

Inherited land dispute resolution process through litigation judicial mechanism in Gorontalo city

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Abstract

The phenomenon that occurs in land disputes every year has increased. This is evident from data from the Indonesian National Land Agency (BPN) which mentions around 2,865 cases of large-scale land disputes that have not been completed and have an impact on hampering the completion of registration and granting of land rights. Disputes can happen to anyone and anywhere. Disputes can occur between individuals and individuals, between individuals and groups, between groups and groups, between companies and companies, between companies and countries, between countries, and so on. The purpose of the study is a description of the settlement of inheritance land disputes through the litigation judicial mechanism in Gorontalo City. The research approach chosen in this study is descriptive qualitative with ethnographic research types. This type of research data consists of primary data and secondary data. Settlement of inheritance land disputes, then there are 2 (two) courts that handle it, namely the Religious Court and the District Court (General). Dispute resolution in court (litigation) is one of the most popular ways for some people in addition to the existence of out-of-court (non-litigation) dispute resolution methods, because the court is an institution that is trusted to provide binding solutions for justice seekers related to the problem at hand, but on the other hand some justice-seeking communities feel that their rights are violated if something goes wrong the authority to adjudicate from the court against the dispute it is trying. Cases of inheritance disputes in Gorontalo City, are not monopolized by the Religious Courts, but many residents who are in dispute inheritance take the route of district courts or public courts.

Keywords: Disputes; Land; Inheritance; Gorontalo

1. Introduction

A reality that is difficult to refute, in the last four decades, the phenomenon of land disputes that have come to the fore is so overwhelming. These disputes occur between the community and the government, the community with investors, the community with the community itself, and even occur between the government and the government [1, 2]. Most of these problems arise due to land acquisition for the benefit of infrastructure development, industry, housing, tourism, and large-scale plantations. Outside Java, for example, land disputes occur between indigenous peoples who retain customary rights to land and owners of large capital who obtain concessions for forest exploitation, mining, including oil and gas mining, and agribusiness development with the PIR (Inti Rakyat Plantation) pattern [3, 4].

The phenomenon that occurs in land disputes every year has increased. This is evident from data from the Indonesian National Land Agency (BPN) which mentions around 2,865 cases of large-scale land disputes that have not been completed and have an impact on hampering the completion of registration and granting of land rights. Disputes can happen to anyone and anywhere. Disputes can occur between individuals and individuals, between individuals and

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groups, between groups and groups, between companies and companies, between companies and countries, between countries, and so on [5]. In other words, disputes can be public or civil in nature and can occur both locally, nationally and internationally. Land disputes are long-standing disputes, from the old order era, the new order, the reform era and to the present. Land disputes in quality and quantity are problems that always exist in the order of people's lives. Land disputes or conflicts become chronic and classic problems and last for a period of years or even decades and are always everywhere. Land disputes and conflicts are a form of complex and multi-dimensional problems [6].

The same thing also happened in Gorontalo City, the problem of land disputes that have been registered with the Gorontalo City Land Office in the last three years (2018, 2019, 2020) as many as 47 cases with different types of cases. Based on preliminary observations of the number of land dispute cases registered at the Gorontalo City Land Office, there are 4 cases as follows: first, the issue of boundaries or the location of land plots, is a difference of opinion and interest between two parties regarding the location, boundaries, and area of land plots recognized by one party that have been determined by the Land Office. For this case that was once handled by the Gorontalo City Land Office only one case about the Kapling Exchange [7, 8]. Second, the issue of ex-particulate land indemnity, i.e. the difference regarding the decision on the government's willingness to provide compensation for the liquidated land. The Gorontalo City Land Office has handled this case only one case about the claim for compensation of one of the people to the Gorontalo City government. Third, the issue of land acquisition, namely differences regarding the status of land rights obtained based on the land acquisition process, or regarding the process of validity of the implementation of land release or acquisition and compensation. The problem of land acquisition that has been registered with the Gorontalo City Land Office is only one case, namely about plots of land in the area in the permit that have not been released, causing demands. Fourth, the issue of the implementation of court decisions, that is, differences regarding judgments and courts relating to the subject or object of land rights or knowing the procedure of certain land rights. The issue of court decisions that have been handled by the Gorontalo City Land Office is only one case of objection to a court decision that is considered impartial [9, 10].

For this reason, this research becomes very important to analyze how the process of resolving inheritance land disputes through litigation justice mechanisms in Gorontalo City. So that the land dispute can be reduced and reduce the occurrence of conflicts in the community on a large scale.

2. Material and methods

2.1. Research Approach

The research approach chosen in this study is descriptive qualitative, which is a method used by researchers to find knowledge or theories about research at a certain time. The method applied in this study is a qualitative descriptive method. Descriptive is intended in this study, where researchers describe and describe and analyze the responses of informants and key informants, both through in- depth interviews, forum group discussion and participation observations on conflict resolution of land disputes in Gorontalo City. Descriptive research is a form of research aimed at describing existing phenomena, both natural phenomena and man-made phenomena that can include activities, characteristics, changes, relationships, similarities, and differences between one phenomenon and another [11].

While the type of research used in this study is a type of ethnographic research. Ethnographic or ethnomethodological research is a qualitative research model that has the aim of describing the cultural characteristics contained in an individual or group of people who are members of a cultural community ([10]. Whereas Michael Burawoy defines ethnography as studying people in their own time and space, in their own daily lives [12].

2.2. Place and Time of Research

The location of the study was conducted in Gorontalo City, namely at the Gorontalo City Land Office. In determining the place or location of the study, it is based on the special considerations of the researcher, that it is this office that knows the most and is involved in land disputes. One of the sections at the Gorontalo City Land Office is the Dispute, Conflict and Mighty Section. The Disputes, Conflicts and Cases Section consists of the Land Disputes and Conflicts Subsection, and the Land Cases Subsection. In addition, researchers will explore in depth about this land conflict or dispute at the Gorontalo City Resort State Police, Gorontalo City District Court, Gorontalo City Administrative Court, Gorontalo City Sub-district Head, village head in Gorontalo City, and the Legal Section of the Gorontalo City Regional Secretariat. The study started in July 2022 and will end in December 2022.

2.3. Determination of Research Informants

Informants are those who provide information not only regarding themselves and their environment but also about others. An informant is a person who can provide information or information about the problem under study and can act as a resource person during the research process [13]. An informant must have several specific conditions that must be possessed, including: (1) being honest; (2) abide by promises; (3) comply with regulations; (4) likes to talk; (5) does not include members of any of the conflicting groups in the research setting; and (6) have a certain view of the events that occurred [14]. The appointment of informants by a purposive procedure is to determine the group of participants who are informants according to selected criteria relevant to a particular research problem [15].

In addition to informants, research takes precedence over key informants. Key informants are key information, namely people who are considered to be able to provide detailed information. Key Informants are the primary sources [10]. The determination of key informants in qualitative research is carried out when the researcher begins to enter the field and during the study, choosing a specific person who is considered will provide the necessary data and then based on other key data or information that is expected to provide more complete data [16]. Key informants are selected *purposively* or intentionally. *Purposive* is often translated purpose, because purpose means purpose or purpose. A key informant is an informant who has thorough information about the issues raised by the researcher. Key informants not only know about conditions/phenomena in society in general, but also understand information about the main informants. In the selection of key informants depends on the unit of analysis to be studied. For example, in a unit of an organization, the key informant is the leader of the organization [17]. The key informants in this study were the Head of the Gorontalo City Land Office, one of the sub-district heads, the Head of the Legal Section of the Gorontalo City Regional Secretariat, one of the village heads, one of the village heads, and the parties to the dispute.

2.4. Types and Sources of Data

2.4.1. Data Types

The type of data used in this study is qualitative data. Data expressed in non-numerical/non-numeric form or commonly also called attributes. In computer terms it is called data of type string. In a qualitative approach, the researcher creates a complex picture, examines words, detailed reports from the informant's view, and conducts studies on natural situations [18]. Furthermore [19] suggests that qualitative methodology is a research procedure that produces descriptive data in the form of written and spoken words of people and observed behaviors. Qualitative research is carried out on natural conditions and is discovery. In qualitative research, the researcher is a key instrument. Therefore, researchers must have broad theoretical provisions and insights so that they can ask, analyze, and construct the object under study to be clearer. This research puts more emphasis on meaning and value-bound. Based on some of the expert opinions above, the data that will be used in this study is a qualitative type of data.

2.4.2. Data Sources

Data is a collection of facts or figures or everything that can be trusted to be true so that it can be used as a basis for drawing conclusions. Based on the data source, there are 2 (two) types of data, namely: primary data and secondary data. The primary data source is the first source where a data is generated. The data generated from the primary data source is primary data [20]. Primary data are data obtained directly from the object to be studied (informant) [14]. Primary data is obtained from interviews with key informants and informants who are considered to know the information and problems studied in depth and can be trusted to be a valid source of data. In addition, the primary data in this study were also excavated through observation or direct observation of events or objects related to the purpose of the study, namely about the resolution of land dispute conflicts in Gorontalo City.

Secondary data according to [15] are data obtained or collected by people conducting research from existing sources. Secondary data in this study is in the form of data derived from books, scientific journals, the internet and documents that support the research results that researchers get when conducting research.

2.5. Data Collection Techniques

In an effort to obtain the data needed in this study, the most important data collection techniques are literature reviews and field studies. Literature study or review or library research, which is to collect data through theoretical review and monitoring of the problems studied through books, literature, magazines, newspapers, documents and various other forms of publishing. Field study (field study), where this research is held to obtain information or data that is directly on the object or location of the study. According to Danang [16], field studies are a method carried out by researchers by direct observation of the activities carried out by the company. To obtain valid and reliable data or information, in this study, interview guidelines were used to obtain data through interviews, in-depth interviews, documentation,

observation, and Forum Group Discussions. In an effort to obtain valid and reliable data or information, in this study, interview guidelines were used to obtain data through in- depth interviews (indepth interviews), documentation, and observations.

2.6. Data Analysis Techniques

To analyze the data that has been collected from the results of this study, both obtained through interviews, observations and documentation, it is processed qualitatively. Qualitative descriptive analysis is carried out by depicting and presenting accurately and actually, so that in the end conclusions can be drawn that clearly describe the problem under study. According to [14], data analysis is the process of organizing and sorting data into patterns, categories, and units of basic description so that themes and places can be formulated working hypotheses as suggested by the data. The data analysis steps according to [15], as follows:

- Data collection, namely collecting data at the research site by conducting observations, interviews, and documentation by determining data collection strategies that are considered appropriate and to determine the focus and deepening of data in the next data collection process.
- Data reduction, which is as a process of selection, focusing, abstracting, transforming rough data that exists in the field directly, and is continued at the time of data collection, thus data reduction begins from the moment the researcher focuses the research area.
- Data presentation, that is, a series of information organizations that allow research to be carried out. The presentation of data is obtained of various types, networks of work, interrelationships of activities or tables.

Drawing conclusions, namely in data collection, researchers must understand and be responsive to something that is studied directly in the field by compiling patterns of direction and causation.

3. Results and discussion

The process of resolving disputes through the courts (litigation) produces an adversarial decision that has not been able to embrace the common interest, because it produces a win lose solution or there is a winning party and there is a losing party [20]. With the winning and losing parties, on the one hand they will feel satisfied but on the other hand they are dissatisfied, so that it can cause a new problem between the parties to the dispute. Not to mention the slow dispute resolution process, long time, and relatively more expensive costs.

Dispute resolution through litigation channels tends to take a long time and costs relatively little. This is because the dispute resolution process is slow, the costs of dealing in the courts are expensive, the courts are considered less responsive in resolving cases, so that decisions are often unable to resolve problems and the accumulation of cases at the Supreme Court level that are not resolved. The litigation process is expected to provide justice to the parties concerned for the dispute. In this judicial process, a party is needed who can assist in the victory of the dispute case. The judiciary is a system of rules that governs that truth and justice can be upheld, while the court is an organizational apparatus for the administration of justice, and this court can be called a judicial institution. In relation to the settlement of inheritance land disputes, there are 2 (two) courts that handle it, namely the Religious Court and the District Court (General).

3.1. Settlement of Inheritance Land Disputes Through Religious Courts

Dispute resolution in court (litigation) is one of the most popular ways for some people in addition to the existence of out-of-court (non-litigation) dispute resolution methods, because the court is an institution that is trusted to provide binding solutions for justice seekers related to the problem at hand, but on the other hand some justice-seeking communities feel that their rights are violated if something goes wrong the authority to adjudicate from the institution of the court against the dispute it is trying [21].

The results of an interview with one of the heirs who disputed as well as an informant in a study named "HG Binti GA", from Limba U II Village, South City District, Gorontalo City, the results were as follows: "We are not distrustful of indigenous institutions, but our case is very complicated. That's why we went the legal route. In order for everything to be brightly lit. Again, we do not distrust indigenous institutions, but our issues or cases are very complex. We need binding legal certainty" (Interview, September 2022).

Based on the results of the above interviews, it shows that the court or litigation route is still taken by the residents, if the inheritance land dispute is too complicated to be resolved through customary institutions.

The procedure in this litigation path is more formal and technical in nature, resulting in agreements that are win-lose, tend to cause new problems, are slow to resolve, cost a lot, are unresponsive and cause hostility among the parties to the dispute. This condition causes the community to look for other alternatives, namely dispute resolution outside the formal judicial process. Resolving disputes through litigation has its own advantages. These advantages include: first, the process is carried out formally by a state-appointed institution (Court to Supreme Court). Secondly, decisions are made by judges where there is no involvement from either side. Third, legal facts become the orientation of the decision-making of the judge. Fourth, the trial process is carried out openly the time required is also relatively short.

The decision made by the judge is final and coercive to the interested parties. In the course of carrying out legal settlement of disputes, professional parties are indispensable to accompany. Even in the Law has regulated the existence of competent parties such as a law firm. Accompanied by competent parties is considered important so that the party concerned over the dispute, get enlightenment and correct legal defense. So that every step taken always goes through clear considerations and in accordance with applicable rules. It must be admitted that this issue of inheritance often causes disputes or problems for the heirs, because it directly concerns one's property so that it often causes disputes or disputes because they are scrambling to control the estate.

Inheritance in Islam is a civil case of its authority to be in the Religious Courts, because civil cases that cannot be resolved family, cannot be resolved by vigilantism, but must be resolved through the courts. Because the party who feels aggrieved has civil rights, it can apply to the court. As based on Article 49 paragraph (1) of Law Number 7 of 1989, which is included in the power of the Religious Court (for those who are Muslim) is about matters of inheritance, wills and grants. Because as it is known that almost one hundred percent of inheritance cases are directly related to property disputes, both between the parties themselves and even possibly involving other parties.

An interview with one of the heirs in dispute as well as an informant in a study named "TL Bin ML", from Limba U.1 Village, South City District, Gorontalo City, the results were as follows: "Yes, based on our consultation with various parties. We don't go the route of public court or district court. But we chose a religious court. Because the matter of the estate is the Religious Court. So we went through the Religious Courts" (Interview, September 2022).

Based on the results of the above interviews, it shows that the informant took the right path in resolving the inheritance land dispute he was experiencing by filing a lawsuit with the local Religious Court. This is considering that the Religious Court is one of the executors of judicial power under the Supreme Court of the Republic of Indonesia, which is independent to organize religious courts, enforce the law, and justice. The existence of the Religious Court has made Indonesian Muslims served in resolving disputes over marital, inheritance, wills, grants, waqf, shadaqah and others. The Religious Courts should uphold the substance of the legal values that color the lives of Muslims.

Absolute power means the power of the court relating to the type of case or the type of court or the level of court, in its difference from the type of case or other type of court or level of court. For example, the Religious Court has power over marriage cases for those who are Muslim while those other than Islam are the power of the General Court. The ruling Religious Court examines and adjudicates cases of the first instance, may not be litigated directly in the High Court of Religion or in the Supreme Court.

In another sense, if it is a Muslim who submits voluntarily to Islamic law, then the settlement of their inheritance dispute case in the Religious Court, but if it is a Muslim who is not subject to Islamic law, then the settlement of their inheritance dispute case can be settled in the District Court. The consequence is that the District Court judge should not reject the case filed against him because it is the human right of Indonesian citizens regardless of religion, and as a state tool the District Court should not discriminate and is obliged to protect its citizens. In general, the community always takes the last resort in resolving inheritance disputes by submitting an application for inheritance determination or inheritance lawsuit to the local Religious Court.

3.2. Settlement of Inheritance Land Disputes Through District Courts

Inheritance is the estate of a deceased person to a living person who is entitled to receive the property. Inheritance law is a set of rules governing legal relations regarding wealth after the death of a person. A person who is entitled to receive inherited property is called an heir. In the case of the division of the estate, the heirs already have certain parts.

As stated in the words of Allah Almighty as follows: "For men there is a right of part of the property left by the fathers and their relatives, and for women there is a right of part (also) of the property left by the fathers and relatives, either a little or a lot according to the stipulated part."

When people have passed away, there will be legal consequences, namely about how to continue managing the rights of someone who has died. Often the problem after a person passes away is in terms of inheritance or division of inheritance. In the division of inheritance this often causes disputes because it relates to the transfer of one's property rights to another person.

This issue of inheritance often gives rise to disputes or problems for the heirs, since it directly concerns one's property, since property by man is considered a valuable thing. So it often causes disputes or disputes because they are scrambling to control the inheritance. This dispute in the issue of inheritance division can also be caused because the estate was only divided after a long time the inherited person died. There is also because of the unclear position of the treasure. It can also be caused because among the heirs there are those who manipulate the inheritance.

This dispute over the division of heirs can have a bad impact on the heirs left behind, because fighting over the inheritance of the family relationship between these heirs can be damaged or break the familial relationship between the heirs. Therefore, this inheritance problem cannot be underestimated. Many of these inheritance disputes end up in court, because they want to get a fair settlement. Solving the issue of inheritance requires accuracy, accuracy and fairness so as not to cause disputes, and not to give bad consequences to the heirs, and the familial relationship between the heirs can be maintained properly.

The existence of court institutions is formed, whether religious courts, district courts, and other types of courts, in order to resolve all cases that arise between the litigants so as to create a sense of justice. Disputes arising in various kinds of varieties, there are tort disputes related to agreements, torts, intellectual property disputes, bankruptcy disputes, divorce disputes, disputes over abuse of authority by the ruler, inheritance disputes, and so on. All cases or disputes cannot be monopolized by one form of court field, the existence of these disputes if they are always connected with the civil court, for example, is a monopoly of general judicial jurisdiction, of course, if not strictly regulated, it will cause problems about the power to adjudicate if forced.

Similarly, with the case of inheritance disputes in Gorontalo City, it is not monopolized by the Religious Courts, but many residents who are in dispute will take the route of district courts or public courts. This was revealed by one of the advocates or senior legal consultants of Gorontalo City named "BRT, SH". The results of the full interview are as follows: "Indeed, the people of Gorontalo are majority Islamic, so they understand very well how to resolve land or inheritance disputes. They took the customary route through a customary institution whose chairman was called Bate. Likewise, they take the path of religious courts in dispute resolution, if they fail in customary institutions. However, according to the existing data we as advocates or legal consultants, not a few take or take the path of the general court or the District Court to resolve their cases. There are many cases that we handle in Gorontalo City" (Interview, October 2022).

Referring to the interview above, it means that not a few residents who have inherited disputes have the path of the General Court or the District Court. The District Court as a court of first instance, has the authority to try all cases, both civil and criminal cases. The District Court is the executor of judicial power in the general judicial environment.

The District Court as one of the executors of judicial power within the scope of the general judicial body has the authority to examine, adjudicate, and decide criminal and civil cases in the first instance. The authority of the District Court in criminal cases includes all forms of criminal acts, except military crimes which are the authority of the Military Court. Meanwhile, in civil cases, the District Court has the authority to try civil cases in general, except for certain civil cases which are the authority of the Religious Court.

The authority of the District Court to adjudicate civil cases includes civil cases in the form of suits and pleadings. A civil lawsuit is a case that contains a dispute between two or more parties called the plaintiff and the defendant. Meanwhile, the case of the petition is a case that does not contain conflict and there is only one party called the petitioner. Cases that do not contain disputes are also called voluntary cases, while cases that contain disputes are also called contentious cases.

Dispute resolution through litigation has its advantages and disadvantages. The dispute resolution process through the courts produces an adversarial decision that has not been able to embrace the common interest because it produces a win-lose solution. So that there will definitely be a winning party the other party will lose, as a result some are satisfied and some are not, so that it can cause a new problem among the parties to the dispute. Not to mention the slow dispute resolution process, long time and indeterminate costs so that it can be relatively more expensive. The long process is not only because the number of cases that must be resolved is not proportional to the number of employees in the court, but also because there is a level of legal remedies that can be taken by the parties as guaranteed by existing laws and

regulations in Indonesia, namely starting from the first level in the District Court, Appeal in the High Court, Cassation in the Supreme Court and finally Judicial Review as the last legal remedy. So that the principle of fast, simple and low-cost courts is not achieved.

Until now, the court is still trusted by the public as an institution to resolve disputes. The existence of a court institution is an institution that functions to coordinate disputes that occur in a justice-seeking community that trusts the litigation route.

The results of another interview with one of the residents who had a heritage dispute in Gorontalo City named "LT Binti YT", from Padebuolo Village, East City District, Gorontalo City, the results were as follows: "Whether we admit it or not, many parties to the dispute complain that resolving disputes through the courts is expensive and takes a long time. And as a result, it does not always satisfy both parties. Some say that the settlement of inheritance dispute cases through the courts, is the same as the proverbial sound, lose so charcoal, win so ashes. Yes, equally unprofitable" (Interview, October 2022).

The results of the interview above show that with the length of time for the settlement of a case, all parties consider the cost of the case very expensive, especially if it is related to the length of settlement of a case. The longer the settlement of a case, the higher the costs that must be incurred. This is of course for the community very unprofitable.

In realizing the goal of a simple, fast and low-cost judiciary through an effective and efficient court institution, the Supreme Court as the organizer of the highest judiciary in Indonesia began to initiate several methods to shorten the dispute resolution process in the courts. One of the ideas that is quite progressive is the integration of mediation in the courts

Mediation in court, one of the objectives is in order to provide access to justice for citizen's access to justice, cost savings and others. The idea as outlined above, the Supreme Court issued Perma No. 2 of 2003. However, due to various reasons, the mechanism until now has not been very institutionalized or less applied in society. This then prompted the Supreme Court to improve by issuing Perma No. 1 of 2008 on Mediation Procedures in Courts.

Although mediation regulations in courts have been enacted, they have not been effective. Found facts related to the effectiveness of mediation in court. Some of the findings are: first, the success rate of mediation in court is very small. Second, mediation has not been implemented to the fullest in court. Third, mediation has not significantly reduced the buildup of cases in court. The formal basis for the integration of mediation in the judicial system is essentially dotted with the provisions of Article 130 HIR (Het Herziene Indonesisch Reglement) and Article 154 RBg (Rechreglement Biutengewesten). However, to further empower and streamline it, the Supreme Court modified it into Supreme Court Regulation No.1 of 2008 on Mediation Procedures in Courts.

4. Conclusion

- Settlement of inheritance land disputes, then there are 2 (two) courts that handle it, namely the Religious Court and the District Court (General).
- Dispute resolution in court (litigation) is one of the most popular ways for some people in addition to the existence of out-of-court (non-litigation) dispute resolution methods, because the court is an institution that is trusted to provide binding solutions for justice seekers related to the problem at hand, but on the other hand some justice-seeking communities feel that their rights are violated if something goes wrong the authority to adjudicate from the court against the dispute it is trying.
- Cases of inheritance disputes in Gorontalo City, are not monopolized by the Religious Courts, but many residents who are in dispute wairisan take the route of district courts or public courts.

Compliance with ethical standards

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