</sup>.

<sup>1</sup> Ali Achmad C., 2004, *Agrarian Law (Indonesia Land)* volume 1, Jakarta: Prestasi Pustaka, p. 328.

<sup>2</sup> Adrian Suted, *Land Rights and Their Registration*, Jakarta: Sinar Grafika Publishers, 2009. p. 23.

<sup>3</sup> Effendi Parangin, *Agrarian Law Indonesia*, (Jakarta CV. Hawk. 1991), p. 95

<sup>4</sup> Boedi Harsono, *Indonesia's Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Content and Implementation* (Bandung: Djambatan, 1999), p. 23.



In general, the resolution of this problem or dispute can be taken in two ways, namely by using the litigation route and the non-litigation route. Basically, these two paths aim to create justice for society in general, and justice for the parties in particular. The use of one of the litigation and non-litigation case settlement routes will be largely determined by the concept and purpose of resolving the case that the parties want to achieve and no less important is the good faith of the parties to resolve the case. Land disputes in Indonesia, including in Tlogoreto Village, are complex and often protracted problems when resolved through conventional litigation. The lengthy and costly legal process makes alternative approaches, such as *Restorative Justice*, an increasingly relevant solution. *Restorative Justice* emphasizes the restoration of relations between the parties to the dispute through dialogue and mutual agreement.

Nowadays, when a criminal act occurs, people tend to use the court route which conceptually will create justice, but in reality this is not easy to achieve. This is because the results that will be achieved from the case settlement process with a win-lose solution judicial route, where there will be a winning party and a losing party. With this kind of reality, the settlement of a case through the traditional judicial route in general often causes a bad feeling in the mind of the losing party, so that it is possible to seek justice to the judicial level further.

Related to this, Satjipto Rahardjo stated that the settlement of cases through the judicial system that leads to a court verdict is a law enforcement in the direction of a slow path. This is because law enforcement has gone through a long distance, through various levels ranging from the police, prosecutor's office, district courts, high courts and even to the Supreme Court. In the end, it has an impact on the accumulation of cases that are not small in court.

## **Discussion**

Pendekatan *Restorative Justice* in resolving land disputes in Tlogoretno Village, it focuses on the mediation process involving all parties to the dispute, as well as involving community leaders as mediators who are considered to have authority and trust among the local community. In this context, community leaders act as dialogue facilitators and mediators who try to create a space for open discussion, so that the parties to the dispute can express their views and complaints. This is in accordance with the essence of *Restorative Justice*, namely seeking the restoration of social relations damaged by disputes and reaching an agreement that is acceptable to all parties. The goal is not only to solve legal problems, but also to restore harmony in the community.



This mediation process involves several important stages, including identifying problems, negotiating, and reaching mutual agreements that are agreed upon by all parties. The outcome of this mediation is expected to reflect a sense of justice that not only focuses on the legal-formal aspects, but also considers the social welfare and long-term interests of the parties to the dispute. In this case, the success of *Restorative Justice-based* mediation lies in its success in reducing tensions between the parties to the dispute and producing a more sustainable solution compared to resolving disputes through the courts<sup>5</sup>.

However, based on the results of an interview with Mr. Seniman as the village head, he said that the implementation of *Restorative Justice* in Tlogoreto Village faces several challenges that need to be considered. One of the main challenges is the lack of public understanding of the concept of *Restorative Justice*. Many people still view that the settlement of land disputes must be resolved through formal legal channels, namely the courts, which are considered to have more legitimate legal force<sup>6</sup>. This makes some people hesitate to fully rely on mediation as a means of conflict resolution. Another challenge is the limitation of formal recognition of the results of mediation carried out through *the Restorative Justice* approach. The outcome of mediation, although agreed upon by the disputing parties, has not been fully legally recognized in some cases, especially if one of the parties decides to bring the case back to court<sup>7</sup>.

To address these challenges, it is important to conduct broader dissemination of the benefits of *Restorative Justice* and how the mediation process can be legally recognized and protected. In addition, there needs to be further support from the government and legal institutions to provide formal legitimacy to the results of *Restorative Justice-based* mediation, so that the public has greater confidence in using this approach<sup>8</sup>.

The restorative justice approach that upholds the values of balance, harmony, harmonization, peace, tranquility, equality, brotherhood, and family is certainly in harmony and in accordance with the values contained in Pancasila. Thus, the restorative justice approach is essentially in accordance with the spirit of the Indonesia nation which prioritizes the values of kinship, association, kinship, mutual

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<sup>5</sup> See John Braithwaite, *Restorative Justice & Responsive Regulation* (New York: Oxford University Press, 2002), pp. 53-55, which emphasizes the role of relationship restoration in *restorative justice-based* conflict resolution.

<sup>6</sup> An interview with the village head of Tlogoreto Village, conducted on August 27, 2024, regarding the community's perception of *Restorative Justice* in resolving land disputes.

<sup>7</sup> See Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, which regulates legal recognition of mediation and arbitration, but still has limitations in its application at the local level.

<sup>8</sup> See Laurence Moffat, *Restorative Justice in Practice: Implementing Law and Policy in Community Settings* (London: Routledge, 2016), pp. 77-80, which highlights the importance of formal support for mediation outcomes for the *Restorative Justice* process to function effectively.



cooperation, tolerance, forgiveness, and prioritizing the attitude of prioritizing the common good.

Since ancient times, land has been a source of conflict and conflict that often results in the loss of human life. As a social phenomenon, conflict or conflict in agriculture (land) is a process of interaction between two (or more) people or groups who each compete for interests over the same object, namely land and other objects related to land<sup>9</sup>. However, the conflicts and land disputes that arise are highly dependent on the existing agrarian context as well as the institutions and policies that existed at that time. From the various disputes or disputes that occur agrarian (land) can be understood as the process of accumulation of factors of production, and in this case it can be seen as follows: First, conflicts arise in a context. Agrarian resource conflicts in disputes or conflicts are actually not a matter of scarcity of land resources, but a massive effort by investors to control agricultural resources that were previously controlled by the people. Second, disputes and disputes arise in connection with the coercion of certain goods. The compulsion to grow certain raw materials gives rise to land disputes. In the agricultural sector, especially the plantation subsector, land disputes arise due to the extraction of raw materials to support export needs. Third, disputes and disputes arise in connection with changing times. Land disputes and disputes occur when farmers are cut off from power over them. When peasants have no allies anywhere, their position weakens.

Disputes and disputes that arise can be detained and suppressed by the authorities at any time so that they do not spread further. Of course this situation was very unfavorable for the peasants, because they lost interest in the aspirations which had protected them, and the peasants organized collectively to fight for their interests and strengthen their bargaining position, the organization was forbidden<sup>10</sup>.

Land is currently a complex social problem that requires a comprehensive approach to solve it. The evolution of nature and the content of land disputes is no longer just a matter of land management that can be resolved through administrative law; The complexity of land extends to the political, social, and cultural spheres and is relevant. About nationalism and human rights. The lack of transparency in land management and ownership is caused by limited data and information on land management and ownership, as well as the lack of transparency of information available to local communities, which is one of the causes of land disputes. This results in land management and ownership only concentrated in a small part of the community, both rural areas and/or a number of properties in urban areas. On the other

<sup>9</sup> Budi Harsono, Op. Cit. hall. 65

<sup>10</sup> Kasim and Suhendar, *Farmers and Conflicts*, Supreme Court: Yayasan Akatiga. p. 178-179.



hand, although land management projects such as Prona and the Review Project have been relatively successful in achieving their goals, land certification still affects access to demand far beyond the supply side.

Talking about the existence of problematic certificates, it turns out that this is done by irresponsible individuals who admit that the problem can be easily solved and take advantage of the situation and circumstances. Another cause of land conflicts is the high economic value of land and the fact that land is a symbol of existence and social status in society so that it causes land conflicts both vertically and horizontally. The strategic and special importance and value of land encourages everyone to own, protect and care for their land and, if necessary, maintain it until the last drop of blood. The roots of conflicts and land disputes are multifaceted and cannot be considered solely legal issues, but are also related to other non-legal variables, such as weak land certification regulations that have not reached 50%.

Disputes continue to arise due to a lack of coordination between land acquisition organizing agencies and other related parties, such as local land registration. This shows the government's inconsistency in setting regulations in the land sector and weak supervision of the implementation of these regulations. At the beginning of the enactment of the UUPA, based on the Outline of State Direction (GBHN), land and property tenure reform was carried out through Repelita III. This phase is known as land reform. In other words, the implementation of land reform in Indonesia aims to liberate the peasants and common people from the influence of colonialism, imperialism, feudalism, and capitalism. The land reform plan implemented by the government at that time included maximum land management and land redistribution limits. But in reality, land reform is not going as smoothly as the government hoped. One of the reasons why land reform has stalled is that the government and farmers have fought for justice, but landowners have not yet understood this. Therefore, the root of the land reform problem is still felt by some people to this day. Lawyer/Lawyer Elsa Sharif in her book entitled "Resolving Land Disputes" states that land disputes are generally caused by the following factors:

- a. Incomplete regulation.
- b. Non-compliance with regulations.
- c. Land owners who are less responsive to the needs or the amount of available land.
- d. Inaccurate and incomplete data.
- e. Wrong land data.
- f. Limited human resources to resolve land disputes.



g. Illegal land transactions;

h. Time of Conduct of the Applicant or

i. There will be decisions of other authorities that result in overlapping authorities.

Based on the description of the specifications of dispute resolution institutions, both litigation institutions and extrajudicial institutions, so far all of these methods have not been able to resolve land disputes completely in a short time, but are prolonged. In fact, the mediation process carried out by BPN is not able to resolve the land dispute that is currently occurring. Therefore, it is very difficult to realize all the visions, missions, and strategic programs carried out by BPN. BPN has had obstacles in resolving land disputes, especially duplicate certificates due to duplication of existing regulations or regulations. If a land dispute arises between two parties and can be resolved through deliberation with the National Land Agency as an intermediary, then the settlement will definitely satisfy both parties. If it is necessary to settle through legal channels in accordance with applicable regulations, then it can be seen that there are additional costs that must be incurred by the parties, especially if they use the services of legal counsel. The cost required may exceed the capabilities of the service user, but the expected results may not always benefit the user.

In reality, land disputes can not only be resolved by the National Land Agency but also by the general courts as well as the national administrative and judicial bodies. If the General Court focuses on civil and criminal cases in land disputes, it is different from the State Administrative Court which decides land disputes related to the laws and regulations of the National Land Agency or other local governments related to land.

Currently, most land disputes are resolved in three ways:

1. Direct settlement through negotiations between the parties The basis for negotiations to reach an agreement is implied in the basis of Pancasila. Deliberations are held outside the courtroom with or without a mediator. Mediators usually consist of influential political parties, such as villages/village heads, traditional leaders, and of course the National Land Agency. If the settlement of land disputes is through deliberation, the condition is that the dispute is not in the form of a determination of land ownership that can grant or abolish anyone's rights to the disputed land.
2. Through Arbitration and Alternative Dispute Resolution Arbitration is the settlement of a case by one or more arbitrators (judges) appointed based on the agreement of the parties, and the decision taken is binding. The main condition that must be met in the use of arbitration as dispute resolution is the existence of a written agreement in which both parties agree to the arbitration agreement and indicate that the other party wants



to reach an agreement. If the case is brought to court, then the trial in court must be postponed until the completion of the arbitration hearing before the arbitral institution. Therefore, the court must and is obliged to recognize and respect the authority and function of the arbitrator.

3. Dispute resolution by judicial institutions According to the regulations in force in Indonesia, the settlement of land disputes related to property disputes is usually submitted to the General Court, and disputes regarding the decisions of the National Land Agency are submitted to the State Administrative Court and disputes regarding waqf land are submitted to religious courts.

### **Conclusion**

The settlement of land disputes in Tlogoretno Village requires a comprehensive approach, involving formal laws and local mechanisms. Despite significant challenges, the application of normative juridical principles can help steer dispute resolution efforts towards a fairer and more efficient outcome. By increasing legal understanding and strengthening local institutions, it is hoped that land dispute resolution can be carried out more effectively.

Regarding nationalism and human rights, the lack of transparency in land management and ownership is caused by limited data and information on land management and ownership, as well as the lack of transparency of information available to local communities, which is one of the causes of land disputes. This results in land management and ownership only concentrated in a small part of the community, both rural areas and/or a number of properties in urban areas.

A legal analysis of land dispute resolution in Tlogoreto Village based on *Restorative Justice* shows that this approach is able to be a more effective and harmonious alternative to dispute resolution through conventional litigation channels. *Restorative Justice* emphasizes the restoration of social relations between the parties to the dispute through mediation and dialogue, involving community leaders as mediators. This approach has succeeded in reducing tensions and creating a more sustainable solution because it prioritizes a fair agreement for all parties.

However, challenges in the implementation of *Restorative Justice* in Tlogoreto Village, such as the lack of public understanding of this concept and the limited formal recognition of mediation results, still need to be overcome. With wider socialization and stronger legal support, *Restorative Justice* has the potential to become an important instrument in resolving land disputes in Indonesia, especially at the local level, which can ultimately strengthen a fairer and more inclusive social and legal order.





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