DISPUTE RESOLUTION MODEL OF LAND OWNERSHIP TO OVERCOME DUALISM OF AUTHORITY BETWEEN THE DISTRICT COURT AND ADMINISTRATIVE COURT

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ABSTRACT

The purpose of this research also to form an ideal model in solving the dispute of land ownership in order to realize justice and legal certainty.The research method used is normative juridical approach to descriptive analysis.The results showed that in fact the existence of the certificate still has problems in terms of certainty of ownership, namely with the cancellation of the certificate. .Important issue that must be considered in the settlement of a dispute regarding the peacemaking (mediation) by applying the principle of a simple, fast and low cost in a civil case investigation.In the application of litigation is also necessary to use the concept of rectification.The concept of rectification is to distinguish the settlement of disputes over land ownership case based on the issuance of certificates of land rights. Legal disputes in the area of land on the certificate of land rights derived from state land issued by the decision to grant land rights of Indonesia National Land Agency (hereinafter referred as BPN) is the authority of Administrative Courts. While certificates of land rights derived from customary land issued under the authority of the conversion of BPN is the authority of District Court.This concept is an alternative in resolving conflicts of positive law.The concept of each application is complementary respective legal norms on the judicial bodies of the Administrative Courts and District Court. The recommendations are necessary for the improvement efforts in resolving disputes over land ownership rights with respect to the clarity of the case object, as mentioned above, so that the pattern of competence clearer and does not create legal uncertainty and disruption of public justice. The role of mediation is also needed as a first step dispute resolution by promoting the principle of unity in order to achieve a balance of deliberation and agreement.

Keywords: dispute resolution, property ownership, authority to hear.

A. BACKGROUND

Act No. 5 of 1960 concerning regulation of agrarian policy of trees (hereinafterreferred to as UUPA), aims to provide legal certainty, legality and order condition.[1] Legal certainty regarding land rights as aspired by UUPA covers three things, namely certainty about these land rights; certainty on the subject of land rights, and certainty about the status of land rights.[2] In order to provide legal certainty for the rights and boundaries, article 19 of the UUPA assigned to the government to administer the registration of land is very important to provide tranquility and confidence to people who have land rights.

According to the land registration system UUPA adopted the system of negative publicity with the positive elements that all information contained in the land certificate is correct until proven otherwise state. Means the certificate is a letter of proof applicable right as a strong evidence of the physical data and juridical data contained therein, all physical data and juridical data in accordance with the existing data in the measurement certificate and the land book. As long as no evidence to prove otherwise, physical data and juridical data contained therein must be accepted as true, both in legal actions everyday and in litigants in court. This is in line with the provisions of article 19 paragraph (2) c UUPA that the certificate is valid as an evidentiary tool, not absolute evidence. This means that the land certificate may still be aborted or canceled as long as there is proof otherwise stated the invalidity of the land certificate.

Said Maria SW Sumardjono, certificates of land rights as a result of the end of the registration process of land contain physical data (information about the location, boundaries, spacious plot, as well as parts of the building or buildings thereon if necessary) and juridical (information on the status of the land and buildings that are listed, holders of land rights and the rights of other parties, as well as other expenses that are above). By having a certificate relating to the legal certainty of land rights, the subject of rights and their rights to be real objects.[3]

[1] It can be seen from the figures I UUPA general explanation which states:
a. Laying the foundations for the preparation of the national agrarian law which is a tool to bring prosperity, happiness, and justice for the state and the people, especially the farmer in the framework of a just and prosperous society;
b. Laid the foundations to hold unity and simplicity in land law;
c. Laying the groundwork to provide legal certainty regarding the rights to the land for the people entirely.

[2] Certainty about this object must be able to demonstrate clearly to all parties about the limits, size and location of the plot in question.

[3] Maria S.W. Sumardjono. Land Policy: Between Regulation and Implementation, Compass, 2001, Jakarta, p. 45.

However, the certificate has differences with other evidence for the certificate is confirmed by the legislation as strong evidence. Strong in this case means that as long as there is no other evidence to prove lack truth, then the information contained in the certificate should be considered correct with no need for additional evidence. Other evidence was only regarded as preliminary evidence and must be corroborated by other evidence. When the judge indicated land title certificates, then the judge should receive information in the certificate as the correct information when it cannot be proved by means of other evidence that the information in the certificate is false. But when the judge indicated, for example, a deed of sale as proof of a person's right to land, then the judge must be convinced by other evidence such as witnesses, receipts, etc., that a person is really entitled to the land.[4]

Problems in land ownership disputes are common today are concerned about the cancellation of the certificate of land ownership, especially among the administrative courts (hereinafter referred to as PTUN) by the general courts, it has been a problem in the form of dualism[5]of authority. Such conditions can create a legal uncertainty. This is due to the duality notch land certificates sourced from the two (2) legal aspects, namely: on the one hand as a decision of the state administration (hereinafter referred to as KTUN) pursuant to section 1 paragraph (3) Law No. 5 of 1986 concerning judicial state administration, as amended by law No. 51 of 2009 and on the other as proof of rights under articles 31 and 32 of government regulation No. 24 of 1997 concerning land registration.

Dualism of authority/ competence adjudicate between the DistrictCourtand the Administrative Court in resolving land disputes was also associated with BPN authority within their discretion to cancel the certificate of land rights. It can be said that the certificate in this case stands on two legal environment that is the law of the State Administration and Civil Law. With the dualism of this authority would create legal uncertainty in the presence of two different forms of the decision on the same case. Inability to realize the rule of law will significantly affect public mistrust of law enforcement and the authority of the court to deteriorate.

This dissertation research is limited only to the dualism of authority in the resolution of the ownership dispute over land ownership certificate by the District Court and the Administrative Court. Then do research to build a model of dispute resolution certificate of ownership rights to land in accordance with the objectives of the law, namely the aspects of certainty, fairness and expediency. By looking at a conflict or conflicts that authority, then that becomes the subject matter of analysis in the research of this dissertation is as follows:

1. Why there is dualism of authority in the settlement of the ownership dispute of land ownership certificate? How does the existence of general courts and the administrative court in resolving ownership disputes over land ownership certificate?.
2. What is the ideal model for resolving ownership disputes over land ownership certificates in accordance with the purpose of the law?.

B. RESEARCH METHODS

This type of research in this dissertation is the empirical research or non-doctrinal.[6] The scope includes the study of empirical legal research to discover the law in people's behavior, and studies to find the law as a symbolic phenomenon in action and community interaction.[7] Analysis of non-doctrinal study conducted with a quantitative approach based on the results of field research conducted, either through interviews, observation, and questionnaire. Sources and types of research data consist of primary data sources and secondary data. The primary data obtained through interviews, observations and questionnaires posed to the respondent.

Data analysis techniques used in this research is the analysis of qualitative and quantitative normative. The purpose of normative starting point here is the legislation that exists as positive law, whereas here is the intent of the quantitative data derived from primary data. Mechanical analysis carried out in three stages, namely reducing the data, presenting data and draw conclusions. Model analysis like this to do a cycle processes between the stages, so that the data collected will relate to one another and completely data to support the preparation of research reports.

C. RESULT AND DISCUSSION

1. Dualism authority dispute settlement of property ownership certificate

a. Point of contact between the Administrative Court with the Courts of General Jurisdiction.

[4] Effendi Perangin-angin, Practice Management Certificate Land Rights, 2nd Ed, Rajawali, Jakarta, 1995, p.1-2.

[5]Dualism is intended in this research is that there are two parties who are handling cases cancellation of the Certificate of Property Rights by the State Administrative Court (Administrative Court) and the District Court. Therefore, a different solution introducing a juridical authority and implications as well as affect the legal certainty for the parties who are disadvantaged, including the aspect of legal protection.

[6] Non-doctrinal legal research used to obtain materials that help answer the problems that require the data obtained through research in the field.

[7] Bernard L. Tanya, Yoan N. Y. Simanjuntak & Markus Hage, Legal Theory of Human Conduct Strategy and Space Traffic Generation, Genta Publishing, Yogyakarta, 2013, p. 209-210.

Point of contact the absolute authority *(jurisdiction)* between the General courts with the Administrative Court, because the authority of the courts located within 1 (one) genus same law, the Civil Law in the broad sense. This is due to the duality notch land certificates sourced from the two (2) legal aspects, namely: on the one hand as KTUN according to the provisions of law of the Administrative and the other side as evidence of rights under the provisions of Government Regulation No. 24 of 1997 concerning land registration. In other words, if the certificate contains the physical data and juridical tight relation to the civil rights of a person.

The absolute authority of the Administrative limited to adjudicate disputes that are in the public law, disputes arising from government actions in public law that are externally multifaceted one and is concrete, individual and final contained in a KTUN.[8] In Article 47 of Law No. 5 of 1986 concerning the justice of the state administration, as amended by law number 9 of 2004 and law number 51 of 2009 has been set on the competence of the Administrative Court in the judicial system in Indonesia, namely the duty and authority to examine, decide, and resolve state administration (hereinafter as TUN) disputes.

Subject or the litigants in the Administrative Court according to the law there are two opposing parties, namely: (1) The Plaintiff, the person or body of civil law that felt their interests harmed by the KTUN released by the body or TUN officer either central or local. (2) The Defendant, the agency or office that issued the administrative decision based on existing authority delegated to him or her. As for the object of the dispute at the administrative court is KTUN, published by the agency / TUN officer, as mentioned in Article 1 point 9 of law number 51 of 2009 on the second amendment of law number 5 of 1986 on administrative courts.

Competence of the District Court is the court of authority in carrying out judicial power to receive, investigate, and prosecute and resolve any matter submitted to him. Problems absolute competence of the district court is governed by Article 134 HIR jo. Article 160 RBg and the authorities may be submitted at any time during the case is still ongoing.[9]

In connection with the issuance of certificates of multiple cases, when viewed under article 1 paragraph 3, the certificate shall be a decision of the state administration for the legal consequences for the person or body of civil law. The legal consequences of the issuance of the certificate of title for the land is, person or body of civil law have formal proof of ownership of a land. This raises civil rights to land through the certificate. Thus, the certificate as a KTUN other hand is also evidence of their civil rights, namely the right to land. If there is a dispute on the land certificate, then it can only be tried and resolved in the two courts a quo. It is certainly already showing the points of contact between state administrative court with general court, where each court may hear a case the same. But that must be considered is, the certificate is disputed objects in the Administrative Court. Because it is a disputed object, then against the certificate is checked whether it has issued a procedural or non-procedural. While standing certificate in civil law if anything happens to the dispute pursuant to Article 143 Paragraph (2) HIR, certificate included in the category documentary evidence, which the documentary evidence is very strong evidence of a formal position in civil law.

Certificates serve as a tool evidentiary proof of ownership. Certificates ensure legal certainty regarding the person who is the holder of land rights, legal certainty regarding the location of the land, as well as the limits of the area of a plot, and legal certainty regarding the rights on his property. With such legal certainty could be given legal protection to persons listed by name in the certificate against the interference of other parties and avoid disputes with other parties.

Stelsel registration of land rights prevailing in various countries can be classified into two (2) types of system positive and negative system. On the positive system, a subject whose name is listed in the land, their right to have a positive force and legally valid, so it cannot be contested. In contrast, in the system of negative rights owned by allowing rights holders still argued over the objections can be proved with evidence that is strong enough. In other words, the negative system of government does not guarantee the accuracy of data contained in the public register of rights registration list. By looking at the rules in Regulation No 10 of 1961 which was officiated by the PP number 24 of 1997 on land registration, it can be said Indonesia adopts a negative containing a positive *(positive quasi)*. So, even if the certificate is a proof of the rights which occurred as strong evidence, but still has not given a definite assurance.

The registration process to obtain a certificate is often a problem occurs in the form of disputes, both in terms of land boundaries as well as the dispute in terms of who is actually entitled to the land.[10] Land registration which aims to ensure legal certainty and security of rights for the holder of the rights over the land in fact the current practice is not uncommon to have occurred published two (2) or more certificates of land on a plot of land of the same or the issuance of a certificate on the ground disputed areas, such as occurs in land dispute between PT. Portanigra with the citizens of South Meruya.

That the certificate of land has a double side, namely on the one hand as a decision of the state administration (KTUN) and on the other as proof of civil rights *(ownership)* a person or legal entity on the ground, then if there is a dispute certificate double / overlapping, the solution can be reached through 2 (two) lines of justice, namely state administration court and district court.

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[8] Indroharto, Business Understanding the Law on State Administrative Court, Jakarta, Sinar Harapan, 1991, p.85

[9] Sudikno Mertokusumo, the Civil Procedure Code Indonesia, Liberty, Yogyakarta, 1985, hlm.57-58

[10] Sri Wjijayanti, Legal Certainty of Land Certificate of Land Ownership Rights As evidence (Case Study On Land Dispute Decision MA South Meruya), http://eprints.undip.ac.id/23929/1/Sri_Wijayanti.pdf. Accessed July 30 August 2016, Time: 09:30 pm.

Civil disputes relating to land can occur between individuals or between individuals and legal entities. As for the disputed diverse, both related to soil physical data, the data juridical, or due to legal actions carried out on the ground.[11]With this certificate spending, signifies existing land registration done. However, in practice, the issuance of land certificates can still be questioned its effectiveness in providing assurance and legal protection, whether the certificate really protects the right *(subject)* or land *(object)* or only physical evidence of the certificate course, as often happens when it is brought to court, can A formally recognized certificate, but does not protect the subject and object. Administrative courts can refuse to cancel a certificate stating the ground, but the general courts pronounce his name listed in the certificate is entitled to the disputed land.

b. Factors causing the dualism of authority in the cancellation of the certificate of property ownership

The incidence of disputes over land ownership rights of their lawsuit stems from one of the parties containing the objections and claims over land rights, both on the land status, priority, or ownership in order to obtain an administrative settlement in accordance with the provisions of applicable regulations. The ultimate purpose of the complaint is the claim that he is entitled to a higher authority than the others on the disputed land. Therefore, the resolution of the legal dispute depends on the nature or the issue raised. The nature of the problem of a dispute over land ownership in general there are several kinds, which are:[12]

1. issues of priority to be assigned as the holder of legal title to the land or the rights status of land that no rights;
2. protest against something is right or proof of earnings are used as the basis of entitlement;
3. mistake or entitlements due to application of the rules that are less or not true;
4. Another problem that contain practical aspects of the social aspects (strategic).

Land ownership disputes are common today are concerned about the cancellation of the certificate of land ownership, especially among the administrative court to district court, it is becoming a problem in the form of dualism of authority. Such conditions can create a legal uncertainty. Land disputes arise from several factors, such as:[13]

1. Uncompleted regulation;
2. Incompatible rules;
3. Officials of land that is less responsive to the needs and the amount of available land;
4. Inaccurate and incomplete data;
5. Wrong land data;
6. Lack of human resources to resolve the dispute;
7. Wrong transaction of land;
8. Applicant behavior or,
9. The completion from other institutions, so as creating overlapping authority.

In general, land disputes arising in Indonesia can be grouped into four classifications of the problem, which the problems related to:[14]

1. Recognition of land's rights;
2. Transitional land rights;
3. Imposition of Rights; and
4. Occupation of the former private land.

In terms of the subject of the dispute, land disputes can be classified into three types, which are:[15]

1. Land disputes between residents;
2. Land disputes between local governments and local residents and
3. Disputes relating to the management of natural resources

According to data in the BPN, the number of land disputes in 2007 which covers disputes, conflicts and cases throughout Indonesia 4,591 cases. That makes one of the challenges for BPN resolve the problem with surgery completed disputes. Period of completion for 60 days, while the print operation of the dispute, the settlement period of 90 days.[16] When viewed from the typology of problems, almost 85 percent is the case with the typology of land tenure disputes. While the rest, with the typology of rights disputes and boundary disputes / lay of the land. This clearly shows that most people have to know their rights to the land they own and control, notwithstanding the fact that the land is already certified or not. With the awareness of society to solve the problems of the land, would be able to contribute to the completion of land problems faced BPN in general.[17]

The typology of the problem then can be traced more deeply on the disputing parties. Disputes between individuals reached 89%, individual disputes with legal entities 6%, while disputes between individuals and the government 5%. To regain their rights over

[11] Sarjita, Techniques and Strategies Conflict Settlement, Tugu Jogja Library, Yogyakarta, 2005, p.50.
[12] Rusmadi Murad, Dispute Resolution Law on Land, Alumni, Bandung, 1991. p. 22-23
[13] Mudjiono, Alternative Dispute Resolution in Indonesia through Revitalization Function Courts, Journal of Laws, No. 3 vol.14 July 2007, p.458 -473.
[14] Gadjah Mada University, Governance Reform and Regional Autonomy, An Executive Summary, Yogyakarta, Center for Population and Policy Studies, 2002, p.15.
[15] Ibid, p.15
[16] www.bpn.go.id/Penyelesaian Dispute / online internet dated August 28, 2013.
[17] *loc.cit*

the land occupied or controlled by the other party, both de facto and de jure, the legislation has determined that people who violated his right to be able to seek legal redress through the judicial process.

Further, the dispute over land ownership rights mentioned by various background factors, such as their certificates is disabled or handicapped administration law. Such circumstances make the legal power certificate becomes doubtful. Legal defects in the certificate can be caused by sale and purchase agreement which one in the agreement founded a faith that is not good or the existence of fraud, so in this case does not comply with the terms validity of the agreement are agreed.

Noncompliance with terms of agreement then the land purchase and sale agreement has raised the potential for rights disputes. These rights disputes occur due to legal bases relied upon acquisition of an ownership rights over land which then issued land certificates contain a flaw that is subjective, then at any time the events that gave birth to these rights can be sued validity.If it can be proved that the claim validity of a legal act is correct, then the judge will decide declared null and legal relations that have occurred. Furthermore, this decision can be used as a basis for requesting the cancellation of a decree granting rights to land or land title certificate.[18]

Conclusions about the cancellation of land rights contained in article 1 paragraph 12 PMNA / KBPN number 3 of 1999, that the cancellation of a decision on the grant of a right to land for these decisions to be defective in law in its publications or executing court decisions that have permanent legal force. In Article 1 point 14 PMNA / KBPN number 9 in 1999, meaning the cancellation of land rights, namely the cancellation of the decision to grant land rights or land title certificates for the decision to be defective in administrative law in its publications or to execute a court decision that was binding.[19]

Proof on land certificates were flawed legal / administrative defects, should be done through the proceedings in the district court. This verification process basically starts from the claim of the plaintiff who feel their rights have been harmed by the defendant, until the end of the proceedings, namely the implementation of the decision or execution. In these proceedings, the parties to the dispute must be able to prove on the right / events that occur with the proposition put forward the proposition and evidence relating to the case which they disputed. The requirement to prove to an event that occurred, in accordance with article 163 HIR about the burden of proof which states that: "the person who claimed to have the right or the bases on an event to strengthen his right it or to deny the rights of others, must prove their rights or that events ".

From the description above both parties, both the plaintiff and the defendant may be charged with proving it, especially the claimant to prove the event that proposes the cancellation of land rights certificates for their disability law, the defendant was obliged to prove his denial. Plaintiffs are not required to prove the defendant's objection, and vice versa defendant is not required to prove the event which proposes that the cancellation of the certificate of land rights because of their disability law, the defendant was obliged to prove the truth of events put forward by the plaintiff. if the plaintiff cannot prove that the filing of events, it must be defeated. Medium if the defendant cannot prove its denial he must also be defeated. So if one of the parties burdened with evidence and he cannot prove, then he will be defeated *(the risk of proof)*. In essence it is nothing else to qualify the justice that the risk of the burden of proof was not biased. Therefore, concerning evidentiary very decisive for the course of the judicial process.[20]

In judicial practice in Indonesia often encountered their dispute over overlapping land certificates, or *zegel* land dealing with the land certificate worth *"strong"*. In other words, as the BAL adopts a negative then they are always open to the opportunity to submit the matter through the court or the administrative court to be declared as being entitled to the land. The downside of this is that the negative system will open the possibility to anyone who feels entitled to the ground to file a lawsuit to the court or the administrative court to be declared as being entitled to the land.Although over the disputed land it has issued certificates of land, and thus it may happen lack of carefully officers in providing land certificates, since ultimately agency district court or administrative court which will assess the truth of who is the owner or holder of land rights actually from soil disputed. This positive use of the system is possible if said land certificate obtained by fraud or dereliction, holding the titles that actually always can make their demands based on the provisions of applicable law.

Arie S. Hutagalung argued that the system of land registration negative with positive tendency is the applied current, so the land title certificates issued by the National Land Agency can only be sued its validity by filing a lawsuit in court and the judge may cancel the certificate, so the certificate of the right to land only as strong evidence is not an absolute tool. As for the positive side in the land registration according to Regulation number 10 of 1961 which has been enhanced by the PP number 24 of 1997 on registration of land in the form of their effort to "*Contradictoir Delimination*" which attempts to reduce disputes regarding (sign) boundaries of land, where the staff National Land Agency is active involving the land owners bordering to determine the boundary markers.[21]

Similarly explanation Regulation number 24 of 1997 confirmed that the land registration system is a system of publication of negative publicity but which contains positive elements because it will produce the letter and proof of rights applicable as

[18] Hasan Basri Nata Menggala And Sarjita, cancellation and nullification Landrights, Tugu Jogja Library, Yogyakarta, 2005, p. 60-61.
[19] Ibid, p. 37
[20] Sudikno Mertokusumo, Op.Cit. p. 110.
[21] Arie S. Hutagalung, Land Ownership Protection Of Dispute According to the National Land Law "in a swirling Thought Legal Issues Regarding Land, (Jakarta: Indonesian Legal Empowerment Institute, 2005, p. 397-398.

evidentiary tool. National land law system does not adhere to a positive publication system where accuracy of data presented fully guaranteed, but a system of negative publicity but which contains positive elements. It can be seen from the provisions of Article 19 paragraph (2) c BAL stating that the registration includes providing proof of mailing letters applicable right as evidentiary tool. Such statements are not to be included in the registration regulation system with a purely negative publicity. While the land registration system used is a system of registration of rights *(registration of titles)* that is visible from the land book as a document that contains data on juridical and physical data collected and presented as well as the issuance of a certificate as proof of rights letter listed.

Bookkeeping in the land book and the recording on the measurement certificate and areas of land described in a legally measurement certificate has been registered in accordance with government regulations number 24 in 1997. According to Article 31 of Government Regulation No. 24 of 1997 for the benefit of the relevant right holders issued a certificate in accordance with the physical data contained in the letter and juridical measure that has been registered in the land book.

c. Examples case of dualism authority between the administrative court with the general courts

Example case which decision conflicting with the general courts and administrative courts, among others, can be seen in the case of a parcel of land tenure dispute in a civil case in court Grobogan No. 30 / Pdt / G / 2003 / PN.Pwi Jo.247 / Pdt / 2003 / PT.Smg Jo.No. 978 K / Pdt / 2004, which formed the basis of cancellation of land ownership certificate No. 11,33,520 / Manggarmas by the land office Grobogan. Based on the decision letter of cancellation later issued a replacement certificate No. 02 152, 02 153, 02 154 / Manggarmas, and is now the object of the dispute of the state administration in the administrative court no. 48 / G / TUN / 2007 / PTUN.Smg, and is currently under appeal in the high court of the state administration in Surabaya.

In a dispute that became the object of the case is the ownership dispute between Suwardi bin Supar (nephew Sarni) and Darmi bin H. Darwo and his friends (heir H. Darwo) on 3 areas of wetland located Manggarmas village, district Godong, Grobogan, which is a legacy of the late H. Darwo alias Abd. Majid, who died in 1978. The three plots each have been issued a certificate of property rights in the name of Sarni which is the third wife of Alm. H. Darwo. At the time of the land died Sarni delivered and controlled by Suwardi. According to the heirs, Sarni and then Suwardi not entitled to the land, because it is a property of H. Darwo gini Gono and his first wife was the mother of the heir. Suwardi're not heirs H. Darwo. for that, the heirs Alm. H. Darwo (Darmi, Darsi) filed a civil lawsuit to Suwardi through Purwodadi district court, No. 30 / Pdt.G / 2002 / PN.Pwi, the high court no. 247 / Pdt / 2003 / PT.Smg, the supreme court no. 987 K / Pdt / 2004, the verdict in favor of the heirs Alm. H. Darwo.

The appeal against the decision, the heirs filed a certificate revocation H. Darwo on 3 areas of the land to the regional office of the national land agency, Central Java province. on the basis of certificate revocation decision letter heir Alm. H. Darwo then apply for a certificate on the three parcels of land, and then the land office issued the certificate HM Grobogan no. 2152, 2153, and 2154 in the name of Darmi, Darsi, Siswoyo and Budi Artati.

On the publication of SHM no. 2152, 2153, 2154 / Manggarmas, Suwardi filed a suit against the head of the land office Grobogan through the administrative court no. 48 / G / TUN / 2007 / PTUN. SMG and terminated on 13 February 2008, the verdict reads, among others: declare void SHM no. 2152, 2153, 2154 / Manggarmas on behalf Darmi, Darsih, Siswoyo and Budi Artati issued by the district land office Grobogan. the verdict, the head of the land office Grobogan filed an appeal at the Administrative Court of Surabaya, and has not been concluded. the replacement of the existing certificates are transferred in the form of a deed of sale to other parties, but cannot be recorded because the transition into the disputed state administration.

2. Build the ideal model of resolving disputes over land ownership rights

a. Forum of mediation as an alternative dispute settlement land ownership

In order to achieve the benefit of the law in the process of resolving disputes over land ownership rights, the role of mediation is very helpful in providing a solution to the dispute between the parties. Mediation is also based on one of the principles of civil procedure law states that the settlement of civil disputes through a court decision or *ultimum remedium* last alternative, which means that the settlement of civil matters as possible, should be resolved by consultation kinship. It is based on a thought that civil cases generally occur between parties who have a familial relationship, or have had close social relationships. If the process of settlement of its case through the proceedings with the court ruling will consequently undermine family relationships that have been built before.[22]

Authors argue, in resolving disputes over land ownership rights necessary to the mediation room in each district court. Mediation room is shaped to dispute resolution can walk with the principle of consultation by promoting a culture of honesty, not selfish and put forward a solution paradigm of win-win solution. Room mediation settlement is also a solution that is fast, low cost, no beating around the bush, as happened in the courts (litigation). Mediation became mandatory by the parties to the dispute, if mediation is not possible, and then can do a lawsuit to court.

The integration of mediation in court if it is linked with the theory of the legal system of Lawrence M. Friedman to see the implementation of the mediation, the legal system consists of three elements, namely the elements of the structure, substance and legal culture. As well as in the implementation of integration mediation, this can be seen from these elements.

[22] Miswardi, Civil Procedure Code, Bukittinggi: STAIN Press, 2005, p.36.

b. Separation model between the judicial handling of cases common with the administrative court

Based on the analysis of the problems that have been submitted, it can be seen that the authority of the Administrative Court and state courts in examining and deciding legal disputes in the field of land have different characteristics. Certificate of land rights that many tried in court, it is known which became the subject matter *(objektum litis)* in the dispute is not KTUN or not the certificate of the land rights but the rights or interests of public interests are violated as a result of the release of KTUN or discharge of the certificate.

Court conduct an examination of who the rightful owners of the land case as designated in the land SHM include checking on the status and history of the land and how the land rights in question (whether in accordance with the provisions of applicable law or not). Of the framework is so, then it is understood that the essence of civil judicial basically discover how a title for the land inherent in a person as legal subjects. The Court will examine and scrutinize carefully how the property was acquired by referring to the provisions stipulated in the laws in force.

The authority of the district court in a dispute over the land ownership is to establish who is eligible and who is not entitled to the land case, not assess whether the land certificate enforceable or not. In connection with the above, it should be noted the relationship or the relationship between the court BPN as one of the agrarian agency authorized to issue, cancel, change and / or change the contents of a certificate of title for the land. In PTUN object of his case *(objektum litis)* is KTUN issued by officials TUN or ruler, while in court the object of his case is the rights or interests of public interests are harmed as a result of the issuance KTUN by officials TUN or authorities, including in this case is the certificate land rights issued by BPN is often detrimental to the rights and interests of the community.

Thus, it can look for a solution in an effort to dualism authority to hear the alignment between the Administrative Court and courts of general jurisdiction. Alignment mentioned is as follows:

1. Legal disputes in the field of land on the certificates of land rights derived from state land issued by decision granting land rights of BPN is authorized administrative court.
2. Legal disputes about land rights certificates are derived from indigenous lands issued pursuant to the conversion of BPN is the authority of General Jurisdiction.

This understanding is important in view of the level of practice each of these jurisdictions often have different opinions or just to check and assess the prosecuting authority which culminated to the Supreme Court, while examination of his case and the principal or the core dispute ruled out.

D. CLOSURE

1. Conclusion

Based analysis has been done, then it can be concluded the following:

a. The occurrence of the dualism of authority in resolving disputes over land ownership rights of the administrative court and the district court due to a lack of clarity in the legislation setting. This dualism of authority refers to the cancellation of the decision to grant land rights. Conflicts of authority / competence adjudicate between the District Court and the Administrative Court in resolving land disputes related to BPN authority within their discretion to cancel the certificate of land rights. Therefore, the cancellation of the disputed certificates including state administration, so that the administrative court is also entitled to take up the case. The legal basis for the cancellation of granting the land title is regulated by legislation under the acts. The lifting of the rights on the basis of legislation under the law is deemed not feasible, given the ownership rights associated with basic human rights. On the other hand, concerning the absolute competence has not been set explicitly in the settlement of disputes through litigation.It is known that the authority of the court in a dispute over the land ownership is set out who the rightful owners of the dispute land (contained in the certificate of land), not to assess whether the land certificate is enforceable or not because such an administrative authority. In connection with the cancellation of a certificate or elimination of property rights, then the court verdict should be implemented in advance, either voluntarily or through court execution institution, prior to the removal request to be registered at the land office related. With the dualism of this authority will lead to legal uncertainty with their two different forms of the decision on the same case. On the other hand, the completion of the mediation approach is still not empowered to communities involved in the conflict / dispute. People prefer to use the path of litigation rather than the path of non-litigation. This is understandable given the litigation path is seen as more certainty in pursuing aspects of certainty and fairness. But the reality is not so, the litigation process is time consuming and cost is not small. Trouble realizing justice that is simple, fast and low cost is still yet to be done. Many structural constraints, the substance and a culture that does not yet support the justice system in Indonesia.
b. Model resolving conflicts or disputes over land ownership rights can be applied settlement through mediation legal system. Mediation is also beneficial in minimizing the number of cases that go to trial. Mediation is applied as a first means of resolving disputes between the parties. Enforcement of mediation legal system suitable to be applied in Indonesia is referring to the values of *Pancasila* philosophy of the Indonesian nation. Practical values of *Pancasila* is the basis and foundation of government policy in formulating legislation that paradigm of *Pancasila* in the settlement of disputes. Concrete manifestation of mediation paradigm of *Pancasila* is the basis of consultation dimensional forward win win solution. Building a model of mediation legal system paradigm *Pancasila* believed would create legal certainty and fairness for the parties to the dispute. Efforts to develop the practice of deliberation in *Pancasila* mediation system will also encourage the development of Indonesian law based by social justice.By dimensional theory of development law to wear a frame of reference in view of life (way of life) community and Indonesian nation based on the principles of

Pancasila that is familial. If the application of the mediation is not successful, only then can the litigation approaches do. For the application of litigation also required a harmonization of using the concept of remedy or rectification.The concept of correction in question is to distinguish the settlement of disputes over land ownership case is based on the issuance of certificates of land rights.Legal disputes in the field of land on the certificates of land rights derived from state land issued by decision granting land rights of BPN is authorized administrative court. The certificate of land rights derived from customary land issued under the authority of the conversion of BPN District Court. This concept is an alternative in solving the conflict of positive law. The concept of each application is not rule out other legal norms, but complementary respective legal norms in the Administrative Court and the District Court. Tuning using the concept of remedy or correction is in accordance with legal safeguards aimed at integrating and coordinating the various interests in the community.Protection against particular interests can only be done by limiting the various interests on the other.

2. Recommendation

On the occasion of the writing of this dissertation, the author of the thoughts expressed in the form of recommendations which is as follows:

a. Arrangement required in the form of legislation regulating disputes or conflicts in land ownership. Such arrangements governing the liability of the mediation process in resolving disputes. Mediation must have to accommodate the interests of the parties to mediation facilitated by the institutions established by the government.
b. The mediation will be applied in the dispute or conflict in a land ownership should be based on the values of *Pancasila* as the paradigm of national praxis. For this purpose the necessary in-depth study of the values of *Pancasila* praxis by the legislators with the involvement of the various elements of society, especially the experts and research institutes who have awareness and the development of the values of *Pancasila.*
c. To support institutional mediation legal system paradigm of *Pancasila,* the necessary mediators that experts have integrity, capability, honest and fair. Mediators should receive education and specialized training in performing their duties and obligations. Mediator appointed given adequate allowances and compensation fees for its success in mediating in accordance with the level of success.
d. Law No. 5 of 1986 concerning the State Administrative Court, as amended by Law No. 51 of 2009 should be amended to define specific criteria in the settlement of land ownership disputes. Only to land right certificate from the ground state issued based on the decision to grant land rights of BPN is the authority of the Administrative Court.
e. The separation between the Administrative Court case and the court through the concept of a remedy is necessary in order to assess the carrying capacity of BPN and inventory of dual ownership. Then checking various documents related to the ownership of the dual certificate.
f. BPN shall convey to the public about their dual ownership certificate, so that people know about it. This announcement is important as part of the reform of public services. The public will be aware of the dual ownership and will prevent unauthorized transfer of rights and harm the good faith purchaser.

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