

## RECONSTRUCTION OF LAND DISPUTE SETTLEMENT ACCORDING TO LAND TECHNICAL DATA BASED ON NON-LITIGATION THAT HAS LEGAL CERTAINTY AND JUSTICE (CASE STUDY AT MEDAN CITY LAND OFFICE)

Mahyu Danil<sup>1</sup>  
Gunarto<sup>2</sup>  
Djauhari<sup>3</sup>

<sup>1</sup>Doctoral Program in Law Science, Sultan Agung Islamic University (Unissula), Indonesia, (E-mail: mahyu@gmail.com)

<sup>2</sup>Faculty of Law, Sultan Agung Islamic University (Unissula), Indonesia (Email: gunarto@unissula.ac.id)

<sup>3</sup>Faculty of Law, Sultan Agung Islamic University (Unissula), Indonesia (Email: djauhari@unissula.ac.id)

*Accepted date: 10-10-2018*

*Published date: 10-03-2019*

*To cite this document:* Mahyu Danil, Gunarto, & Djauhari. (2019). Reconstruction of Land Dispute Settlement According to Land Technical Data Based on Non-Litigation That has Legal Certainty and Justice (Case Study at Medan City Land Office). *International Journal of Law, Government and Communication*, 4 (14), 18-31.

---

**Abstract:** *This research focused on the Reconstruction of Land Dispute Settlement According to Technical Land Data Based on Non-Litigation that has Legal Certainty and Justice, especially in Medan city. The purpose of this research was to examine and to analyze the existence of land technical data in non-litigation land dispute settlement with legal certainty, to analyze the constraints of land dispute resolution in a legal land registration system, and to reconstruct the land dispute settlement law based on land technical data with legal certainty and justice. The approach used was sociological juridical. The results of the study found that the existence of Land Technical Data Existence in Non-Litigation Land Dispute Settlement with Legal Certainty was explained and regulated in PMNA/KBPN 3/2011 Article 1- 33 jo. Law No. 30 year 1999 concerning Article 1 point 10 jo Arbitration and Alternative Dispute Resolution. Government Regulation Number 24-year 1997 concerning Land Registration. The constraints that occur are land technical data not all have been verified or validated, when a dispute occurs, and the land data is valid, the solution is done by re-measuring the land boundary, then the problem is consider settled. Legal Reconstruction of Land Dispute Settlement Based on Land Technical Data is only from the administrative juridical aspect.*

**Keywords:** *Reconstruction, Land, Dispute, Resolution, Justice*

---

## Introduction

The influence of globalization in all areas such as in the social, economic, and culture increasingly driving the pace of economic development of society.<sup>1</sup> The law can serve as a social engineering tool (law is a tool of social engineering).<sup>2</sup> The work of law in a system is determined by three elements, namely legal structure, legal substance, and legal culture. Legal culture (legal culture) is a human attitude towards law and the legal system. The attitude of this society includes the beliefs, values, ideas and expectations of society against the law and the legal system.<sup>3</sup>

The Basic Agrarian Law (hereinafter abbreviated as BAL (Ina: UUPA)) number II point 2 has stated that the state is an organization of power of all people who acts as the governing body. Then the provisions of Article 2 paragraph (1) of the BAL states that, "Earth, water, and space, including the natural resources contained therein are controlled by the state". "Controlled" does not mean "owned" but intends to give authority at the highest level, to:

- a. Arrange and organize its designation, use, inventory and maintenance;
- b. Determine and regulate the rights that can be owned by (part of) the earth, water and space;
- c. Determine and regulate legal relations between people and legal actions concerning the earth, water and space.

Therefore, with the issuance of the BAL, based on Article 19 paragraph (1) of the BAL, the government is obliged to carry out land registration in all parts of Indonesia which aims to ensure legal certainty of the *Recht Cadastre*, to lead to the certainty of land registration referred to in Article 19 of the BAL these include:

1. Measurement, mapping and land bookkeeping.
2. Registration of land rights and transfer of these rights.
3. Provision of proof of rights that apply as a strong evidentiary tool.

Based on the mandate of the BAL, as an organization of powers that has authority over land, the state organizes land registration regulated in Government Regulation Number 10-year 1961 (hereinafter abbreviated as PP 10/1961) which was used until 1997 and then renewed by Government Regulation Number 24 year 1997 (hereinafter abbreviated as PP 24/1997) concerning Land Registration in lieu of PP 10/1961.

In PP 24/1997, it is stated that land registration consists of 2 (two) activities, namely land registration and maintenance of land registration data. Article 13 PP 24/1997 the land registration process was first explained that:

1. Land registration for the first time is carried out through systematic land registration and sporadic land registration.

---

<sup>1</sup> Anis Mashdurohatun, Gunarto, *Comparison of Trademark Laws as Fiduciary Guarantee Objects*, Advances in Social Science, Education and Humanities Research, volume 192, 1st International Conference on Indonesian Legal Studies (ICILS 2018), This is an open access article under the CC BY-NC license (<http://creativecommons.org/licenses/by-nc/4.0/>). 1st International Conference on Indonesian Legal Studies (ICILS 2018). Published by Atlantis Press. p.188

<sup>2</sup> Amin Purnawan, Kami Hartono, *Development of UMKM through Strengthening Aspect of Business Legality (Case Study of Weaving Industry in Central Java)*, IJABER, Serials Publication, Volume: No.15(2017). page 415

<sup>3</sup> Djauhari, Jamaluddin Mahasari, Anis Mashdurohatun, Mahmutarom, *Agrarian Law Politic The Privilege Of Special Regency Of Yogyakarta In The Fulfillment Of The Rights Of Land For The Community*, Man in India vol. 97, 2017, page 499.

2. Systematic land registration is based on a work plan and carried out in the areas determined by the Minister of Agrarian Affairs.
3. In a village, it has not been designated as a systematic land registration area as intended in paragraph (2), the registration is carried out through sporadic land registration.
4. Sporadic land registration is carried out on the request of the parties concerned

The lands that have been registered, its physical and juridical data, the government maintains the land registration data. As described in Article 36 of PP 24/1997, it is stated that the maintenance of land registration data is:

1. Maintenance of land registration data is carried out if there is a change in physical or juridical data of the registered land registration object.
2. The holder of the right concerned must register the changes as referred to in paragraph (1) to the Land Office.

Land disputes can occur during the initial process of land registration and during the maintenance of land registration data. Disputes during the initial process of land registration can be seen in the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 year 1997 (hereinafter abbreviated PMNA / KBPN 3/1997) concerning Provisions on Implementation of PP 24/1997 concerning Land Registration, in article 20 Paragraph (1 to 4) mentioned:

1. In the event of a dispute concerning the boundary land parcels, a systematic Adjudication Committee in land registration or the Head of Land Affairs / measurement officer appointed in sporadic land registration seeks to settle the problem peacefully. It is done through deliberation between right holders and land rights holders the border, if the process is successful in determining the border, it will set forth in the Minutes of Boundary Dispute Settlement (list of 200 entries).
2. If until the date of the determination of the boundary and measurement of the land done in a peaceful settlement is unsuccessful, then a temporary boundary shall be determined based on the boundary according to reality constitute the boundaries of the relevant land parcels as referred to in Article 19 paragraph (1) Government Regulation Number 24 year 1997, and those who feel objected, are notified in writing to file a lawsuit in court.
3. The determination and measurement of the temporary boundary as referred to in paragraph (2) is included in the file 201 and recorded in the measuring image.

In case that the dispute in question is submitted to court and the court issued a decision, it has permanent legal force regarding the land in question and further it is accompanied by the Minutes of Execution, or if peace is reached between the parties before the announcement period as referred to in Article 26 Government Regulation Number 24 year 1997 ends, the note about the temporary limit in the 201 list and the measuring image will be deleted by crossing with black ink.

The dispute filed after the land registration process is first completed or when maintaining land registration data, is reflected in PP 24/1997 Article 31 paragraph (2) which reads:

"In the event that a valid land certificate has been issued in the name of a person or legal entity that has obtained the land in good faith and has clearly mastered it, then other parties who feel that they have rights to the land can no longer demand the exercise of that right if 5 (five) years after the issuance of the certificate does not file a written objection to the holder of the certificate and the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land ownership or issuance of the certificate. "

Handling of disputes both during the first land registration process and during the maintenance of land registration data is technically regulated in the Regulation of the Head of the National Land Agency Number 3 year 2011 (hereinafter abbreviated PMNA/KBPN 3/2011) regarding Land Case Management, assessment and handling, where More systematically described regarding the settlement of the dispute. This land dispute was formulated in Article 1 Number 2 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency No. 3 year 2011 concerning Management, Assessment and Handling of Land Cases (hereinafter abbreviated PMNA/KBPN 3/2011). In this regulation, it is stated that disputes are land disputes between individuals, legal entities, or institutions that do not have a wide socio-political impact.

Sarjita stated that land disputes are disputes between two or more parties who feel or are harmed by those parties for the use and control of their land rights, which are resolved through deliberation or through court.<sup>4</sup>

By looking at the overarching rules for resolving disputes, it can be seen that the role of the National Land Agency (hereinafter abbreviated as BPN) is to mediate. Mediation has been the National Land Agency's effort to resolve land disputes with a juridical data approach. However, in its implementation, it turns out that the mediation must be followed by verification of field data/physical data in the form of measurements and mapping of parcels. This physical data or field data is also known as land technical data.

If an agreement is reached between the parties in the mediation, a joint agreement is made to be registered with the Court. However, if it fails, the mediator will submit written recommendations to both parties. If a written recommendation given by the mediator does not get a response or is rejected by the disputing party, the party can file a lawsuit to the Court.

Thus, the certainty of the land title certificate will have legal certainty after obtaining a decision of a State Administrative Court judge or a General Judge who has legal force and declares a certificate that has been issued is a legally issued certificate.

The use of field data verification is based on PMNA/KBPN No. 3 year 2011, it appears that the core of actual dispute resolution does not only depend on the juridical data approach, but also on land technical data, namely by verifying field data or physical data when mediation is carried out.

In relation to the dispute resolution process in land registration at the Land Office, it is necessary to conduct construction on land dispute resolution efforts based on land technical data. Therefore, the researcher was interested in conducting further review of land dispute settlement procedures that occur in land registration as one of the government's efforts to guarantee legal certainty for the Indonesian people, which was examined the existence of land technical data in non-litigation land dispute resolution, constraints on land dispute resolution based on non-litigation land-based technical data that has legal certainty and justice, and reconstruction of land dispute resolution laws based on non-litigation technical data on land with legal certainty and justice.

---

<sup>4</sup> Sarjita, Teknik dan Strategi Penyelesaian Sengketa Pertanahan, Tugujogja Pustaka, Yogyakarta, 2005, p.8

## Research Methods

The approach method in this study is social legal reset. The data used are primary data and secondary data.<sup>5</sup> In which the data were obtained from literature study by using secondary data. The data collected were then descriptively analyzed.<sup>6</sup>

## Research Results and Discussion

### *The Existence of Land Technical Data in Non-Litigation Land Dispute Settlement*

In this case the land dispute resolution process used technical data in the form of physical data obtained by land officials from the measurement and mapping of the dispute location. It can be used as one of the medias for the process of resolving non-litigation disputes that we are familiar with in the negotiations in the Law. In this case the land officer is authorized and understands the location of the dispute that can be requested to be a negotiator between the parties to the dispute. It means that in the arbitration law and alternative solutions to land technical data disputes can be used as a peaceful medium for parties to the dispute without having to go through the court.

Negotiation is a process that involves someone's efforts to change (or not change) the attitude and behavior of others in the form of communication that brings together two parties that have different interests from one another where both parties together seek good results<sup>7</sup>. Some things to know about negotiations, among others:

1. Behavior Pattern in Negotiations:<sup>8</sup>
  - a. Moving against (pushing): explaining, judging, challenging, disagreeing, showing weaknesses of others;
  - b. Moving with (pulling): pay attention, propose ideas, approve, generate motivation, develop interactions;
  - c. Moving away (with drawing): avoid confrontation, withdraw the contents of the conversation, keep quiet, not respond to questions;
  - d. Not moving (letting be): observing, paying attention, focusing on "here and now", following the flow, being flexible, adapting to the situation.
2. Negotiation Skills:
  - a. Able to empathize and take events like the other party observes;
  - b. Being able to demonstrate the benefits of the proposals of other parties so that the parties involved in the negotiations are willing to change their stance;
  - c. Able to overcome stress and adjust to uncertain situations and demands beyond calculation;
  - d. Able to express ideas in such a way that other parties will fully understand the ideas proposed.
  - e. Quickly understand the background, culture of others and try to adjust to the wishes of others to reduce obstacles.

---

<sup>5</sup> Soerjono Soekanto dan Sri Mulyadi, *Penelitian Hukum Normatif*, Suatu Tinjauan Singkat, Raja Grafindo Persada, Jakarta, 1995, page 7.

<sup>6</sup> Haris Budiman, Anis Mashdurohatun, Erman Suparman, *A comparative Study Of Spatial Policy in Indonesia And The Netherlands*, Jurnal Dinamika Hukum, Faculty of Law Universitas Jenderal Soedirman, Purwokerto Indonesia, Vol.18.No.3.Sept 2018. Page 296.

<sup>7</sup>Sarjita. *Op.Cit.*, p.60

<sup>8</sup> Sarjita.*Op.Cit*, p. 61

### ***Negotiations and Hidden Agenda***

In negotiations, it is not possible for each party to have a hidden agenda. The hidden agenda is hidden ideas/hidden intentions that are not disclosed (not explicit) but actually the essence is the thing that the parties really want to achieve.

#### ***Negotiation and Work Style***

- a. The way to negotiate by someone is strongly influenced by his work style;
- b. A person's negotiating success is supported by his careful understanding of the work style and cultural background of others.

#### ***Information Function and Lobby in Negotiation***

- a. Information plays a very important role. People who have more information are usually in a more profitable position;
- b. The impact of the ideas agreed upon and what will be offered should be considered first;
- c. If the negotiation process is hampered due to the agenda of one/both parties, then *laying* can be chosen to explore the agenda so that negotiations can proceed with more open ideas.

This negotiation is a way of resolving disputes that carries the values of justice where, according to Gustav Radbruch, Sein and Sollen, 'material' and 'form', as two sides of one currency. 'Materials' fill in' form and 'form protects 'material'. That's about the right phrase to describe Radbruch's theory of law and justice. The value of justice is 'material' which must be the content of the rule of law. On the other hand, the rule of law is 'form' which must protect the value of justice. The law as the bearer of the value of justice is a measure of the justice of the unfair legal system. Not only that, the value of justice is the basis of law as law. Thus, justice has a normative and constitutive nature for the law. It is normative, because it functions as a basic prerequisite that underlies every positive, dignified law. It becomes the cornerstone of moral law and at the same time measures a positive legal system. To justice, positive law originates. On the other hand, in constitutive, justice must be an absolute element of law as law. Without justice, a rule does not deserve to be a law<sup>9</sup>.

The value of justice in negotiations is the form of material as he said, because in the negotiation process, the negotiator is truly a neutral person and knows clearly where the case is. While this legal rule concerning negotiation is the legal form that must be upheld in the dispute resolution process using negotiation. Starting from these two forms where the value of justice has been carried out properly in this negotiation rule, the dignity of the negotiator is tested by its ability to maintain the rule of law and not side with any party in the dispute, the value of justice can be seen from the ability of the negotiator to maintain the rules in the form of legal norms against the disputes that are being faced, this is why negotiations meet the theory of justice because between the rule of law and its enforcement are two sides of the same coin said by Gustav Radbruch.

In the implementation of negotiations as a way of resolving disputes outside the court, for example resolving land disputes by using land technical data that contains all physical and juridical data related to the land, the state law theory can also explain it. Philipus M. Hadjon stated that based on liberal principles, the main features of Rechtsstaat are as follows: <sup>10</sup>

---

<sup>9</sup> Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, Cetakan III, Genta Publishing, Yogyakarta, 2010, p. 129-130.

<sup>10</sup> Bahder Johan Nasution, *Negara Hukum Dan Hak Asasi Manusia*, Bandung: Mandar Maju, 2012, p. 19.

- a) The existence of a Basic Law or constitution which contains written provisions concerning the relationship between the authorities and the people;
- b) There is a division of state power which includes the power of the legislators in the parliament, a free judicial power that does not only deal with disputes between individuals and the people but also between the authorities and the people, and the government whose actions are in law;
- c) Recognized and protected the rights of freedom of the people.

Seeing the explanation above, it shows clearly that in a legal state the power of the ruler and the enforcement of the constitution are the main things. This is what causes the resolution of land disputes through negotiations by using land technical data to be less effective. Because in the state law, the rule of law is a form of policy that connects the people with its rulers, while the land technical data does not have a rule that explicitly explains that land technical data can be used to resolve disputes by negotiating without having to refer to decisions in court. So, this shows that negotiations are not in accordance with the theory of the rule of law where each dispute resolution must be based on a judge's decision.

### ***Constraints in Land Dispute Settlement Based on Non-Litigation According to Land technical Data with Legal Certainty and Justice***

#### ***Regulatory Constraints***

The regulatory constraints outlined below are constraints regarding differences in interpretation. Differences in interpretation occur because of differences in interpretation of "mediation" in national land law with "negotiation" in civil law, namely arbitration law and alternative dispute resolution. In essence these two terms have the same substance.

Article 6 paragraph (1) of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Settlement ("Arbitration Law and APS") reads: "Disputes or differences in civil opinion can be resolved by the parties through alternative dispute resolution based on good faith with rule out litigation settlement in the District Court. "

Conventionally, dispute resolution in the business world, such as in trade, banking, mining projects, oil and gas, energy, infrastructure, and so on is done through litigation. In the litigation process, it puts the parties against each other, in addition to litigation dispute resolution is the final means (*ultimum remedium*) after alternative dispute resolution has not yielded results.<sup>11</sup>

In addition to going through court (litigation), dispute resolution can also be resolved outside the court (non-litigation), which is commonly called the Alternative Dispute Resolution (ADR).<sup>12</sup>

From the above matter, we can know that litigation is the settlement of disputes between the parties carried out in court. According to Article 1 point 10 of the Arbitration and APS Law, Alternative Dispute Settlement is a dispute resolution or dissenting institution through a procedure agreed upon by the parties, namely an off-court settlement by means of consultation, negotiation, mediation, conciliation, or expert judgment.

---

<sup>11</sup> Frans Hendra Winarta, *Hukum Penyelesaian Sengketa*, Jakarta: Sinar Grafika, 2012, p.1-2

<sup>12</sup> Rachmadi Usman, *Mediasi di Pengadilan*, Jakarta: Sinar Grafika, 2012, p.8

### ***Implementation Constraints***

Based on research conducted at the Medan City Land Office, several case data were obtained related to land disputes involving land technical data as an alternative to resolving land disputes.

The first land dispute case as an example is a Criminal case between Lily Luther and the reporter in the name of Kho Lian Hong, Haryanto JAP and Dicky Candra. The Reporting Entity is based on evidence of ownership of Certificate of Ownership Number 470 in the name of Dicky Sanjaya and Haryanto JAP. Certificate of Ownership Number 471 on behalf of Dicky Sanjaya and Certificate of Ownership Number 472 on behalf of Kho Lian Hong reported Lily Luther for the destruction of the common boundary wall between the parcels of land. The Reported Party has the base of the Right of Ownership Certificate No. 670. All object cases are located in Pandau Hulu II Village, Medan Area District, Medan City. The case was filed criminally with the Police Number: LP/3464/XII/2015/SPKT-Resta Medan, on December 18, 2015. Then followed up with a Letter of Order No Sp. Investigation /912/VI/2016/Reskrim, dated 06 June 2016. After the issuance of the investigation warrant, the Police then requested a re-measurement by the Medan City Land Office, with the issuance of the Medan Kapolresta Number: B/2711/III/2016, dated 11 March 2016 regarding re-measurements. Furthermore, based on a request from the Police, the Medan City Land Office followed up with repeated measurements, with the Letter of the Head of Medan City BPN Number: 289/12.71-200/III/2016 dated March 18, 2016 regarding the measurement of parcels of land. After measuring the plot of land, the Head of the Medan City Land Office presented the results to the Police with a letter from the Head of Medan City BPN Number: 512/12.71-200/V/2016 dated May 26, 2016 regarding the delivery of results. In the letter of submission of the results attached the minutes of re-measurement No. 005/BA-SPP/I/2017 dated January 17, 2017.

At the point of explanation stated in the minutes, it was explained that the disputed boundary was the joint boundary between the Right of Ownership of Nomo 670, 470 and 471. Then the results of the re-measurement found that technically, there was no difference in the data between the measurements stated in the Certificate with real conditions in the field against reported ownership. The difference in data was precisely in the description of the certificate of ownership of the reporters. This difference was not a difference in mastery, but a difference in mapping/depictions with real conditions in the field, while the measuring and broad figures did not experience differences. Thus, it was clear that the disputed boundary wall was a boundary wall of common property.

In this case, the legal certainty theory is right if it is used as a knife for analysis, legal certainty in the concept of law by H. L.A. Hart commented on legal certainty in the law. He argued that sometimes the words in a law and what the law ordered in a particular case could be very clear, but sometimes there might be doubts related to its application. Such doubts can sometimes be resolved through interpretation of other legal regulations.

The dispute issue of the land boundary can be resolved by using land technical data through repeated measurements and matching of land technical data contained in the respective property rights certificate, both reporter and reported party. So, later this problem can be solved non-litigation by using negotiation methods, where the land parties become negotiators to reconcile the parties using land technical data which is more efficient and effective in resolving land law disputes.



Aristotle interpreted justice as a political policy whose rules form the basis of State regulations and these rules are a measure of what is right. Therefore, people who have to control themselves from *pleonexia*, which is to gain benefits for themselves by grabbing what belongs to others or rejecting what should be given to others. Aristotle approached the problem of justice in terms of equality. This principle requires that this world resource be given the principle of equality to members of society or the state.<sup>13</sup> The principle of equality referred to here is based on the rights to what is sought by the community or country. According to Aristotle, a good country is a state that is ordered by the constitution and has a legal authority.<sup>14</sup>

According to the theory of justice delivered by Aristotle, it shows that actually a just solution for the people is the settlement of disputes that are supported by clear legal rules regarding the rights of every citizen, so that when a dispute occurs the people will think that the decision is fair as long as they do not take the rights of the people others, but in the settlement of disputes using land technical data the value of justice is not fulfilled, because the settlement that should have provided certainty about a land right at National Land Agency is considered unfair to decide before being decided officially by a judge in court just because the settlement does not yet have clear legal rules.

In the process, the Republic of Indonesia's National Police Parent Cooperative (Inkoppol) submitted a letter of application Number: B/266/A.1/X/2016/INKOPPOL dated October 10, 2016 to re-measure the follow-up of the mediation was done. Then this letter was followed up with the issuance of Assignment Letter Number 116/St-12.71/III/2017 dated March 5, 2017. Afterwards, the next dispute was the land dispute between the state and the community; Such as the case between the North Sumatra Regional Police and the community in the name of Mukijo and friends. This protracted problem has occurred for years. Where each party claims each other over the ownership of a plot of land located in Pasar V, Paya Rumput, Environment X, Titi Papan Village, Medan Deli District, Medan City. The community cannot take care of the certificate or register their land with the National Land Agency, while the Regional Police cannot take care of the replacement certificate and control and utilize the land again. The total area of disputed land is  $\pm$  18 Ha. There is an area of Use Rights No. 2 covering an area of 7.6 Ha and a community area of  $\pm$  10.5 Ha. The proof of ownership of the Regional Police is the Right to Use certificate, while the community has not been certified. However, in the field, the land is controlled by the community and many buildings have been built, both individual houses and buildings that are used for public use. Neither party can show a border of ownership/stakes on their respective land or in other words, each party is still ambiguous in ascertaining its ownership border. This is what then becomes the emergence of claims and there is overlap in the field of ownership of the land.

Re-measurement, a Field Reporting Report was made Number: 009/BA-SPP/IV/2017 dated April 18, 2017. One of the minutes of the minutes was based on the designation of the land boundary, the land object designated was in the Right to Use Number : 2/1974, PLL Number 359/1974 in the name of the North Sumatra Police Force Regional Command II in Medan, and most of the land have been controlled/cultivated by the community and there are also public facilities (roads, places of worship (mosques and churches) and educational facilities (school): Land boundaries as a whole cannot be measured, because the applicant cannot show the land boundary markers.

---

<sup>13</sup> Satjipto Rahardjo, Ilmu Hukum, Citra Aditya Bakti, Bandung, 1996, p.163

<sup>14</sup> Ridwan HR, Hukum Administrasi Negara, PT. Raja Grafindo Persada, Jakarta, 2006, p.2

In this case, the legal certainty theory can be used, according to Tan Kamello, in a law, certainty of law (certainty) includes the first two things, legal certainty in the formulation of legal norms and principles that do not contradict one another from the articles the law as a whole or in relation to other articles that are outside the law. Second, legal certainty also applies in implementing the norms and principles of the law. By taking measurements in the field, this is the implementation of legal norms and principles in finding the resolution of land disputes between the two parties.

In the above cases what is meant by mediation is not mediation as stated in the Arbitration Law and Alternative Dispute Settlement, but we can conclude mediation here in the same way as the negotiations contained in the Law. So that in this case the overlapping rights are assumed to be true but for more details it must use more detailed land technical data. In reality, after repeated measurements, the land technical data stated that the overlap did exist but for more details so as not to violate the applicable regulations there is a need for more complete and accurate technical data so that legal certainty for both parties to the dispute becomes certain.

### ***Reconstruction of the Law on Land Dispute Settlement Based on Non-Litigation According to Land Technical Data with Legal Certainty and Justice***

The position of Pancasila as *staatfilosofie* or *weltanschauung*, and *lebenanschauung*, ideology and legal basis continue to change through the practice of state politics or behavior of the community. The different position of Pancasila is proof that Pancasila has an important role in the socio-historical practices of the Indonesian nation.<sup>15</sup> Pancasila is the basic relationship of the basic values which are the crystallization of various values that live in a society which is the soul of the nation (*volksgeist*) in the Indonesian people is the guiding star (*leidstar*) in the life of society, nation and state of Indonesia<sup>16</sup>. The five principles above are the foundation of the entire life of Indonesia. Pancasila as ideology of Indonesian has differences with the system of capitalism, liberal and socio-communism. Pancasila recognizes and protects the rights of individuals and the rights of the people both in the economic and political.<sup>17</sup>

Reconstruction is carried out by creating new legal norms with the addition of new articles and the addition of the contents of articles that already existed before, namely to revise PP 24/1997 concerning Land Registration, PMNA/KBPN Number 3-year 1997 concerning Provisions on the Implementation of Government Regulation Number 24 year 1997 concerning Land Registration and PMADTR/KBPN Number 11 year 2016 concerning Land Settlement Cases. For example in Article 61 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration of Land of Reconstruction that is desired Every land that has a certificate and a dispute, conflict and case occurs, then the certificate is stipulated in a blocked status, Article 62 Chapter VII Dispute, Conflict and Land Case that Has Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. Any dispute, conflict and case that has occurred on the land that has already been certified, is analyzed to determine the disputed matter, namely technical, juridical, and/or

---

<sup>15</sup>Bello Petrus C.K.L., 2013, *Ideologi Hukum Refleksi Filsafat Atas Ideologi Dibalik Hukum*, Bogor, Insan Merdeka, page 99

<sup>16</sup>Anis Mashdurohaturun, *Constructing and Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights*, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) ISSN 2289-1560, 2015. P.88. see to Said Gunawan, Anis Mashdurohaturun, Teguh Prasetyo, I Gusty Ayu KRH, *Development Concept Of Non-Alutsista Abuse By Indonesian National Army*, International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August). ISSN 2289-1552. 2017. Page.185.

<sup>17</sup>Jimly Asshiddiqie, 2008, *Menuju Negara Hukum Yang Demokratis*, Jakarta, Sekretariat Jendal and Kepanitraan Mahkamah Konstitusi, page 10

administration as outlined in a land case research report, Article 63 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. The settlement of disputes, conflicts and cases due to technical matters, is carried out with a degree case d verification of physical data which is then set forth in an official report, Article 64 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. Settlement of disputes, conflicts and cases because juridical and administrative matters are settled through the court state and state administrative court.

Article 197 Chapter VII Disputes, Conflicts and Land Cases Already Certified by PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration of Desired Reconstruction Land Disputes, conflicts and cases that have been analyzed and contained in the minutes of research land cases and entered into technical matters that were filed, then resolved by referring to land technical data related to the object of the problem. Article 198 Chapter VII Disputes, Conflicts and Land Cases Already Certified to PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration. The desired reconstruction land Disputes and conflicts that have been resolved with technical data, must be accepted by parties by making an official report binding on the parties to the dispute. Article 199 Chapter VII Disputes, Conflicts and Land Cases That Have Been Certified PMNA/KBPN Number 3 year 1997 concerning Provisions for Implementation of Government Regulation Number 24 year 1997 concerning Land Registration desired reconstruction. Cases that have been resolved with technical data must be accepted by the parties by making an official report binding to the parties to the dispute and the basis for the termination of the case. Article 200 Chapter VII Disputes, Conflicts and Land Cases That Have Certified PMNA/KBPN Number 3 of 1997 concerning Provisions implementation of Government Regulation Number 24 year 1997 concerning Registration Land of the desired reconstruction. If the land technical data contained in the Land Office has not been verified and validated, the truth is due to a certain reason, then the settlement of the dispute, conflict and case is carried out by re-determination of the boundary by the parties to the dispute and an official report is made. Article 201 Chapter VII Disputes, Conflicts and Land Cases That Have Been Certified by PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration The desired land of reconstruction verify and validate the technical data it owns, then it is listed in the land book, that the Certificate is blocked because the technical data is not verified and validated. Article 202 Chapter VII Disputes, Conflicts and Land Cases That Have Certified PMNA/KBPN Number 3 year 1997 concerning Implementation provisions Government Regulation Number 24 year 1997 concerning Registration. The desired reconstruction land Against the certificate being blocked because the technical data is not verified and validated, data maintenance cannot be carried out on the certificate.

### **Conclusion**

The existence of land technical data in non-litigation land dispute resolution is explained and regulated in the Regulation of the Minister of Agrarian and Spatial Planning / National Land Agency No. 11 year 2016 concerning Land Settlement Cases, Law No. 30 year 1999 concerning Arbitration and Alternative Dispute Settlement, Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 3 year 1997 concerning Provisions for the Implementation of PP No. 24 year 1997 concerning Land Registration, Article 1 number 10 jo. Government Regulation Number 24 year 1997 concerning Land Registration.

Constraints in land dispute resolution based on non-litigation land technical data that have legal certainty and justice are:

- a. Land technical data has not all been verified or validated. The solution is with the establishment of a regulation at the level of Government Regulation or Law that if there is a dispute where the land technical data is invalid, then the boundary arrangement must be made by the parties to be the basis for improving the land technical data to be valid.
- b. The parties still do not feel sufficiently accommodated with the existing legal norms, even if there is a dispute and the land data is valid, namely by re-measuring or restoring the boundaries and mapping. So that the dispute continues to litigation.

Reconstruction is carried out by creating new legal norms with the addition of new articles and the addition of the contents of articles that already existed before, namely to revise PP 24/1997 concerning Land Registration, PMNA/KBPN Number 3 year 1997 concerning Provisions on the Implementation of Government Regulation Number 24 year 1997 concerning Land Registration and PMADTR/KBPN Number 11 year 2016 concerning Land Settlement Cases. For example in Article 61 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration of Land of Reconstruction that is desired Every land that has a certificate and a dispute, conflict and case occurs, then the certificate is stipulated in a blocked status, Article 62 Chapter VII Dispute, Conflict and Land Case that Has Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. Any dispute, conflict and case that has occurred on the land that has already been certified, is analyzed to determine the disputed matter, namely technical, juridical, and/or administration as outlined in a land case research report, Article 63 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. The settlement of disputes, conflicts and cases due to technical matters, is carried out with a degree case d verification of physical data which is then set forth in an official report, Article 64 Chapter VII Disputes, Conflicts and Land Cases that Have Been Certified PP No. 24 year 1997 concerning Registration Land of the desired reconstruction. Settlement of disputes, conflicts and cases because juridical and administrative matters are settled through the court state and state administrative court.

Article 197 Chapter VII Disputes, Conflicts and Land Cases Already Certified by PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration of Desired Reconstruction Land Disputes, conflicts and cases that have been analyzed and contained in the minutes of research land cases and entered into technical matters that were filed, then resolved by referring to land technical data related to the object of the problem. Article 198 Chapter VII Disputes, Conflicts and Land Cases Already Certified to PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration. The desired reconstruction land Disputes and conflicts that have been resolved with technical data, must be accepted by parties by making an official report binding on the parties to the dispute. Article 199 Chapter VII Disputes, Conflicts and Land Cases That Have Been Certified PMNA/KBPN Number 3 year 1997 concerning Provisions for Implementation of Government Regulation Number 24 year 1997 concerning Land Registration desired reconstruction. Cases that have been resolved with technical data must be accepted by the parties by making an official report binding to the parties to the dispute and the basis for the termination of the case. Article 200 Chapter VII Disputes, Conflicts and Land Cases That Have Certified PMNA/KBPN Number 3 of 1997 concerning Provisions implementation of Government Regulation Number 24 year 1997 concerning Registration Land of the desired

reconstruction. If the land technical data contained in the Land Office has not been verified and validated, the truth is due to a certain reason, then the settlement of the dispute, conflict and case is carried out by re-determination of the boundary by the parties to the dispute and an official report is made. Article 201 Chapter VII Disputes, Conflicts and Land Cases That Have Been Certified by PMNA/KBPN Number 3 year 1997 concerning Implementation Provisions of Government Regulation Number 24 year 1997 concerning Registration The desired land of reconstruction verify and validate the technical data it owns, then it is listed in the land book, that the Certificate is blocked because the technical data is not verified and validated. Article 202 Chapter VII Disputes, Conflicts and Land Cases That Have Certified PMNA/KBPN Number 3 year 1997 concerning Implementation provisions Government Regulation Number 24 year 1997 concerning Registration. The desired reconstruction land Against the certificate being blocked because the technical data is not verified and validated, data maintenance cannot be carried out on the certificate.

## References

- Anis Mashdurohatun, Gunarto, *Comparison of Trademark Laws as Fiduciary Guarantee Objects*, Advances in Social Science, Education and Humanities Research, volume 192, 1st International Conference on Indonesian Legal Studies (ICILS 2018), This is an open access article under the CC BY-NC license (<http://creativecommons.org/licenses/by-nc/4.0/>). 1st International Conference on Indonesian Legal Studies (ICILS 2018). Published by Atlantis Press.
- Anis Mashdurohatun, Constructing and Developing The Social Function Principles In Utilising Copyright Products Related To The Fundamental Rights, South East Asia Journal of Contemporary Business, Economics and Law, Vol. 7, Issue 4 (Aug.) ISSN 2289-1560, 2015
- Amin Purnawan, Kami Hartono, *Development of UMKM through Strengthening Aspect of Business Legality (Case Study of Weaving Industry in Central Java)*, IJABER, Serials Publication. Volume: No.15 (2017).
- Djauhari, Jamaluddin Mahasari, Anis Mashdurohatun, Mahmutarom, *Agrarian Law Politic The Privilege Of Special Regency Of Yogyakarta In The Fulfillment Of The Rights Of Land For The Community*, Man in India vol. 97, 2017.
- Bahder Johan Nasution, *Negara Hukum Dan Hak Asasi Manusia*, Bandung: Mandar Maju, 2012
- Bello Petrus C.K.L., *Ideologi Hukum Refleksi Filsafat Atas Ideologi Dibalik Hukum*, Bogor, Insan Merdeka. 2013.
- Bernard L. Tanya, Yoan N. Simanjuntak, dan Markus Y. Hage, *Teori Hukum, Strategi Tertib Manusia Lintas Ruang dan Generasi*, Cetakan III, Genta Publishing, Yogyakarta, 2010.
- Frans Hendra Winarta, *Hukum Penyelesaian Sengketa*, Jakarta: Sinar Grafika, 2012.
- Haris Budiman, Anis Mashdurohatun, Erman Suparman, *A comparative Study Of Spatial Policy in Indonesia And The Netherlands*, Jurnal Dinamika Hukum, Faculty of Law Universitas Jenderal Soedirman, Purwokerto Indonesia, Vol.18.No.3.Sept 2018.
- Jimly Asshiddiqie, *Menuju Negara Hukum Yang Demokratis*, Jakarta, Sekretariat Jendal and Kepanitraan Mahkamah Konstitusi. 2008.
- Rachmadi Usman, *Mediasi di Pengadilan*, Jakarta: Sinar Grafika, 2012,
- Ridwan HR, *Hukum Administrasi Negara*, PT.Raja Grafindo Persadda, Jakarta, 2006
- Sarjita, *Teknik dan Strategi Penyelesaian Sengketa Pertanahan*, Tugujogja Pustaka, Yogyakarta, 2005.
- Satjipto Rahardjo, *Ilmu Hukum*, Citra Aditya Bakti, Bandung, 1996

Said Gunawan, Anis Mashdurohatun, Teguh Prasetyo, I Gusty Ayu KRH, *Development Concept Of Non-Alutsista Abuse By Indonesian National Army* , International Journal of Business, Economics and Law, Vol. 13, Issue 4 (August). ISSN 2289-1552. 2017.

Soerjono Soekanto dan Sri Mulyadi, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*, Raja Grafindo Persada, Jakarta, 1995.