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LAND TENURE DISPUTE RESOLUTION
TANGERANG CITY GOVERNMENT AGAINST THE MINISTRY OF LAW AND HUMAN RIGHTS

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Abstract

The sociological approach of law in explaining and understanding agrarian conflicts. Because the normative, legalistic, and positivistic legal systems that have been used are not sufficient to explain and even provide solutions for agriculturaldisputes that continue to drag on and become chronic. Agrarian conflict is not only a positive legal problem but more substantially a complex problem, which is related to other social issues such as law, economy, and culture. The sociological,standard approach is used to understand agrarian conflict, especially in the conflict between the Tangerang City Government and the Minister of Home Affairs in Land Management Rights in a sociological and punitive way toBE understand agrarian conflicts more fully and therefore can find ways to resolve and more judicial solutions for Public. The agrarian conflict between the Tangerang City Government and the Minister of Home Affairs in the Right to Manage Land the competition started when the Minister of Justice and Human Rights teased the Tangerang City Government. As a result, the Tangerang City Government will not serve several services on the land of the Ministry of Law and Human Rights (Kemkumham), especially offices until there is communication with the Ministry of Law and Human Rights. The sociology of law approach has relevance to explain it. This approach is considered capable of explaining the socio-legal reality in society, especially those related to agrarian conflicts.

Keywords: *sociology of law, agrarian conflicts, land use, dispute resolution*

A. INTRODUCTION

1. Background of Study

During 2017, KPA recorded at least 659 agrarian conflicts in various regions and provinces in Indonesia, with an area of 520,491.87 hectares. These conflicts involved at least 652,738 households (KK). Compared with 2016, the incidence of conflict shows a very significant increase where there is an increase of up to 50%. On average, almost two agrarian conflicts occurred in one day in Indonesia this year.[1]

The Ministry of Home Affairs asked the Governor of Banten to intervene in resolving the problem between the Tangerang City Government and the Ministry of Law and Human Rights. Head of the Ministry of Home Affairs Information Center Bahtiar said, "theissue between the Tangerang City Government and the Ministry of Law and Human Rights was limited to the miscommunication." The Ministry of Home Affairs has not been able to bridge the Tangerang City Government and the Ministry of Law and Human Rights to overcome this problem because the Ministry of Home Affairs has not received a letter containing an explanation of the issues between the two.

The conflict started when the Minister of Law and Human Rights teased the Tangerang City Government. As a result, the Tangerang City Government will not serve several services on the land of the Ministry of Law and Human Rights (Kemkumham), especially offices until there is communication with the Ministry of Law and Human Rights.

These services include public street lighting, improved drainage, and garbage collection. The Head of Public Relations of the Tangerang City Government, (Achmad Ricky Fauzan) said,"the places whose services were the Tangerang City Immigration Office such as State Confiscation House for Confiscated Objects of Tangerang City Class I, Youth Prisons, Women's Prisons, and Children's Prisons.".[2]

The Indonesian Ombudsman said that the dispute between the Tangerang City Government and the Ministry of Law and Human Rights had a significant impact because it was detrimental to the people. The effect on public services is due to the Tangerang City Government turning off public street lighting, stopping waste

[1] Lihat Permendagri No 80 Tahun 2015 tentang Pembentukan Produk Daerah

[2] Yuri S, Antikowati, & Rosita I. Pengawasan Pemerintah Terhadap Produk Hukum Daerah (Peraturan Daerah) Melalui Mekanisme Pembatalan Peraturan Daerah Berdasarkan Undang-undang Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah. Jurnal Lentera Hukum Vol April 2014 Hal 3.

transportation services, and controlling the dredging of culverts in all service offices under the Ministry of Law and Human Rights. [3]

Not only the public services regarding the transportation of this waste, theyalso have been affected by the local prisons. The Ombudsman is worried that if nobody can resolve the problem, the impact will continue to spread to prison residents. From the above background, the researcher can propose the following problem formulations: How does the Tangerang City Government resolve land conflicts in its area?

B. RESEARCH METHODOLOGY

The research methodology is how you, as a researcher or you, as part of a research team, try to make a comprehensive picture of how to answer a research question. In this study, the authors used the socio-legal research method.[4] This method is an interdisciplinary method needed to determine how law can be useful in practice in society.

C. RESULT AND DISCUSSION

Sociological Approach of Law Against Agrarian Conflict

In sociology, it is known as group conflict, management conflict, and system conflict.[5] Meanwhile, Laura Nader and Harry Todd suggested three phases in a dispute process, namely: 1) the pre-conflict stage or grievances conflict, 2) stage of conflict or conflict period and 3) the stage of dispute or dispute period.[6] What is meant by the pre-conflict step is a situation or condition in which a person or group feels injustice. This stage can escalate through confrontation or turn into conflict and can also be suppressed.

This stage is characterized as a nomadic stage (one-way conflict perpetrated by parties who feel they have not received injustice). If the party who feels aggrieved takes action against the party considered to have taken away their rights, this is called the dyadic conflict stage. The dispute stage is a result of the escalation of the conflict

[3] Soetandyo W. *Penelitian Hukum sebuah Tipologi dalam Masyarakat*; 1974 hal 147

[4] Lihat UU No 15 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan

[5] Marwan. Hakikat Naskah Akademik dalam Pembentukan Peraturan Daerah yang Responsif. Disertasi Program Pascasarjana Universitas Hasanuddin Makassar; 2017 hlm 165

[6] Raegen MAR. "Kedudukan dan Fungsi Naskah Akademik dalam Pembentukan Peraturan Daerah Kabupaten/ Kota Menurut UU No 12 Tahun 2011: Lex Crimen; 2016 Vol. V. 4/ Apr-Jun, hal 23

stage, where the dispute that occurs is known to the general public and many parties involved in it (triadic). Each step does not always happen sequentially, because parties who feel their injustice are threatened can express their dissatisfaction to the dispute stage without going through the pre-conflict phase.

The sociology of law approach is a research method nomologic-inductive, and no longer purely normological-deductive. This approach is increasingly being developed and used to analyze and provide answers to the effectiveness of law in all legal, institutional structures in society. Therefore, according to Soetandyo, the law is sociologically conceptualized as an empirical symptom observed in life. Law is no longer conceptualized philosophically-moral as a norm "iusconstituenteum" or law as what ought to be (rules/norms that should be / normative).Nor "positivistically"is as a norm "iusconstitutum" or law as what it is in the book, but empirically as law as what is functioning in society, how the law plays a role and functions in society through the operation of social systems and other systems in a balanced and synergistic manner. As the norm of iusconstituenteum or law as what ought to be (rules/norms that should be / normative), nor positivistically as norms of iusconstitutum or law as in the book, but empirically as law as what is functioning in society.It explains how the law plays a role and functions in society through social systems and other systems in a balanced and synergistic manner.

Sociologically, the reality of Indonesian society is the reality of a community that is diverse in various ways, including the law. They have customs and traditions from generation to generation, have traditional rules that are used to regulate, among others, land distribution and conflicts and even have institutions that are tasked with solving various problems or better known as community law.[7] Simultaneously, the state seeks to "impose" national rules to be enforced throughout society without differential treatment. Sometimes the national law that wants to be implemented is not following the norms of society. When it happens, the state law, which is not by the 'law' of the people, tends not to be elected. The community may fight back.

In agricultural matters, for example, positive state law, including the constitution, tries to recognize the existence of customary law. But in practice, agrarian conflicts, mining conflicts, and forestry conflicts show that indigenous peoples remain in a marginal position. The conflicts that occur on the ground in the

[7] Raegen MAR. "Kedudukan dan Fungsi Naskah Akademik dalam Pembentukan Peraturan Daerah Kabupaten/ Kota Menurut UU No 12 Tahun 2011. Lex Crimen: 2016; Vol. V. 4/ Apr-Jun, hal 24

allocation of land and natural resources will always create social conflicts, with the most significant victims being the customary law communities. In contrast to community law, which is bottom-up and able to guarantee the realization of justice, state law - namely positive law born by state apparatus - is not automatically a law that is in accordance with the ideals of public justice. It is often a product that society feels foreign to.[8]

In fact, there has been no normative solution with a socio-cultural perspective to solve long and tiring problems related to agrarian conflicts, and there is no strong awareness of the state (government) towards the concept of development that is more just and has a human rights perspective. Moreover, in particular, the making, legal regulation, and legal settlement of agrarian conflicts are more equitable for local community groups. The resolution of agriculturaldisputes through legalistic-positivistic state traditional instruments often creates legal injustice for local community groups. SoetandyoWignyosoebroto said that a just law is a national law which, in its application from case to case,can greet the moral principles that apply in local communities whose truth is still believed by the local community.[9]

Seeing the reality of agrarian conflicts, it needsa more comprehensive explanation and empirical analysis of agrarian conflicts that provide a more sense of agrarian justice for local communities.[10]

The agrarian conflict between Tangerang City Government and the Ministry of Law and Human Rights in Land Management Rights

According to the Regulation of the Minister of Agrarian Affairs / National Land Agency of the Republic of Indonesia (ATR / BPN-RI) No. 11/2016 on Settlement of Land Cases, Land Conflictdefines asa land dispute between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have a broad impact.

The conflict between the Tangerang City Government and the Ministry of Law and Human Rights began when the Minister of Law and Human Rights teased the Tangerang City Government. As a result, the Tangerang City Government stated that

[8] Ibid, hlm 163

[9] Lihat UU No. 15 Tahun 2019 Tentang Perubahan Atas UU No. 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Pasal 6 Ayat (1).

[10] https://www.hukumonline.com/berita/baca/lt4d79e4c779bb0/rancangan-peraturan-harus-punya-naskah-akademik/diakses pada Rabu, 26 Agustus 2020

it would not serve services on the land of the Ministry of Law and Human Rights (Kemkumham), especially offices until there was communication with the Ministry of Law and Human Rights. These services include public street lighting, improved drainage, and garbage collection.[11]

With this conflict involving government organs, finally, the Ministry of Home Affairs asked the Banten governor to intervene in resolving the problem between the Tangerang City Government and the Ministry of Law and Human Rights, which according to the Head of the Information Center of the Ministry of Home Affairs Bantiar said that the problem occurred between the Tangerang City Government. The Ministry of Law and Human Rights is only a miscommunication.[12]

Although, in the end, this case could be resolved by both parties, each government organ should be wiser in overcoming any conflicts that occur so as not to harm the community. Because in essence, land dispute conflicts are not the first time this has happened in the Tangerang city area. However, there are many land dispute cases, which are still government homework, where many of these land dispute cases are detrimental to the people. The government should be wiser in deciding all conflict resolution, which is not only carried out through the District Court (PN) but also through the State Administrative CriminalCourt (PTUN).[13]

The increasing human need for land impacts the growing number of land disputes that occur in Indonesia. From 1992 to 1996, the number of land disputes increased by 17% compared to previous years. Around 40% data analyzed, 20% were submitted to the PTUN, while rest resolved by deliberation, mediation, or even not resolved at all.[14] Based on the facts mentioned above, it can be said that the existence, designation, and settlement of land disputes is not

D. CONCLUSION

State-owned land is used in the interests of the state, as well as the case above, which is a dispute with the community, but the law belongs to the country and must return to the state based on the public interest and for the benefit of the state.

[11] Ibid, hlm 164

[12] Wawancara dengan bapak Wahyu, Ketua biro hokum pemerintah daerah Kudus pada 15 Juli 2015

[13] Wawancara dengan Imam Sofwan, Kepala Bagian Hukum dan Persidangan pada tanggal 29 Juni 2020

[14] Ibid, hlm 165

The agrarian conflict between the Tangerang City Government and the Minister of Home Affairs in Land Management Rights started when the Minister of Law and Human Rights teased the Tangerang City Government. As a result, the Tangerang City Government will not serve several services on the land of the Ministry of Law and Human Rights (Kemkumham), especially offices until there is communication with the Ministry of Law and Human Rights. The dispute between the Tangerang City Government and the Ministry of Law and Human Rights has a massive impact because it is detrimental to the people. The effect on public services is due to the Tangerang City Government turning off public street lighting, stopping garbage collection services, and stopping dredging of culverts in all service offices under the Ministry of Law and Human Rights.

The Tangerang City Government and also the Ministry of Law and Human Rights should sit together first to discuss what steps should be taken to prioritize the interests of the people who are directly affected by this conflict so that the losses felt by the community do not add to the burden on the lives of the people of Tangerang city in particular. and the general public.

Although this conflict has been resolved through deliberation through a meeting of the two parties, it is wiser if both parties take this step before throwing opinions and also insinuations to the opposing party through the media because it does not reflect good communication between the two parties. Party.

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