

ANALYSIS OF PATTERNS FOR SETTLEMENT OF DISPUTE RIGHTS TO LAND OF INDIGENOUS LAW COMMUNITIES

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Backgrounds: Solution Dispute on soil Public law custom conducted through discussion for consensus with each other honor the position of each party that also involves Local Government.

aim: for analyze pattern solution dispute right on soil Public law custom
Methods: use p approach comparative approach this conducted with stage studies comparison law.

Findings: Solution disputes that can taken in solution dispute soil ulayat is through discussion for consensus and solution through track law that is lawsuit to State Administrative Court for get certainty law and protection for the parties to the dispute. Cooperation between government and society law custom required in complete dispute right what happened so that could give sense of justice for Public law custom procedural law in force in Indonesia

KEYWORDS

Dispute Resolution; Customary Law Community ; Land Rights

INTRODUCTION

Article 3 of the LoGA stipulates that " Remember " Settings Articles 1 and 2, implementation right ulayat and freedom comparative network regulation standard , as long as rule general that truly there is so that in accordance with interest general and the state, which depend on solidarity public. and no must fight with more rules and guidelines high." Substance Settings this is affirmation from authority public about existence freedom ulayat (land) and comparable rights from network regulation standard , in Thing whatever , interesting. freedom standard set in regulation (Adolf, 2020) .

Even though the UUPA's spirit and reasoning depending on the rules standard and at level base feel existence freedom customary , however plan material about right ulayat no detailed. This thing cause problem because contrast in affirmation law in the public arena. So authority public then give Pastor Guidelines Agrarian / Peak Land Agency General Number 5 of 1999. Guidelines this contains strategies that explain rule confession freedom ulayat and rights comparative from network regulation standard (Arifin, 2020) (Hajati et al., 2014) .

land for existence man have vital position. This thing because almost all part life , especially for Indonesian people , no could separated from existence land that is not only could seen from side financially , however covers whole life and livelihood they (Laturette, 2016) . Land has many quality , so the term state and massacre used by the Indonesian people for describe the territory of the country with describe an area controlled through land , water and land sovereign (Labetubun et al., nd) . Interest soil for man as people and country as supreme territorial unit by natural set in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated the 1945 Constitution of the Republic

of Indonesia). which reads : " Earth , water and wealth " remains contained in it which will be restricted by the state and used the best for people's success."

As development from Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which relates with soil or land , then given Regulation Number 5 of 1960 concerning Trees Agrarian (next abbreviated as UUPA). Destination The basic principles of the UUPA are :

1. Put basics planning regulation agrarian general , which is tool for realize prosperity , happiness and equity of nations and individuals , in particular individual in structure just and prosperous society.
2. Putting a stand to realize solidarity and candor in land regulation.
3. Put in place agencies to provide legitimate beliefs about land freedom for all individuals.

With method this , for reach development and assistance government individual , use and utilization important land for asset permanent must solved by awesome and deep administration handed over to the state (Pure et al., 2022) .

It is also set in Article 2 of the LoGA:

1. Based on Settings in Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, earth , water and space space , including the normal assets contained therein , at the highest level , are limited by the state, as power associations for all individuals.
2. The right to control the state as referred to in paragraph 1 of this article agrees: (a) regulate and regulate the distribution, use, supply and maintenance of the earth, water and space; (b) define and manage legitimate relationships between individuals and earth, water and space; (c) determine and regulate legitimate relationships between individuals and legitimate activities concerning earth, water and space.

This arrangement is planned with the aim that the earth and water as well as the natural resources contained therein can provide the maximum benefit for developing individuals. in terms of happiness, prosperity, and independence in an independent, sovereign, just and prosperous society, nation and state, as well as legal certainty of land rights, especially in terms of land ownership and control, it will make it clear who has land rights. (Pure, 2021). As well as certainty regarding the location, boundaries, and area of the area, among others. affirmation that land controlled directly by the state meets the requirements as state control rights, not ownership. General Explanation II (2) UUPA explains that the principle that the nation or the Indonesian state acts as the owner of the land, meaning that the state is built and not the owner of the land, it is neither necessary nor appropriate to achieve what is specified in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Wibowo, 2018) . Because the Indonesian people are the real owners of the land.

The ulayat rights of customary law communities are land tenure rights owned by indigenous peoples. Article 2 Regulation of the Minister of State for Agrarian Affairs and the Head of the National Land Agency Number 5 of 1999 contains provision addition about implementation mastery soil ulayat (National, 1997) , which states:

- a. Implementation right ulayat done by the community law the custom concerned in accordance with law local customs as long as they really exist.

- b. Customary law communities are considered to still have customary rights if: So that the earth, water and natural resources contained therein are could give the greatest benefit for prosperity people in Thing happiness , prosperity , and independence nature. an independent , sovereign , just , and prosperous society , nation and state as well as existence certainty law rights , there are arrangement law custom about management , control , and use soil ulayat that is legal and obeyed by members fellowship the law above land , in particular about ownership and control land , will give certainty about location , boundaries , area , and details other as well as clarity about the person or legal entity that holds right on soil (Prayogi & Sesung, 2018) .

Besides that , Terms General Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 5 of 1999 concerning Guidelines Solution Problem The Rights of Indigenous Peoples states that (Wowor, 2014) :

- a. According to law custom , ulayat right is the authority possessed Public law custom certain over certain areas that become environment life citizens for utilise source power nature , including land , in the region for continuity life and survival life society. Right ulayat the arise from connection physically and mentally down hereditary and not disconnected Among Public law customs with the region concerned.
- b. A piece of land that becomes the ulayat rights of a customary law community is called ulayat land.
- c. A group of people who are bound by their customary law order as joint citizens of a legal alliance because of the similarity of residence or descent are referred to as customary law communities.

Article 2 Regulation of the Minister of State for Agrarian Affairs and the Head of the National Land Agency Number 5 of 1999 contains provision addition about implementation mastery soil customary law , which states :

- a. legal society the custom concerned doing right ulayat in in accordance with law local customs as long as they exist.
- b. Customary law communities are considered to still have customary rights if:
 - (a) there a group of people who are still bound by order law custom as inhabitant together from something fellowship law certain and acknowledging as well as apply conditions in Constitution that. alliance in life daily them ;
 - (b) there are soil ulayat certain which is environment the place stay inhabitant fellowship law and place they take necessity life daily ;
 - and (c) the presence of arrangement law customs that apply and are obeyed by members fellowship law about management , control , and management (Erfa & Ubaidi, 2021).

In accordance with Article 2 Regulation of the State Minister of Agrarian Affairs and the Head of the National Land Agency Number 5 of 1999, problems related land right permanent ancestral is in every area Becomes focus Settings (Sembiring, 2018). In consider conflict interests of the parties in dispute land , case land following often appear : 1) People who should deal with bureaucracy ; 2) People who should deal with state business ; 3) People who should deal with business private ; 4) Conflict between man Almost everywhere there is disputes , the parties involved and the authorities for handle problem the look for solution in

various way. Court (litigation) and settlement non- court disputes (non- litigation) have been Becomes method solution dispute During this. The implication is that you have to there is protection law to rights related civil with ownership land and fair treatment to ownership soil in dimensions juridical mastery land and ownership soil ([Laturette, 2021](#)).

Dispute land that lasts long and does not could solved with good could harmful second split party. Dispute civil Among residents in the area about ownership and control soil often Becomes source conflict. Right ulayat soil is source dispute this , or right ulayat is the object ([Nasir, 2018](#)). On the other hand, have occur dispute civil about right on soil Among Public custom with owner soil ancestral.

In fact , dispute law often involve soil custom , including soil ancestral. A number of reason happening dispute soil ulayat is as follows:1. Boundaries soil custom no clear ; 2. Lack awareness Public practitioner law custom; 3. The role of the head custom in Public law custom the more complex. The cause no only economy , but also factors social , cultural , and even religious. According to Article 1 point 4 UUPA, land is dispute or conflict between individual , group , group organization , legal entity , or institutions that tend to or impact large by politics , fit with case land.

METHOD

Approach comparative approach this conducted with stage studies comparison law. Studies comparison law that alone is an " activity " for compare law a country with the law of another country or law from something time certain with law from another time ". Destination from comparison the is for get similarities and differences the law. According to Diantha , " approach comparison can also used by researchers in Thing problem the research make a fuss existence emptiness norm.

RESULTS AND DISCUSSION

According to Article 3 of the Law tree Agrarian Law (UUPA), which pays attention to provision Articles 1 and 3, society law custom have one the most important right about room life them : " Right " Ulayat." as existence , implementation right ulayat and rights similar by society law custom must in accordance with interest national and state based on unity national and not contrary with law.

The 1945 Constitution of the Republic of Indonesia also states : that rights Public law custom must recognized : As long as society and the principles of the Unitary State Republic of Indonesia is regulated with laws , the state recognizes and respects unity Public law custom. and rights traditional them.

Besides that , the law Number 32 of 2004 concerning Regional Government paragraph (9) Article 2: As long as still live , the country respects units Public law customs and rights traditional in accordance with development society and the Unitary State Republic of Indonesia. the principle of the Unitary State Republic of Indonesia.

Constitution tree Agrarian Law (UUPA) itself no explain about right ulayat besides say that that is inherent rights as competence special in Public law custom and consist from authority or power for manage and organize land and its contents with power Act in demand to outside or to in. As a result , the right ulayat show connection law Among soil or a specific area (object rights) and society law (subject rights). Right ulayat this give people power for:

- 1) Mastering and managing use soil for settlement , agriculture , and other purposes , as well as land maintenance.
- 2) Regulating and determining the legal relationship between people and land (granting special rights for certain subjects).
- 3) Regulate and establish legal relationships between people and legal actions related to land (such as inheritance, sale, and others).

According to authority right ulayat , community law custom have connection mastery with soil or its territory. As a result , the Law tree Agrarian Law (UUPA) requires confession rights following : In Thing this , interest Public law custom people must submit to interests general , nation , and state more tall and more wide. because of that , no could allowed if in atmosphere nation and state moment this still there is Public law the custom still maintain contents implementation right ulayat by absolute. Position right ulayat in Regulation of the Minister of State for Agrarian Affairs / Head of the National Land Agency Number 5 of 1999 is regulated in chapter paragraph (1) , namely :

" Rights " ulayat and the like Public law custom (next called right ulayat) , is authority according to law custom owned by the community law custom certain over a certain area which is environment life citizens for utilise source power nature , including ground , inside territory , for interest continuity life and life that arises from connection physically and mentally down hereditary and not disconnected Among Public law custom with the area in question. Regulation this load clear policy principle right ulayat and rights similar Public law custom , as meant in Article le 3 law main agrarian. policy include : perception right ulayat , criteria and regulations existence right ulayat and rights similar Public law custom , authority Public law custom on soil ancestral.

Arranged things in PMNA/KBPN Number 5 of 1999 , among others, Article 2 paragraph

(1) : implementation right ulayat along still there is implemented by the community law the custom concerned according to provision regulation legislation local. law custom. Provision this arrange about provision right ulayat as long as in reality still implemented by the community law custom provision law , Article 2 paragraph (2) PMNA/KBPN No. according to rights considered still there is when :

- a) To a group of people who are still feel bound with arrangement law custom as inhabitant together from something fellowship law certain people who recognize and apply the provisions of the fellowship in everyday life.
- b) There is a certain ulayat land which is the living environment of the members of the legal community and where they collect their daily needs.
- c) The existence of a customary law order regarding the management, control and use of customary land that is legal and adhered to by members of the legal alliance.

These three elements actually have to exist cumulatively.

Customary law research will be submitted to government deep district implementation will involve expert law customs and elders custom local. However in Article 3 PMNA/KBPN No. 5 of 1999 there are exception that is required implementation right ulayat Public law

custom as meant in Article 2 no could again implemented , there peach. land which at the time the Regional Regulation comes into force as referred to in Article 6:

- a) Already owned by an individual or legal entity that has land rights according to the Basic Agrarian Law.
- b) Are parcels of land that have been acquired or acquired by government agencies and legal entities or individuals in accordance with applicable provisions and procedures. The article stipulates that the implementation of right ulayat can no longer be carried out on parcels of land which at the time of the Regional Regulation as referred to in PMNA/KBPPN Number 6 Furthermore in Article PMNA/KBPN No. 5 of 1999 The following table details the year 1999:
 - 1) Individuals and legal entities can control land parcels included in ulayat land as referred to in Article 2; a) By an individual who is a member of the customary law community and is concerned with tenure rights in accordance with the provisions of applicable customary law, which if desired by the right holder can be registered as a proper land right in accordance with the principles of agrarian law. b) By an individual who is not a member of the customary law community and is concerned with land rights in accordance with the basic provisions of agrarian rights law based on the granting of rights from the state after the land
 - 2) Indigenous peoples can release customary land for agriculture and other purposes that require usufructuary rights or usufructuary rights in accordance with paragraph 1 letter b by submitting a system of use for a certain period of time, so that the period has expired. After soil the no used again or abandoned , right effort or right use the relevant deleted , and use next must approved by the community law the custom concerned along right ulayat Public law the custom concerned. right To use effort or state - granted use and extension as well as update no can exceed period time use land by the community law the custom concerned in Thing as referred to in paragraph 2. according to provisions of the UUPA, after soil released by society law custom , right ulayat by individuals and legal entities could implemented by members Public law custom , institution government , or natural persons who are not member Public law customs related to land rights.

The rights of the head of adat and adat elders have the authority to regulate ulayat rights in the context of public law. As customary law community officials, they are authorized to manage, regulate, and lead designation , control , use , and maintenance soil together. here shapes settlement of land rights disputes.

Individual rights and customary rights always interact with each other. One's right to a piece of land is getting stronger and closer with the land in question the more many the efforts they do. In scenario this , right ulayat on soil lost part from his rights. However Constitution original say that right individual on soil permanent bound by rights customary , however strong law it. At the same time , the right individual has Becomes so strong in many the place so that right ulayat has lost his strength or almost no there is. However , in the right territory ancestral still strong , relationship Public with the land can Becomes tense from time

to time. For example , when no there is again planted crops , rights ulayat Becomes strong return until soil the return mastered completely by the community the custom concerned.

Right on plot soil could is lost if no done again until Becomes forest or bush shrubs growing on it. After that , member Public other could process soil that. Clear meaning of function social it. right on soil is subject of Customary Law. Right this is what the law sees custom as " element " togetherness " in " practice. Member Public given opportunity for open , control , and demand soil no only for owned but also for cultivated for needs they alone. If the land that should be done abandoned , this contrary with function social. In accordance with law custom , right on soil no only give authority but also oblige owner for process soil that. According to draft law custom , this is it how. right individual on ground at first created.

With As a result , in reality development is very diverse , so that by general no could said is Public law custom still yes , already no there is again , or no once there is same very in an area of rights ancestral. With the more strong mastery inhabitant to parts soil together that , then strength right ulayat Public law the custom concerned with alone weakened. Right ulayat no abolished by the LoGA or the National Land Law , which may result in continuity life or its preservation. On the other hand , evolution Public show trend for abolish Right Ulayat by reasonable. Specifically with increase rights individual in Public law the custom concerned.

Since the UUPA was enacted on September 24, 1960, all right on soil western law has changed Becomes right on soil in accordance with UUPA. here reason main why Public law custom village Wangel prohibited dominate land (previously known as HGU) in North Wamar. Right Erfpacht changed to fit with BAL requirements after out.

On September 24, 1960, the rights on land that has been converted ends. The land Becomes state land , and arrangements next conducted in accordance with UUPA and regulations its implementation. By special , Regulation President No.32/1979 concerning trees policy about gift right on soil new for conversion western rights.

1945 Constitution and laws next confess existence Public law customs and rights ancestral. Unfortunately , right ulayat Public law custom often belittled by interests party or group certain support government. Interest national , as poured in policy government , is justification together. Mining , forestry , utilization islands small , and policy government center or government areas that are in the interests of all investors reflect erosion right ancestral. For the sake of national , eroded rights custom often result in damage environment , loss culture , and worst of all , the loss of identity national. Conflict often appear as consequence from loss Public custom.

Conflict Among Public law customs and society law custom often is results from effort government for complete complaints , in particular about obscurity territory boundary or community area custom. In fact , the mechanism law has formed for complete conflict involving Public law custom.

Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 5 of 1999 concerning Guidelines Solution Problem Customary Rights for Indigenous Peoples contains mechanism solution problem right ancestral. Public law adat whose management , control , and utilization based on provision law custom local and recognized by members Public law the custom concerned as soil ancestral Becomes base issued regulation this. as well as existence and mastery the land , presenting amount

challenges in various area. Right ulayat defined more clear in regulation This : Legal Society the custom concerned doing implementation right ulayat in accordance with provision law custom local along rights that truly there is. legal society custom considered still have right ulayat if :

- 1) There is a group of people who are still bound by order law custom as inhabitant together from something fellowship law certain and which recognizes and applies provision fellowship in life daily ; 2) there are soil ulayat certain which is environment the place stay inhabitant fellowship law and place they take necessity life daily ; and 3) existence arrangement law customary law and obeyed by citizens fellowship law about management , control , and use Boedi Harsono say that right ulayat is set power and responsibility responsibility owned by a Public law custom. dominate land in its territory. As mentioned before , land this has Becomes supporter main eye livelihood and ways life Public from time to time.and law civil covers not quite enough answer this.especially related with ownership soil together.Task authority for manage , organize , and lead designation , control , use , and maintenance are also included in law public. All soil within the jurisdiction Public the law in question subject to rights ulayat , good that has been Becomes the rights of others and no. Not there is "res nullius" land in the neighborhood Right Ulayat. In general no possible for determine by certain boundaries right ulayat Public law custom territorial. Besides that , Maria SW Soemardjono state that right ulayat show connection law Among soil or a specific area (object right ulayat). rights) and society law (subject rights). Authority the poured in ulayat rights. 1) Control and regulate use land (for agriculture , settlements , supplies , etc.), supplies (development of new rice fields , settlements , etc.), and land maintenance;
- 2) Regulating and determining the legal relationship between people and land (granting special rights for certain subjects);
- 3) between individuals and actions related law with land (such as sell purchase , inheritance , etc.).

Local government must involve expert law custom , community law local customs , institutions self-subsistent communities , and institutions management source power natural in the investigation to existence Public law customs and rights ancestral. on result research , whether still there is Public law custom. The boundaries of the area are listed on the map base registration soil with affix sign cartography and if allow , describe the limits and take notes in the land register if his existence still determined by regulations government area. Kurnia Toha , Head of the Legal and Public Relations Center of BPN RI, stated , "BPN RI with assertive acknowledge and respect existence right ulayat During right ulayat that truly exists." Constitution recognize and protect right ulayat as right basic human. He state that BPN has register many soil custom owned by individual moment this. However , land registration soil ulayat Public law custom only could conducted after regulation regional (perda) is established.

Anyone who wants work same or utilise right ulayat Public law custom could with easy identify the parties who will contacted and negotiated if the boundaries of the community clear according to law custom. right Public law real custom still there is before gift rights , applicant Required To do discussion with Public law the tradition that holds right ulayat and

residents holder rights ," so clear statement in Constitution Number 18 of 2004 concerning Plantations of the land in question for reach deal about surrender and replace make a loss soil that.

Even though can said too late , however confession right ulayat Public law custom in various laws and mechanisms confession Public law custom through Real local regulations is step proactive for complete problem confession. right ulayat Public law custom. Could means " law " responsive " as product law from regulation governing area boundaries Public law custom. However , often government postpone or even reject for handle existing problem. no will continue if government respond with fast complaint Public customs and members Public other contradicting with them. According to Nonet and Selznick, responsiveness is something possibility in every system developed law , but reach promise that need environment politics.

Something community that has capacity political for face the issues required ry for law responsive. Create commitment required and set priority. In realm justice , law responsive not source miracle. Will and source power community political required for success. Even though there is potency responsiveness in every arrangement advanced law , fulfillment promise responsive depending on context supportive politics , contribution special is for facilitate destination public and build spirit correct self to in the governance process. People who can afford solve the problem , set priorities , and make commitment required required for responsive law. Because responsive law no work like charm in system judiciary. Willingness and resources power community political required for success. Contribution unique is push correct self to in process governance and for facilitate destination public.

Mahfud continued , law responsive or populist is product law that fulfills hope society and reflects a sense of justice. In the process of making it , the group social or individual given significant role and participation full in society. to needs individual or group social in society. Goods law that is responsive have a manufacturing process participatory , meaning push as much possible participation Public through group social and individual.

Besides that , Achmad Sodiki⁶ emphasized that consideration tight economy relation with well-being must taken into account in every related policies with agrarian and management source power nature. reality community that has walk far away , no back off like when various regulation legislation made. Lack of consideration aspect certainty law , protection law , justice and prosperity Public the place agrarian and resources power natural exploited is disabled in Constitution agrarian until moment this. Population local no pick benefit from thin it out all source power nature. Companies that manage and utilize source power this no could responsible answer completely. As a result , some big profit company which is characteristic from centralization government moment this. Government center must notice the community whose territory is ds and the source power natural exploited and distributed profit by fair to them.

For tie or comply with the parties , disputes concerning soil custom or soil ulayat resolved through track law or mediation need based on approach multidimensional (anthropological , sociological , etc. , in addition to approach juridical). In other words, only a formal legal strategy will produce results positive. Problem land that is not always related with application regulation existing legislation no could solved only with law course. In order to claim similar in the future could reduced , required various effort for ensure right economy

society. If three (three) conditions fulfilled , law positive in the field agrarian and rights ulayat will synergize :

- 1) Objective understanding about state land , land ulayat , and rights on soil in framework positive law and customary law ;
- 2) The method used is educative-persuasive and does not impose a unilateral will;
- 3) Traditional leaders, religious leaders, and formal figures who really understand customary law and positive law (UUPA and its implementing regulations) must be used to implement approach cultural-religious.

Clash interest Among those who believe that they have equal rights or plot soil cause happening dispute land. People do action block or occupy land , and the parties are also trying for show that they have greatest right. as a result no seldom many the aggrieved and troubling party the surrounding community in situation like this. As a result , the parties will attempted for complete every disputes that arise. Non -litigation or method solution dispute alternative will Becomes choice first for solution dispute.

There are several stages of the completion process in solution dispute. Completion process non- litigation dispute or alternative for dispute soil usually consist from three stage :

- 1) Stage Deliberation of the parties involved must obey three processes at a time this. The procedure consists of:
 - a) Preparation is the first step. In this step it will be determined who will be the mediator or mediator, who will understand difference opinion , where is the solution will done , when will happened , and who more will involved. Other things needed for support deliberations will also be decided.
 - b) The opening of the second process is where information about the dispute will collected from the applicant / plaintiff and the defendant / defendant , as well as description witness of the plaintiff or defendant.
 - c) Closing is the third step, and it involves ending the discussion, declaring peace, signing an agreement by the disputing parties (if it has been reached), calling witnesses, and concluding the discussion.
- 2) Stage of Implementation of Deliberative Decisions At this point, the Parties will voluntarily implement the Deliberative Decision Agreement, so that implementation is relatively inexpensive.
- 3) Deliberation Closing Stage The authorized party, usually the leader of the deliberation, will close the deliberation after an agreement is reached.

Chairman institution Public custom will investigate dispute it and endeavor finish it based on complaint. This thing conducted for see is need there is institution Public law custom or traditional council for Act as a mediator or middleman in dispute that.

Before start , there many interest different is necessary considered for complete dispute land and respect the trust of the disputing parties to the mediator or arbitrator. In discussion with the disputing parties , the mediator or mediator is necessary investigate by thorough , categorize , and understand dispute soil next for concentrate on the problem at hand and determine contributing factors to happening dispute land.

Data that can be inform about land status and origin suggestion disputed land required To use assisting mediators and intermediaries in complete dispute existing land. Parties who

can reliable as source information provide the data. written or verbal , must investigated by thorough. Not need long time because many things to do studied.

The disputing parties , witnesses , and the mediator or arbitrator are all required for attend deliberation. The mediator or arbitrator must more formerly inviting all party before discussion could started. Invitation no need to be formal or written , and can also given only by verbal.

In most case , disputing parties complete alone dispute land and not give power to the other party for represent them. This thing for prevent problem Becomes more bad because intermediaries and other parties involved will with easy knowing interests and concerns of the parties. Besides it 's easy for the parties for disclose his wish by direct to other parties and intermediaries.

This thing no occur when our go to court , where usually the parties represented by a representative law they because they more familiar with procedure court. People sometimes reject for complete dispute soil through court because , apart from other factors such as long process, expensive costs, etc., procedures like above seen not enough effective by the community.

The mediator will give opportunity again to the parties for offer each solution above dispute medium ground talked about after the parties feel enough for convey all interest them and the disputed issues.

administrative court (PTUN) must used for complete dispute if discussion no reach deal. legal society custom push land office official for Secrete decision about the status of rights soil ulayat (formerly known as Land Use Rights) on command for start the completion process through State Administrative Court. Decision letter office from the Land Office could used as base lawsuit to state administrative court.

For looking for a win-win solution for dispute soil ulayat , community law custom use alternative solution dispute (ADR). Win-win solution is something form profitable solution second split disputing party because no there is winning side or lose and be in the same position.different with court , where no there is another option for complete dispute. given opportunity again for submit effort law , the disputing parties only have two choice : win or lose. But in the end , the choice permanent same : win or lose.

Difference how the UUPA interprets right common and rights neither individual miss from dispute land. BPN 's authority to publish certificate as State Administrators are right general , while the transition process right influence right individual.

Publishing certificate , deed law transition right on land (sell) buy , grant), and release soil for interest general is example dispute land that can arise. Five causes main dispute soil is as following : 1) dispute consequence policy the government during the New Order era ; 2) regulations overlapping laws overlap about source power agrarian ; 3) regulations overlapping laws overlap in use land ; 4) quality source power man from apparatus executor ; and 5) shift attitude Public to mastery land.

When it happens difference opinions , quarrels that last a long time, and when the process reaches deal failed , path healthy communication disconnected. Must - have prerequisites fulfilled for build procedure solution efficient dispute is both parties must notice or respect tall right for hear and rights for heard for find similarity in solution problems / disputes.

Completion process dispute influenced by three element main :

- 1) Intersecting interests;
- 2) Rights and Status of Power The disputing parties want their interests to be realized, their rights to be enforced, and their powers to be demonstrated, used, and maintained. The disputing parties will usually insist for maintain third factor the during the completion process dispute.

Article 1 point 6 Regulation The Supreme Court Number 2 of 2003 defines mediation as " solution " dispute through the negotiation process between the parties assisted by a mediator" (Article 1 point 5), whose function help the parties in look for various choice solution dispute. There are three track different that can taken mediation Public for reach solution : mediation custom , mediation through the National Land Agency and mediation in court.

In Indonesian society which consists of from various ethnic and social culture , solution dispute through discussion between party more emphasized , upheld high and appreciated To use guard familiarity unity and harmony social , normal called for institution custom. Deliberation and consensus is two form solution disputes that have rooted and established. With use Presidential Decree No. 10 of 2006 concerning the Role of the National Land Agency in complete dispute land through Head of BPN RI No. 34 of 2007 concerning Technical Guidelines (Technical Guidelines) Handling and Resolution Problem land. The National Land Agency does effort for doing Duty this , including through mediation.

In order to be alone possible no each other accuse and blame , the mediator must capable create enabling atmosphere and conditions achievement compromise between the parties or Among second split party. This thing will prevent mediation successful and allows the parties for reach profit and satisfaction together. who are at odds. Mediators help in implementation deal written that has signed by both split party if deal together has achieved During mediation. Mediator then prepare agreement written for signed by the parties. Use alternative solution dispute (ADR) no by explicit supported by regulations legislation in the field of land. Court , judge always suggest that the parties complete by peace (Article 130 HIR).

CONCLUSION

Solution disputes that can taken in solution dispute soil ulayat is through discussion for consensus and resolution through track law that is lawsuit to State Administrative Court for get certainty law and protection for the parties to the dispute. Cooperation between government and society law custom required in complete dispute right what happened so that could give a sense of justice for Public law custom procedural law in force in Indonesia

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