

# **Court Competence in Administration in Resolving The Land Disputes To The Land**

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**Article History: Received: November 16, 2023; Accepted: January 28, 2024**

## **ABSTRACT**

The purpose of this study is to describe the competence of the State Administrative Court in handling land disputes. With the existence of a duplicate certificate of ownership originating from two legal aspects there is also a dualism in handling the case, and with the existence of the antinomy of this legal norm, this can further lead to a conflict of competence in adjudicating between the General Court or State Administrative Court in resolving land disputes. This research uses a normative method, in which the sources of legal materials are used by using literature studies, legislation, journals / articles, jurisprudence and books. Significantly this research shows that the competency of Administrative Court becomes a place that should be a reference for legal certainty seekers for the existence of a double certificate that can be tested for validity through the State Administrative Court for the Decree of a State Administration officia.

**Keywords:** Court, Administration, Competence, Disputes

## **1. INTRODUCTION**

In Indonesia, land reform is carried out by setting a minimum limit of land ownership whose extent is considered to be sufficient to ensure the living needs of farmers and their occupants have a maximum limit to supervise excessive landowners (Andi Achdian, 2008). Land is an important natural resource for human life and is also a means to improve a country's economy. The scope of agrarian law, land is part of the earth, which is called the surface of the earth. In this case land that not only regulates the use of land in all its aspects, but only parses one aspect that becomes a more comprehensive specific discussion, namely land in a juridical sense called rights (Santoso, 2009). While land rights are rights inherent in the validity of land status with proof of ownership of a certain portion of the surface of the earth with two dimensions with length and width.

Land basically has properties that can provide benefits to humans who have a production value, location value, environmental value, and social value (Boedi Harsono, 2007). Along with the development of the era of the level of land needs now increasingly needed by the community, along with that also developed regulations or regulations governing how to obtain



and maintain the land requires a long process, then with the Basic Agrarian Law No. 5 of 1960 became the legal basis for land matters. However, this regulation should not fully protect the holders of land rights.

In brief, there are three forms of inequality raised by agrarian structures with colonial and feudal features. First, the imbalance in the structure of land ownership by foreign private and feudal landlords. Secondly, inequality in land allocation for the purpose of extraction by the colonial government. Third, inequality arising from incompatibility in terms of agrarian perceptions and conceptions, that is, between colonial rulers who use positive legal concepts from the west and indigenous communities who recognize cultural rights on land based on cultural features. So the urgency of the current land registration is important in order to be a proof of the strength of land rights as well as evidence that holders of legal rights to land. In addition, land registration specified in the Basic Agrarian Law 5/1960 is an effort by the government to establish legal simplicity for the community.

Referring to the provisions of Article 19 paragraph (1) which is a basic provision for the Government in carrying out registration of land ownership throughout the territory of Indonesia, as such it is the legal basis for the implementation of land registration in the framework of obtaining legal certainty which is recorded through a certificate of proof of ownership of the land. serves as a valid means of proof before the law. As Article 23 paragraph (1) concerning property rights, each transfer and elimination of the imposition of other rights must be registered according to the provisions referred to in Article 19, and Article 32 paragraph (1) concerning Rights of Business, including conditions for granting, that every transfer and abolition of said rights must first be registered according to the provisions referred to in the Article above.

The application of Article 19 is the legal basis before the issuance of technical instructions in PP No.10 / 1961 concerning Land Registration, which is then replaced with PP No. 24/1997 concerning Land Registration. This final legal product does not significantly change the basic principles that have been developed by Article 19 and PP No. 10/1961. With the PP No. 24/1997, the provisions of a land registration shall apply uniformly to all regions of Indonesia. This includes land rights that are subject to Western law and Customary law, all of which are uniformed, meaning ex BW (*Burgerlijk wetboek*) evidence must be converted to a system regulated by Basic Agrarian Law, as well as customary lands, registered or unregistered.

Related to the existence of land rights, often problems are encountered in community life related to land disputes, namely, fighting over a parcel of land. Parties fighting over land



vary in types, including: (i) Someone with another person; (ii) A person or more with a private legal entity and a public legal entity; (iii) Civil legal entity with other civil legal entities; (iv) A person or private / civil legal entity with a public legal entity. The number of cases of falsification of certificates and the emergence of multiple certificates is the dishonesty of the applicant, in this case the landowner who submitted an application for measurement and preparation of land certificates to the National Land Agency, by entering data that is not in accordance with the physical form in the field, of course this is not based on the correct basis for rights, such as the issuance of certificates which are based on falsified certificates of ownership, other forms of stamps of the National Land Agency and falsification of land data.

The existence of overlapping certificates will certainly cause problems that result in the absence of legal certainty, especially relating to who will be the subject or owner of the land who has the right to a piece of land that is the object of the dispute. Therefore, problems in land matters are felt to greatly affect the community, so the need for legal certainty of land to be immediately filed for land registration is very important, because from the land registration it will issue certificates of land rights which become legal and strong evidence of a land object.

As is known, the main problem so far in the resolution of land disputes is submitted through the General Court or State Administrative Court. This is due to the dualism of the certificate of ownership over land derived from two legal aspects, namely on the one hand as a State Administration Decree which according to Article 1 number (9) of Law No. 51/2009 concerning the Second Amendment to Law No. 5/1986 concerning PTUN and on the other hand as a Proof of Rights under Articles 31 and 32 PP No. 24/1997 concerning Land Registration. With the existence of this antinomy of legal norms which can further lead to a conflict of competence to test and adjudicate between the General Courts or the State Administrative Courts in resolving land disputes.

## **2. RESEARCH METHODS**

Normative juridical research corresponds to the unique character of legal scholarship, which lies in the study of legal law. Research using laws and regulations that lead to the type of research used is normative juridical research.

The normative legal research method is a detailed scientific research procedure to find the truth and is based on the scientific logic of law from the normative side (Ibrahim, 2005).

As a normalog science, normative legal science is directly related to legal practice which concerns two main aspects, namely the formation of law and the application of law (Sidharta, 2016).



### **3. RESULTS AND DISCUSSION**

#### **Judicial Power**

Based on the applicable laws and regulations, several functions of the judicial power can be identified, which include (i) the main function in the form of the *recthtsprekende functie* function, (ii) the supervisory function (*controleerende functie*), (iii) the advising function (*advieserende functie*), (iv) regulating function (*regelende functie*), (v) material testing function (*materieeltoetsingrec*) (Ariawan, 2010). When our judicial power is related to the state administrative court / PTUN as we know that the public is still lay with one of the judicial bodies that exercise "free judicial power" equivalent to other courts that function to provide a legal protection for the community who are seeking legal certainty which covers:

- 1) Renewal actions for the improvement of the government in the interests of the people;
- 2) Legal stabilizers in development;
- 3) Preservation and enhancement of justice for the community;
- 4) Maintaining a balance between individual interests and the public interest (Sjachran Basah, 1985 : 25).

#### **Main Duties and Functions**

Judicial power which is still the basis of the power process that has the function of upholding justice (Angkasa, 2013). In relation to the duties and functions of a PTUN judge, it is the part of the Judiciary that has the task of examining, deciding and resolving disputes within the scope of the Neagara Administration between Individuals / Civil Legal Entities and State Administration Bodies / Officers, which are carried out by Judges specifically appointed to adjudicate the dispute.

#### **State Administration Judicial Competence**

Competence / authority of a judicial body to adjudicate a case whose substance can be distinguished by relative and absolute competence (Grace, 2014). The main competence is related to the authority of the court to adjudicate a case that is in accordance with its jurisdiction. Whereas absolute competence is related to the authority of the judiciary to adjudicate a case according to the object, material or subject matter of the dispute. With the differences in competence of the State Administrative Court after the Government Administrative Law, differences in legal concepts and the existence of objects of disputes in the State Administrative Court that are regulated in the Government Administrative Law, where the legal events are still not accommodated in the Law No. 5/1985, causing differences polemic for handling cases in the State Administrative Court after the Government Administration Act (Yodi Martono

Wahyunadi, 2016a).

### **Petendi Fundamentum**

Judges of the State Administrative Court in conducting a testing (toetsing gronden) on a certificate of a sued State Administrative Decree, based on the provisions of Article 53 paragraph 2 of Law Number 9 of 2004 which describes a lawsuit whether it is contrary to the legislation or is contradictory with general principles of good governance. The Judge's authority in the State Administrative Court will carry out administrative testing to see the validity of the certificate of land rights issued by the National Land Agency. Then the certificate issuance test is examined in terms of its authority, procedures and substance in the field of administrative law, and it is not related to the civil disputes between the Parties in dispute regarding the parcels listed in the certificate of land rights. This is because the test in the State Administrative Court is different from the test conducted in the General Court which conducts a civil testing on which party actually has the rights to the land mentioned in the certificate.

In carrying out tests related to the issuance of certificates of land rights as a State Administration Decree, the Judge of the State Administrative Court will judge from several aspects / elements, namely:

#### **Authority aspects, which include sources of authority:**

Judging from the source of his authority, there are 3 (three) authorities of the TUN Officer, namely:

- (1) Attribution, namely the granting of governmental authority sourced from / or granted by the legislators to government organs;
- (2) Delegation, namely the authority of government originating from / or due to the delegation of authority from one government organ to another government organ;
- (3) Mandate, occurs when an organ of the government allows its authority to be carried out by another organ on its behalf

Whether or not authority is valid, in terms of: Authority is limited by the content (material), territory and time, thus any use of authority outside those limits is a defect of authority or an act of violating authority (onbevoegdheid).

- (1) The act of violating authority in terms of content or material (onbevoegdheid ratione materiae) means that the administrative organ is carrying out actions in a field which is not within its authority. For example, the issuance of certificates of land rights is the authority of the District / City Land Office, not the authority of the Provincial National Land Agency

Regional Office. If the Regional Office issues certificates for land, for example, it is an act of violating authority (*onbevoegdheid*). If this is done by the Regional Office, then the action has no legal consequences and is considered never to exist because the action is not legal (*onrechtmatig*).

(2) The act of violating the authority in terms of territory (*Onbevoegdheid ratione loci*) means that the administrative organ is taking actions that exceed the limits of its territory. For example, the Gianyar Regency Land Office issues certificates of land rights whose location is located in Badung Regency.

(3) The act of violating authority in terms of time (*onbevoegdheid ratione temporis*) occurs when the authority used has exceeded the time period specified for that authority. For example, if the issuance of a certificate of land rights is carried out by the Head of the District / City Land Office who has finished his term of office

### **In terms of procedure**

With regard to the procedure for issuing certificates, the Judge at the State Administrative Court will refer to the laws and regulations in effect at the time the certificate of land rights (*extunc*) was issued. Based on Article 11 PP No. 24 of 1997 concerning Land Registration. The theory of legal protection in the view of Fitzgerald and Salmond states that the law aims to integrate and coordinate various interests in society, because in a traffic of interests, legal protection of certain interests can only be done by limiting various interests on the other hand (Raharjo, 2000).

### **In terms of substance or material for the issuance of certificates of land rights**

The Panel of Judges at the State Administrative Court will carry out a good test related to the physical and juridical data listed and become a unity in the certificate of land rights. Therefore, a State Administration Decree, in this case a certificate of land rights that is the object of a dispute in the State Administrative Court, is declared invalid or invalid, because it contains juridical defects, or contravenes the applicable laws and regulations, if the first is issued by an unauthorized State Administration body or Officer, the second violates formal procedural regulations, and the third violates material / substantial laws and regulations.

### **Principle of State Administrative Court Procedure**

The same principle that is still relevant to use consists of several principles, including: legal certainty, openness, and public interest. The difference in substance contained in the AUPB in the Peratun Law and UUAP in practice in the State Administrative Court is not a problem.



Therefore, in addition to the General Principles of Good Government contained in both laws, the judge can still test decisions or actions based on General Good Government Principles beyond those contained in the Act (Yodi Martono Wahyunadi, 2016b).

### State Administrative Court System

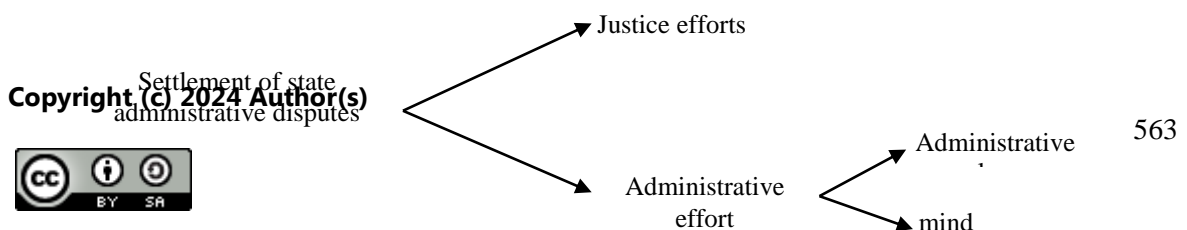
The State Administrative Court System aims to carry out the function of judicial oversight of the legal actions of state administration whose implementation is based on, among others, the principle of activeness of judges and the principle of free evidence. (Tjandra, 2013) In the State Administrative Court Procedure Law there is a stage of the event that must be passed before entering the trial stage, this stage is the Preliminary Examination stage which consists of two stages, namely the Consultative Meeting stage and the Preparatory Examination stage.

At this stage the deliberative chairman of the court will first examine the incoming lawsuit whether it meets the requirements as regulated in the Act and whether the registered claim is within the authority of the Neagar Administrative Court. Whereas in the preparatory examination stage the judge plays an active role in examining disputes, including by giving advice / input to the plaintiff to improve his lawsuit, asking the plaintiff to complete the evidence and asking the relevant State Administration official to provide information and data needed by the court.

### Understanding of State Administration Disputes in the Field of Land

Settlement of land disputes at PTUN generally occurs because of a lawsuit by the plaintiff (civil person or legal entity) who argues to control and have land rights with evidence other than certificates. The party sued by the plaintiff is not the land owner who is certified, but the State Administration Officer who has issued the certificate, namely the National Land Agency.

The purpose of the lawsuit is that the National Land Agency revokes the certificates that have been issued. Which according to Soemitro (1997: 6), explains that the origin of state administrative disputes were disputes arising in the field of state administration between civil persons or legal entities and state administrative bodies or officials, both at the central and regional levels, as a result the issuance of a state administrative decision. Meanwhile, if viewed from the perspective of administrative law, certificates of land rights are one manifestation of the State Administration Decree in the field of land issued by the cadastral authority (government organ in the field of land registration) or other officials who have the authority.





### **Scheme. Case Settlement Process in State Administrative Court**

In the settlement process in the State Administrative Court there are 2 (two) settlement processes, namely:

1. Directly through the court
2. Indirectly, namely through administrative efforts

Through a petition for an appeal containing a claim addressed to the TUN Agency or Officer submitted through the Court to obtain a binding legal binding judgment that can be seen in Article 1 number 11 of Law No. 51/2009.

Important things about making a lawsuit:

- a. The Plaintiff is a weak party in all cases including disputes in the State Administrative Court. The plaintiff is a person or legal entity that feels his rights and interests have been impaired by a State Administration Decree issued by the State Administration Agency or Official both at the central and regional levels.
- b. Intervention Parties, if referring to Article 83 of Law No. 5/1986 concerning the State Administrative Court regulates the third parties having an interest in the examination of the object of the dispute. If the interests are parallel with the Defendant, it is called Defendant II Intervention, for example in a land certificate dispute, Administrative effort is a procedure that can be taken by a person or a legal entity if not satisfied with a State Administration Decree implemented at the environment of self-government is based on Article 48 paragraph 1 of Law Number 5 of 1986 concerning State Administrative Court jo. Article 75 of Law Number 30 Year 2014 concerning Government Administration)

Administrative efforts consist of two kinds of procedures, namely:

- a. Objection is a step in resolving administrative disputes TUN conducted independently by the Agency or Punabat TUN who issued the decision.
- b. Administrative appeals are administrative steps in resolving TUN disputes that can be done by the supervisory agency or other agency of the party that issued the decision..

### **The form of the subject of the dispute**

Supreme Court Circular Letter Number 2 of 1991 provides instructions to the State Administrative Court in resolving State Administration disputes that have administrative efforts, namely that if in the statutory regulations which are the basis for issuing State Administration decisions that occur in the event of State Administration disputes, the administrative effort



available is objection and the next settlement is to file a claim with the State Administrative Court.

### **The shape of the dispute object**

Understanding the scope of the object of dispute in the State Administrative Court must first be understood in terms of its authority, so that the State Administration Decree in the Neagar Administrative Court Law must be interpreted as follows: (a) a written stipulation that includes factual action; (b) Decisions of State Administration Agencies and / or Officials in the scope of the executive, legislative, judicial and other state administrators; (c) Based on statutory provisions and General Principles of Good Governance; (d) Be final in the broad sense; (e) Decisions that have the potential to cause legal consequences; and / or (f) Decisions that apply to the community. (Simanjuntak, 2018)

In seeking legal certainty with all the efforts that have been made in order to resolve the dispute peacefully and not cause harm to both parties has been taken. However, if it has been related to wanting to control land rights and each party insists that the rights to the land are theirs, the middle ground achieved is making a claim made at the State Administrative Court and the outcome to obtain legal certainty is of course by canceling and / or revoke one of the decisions on the issuance of a certificate.

Cancellation of the decision to grant land rights includes cancellation of the subject or owner of the land for the certificate. The cancellation of the decision to grant land rights to the land owner, which is the subject of the owner of the land, also the certificate of land rights will become invalid. The annulment of a certificate of land object for the purpose of termination, termination or eradication of the legal relationship between the subject of land rights and the object of land rights has been decided in a trial in court. (Mintaraningrum, 2015)

## **4. CONCLUSION**

Then it can be concluded that the authority of the State Administrative Court in handling disputes over the Decree of the State Administration Officer, is an object that can be canceled at the State Administrative Court. Through efforts that can be taken by a person, a legal entity (private) can choose two efforts: 1) through administrative efforts, 2) through the State Administrative Court. An attempt to appeal an administrative person, a legal entity (private) first submit an appeal and objection to the State Administration Officer first. If in this effort the dispute cannot be resolved, it can be traveled through the State Administrative Court.

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