

**Review Article****LEGAL ASPECTS IN RESOLUTION OF LAND DISPUTES FROM A CIVIL LAW PERSPECTIVE;**¹Ilham Septi Sumantri, ²Sriono, ³Toni;Email : ilhamseptisumantari@gmail.com, sriono.mkn.@gmail.com, toni300586@gmail.com**Article History**

Received: 29.01.2024

Accepted: 16.02.2024

Published: 30.02.2024

Journal homepage:<https://jurnal.arjunajusticia.com/index.php/ijeck>**Abstract:**

This research was conducted with the aim of finding out legal sanctions for perpetrators of the crime of gambling according to Article 303 of the Criminal Code. This type of research uses normative legal research. The results of the research and discussion state that the criminal sanctions for perpetrators of gambling crimes contained in article 303 paragraph (1) of the Criminal Code are: imprisonment for a maximum of ten years or a fine of a maximum of twenty-five million rupiah, initially only subject to a maximum criminal penalty. two years and eight months with an initial fine of up to ninety thousand rupiah, whoever without obtaining permission: a. Deliberately offering or providing opportunities for gambling games and making it a pursuit, or deliberately participating in an enterprise for that purpose; b. Deliberately offering or giving/the opportunity to the general public to play gambling or deliberately participating in a company for that purpose, regardless of whether to use the opportunity of a condition or the fulfillment of a procedure; and Article 542 of the Criminal Code which has been amended to become 303 bis paragraph (1). Threatened with a maximum imprisonment of four years or a maximum fine of ten million rupiah: a. Whoever uses the opportunity to play gambling, which is held in violation of the provisions of Article 303; b. Any person who participates in gambling on a public road or on the side of a public road or in a place that can be visited by the public, unless there is permission from the competent authority who has given permission to carry out such gambling, paragraph (2) If two years have not passed since the time of committing the offense. Convictions that become permanent due to any of these violations may be subject to imprisonment for a maximum of six years or a fine of a maximum of fifteen million rupiah.;

Keywords: *Legal Sanctions, Crime, Gambling;*

Hak Cipta © 2023 Penulis: This is an open access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any media;

INTRODUCTION

Land disputes are currently common in society. There are many factors behind the current land disputes. Land is a very valuable asset. For a sovereign country, land plays an important role as a symbol of the sovereignty of a free and independent nation. Forcible or peaceful takeover of land by other nations, whether through war, as a result of colonialism or through diplomacy, of course has a huge impact on the status of land ownership. In fact, the many land conflicts that are currently arising have a negative impact on the economic, social and political growth of the country concerned.

The availability of land is limited in number which is not comparable to the current number of people. So it always causes conflict in the land sector. The many conflicts in the land sector have resulted in parties suing each other to defend their rights. In fact, the decision has not shown any dissatisfaction on the part of either party to obtain justice regarding their rights in the land sector.

Book II Burgerlijk Wetboek (BW) regulates the types of land rights that can be owned by individuals or legal entities, including regulating the contents of the rights in question and the legal relationship between the right holder and the land they control. This shows that the land laws covered by BW tend to be civil in nature. Apart from that, the BW also contains provisions governing administrative matters, which contain the policies of the Dutch East Indies Government regarding granting land rights in Indonesia..¹

Before the Basic Agrarian Law (abbreviated as UUPA) was enacted, namely Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations, the land law that applied in Indonesia was still the land law inherited from the Dutch East Indies government. At this time, the philosophy of land law adopted was: "Earth, water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people." This philosophy was still in effect until the UUPA was promulgated, namely on September 24 1960. After the enactment of the UUPA, the applicable national land law was land law which regulated the types of land rights in the civil aspect and in the administrative aspect which contained national land politics, all of which The final aim is to create unification of land law in Indonesia. UUPA as a national agrarian law is separated from customary law. As national land law, UUPA is the basic regulation for its 44 implementing regulations, both in the form of laws and government regulations.

In accordance with its aim, national agrarian law must embody the incarnation of the Almighty God, Humanity, Nationality, Democracy and Social Justice, as the spiritual principles of the State and the ideals of the nation, as stated in the Preamble to the 1945 Constitution. Furthermore, agrarian law as an implementation of the Presidential Decree dated 5 July 1959, that the provisions in article 33 of the Constitution and Political Manifesto of the Republic of Indonesia, as confirmed in the President's speech on 17 August 1960, the State is obliged to regulate land ownership and direct its use, up to all land throughout the territory of the nation sovereignty is used for the greatest prosperity of the people, both individually and through mutual cooperation. If the benchmarks for land ownership and its use were regulated by the State in accordance with the mandate of the law, then there would no longer be a need for land conflicts at this time.

¹ Subekti, R. dan Tjiptosudibio, R, Kitab Undang-undang Hukum Perdata, Burgerlijk Wetboek, dengan Tambahan Undang-undang Pokok Agraria dan Undang-undang Perkawinan.

The aim of the research entitled Legal Aspects of Settlement of Land Disputes from a Civil Law Perspective is to understand how Land Disputes are Settled from a Civil Law Perspective and what are the alternative efforts in resolving land disputes in Indonesia.

RESEARCH METHODS

The type of research used is a juridical-empirical research method, namely a research and understanding process based on a methodology that investigates a social phenomenon and human problem. Conduct field research related to efforts to handle the crime of gambling according to Article 303 of the Criminal Code. The approach taken is sociological juridical, namely the occurrence of social phenomena in society.

RESULTS AND DISCUSSION

Land Disputes and Their Resolution

In several regions of Indonesia, land dispute resolution is generally carried out by figures from communities who are highly respected by local residents, namely traditional heads, tribal heads, village heads or clan heads. The role of community leaders is very helpful in determining the allocation and supervision of land use by local residents. Community leaders' knowledge of the history of existing land tenure is strongly supported by high levels of trust and solidarity from local residents, so that land disputes can be resolved by traditional leaders, and their decisions will be implemented by their residents.

Land is closely related to development, in fact this is a supporting factor in improving the economy in Indonesia. So that cases of land disputes that arise in the community must really get a solution so as not to hinder the rate of economic growth and hinder development. In the Civil Code, land is classified as private law. However, in reality, land regulation is full of government interference. Moreover, it is common knowledge that most of the land in Indonesia is controlled by government officials and foreign citizens, but this data is only known by a few parties. This is actually a problem related to land tenure regulations that have been implemented by law. The main laws and regulations that form the basis for land law regulation in Indonesia include Article 33 Paragraph (3), the 1945 Constitution, TAP MPR RI No. IV of 1973 concerning Outlines of State Policy or what is usually abbreviated as GBHN, Article 2 Paragraph (1) UUPA along with a number of implementing regulations.

In practice, land dispute resolution is not only carried out through the District Court (PN), but also through the State Administrative Court (PTUN), and it is not uncommon for land dispute resolution to penetrate into the area of criminal law because the dispute contains criminal elements. The increasing human need for land has had an impact on increasing the number of land disputes that occur in Indonesia.

According to data compiled by Tanahkita.id, during the period 1988-July 2023 there were 562 cases of land conflict recorded in Indonesia. The conflicts that occurred during this period involved disputed land with a total area of around 5.16 million hectares. During the period 1988-July 2023, the most land conflicts occurred in Central Kalimantan Province, namely 126 cases. After that, South Sulawesi, Central Sulawesi, West Kalimantan, North Sumatra, Riau, Southeast Sulawesi, East Java, Central Java and West Java. Tanahkita.id also noted that in the period 1988-July 2023, land conflicts in the country were mostly related to the plantation sector, namely 286, land conflict cases in the form of disputes in production forest areas (84 cases), mining (62 cases), conservation forests (37 cases), protected forests (33 cases), infrastructure projects (14 cases), and transmigration areas (11 cases).

In general, land disputes that arise in Indonesia can be grouped into 4 classifications of problems, namely problems related to:

- 1) Recognition of ownership of land;
- 2) Transfer of land rights;
- 3) Imposition of rights and
- 4) Occupation of former private land.

Judging from the subject of the dispute, land disputes can be grouped into 3 types, namely:

- 1) Land disputes between residents;
- 2) Land disputes between the Regional Government and local residents; And
- 3) Disputes related to natural resource management.

In relation to the process of resolving land disputes in judicial institutions, Article 4 Paragraph (2) of the Republic of Indonesia Supreme Court Law regulates that trials be carried out quickly, simply and at low cost. This is intended so that the parties to the dispute and community members involved in land disputes are not harmed and are not burdened with expensive costs in order to obtain legal certainty over the disputed land. Long settlement times and even all kinds of complicated administrative procedures will actually increase the number of land disputes. The concepts, principles and institutions of customary law which are the main sources for the formation of national agrarian law must be seen as complementary sources, especially in resolving concrete problems in the land sector in the judiciary. The functioning of these customary legal instruments will later realize the concept of development law which will increase the rate of national economic growth. This thinking is based on the fact that land is the main requirement for sustainable development. Without adequate land availability, the development process will be hampered.

Alternative Efforts to Settle Land Disputes in Indonesia

Alternative efforts to resolve land disputes in Indonesia include::

- a) Settlement of Land Disputes From a Civil Law Perspective, land dispute resolution is not only carried out through the District Court (PN), but also through the State Administrative Court (PTUN), and it is not uncommon for the resolution of land disputes to penetrate the criminal law area because the dispute contains criminal elements. . Land dispute resolution is generally carried out by community figures who are respected by local residents, namely traditional heads, tribal heads, village heads or clan heads. Alternative efforts in resolving land disputes in Indonesia are carried out through:
- b) Appropriate legal rules, that the rules relating to land must be in accordance with what is applied in the field, these rules do not overlap with higher regulations above them. The benchmark is that it does not conflict with the 1945 Constitution,
- c) Good human resources, namely human resources in the field of law enforcement who have high integrity in their work by prioritizing honesty and have the principle of equal justice for the entire community.
- d) Availability of adequate facilities and infrastructure, as well
- e) The existence of a good society, namely a society that has an adequate level of education and can uphold the values of justice in society, is polite and cultured in land ownership and control

CONCLUSION

Settlement of Land Disputes From a Civil Law Perspective, land dispute resolution is not only carried out through the District Court (PN), but also through the State Administrative Court (PTUN), and it is not uncommon for the resolution of land disputes to penetrate the criminal law area because the dispute contains criminal elements. . Land dispute resolution is generally carried out by community figures who are respected by local residents, namely traditional heads, tribal heads, village heads or clan heads. Alternative efforts in resolving land disputes in Indonesia are carried out through:

- a) Appropriate legal rules, that the rules relating to land must be in accordance with what is applied in the field, these rules do not overlap with higher regulations above them. The benchmark is that it does not conflict with the 1945 Constitution,
- b) Good human resources, namely human resources in the field of law enforcement who have high integrity in their work by prioritizing honesty and have the principle of equal justice for the entire community.
- c) Availability of adequate facilities and infrastructure, as well
- d) The existence of a good society, namely a society that has an adequate level of education and can uphold the values of justice in society, is polite and cultured in land ownership and control.

BIBLIOGRAPHY

A. BOOKS ;

Boedi Harsono, Hukum Agraria Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya, Djambatan, Jakarta, 1999.

Mudjiono, Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan, JURNAL HUKUM NO. 3 VOL. 14 JULI 2007: hal. 458 – 473.

Mochtar Kusumaatmadja, Fungsi dan Perkembangan Hukum Dalam Pembangunan Nasional, Lembaga Penelitian Hukum dan Kriminologi FH-UNPAD, Bandung, 1970

Mochtar Kusumaatmadja, Pembinaan Hukum Dalam Rangka Pembangunan Nasional, Lembaga Penelitian Hukum dan Kriminologi FH-UNPAD, Bandung, 1975

Subekti, R. dan Tjiptosudibio, R, Kitab Undang-undang Hukum Perdata, Burgerlijk Wetboek, dengan Tambahan Undang-undang Pokok Agraria dan Undang-undang Perkawinan.

Peter Mahmud Marzuki, Penelitian Hukum. Cet 2. (Jakarta: Kencana 2008)

Universitas Gadjah Mada, Pusat Studi Kependudukan dan Kebijakan, Reformasi Tata Pemerintahan dan Otonomi Daerah, Suatu Ringkasan Eksekutif, Yogyakarta, 2002.

<https://databoks.katadata.co.id/datapublish/2023/09/12/ini-provinsi-dengan-kasus-konflik-lahan-terbanyak-diindonesia#:~:text=Menurut%20data%20yang%20dihimpun%20Tanahkita,sekitar%20868%2C5%20ribu%20orang> diakses pada tanggal 23 Desember 2023 pukul 18.09 wib.

Undang-undang Dasar 1945.

Undang-undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokokpokok Agraria.