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Authority of The State Administrative Court In Handling And Resolving Land Cases

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ABSTRACT

The handling and settlement of land cases through the courts must be seen what is the object of the lawsuit/dispute, because this concerns the authority of the judicial body, such as the authority of the State Administrative Court related to handling and resolving land disputes. Therefore, the purpose of this research is to analyze and find out about the authority of the Administrative Court in handling and resolving land cases. This research method is normative juridical. Normative juridical is a method in normative legal research that analyzes secondary data. The secondary data is then analyzed in a qualitative juridical manner. The result of this study are as follows: The authority of the State Administrative Court in handling and resolving land cases is more about the correctness of formal administrative procedures, not authorized to hear "cases of ownership of land rights", which are civil in nature, even though the land has been certified.

Keywords: authority, state administrative court, handling, settlement, land cases.

1. INTRODUCTION

Land as a gift from God Almighty is a natural resource that is needed by humans to fulfill their needs (Suardi, 2005). Land is the most important element for human life, they can live and develop because of the land (Sarkawi, 2014). land is a place for humans to live and continue their lives (Sutedi, 2009). Land as a natural resource in Indonesia has been regulated in the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as UUD 1945) in Article 33 paragraph (3) states that: "The land and water and the natural resources contained therein shall be under the control of the State and shall be utilized for the greatest prosperity of the people". As a follow-up to the provisions of Article 33 paragraph (3) of the 1945 Constitution, the Government has issued Law No. 5/1960 on the Basic Regulation of Agrarian Principles or commonly abbreviated as UUPA, which was issued on September 24, 1960 which regulates land rights. With the enactment of the UUPA, only one land law applies throughout Indonesia, namely the UUPA.

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provisions of Article 33 paragraph (3) of the 1945 Constitution, the Government has issued Law No. 5/1960 on the Basic Regulation of Agrarian Principles or commonly abbreviated as UUPA, which was issued on September 24, 1960 which regulates land rights. With the enactment of the UUPA, only one land law applies throughout Indonesia, namely the UUPA.

UUPA grants land to and is owned by people with land rights provided by UUPA for use or utilization. Although land rights have been regulated in the UUPA, problems often arise around land rights issues, such as land registration, ownership status, and problems related to legal acts of transfer of land rights (such as sale and purchase, grants), which lead to land rights disputes.

Land rights disputes usually arise because of differences or discrepancies or gaps between what is expected and the actual reality (differences or gaps between das sollen and das sein) and differences between what is desired and what happens, both of which are problems. If this problem is caused by another party, then the problem will lead to a dispute. If the dispute is within the scope of the legal order, it will become a legal dispute. Some legal disputes are brought to court and some are not brought to court. The difference or gap between das sollen and das sein is a normative problem, while the difference between what is desired and what happens is an individual or emotional problem. The two are often combined in one problem but also each is a separate problem (Arto, 2001).

Land rights disputes certainly need to be resolved. Strategies in dispute resolution are efforts to find and formulate ways to end disputes that arise between the parties, such as through mediation, reconciliation, negotiation, and others (HS & Nurbani, 2013). There are many ways to resolve land rights disputes, ranging from ways that are in accordance with the law to ways that are not in accordance with the law. However, because Indonesia is a state of law, all problems must be resolved through legal channels. The way to resolve land rights disputes with legal channels, namely first, through nonlitigation channels or outside the judicial body, namely through arbitration and alternative dispute resolution, such as by means of consultation, negotiation, mediation, conciliation or expert judgment, and the second route, is the court route.

Land rights disputes, with various kinds of settlements, which if an amicable settlement is not reached, one way can be taken by them is that the land rights dispute is submitted to the authorized Court, namely by making a lawsuit letter (Saleh & Mulyadi, 2012), which the land rights dispute rolls into a land case. Land cases are land disputes that are handled and resolved through the judiciary. The court is still the last resort in dispute resolution, in this case land rights disputes, although it is not the only way to go. The advantage of dispute resolution in court is that

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it is adjudicative in nature by providing a decision on a dispute so as to provide legal certainty (Sufiarina, 2014).

The handling and settlement of land cases is one of the complex cases to reach a settlement point quickly, simply and at low cost. The handling and settlement of land cases through the courts can even involve more than one court, including the General Court, State Administrative Court and Religious Court. This is because the three judicial institutions have different absolute authority in resolving land cases, which can lead to a point of intersecting case settlements. In connection with the handling and settlement of land cases through the courts, it must be seen what is the object of the lawsuit/dispute because this concerns the judicial authority authorized to hear it. In connection with the handling and settlement of land cases, in this paper, the author analyzes the authority of the State Administrative Court in handling and resolving land cases based on the State Administrative Court Law, namely Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, and amended again by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.

Based on the background of the problem mentioned above, the author is interested in conducting this legal research with the title: The Authority of the State Administrative Court in Handling and Resolving Land Cases.

Based on the above background, the problems in this study are as follows: How is the authority of the State Administrative Court in handling and resolving land cases? In relation to the originality of the research, the author has conducted a literature search from various references and the internet, and other sources of information has not found previous research that is the same as the research that the author compiled, especially in the form of articles published in journals that are used as comparison materials with the research that the author compiled. However, there are several writings, namely:

1. Manan, Lecturer at the Faculty of Law, University of Muhammadiyah Jember, "*Penyelesaian Sengketa Hak Atas Tanah Melalui Pengadilan Tata Usaha Negara*". His abstract argues that: The incompleteness of the state administrative court in adjudicating land disputes arises from the understanding that the state administrative court is not authorized to adjudicate "ownership disputes", and is not authorized to assess "deeds of sale and purchase" even though both reasons are a series of processes that cannot be separated from the material validity of the certificate. If this understanding is maintained, it

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is certain that the existence of the PTUN in handling land disputes is more about formal truth than the pursuit of community benefit and justice. From the above constraints, it is important to first explore the meaning and legal values contained in the current understanding of the terms 'land ownership' and 'deed of sale' itself.

2. Onma Ezra Rodi Aprilo1, et al, Padjadjaran University, entitled: "*Kompetensi Absolut Peradilan Tata Usaha Negara Dalam Sengketa Tanah Terhadap Sertifikat Hak Atas Tanah*". Trebit in Journal: Peratun Law Journal Vol. 5 No.2 August 2022: pp. 159-174. This article was made with the aim of knowing how the absolute competence of the Administrative Court in Indonesia and how the competence of the State Administrative Court if there is a land dispute against the certificate of land rights. The closing of the article argues that: The clash of absolute competence between the Administrative Court and the General Court related to the settlement of land disputes over land rights certificates in the form of Certificates of Ownership (SHM) should not occur because the absolute competence of the Administrative Court is related to administrative matters, while for the General Court one of them is related to civil aspects. As stipulated in the Supreme Court Guidelines No. 224/Td.TUN/X/1993, the authority of the State Administrative Court is only regarding the land certificate, whether the issuance procedure is in accordance with the applicable statutory provisions, while the matter of ownership is the authority of the General Court.

2. RESEARCH METHOD

This research is normative legal research. Normative legal research, is one that examines legal issues from the point of view of legal science and in-depth on established legal norms (Soerjono Soekanto, 2006). Normative legal research or library legal research, is legal research conducted solely by looking at secondary sources of information (Soekanto & Mamudji, 2015). In line with this type of research, the specificity of this research is descriptive analytical, because its main purpose is to provide a description of society or certain groups of individuals, as well as medical disorders or other symptoms (Soekanto & Mamudji, 2001).

The research approach in normative legal research, namely normative juridical, is legal research conducted by examining secondary data (Soekanto & Mamudji, 2015). Soerjono Soekanto argues (Soerjono Soekanto, 2006):

Secondary data, in terms of its binding force, includes:

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1. Primary legal materials, or binding legal materials, consist of basic norms or rules (preamble of the 1945 Constitution), basic regulations (Torso of the 1945 Constitution, laws and regulations and others;
2. Secondary legal materials or legal materials that provide explanations of primary legal materials, such as draft laws, expert research findings, scientific findings from legal experts, and so on,
3. Tertiary legal materials such as dictionaries, encyclopedias, and others, which provide guidance or clarify primary and secondary legal materials.

Secondary data that is inventoried as material for this research, namely: *First*, secondary legal materials in the form of: literature books. *Second*, primary legal materials in the form of laws and regulations, namely, among others, the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Principles or commonly abbreviated as UUPA, Law Number 5 of 1986 concerning State Administrative Courts, Law Number 9 of 2004 concerning Amendments to Law Number 5 of 1986 concerning State Administrative Courts, Law Number 48 of 2009 concerning Judicial Power, Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts. other. *Third*, tertiary legal materials, such as dictionaries, scientific journals and others.

The data source is obtained through a data collection technique. According to Soerjono Soekanto, there are three main categories of data collection tools used in research: document studies (also known as library materials), observation, and interviews. These three tools can be used separately or together (Soerjono Soekanto, 2006). In accordance with the data collection tools and the type of research, the data collection techniques used are: "desk study" of secondary data. The data sources obtained are then analyzed juridically qualitatively and arranged in the form of sentence descriptions (Amiruddin & Asikin, 2012). Juridical in the sense of starting from the applicable laws and regulations. Qualitative, namely without numerical data, statistical models, and mathematical calculations (Abdulkadir Muhammad, 2004).

3. RESULTS AND DISCUSSION

Land disputes are disputes that occur between two or more parties who feel or are disadvantaged by these parties for the use and control of their land rights (Murad, 1991). Since the UUPA came into force, there have been no new legal products in the land sector. As a result, there has been a legal vacuum for half a century. Meanwhile, on the other hand, land disputes continue to grow (Elza Syarief, 2012). The emergence of land disputes begins with a complaint from a party

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(person or legal entity) containing objections and demands for land rights both to land status, priority and ownership in the hope of obtaining an administrative settlement in accordance with the provisions of the applicable laws and regulations. The land dispute can turn into a land case, if the handling and resolution of the land dispute is through a judicial institution.

The author has argued that the Court is still *the last resort* in dispute resolution, in this case disputes over land rights, which turns into land cases, and with regard to the handling and settlement of land cases through the courts, it must be seen what is the object of the lawsuit/dispute, because this concerns the authority of the judiciary. The term authority is often called *authority/gezag*, or jurisdiction and the term authority is called *competence* or *bevoegdheid*. *Authority* (*authority/gezag*) is a formalized power either over a certain group of people or over a certain sphere of government as a whole. This power can be derived from legislative power (Yurizal, 2014). According to the Big Indonesian Dictionary, authority is: 1. the thing authorized; and 2. the right and power to do something (*Kamus Besar Bahasa Indonesia*, 2003).

Philipus M. Hadjon as quoted by Yurizal stated that: "Authority in the juridical sense is an ability given by the applicable laws and regulations to cause legal consequences" (Yurizal, 2014). An authority can be obtained from three sources, namely attribution, delegation and mandate (Suriansyah Murhaini, 2016). According to H.D. van Wiljk/William Konijnenbelt as quoted by Yurizal, the definition of authority is as follows (Harahap, 2008):

a. Attribution is the granting of government authority by the legislator to a government organ. This means that the authority is obtained from the laws and regulations governing government authority.
b. Delegation is the delegation of government authority from one government organ to another.
c. A mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf.

The theory of authority mentioned above, when associated with the title and problems in the writing of this final project, which is related to the authority (power) of the Judiciary, which is carried out by the Supreme Court and the judicial bodies under it, including the Religious Courts, and the General Courts, which in the General Courts are also formed specialty courts, one of which is the Commercial Court, can be explained as follows. Article 24 paragraph (1) of the 1945 Constitution states that: Judicial Power is an independent power to administer justice in order to uphold law and justice. M. Yahya Harahap suggests the definition of judicial power according to Article 24 paragraph (1) of the 1945 Constitution, which is as follows (Harahap, 2008):

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a. is an independent judiciary. In the past it was called "*een onafhankelijke rechterlijke macht*", i.e. a judicial power that is free, independent of other powers;
b. its power to administer justice in order to uphold law and justice, so that public order can be created (to achieve social order) and public order is maintained (to maintain social order).

The affirmation of the definition of judicial power in Article 24(1) of the 1945 Constitution of the Republic of Indonesia is repeated in Article 1(1) of Law No. 48/2009 on Judicial Power, which states that, judicial Power is an independent state power to administer justice to uphold law and justice based on Pancasila and the 1945 Constitution of the Republic of Indonesia, for the implementation of the rule of law of the Republic of Indonesia. Starting from the provisions of Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 1 paragraph 1 of Law No. 48 of 2009 on Judicial Power, it can be stated that judicial power is a state power, like other bodies of state power; judicial power organizes justice to uphold justice; and in organizing justice, judicial power has independent power.

In relation to the authority or power (jurisdiction) or competence of the court, it needs to be stated that based on Article 24 paragraph (2) of Constitution of the Republic of Indonesia in conjunction with Article 18 of Law No. 48 of 2009 concerning Judicial Power, it is stated that: judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial sphere, religious judicial sphere, military judicial sphere, state administrative judicial sphere, and by a Constitutional Court.

The Supreme Court is a high state institution in the Indonesian constitutional system that holds judicial power together with the Constitutional Court. The Supreme Court oversees judicial bodies within the general court, religious court, military court, and state administrative court. In connection with the authority to handle and resolve land cases in Indonesia, three judicial institutions are authorized according to their competence, namely:

a. Through the General Court: when it comes to land rights disputes.
b. Through the State Administrative Court: when it comes to resolving disputes over decisions of the State Administrative Court (National Land Agency), such as land certificates.
c. Through the Religious Courts: when it comes to waqaf disputes (and inherited land disputes).

General Courts as stipulated in Article 50 of Law Number 2 of 1986 concerning General Courts as amended by Law Number 8 of 2004 concerning Amendments to Law Number 2 of 1986 concerning General Courts and last amended by Law Number 49 of 2009 concerning the Second Amendment to Law Number 2 of 1986 concerning General Courts, are authorized to examine,

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decide and resolve cases of general civil cases. Similarly, the Religious Courts as stipulated in Article 49 of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts and last amended by Law Number 50 of 2009 concerning the second amendment to Law Number 7 of 1989 concerning Religious Courts, are authorized to examine, decide and adjudicate certain cases.

In the general court there is competence to adjudicate land cases related to disputes over ownership rights due to civil reasons. Meanwhile, the State Administrative Court has the competence to adjudicate the validity of land certificates as a decision made by a state administrative official. On the other hand, the Religious Courts also have the competence to adjudicate in land ownership disputes based on inheritance conflicts. Although the three courts have their own competencies that have their own scope, all decisions are intended to lead to a point of resolution that can be felt by the value of justice, legal certainty and benefits for justice seekers. Therefore, each judicial body has its own absolute authority with the intention that in exercising its authority it will not cause an intersection of authority between judicial bodies.

Thus, the settlement of land cases in Indonesia through the State Administrative Court: when it comes to resolving disputes against State Administrative Decisions, for example Decisions of the Head of the National Land Agency, City / District Land Office, for example land certificates. In connection with the handling and settlement of land cases, in this paper, the author analyzes the authority of the State Administrative Court in handling and settling land cases based on the State Administrative Court Law, namely Law Number 5 of 1986 concerning State Administrative Courts as amended by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts, and amended again by Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.

The State Administrative Court is an executor of judicial power within the State Administrative Court whose duty and authority is to decide and resolve State Administrative Disputes. The object of dispute in the State Administrative Court is "State Administrative Decisions". The term and definition of State Administrative Decree is mentioned in Article 1 point 9 of Law Number 51 Year 2009 which states:

> "State Administrative Decree is a written decision, issued by a state administrative body or official, which contains state administrative legal actions based on applicable laws and regulations, which are concrete, individual, and final, which have legal consequences for a person or civil legal entity".

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The written stipulation becomes a "State Administrative Dispute", because "there is a legal effect that is "felt" to be detrimental to a person or civil legal entity", so that a "lawsuit" is filed with the State Administrative Court within the State Administrative Court to assess its "validity" (Sugitario & Tirtamulia, 2012). Thus, a person who feels that their interests have been harmed as a result of the issuance of a State Administrative Decision relating to authority, procedure, and substance, in this case for example the issuance of a land title certificate by the City/Regency Land Office, can file a lawsuit to the State Administrative Court. The term and definition of a State Administrative Dispute can be read in Article 1 number 10 of Law Number 51 of 2009 which states:

> "State Administrative Disputes are disputes arising in the field of state administration between persons or civil legal entities and state administrative bodies or officials, both at the central and regional levels as a result of the issuance of state administrative decisions, including employment disputes based on applicable laws and regulations".

Therefore, the state administrative court assesses the issuance of the object of the dispute based on formal procedures (the object of the assessment is the actions of state administrative officials) in land cases, where the land rights have been issued certificates by the city / regency land office, which at the time of the issuance of the certificate was in accordance with formal procedures or not, so that the certificate cannot be canceled, or vice versa. The handling and settlement of land cases through the State Administrative Court based on its authority is only about the authority, procedure and substance in the issuance of letters granting land rights and / or land rights certificates, not authorized to hear "cases of ownership of land rights", even though they are certified, where ownership is a series of processes that cannot be separated from the material validity of the certificate, so it can be said that the State Administrative Court in handling and resolving land cases is more about the truth of formal administrative procedures.

The authority of the State Administrative Court in handling and resolving land cases relates to the authority, procedure, and substance in the issuance of letters granting land rights and/or land rights certificates. Meanwhile, the general courts are authorized to handle and resolve land cases related to ownership of land rights, which are civil in nature. If a person feels that their interests have been violated, in terms of ownership of land rights, they can file a lawsuit with the District Court. Thus, the authority of the State Administrative Court in handling and resolving land cases is more about the truth of formal procedures that are administrative in nature, so it is not authorized to hear "cases of ownership of land rights, which are civil in nature, even though the land has been certified.

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4. CONCLUSIONS

Based on the results of research and discussion, the conclusions are obtained, namely: The authority of the State Administrative Court in handling and resolving land cases is more about the correctness of formal procedures that are administrative in nature, not authorized to hear "cases of ownership of land rights", which are civil in nature, even though the land has been certified. With regard to these conclusions, the author makes the following suggestions: The State Administrative Court should be authorized to hear "cases of ownership of land rights" where the land has been certified, because ownership of land rights is a series of processes that cannot be separated from the material validity of the certificate. This means that if a land case has been certified, then the land case becomes the absolute responsibility of the State Administrative Court. Therefore, it is necessary to amend Law No. 5 of 1986 concerning the State Administrative Court.

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