



Untangling the Causes of Land Ownership Disputes

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Abstract: The purpose of this study is to find out and analyze the role of the village head as a mediator in resolving land title disputes in Tongo Village, Bonepantai District, and Bonebolango Regency. This research uses a type of empirical legal research, with a qualitative research approach that uses facts in the field as the main data source. The data sources used are the results of observation, interviews in the field, and documentation. The population and samples used are village heads and communities in dispute in Tongo Village. The results showed that (1) the settlement of land disputes in Tongo Village through the mediation of the Village Head is quite effective because it always strives to obtain mutual benefits and does not require a lot of costs, is more efficient, and still maintains good relations between the community; (2) while the factors causing land disputes in Tongo Village are the use of land without permission from the landowner, unclear division of inheritance, uncertified land, and land boundary disputes.

Keywords: *The Role of the Village Head; Mediation; Land disputes.*

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1. Introduction

The territory of Indonesia is the unity of the homeland of all Indonesian people. This means that all land within the territory of the Indonesian state is land jointly owned by all Indonesian people who are united as the Indonesian nation.¹ Land for the Indonesian nation has a religious nature which means that all land in the territory of the Indonesian state is a gift from God Almighty. The relationship between the Indonesian nation and earth, water, and space is eternal. So as long as the Indonesian people are united and as long as the earth, water, and space of Indonesia still exist than under no circumstances can there be any power that can break or negate the relationship.²

Soil is an important element for human life. This is because population growth is increasing every year, proportional to the need for land. Various ways are carried out by the community to control, own, and even will cause disputes over land problems.³ The land is considered a fixed property of proof, as it provides benefits for reserves for future life, in addition to the land of place for a deceased person. Evidence of the value of economic, social, political, cultural land, psychologists, and human rights.⁴ Government Regulation No. 16 of 2004 concerning Land Stewardship and the Enactment of Law No. 32 of 2004 concerning Regional Government has brought fresh air to regions to make and manage their policies in terms of regional regulation.⁵

Along with the development of the times and the increasing level of the population, human needs for land are increasing. As a result, there are many cases of disputes and problems in the land sector. Whether the dispute occurs between the community and the government, the community with investors, or the community with the community itself.

With the passing of Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles or commonly referred to as the abbreviation UUPA, the Indonesian state already has agrarian law that is national in nature both in terms of formal and material aspects.⁶ With this UUPA, it can provide legal certainty to the community in managing land so that it does not necessarily override the enactment of customary law. Article 5 of Law Number 5 of 1960 states that "The agrarian law that applies to the earth, water, and outer space is customary law, as long as it does not conflict with national and state interests, which is based on national unity with Indonesian socialism and with the

¹ Urip Santoso, *Perolehan Hak Atas Tanah* (Jakarta: Prenadamedia Group, 2015).

² *Ibid*

³ N Sarson, M. T. Z., & Junus, "Penyuluhan Tentang Implementasi Program Pendaftaran Tanah Sistematis Lengkap Terhadap Peningkatan Data Kepemilikan Sertifikat Tanah," *Jurnal Abdidas* 3, no. 5 (2022): 848-52.

⁴ J. Jasin, "The Agreement for the Results of the Agricultural Land in the Indigenous Perspective of Gorontalo.," *Indonesia Prime* 1, no. 1 (2016): 33-43.

⁵ N. Junus, "Status Hukum Penguasaan Tanah Bantaran Danau Limboto Di Provinsi Gorontalo.," *Jurnal Pelangi Ilmu* 5, no. 1 (2012).

⁶ Muchsin dkk, *Hukum Agraria Indonesia Dalam Prespektif Sejarah* (Bandung: Refika Aditama, 2014).

regulations contained in this Law and with other laws and regulations, everything concerning elements based on religious law".

Article 16 of Law Number 5 of 1960 concerning UUPA regulates the rights to land that can be given to its citizens in the form of very main rights property rights, business use rights, building use rights, use rights, land opening rights, lease rights, the right to collect forest products, as well as other rights that are not listed in the rights mentioned above to be stipulated by law and rights of a similar nature such as liens, the right to float, profit-sharing business rights and the right to lease agricultural land which is regulated to limit its properties as stated in Article 53 of the Basic Agrarian Law.⁷

Many land disputes occur because of conflicting interests. Human beings who are aware of the importance of land for residence or other interests cause land whose ownership is not contested, even if the land is contested for ownership.⁸ The emergence of disputes can be caused by various factors such as differences in interests and disputes between one party and the other. In addition, it can also be caused by the existence of rigid rules that are considered as obstacles and obstacles to achieving the goals of each party. Each party will make every effort to achieve its goals so that the potential for disputes becomes large.⁹

Land disputes are an issue that always arises from year to year along with the increasing population, development, and the increasing access of various parties to obtain land to be used as the authorized capital in various interests. The emergence of various land problems shows that the use, control, and ownership of land have not been sufficiently orderly and directed. The facts show that land tenure and ownership still overlap and there is a small group of people who own a very limited amount of land, some do not have it at all so they are forced to live as cultivators.¹⁰ Almost all aspects of land can emerge as a source of land disputes as well as the right to ownership of inherited land.

Dispute resolution can be resolved by the parties to the dispute using dispute resolution through the court or outside the court. Dispute resolution through the court will be guided by procedural law which regulates the requirements that must be met for a dispute to be submitted and the efforts that can be made, while dispute resolution outside the court of resolution is carried out based on the agreement of the parties and the settlement procedure is left entirely to the parties to the dispute. Settlement of disputes

⁷ Undang - Undang No. 5 Tahun 1960 UUPA, "Pasal 16" (n.d.).

⁸ Joanna Indao, "Peran Kepala Desa Dalam Penyelesaian Masalah Sengketa Tanah Di Desa Pasapa Mambu Kecamatan Messawa Kabupaten Mamasa Provinsi Sulawesi Barat" (Universitas Bosowa, 2021).

⁹ Jimmy Joses Sembiring, *Cara Menyelesaikan Sengketa Diluar Pengadilan (Negosiasi, Mediasi, Konsiliasi, Dan Arbitrase)* (Jakarta: Transmedia Pustaka, 2011).

¹⁰ Aji Wahyu Pambudi, "Peran Pemerintah Desa Dalam Penyelesaian Sengketa Hak Milik Atas Tanah Studi Kasus Di Desa Turirejo Kecamatan Lawang Kabupaten Malang" (Universitas Islam Malang, 2020).

outside the court can be done through various means including negotiation, mediation, conciliation, and arbitration.¹¹

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The role of the Village Head becomes very important in resolving disputes in the village community, including disputes in land disputes. The provisions in Law No. 6 of 2014 concerning Villages confirm that the function of the Village Head is as a dispute resolution. Article 26 (1) states that "The Village Head is in charge of organizing village government, carrying out village development, village community development, and empowering village communities." Then Article 26 (4) Letter K states that "The Village Head is obliged to resolve the disputes of the village community."¹³

From the provisions of the Law above, the Village Head not only serves as the organizer of village government but also has the duty, authority, and obligation to reconcile disputes that occur involving villagers, including as a mediator in resolving land disputes. Although the Village Head has the duty and obligation to resolve disputes in the village community, there are no rules that can be used as guidelines for the Village Head in resolving disputes that occur in the village.

This is because Undang-Undang and other laws and regulations do not provide rules or guidelines regarding how to resolve community disputes in the village. However, although there are no rules that can be used as guidelines for dispute resolution that occurs in the village, provisions regarding the duties and obligations of the Village Head in resolving disputes in the village as contained in Article 26 (4) of Law No. 6 of 2014 concerning Villages, of course, must be implemented properly to realize a village government so that it can provide peace, security, and order in the village community. This means that the Village Head in resolving disputes in the form of land disputes must have initiatives and ways to resolve and reconcile the parties to the dispute.

The following is data on Land Title Disputes in Tongo Village, Bonepantai District, and Bonebolango Regency in the last three years.

¹¹ Jimmy Joses Sembiring, *Op.Cit*, hlm 2

¹² Jimmy Joses Sembiring, *Op.Cit*, hlm 2

¹³ dan Anti Mayastut Sri Lestari Rahayu, Mulyanto, "Penguatan Fungsi Kepala Desa Sebagai Meditor Perselisihan Masyarakat Di Desa," *Jurnal Yustisia* 5, no. 2 (2016): 343.

Table 1: Cases of Land Title Disputes in the Last Three Years

No.	Year	Number of Cases	Number of Cases Handled by Village Heads	
			Succeed	To no avail
1	2019	5	3	2
2	2020	4	2	2
3	2021	6	4	2
Sum		15	9	6

Source table 1: Tonggo Village Kec. Bonepantai Kab. Bonebolango

In 2019 there were five cases of Land Title disputes. Of the five cases that were successfully handled by the Village Head, three were cases. The two diantras could not be handled by the Village Head because each side could not reach an agreement so the case continued to the court. Then in 2020, there were four cases, the number of cases that could be handled by the Village Head was two cases, one of which did not reach the Village Head's mediation process and one continued to the court. Finally, in 2021 six dispute cases were successfully handled using mediation, namely four cases, two of which could not be resolved by mediation by the Village Head which eventually proceeded to court.

Based on the table data above, shows that for the last three years, the settlement of land disputes through a mediation process by the village head carried out by the Village Head in Tonggo Village, Bonepantai District, Bonebolango Regency in resolving land disputes is a fairly effective step because it resolves disputes better and does not require much cost compared to resolving disputes in court. As we realize that every rarity we take must always have a positive side and the negative side is no exception with dispute resolution through the mediation of the Village Head.

Thus, the researcher is interested in conducting research related to the Role of the Village Head as a Mediator in Resolving Land Property Rights Disputes in Tonggo Village, Bonepantai District, Bonebolango Regency.

2. Method

This type of research is empirical research, using a qualitative approach. This research uses data analysis techniques in research that conducts studies or studies of the results of data processing assisted by theories that have been obtained previously In this study uses descriptive analysis, meaning is where the researcher in analyzing wants to provide an

overview or exposure to the subject and object of research as the results of the research he conducts.

3. Analysis And Discussion

Factors Causing Land Disputes in Tongo Village, Bonepantai District, Bone Bolango Regency

Land ownership disputes can sometimes occur in legal subjects between individuals, individuals with groups, or certain community groups with other groups. As happened in Tongo Village, Bonepantai District, and Bonebolango Regency, land disputes often occur between individuals regarding who has the right to own the rights to the land. Viewed from any point of view whether from sociology, anthropology, politics, military, and economics the land is a place to live, earn a living, live, and practice customs. So much so is the meaning of land that man who is a social being will defend his land no matter what. And serves as the basic capital to realize prosperity.

Land disputes occur because the land has a very important position that can prove the independence and sovereignty of the owner. The land has a function in the framework of state integrity. Similarly, in Tongo Village, where the residents work as farmers, the facts in the field show that the causal factors of land disputes in Tongo Village are the use of land without permission, unclear division of inherited land, uncertified land ownership, and land boundary disputes.

The results of the research found in the field that the causative factor for the occurrence of land disputes in Tongo Village, Bonepantai District, Bonebolango Regency, according to what the researchers got from interviews with the people of Tongo village which was used as a sample, namely Land Use Without Permission from the Landowner The first causal factor in land dispute cases is the use of land without permission from the landowner. The beginning of dispute began at the end of 2021 to be precise in August. A case begins when a person reports to the landowner that his or her land is being cultivated/used by someone else. As we all know that Article 2 of the Government Regulation instead of Law Number 51 of 1960 concerning the Prohibition of The Use of Land Without a Rightful Permit or Power of Attorney states that "It is forbidden to use land without a rightful permit or its valid power of attorney".¹⁴

In the article, it has been explained that a person who uses or controls land without any evidence in the form of authentic land papers even though the land has a legal owner, in this case, there is another party who controls or uses the land without the permission of its rightful owner then that person has committed an offense or encroachment of the land.

¹⁴ Pasal 2 Peraturan Pemerintah Pengganti Undang-Undang Nomor 51 Tahun 1960, "Larangan Pemakaian Tanah Tanpa Izin Yang Berhak Atau Kuasanya" (n.d.).

From the results of the researcher's interview with the owner of the land with the initials IM that his land without his knowledge has been more than one year (three times the corn harvest season) cultivated by someone with the initials AH (a person who is not the owner of the land). On the land located in Tongo Village, Bonepantai District, Bonebolango AH Regency, use the land to grow corn. AH did this because he considered that the land had no owner. So it is because of this that the land is disputed. IM does not accept what the AH brother did on his land. So IM wants the land to no longer be used/cultivated by AH's brothers.¹⁵

From the above case, the researcher argued that before cultivating on land that is not one's own, you should first find out who the owner of the land is and then ask for permission to use the land. So that such a problem as a land dispute will not occur and is not considered a violation or against the law.

Unclear Division of Inherited Land under civil inheritance law the division of inheritance may be exercised when the inheritance is marked by the death of the Heir. Article 830 of the Civil Code says that "Inheritance lasts only by death."

From the results of the researcher's interview with the mother with the initials TP (the child of the heir) he said that before the heir died, he advised that his land would be given to all his children totaling 3 children. Of his three children, the first child wanted to have a part of the estate. Whereas in this case, the Heir did not specify how much of the land should be given to his three children (not yet divided).

The case began when the Heir had left the world, and bequeathed his estate to his three sons. But in this case, the Heir did not specify how much land sizes should be distributed to his children. The size of the land inherited after measurements is approximately 6,380 M². The first child wanted the inherited land to be divided immediately and wanted his share to be wider than his two younger siblings with an area of 3000 M² because he was the first child and because he was part of the inherited land there was his chili plant. But his two younger siblings did not accept the opinion they wanted the land to be divided equally.¹⁶

From the above case, the Researcher argued that the estate should not cause disputes and should be divided first. So as not to cause disputes in the future. Because the regulation of the Civil Code Article 1066 states that "no one is required to accept the continuation of the estate in an undivided state". Because the separation of the estate can be demanded at any time, although there are provisions contrary to it. From the above case, because the inherited land has not been divided, this is one of the factors causing the occurrence of land disputes, namely Land that is not certified Based on the law of land that does not have certificates, it cannot be said to be the property of the person who controls it.

¹⁵ Interview with IM as a disputing community, dated July 16, 2022.

¹⁶ Interview with TP as the heir's son, dated July 16, 2022

Although the land is inherited land, if you don't have a certificate, the land is not entirely his because there could be other people who feel that the land belongs to him and will demand it.

As happened to the brother who had the initials YA based on the results of the interview that the land he used for agricultural land for about two years was claimed by others that he had rights to the land. Because the land used as agricultural land by YA does not yet have a certificate, this YA negotiates with the help of the Head of Tongo Village as a Mediator. After tracing by bringing in parental witnesses (people who know the origin of the land) it is proven that YA's brother is the one who is entitled to the land.¹⁷

From the case above, researchers argue that land certificates are very important things to take care of because of the increasing number of land disputes that occur. The importance of land certificate ownership in addition to being a basic proof of land ownership rights, land certificates also serve as valid proof for a strong evidentiary tool if a land dispute occurs in the future. LandBoundary The land boundary is an important element for determining the extent of land rights. A boundary dispute is a difference of opinion regarding the location of the boundary and the area of the land parcel recognized by one party. Dispute resolution can be done through the courts and out of court (mediation).

The researcher's findings from interviews with sisters with the initials MS the beginning of the dispute was when her neighbor built a small room (WC) right opposite the window of her house. The land area owned by sister MS is 290 M². "The dispute started when my neighbor made a restroom right in front of my ruma window," said sister MS. Because of this, sister MS did not accept what the neighbor did so from the case mediation was carried out which was assisted by the Head of Tongo Village. From the results of the mediation, the Head of Tongo Village said that the two sides had received a word of agreement and mutual forgiveness and also in the future they promised that there would be no more disputes and could reconcile.¹⁸

From the explanation above regarding the factors causing land disputes, researchers argue that most of the triggers for land disputes in Tongo Village are due to land ownership but the land does not have a certificate so that the land can be claimed by others as its own. So that is what can trigger land disputes. The importance of land certificates is as a basic proof of land plot ownership rights.

Thus, researchers hope that the people of Tongo Village are aware of the importance of land certificates as strong evidence to be able to prove their land rights. If it is clear that the name is listed in the certificate, then as the holder with the presence of the land certificate, the title to the land will be attached to the owner as long as the owner does not waive his rights or transfer of rights.

¹⁷ Interview with ya as the landowner, dated July 16, 2022.

¹⁸ Interview with MS as a disputing community, dated July 16, 2022

Peaceful resolution of conflicts is very important to do so that harmony in the life of social society persists, and does not cause inner wounds that leave a prolonged grudge. This familial settlement is essentially an apology from the wrongdoer to the aggrieved party and the aggrieved party is willing to accept the apology and willing to forgive the wrongdoer.¹⁹

Most people in Tongo Village prefer the way of resolving disputes through mediation by the Village Head. With the reason that in addition to the costs incurred, there is not much dispute resolution through the mediation of the Village Head is the result of a more satisfactory meditation for the parties, maintaining social relations so that they are maintained, can improve the relationship of the parties to the dispute and provide a good agreement without anyone feeling victorious or losing.

4. Conclusion

Based on the results of the analysis and discussion that have been described above, it can be concluded that several factors cause land disputes in Tongo Village, Bonepantai District, Bonebolango Regency, including the use of land without permission from the landowner, unclear division of inheritance, uncertified land, and land boundary disputes.

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¹⁹ Nofel Hermawan, "Peran Kepala Desa Sebagai Mediator Dalam Sengketa Pertikaian Di Desa" (Universitas Jember, 2018).

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