

The Parameters of Absolute Competence of General Courts and State Administrative Courts in Adjudicating Land Disputes

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Abstract. The judiciary, as a subsystem of the judicial power system in Indonesia, consists of four judicial environments, namely the general judiciary, religious court, military court, and state administrative court. The parameters for determining the authority of each judicial body are as specified in Act Number 48 of 2009 concerning Judicial Power. This research aims to analyze the existence of legal instruments, the scope of authority of the State Administrative Court and the general court in land disputes, as well as the absolute competency parameters of the general court and State Administrative Court in adjudicating land disputes. The problem was investigated using several approaches, namely the conceptual approach, the statutory regulatory approach, and the case approach. The research can provide a theoretical contribution, namely a contribution of thought to the development of legal science, especially administrative law, in the form of concepts and theories related to the authority of the judiciary. Practical contributions can be a contribution of thought to the community and legal practitioners, especially judges, in recognizing aspects of public law and aspects of civil law in dealing with land disputes.

1 Introduction

The judicial body is a subsystem of the judicial power system according to 1945 Constitution of the Republic of Indonesia 1945 Article 24 paragraph 1. The Third Amendment is carried out to uphold the law and justice, and these judicial bodies consist of four judicial environments, namely general courts, religious courts, military courts, and administrative courts [1,2]. In addition to the four judicial environments under the Supreme Court, there are special courts with the authority to examine, adjudicate, and decide on specific cases that can only be formed within one of the judicial environments. The term 'special court' includes juvenile courts, commercial courts, human rights courts, corruption courts, and fisheries courts within the general court environment, as well as tax courts within the administrative court environment, as stipulated in Article 1 number 8 juncto Article 27 paragraph (1) and the explanation of Act Number 48 of 2009 Concerning Judicial Power [3-5].

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The legal consequence of the differentiation of the four judicial environments and the existence of special courts within one of the judicial environments is the division of the scope of jurisdiction between these judicial bodies, both absolute and relative. The jurisdiction of each judicial environment in Indonesia is primarily regulated by laws that cover all judicial bodies, namely the law on judicial power. The law on judicial power in Indonesia has undergone several changes and amendments since the beginning of independence until now, with the latest being Act Number 48 of 2009 Concerning Judicial Power [6-8].

Adopting a system of more than one judicial environment and the possibility of forming special courts within one of the judicial environments in the judicial power system may give rise to disputes over jurisdiction between one judicial environment and a court in another environment. This could also lead to conflicts of jurisdiction between one court and another judicial body, such as between the Administrative Court and the District Court, especially in matters related to land certificates. This can happen because the certificate, as a determination, falls under the jurisdiction (object) of the administrative court. On the other hand, disputes over ownership or land rights fall within the jurisdiction (object) of the general court (civil court) [9]. In the assessment of Philipus M. Hadjon, disputes over certificates as administrative disputes are apparent, as such administrative disputes have dominant civil law aspects [10].

Land certificates are a government product born out of law and have a concrete nature as they are intended for specific subjects and objects. A certificate is evidence of land rights that serves as a strong means of proof [11]. Land certificates, as the result of the land rights registration process, including changes related to its subjects, status, and legal actions taken on the land, are strong evidence, as stated in Article 19 paragraph (1) letter c [12]. Considering the consequences, the government's actions in the issuance of certificates aim to create a new legal status, resulting in the emergence of specific legal rights and obligations.

The presence of public law and private law dimensions in land disputes, with each dimension being subject to the jurisdiction of different judicial bodies, can be considered as disputes with two faces. This situation creates an impression and assumption that there is concurrent authority in resolving land disputes. It is essential for legal practitioners, advocates, law enforcers, and the public to be aware of this, ensuring accuracy and correctness in interpreting and applying the law to settle land-related cases.

Administrative judges often make decisions based on their own assessments of ownership, conducting examinations as if they were civil judges [13]. There are land disputes related to certificates that are decided at the first and appellate levels within the jurisdiction of the Administrative Court. However, at the cassation level by the Supreme Court, it becomes a civil matter falling under the jurisdiction of the general court. There are even cases where, at the Judicial Review level, the matter is determined to be a civil issue and not within the jurisdiction of the Administrative Court.

This condition has drawn comments from Bagir Manan, the former Chief Justice of the Supreme Court of Indonesia, stating that the presence of the administrative court system contributes to the complexity of land issues [9]. The confusion in land dispute issues arising from judicial bodies is experienced by the National Land Agency in resolving disputes and land conflicts. This is caused by overlapping court decisions from administrative, civil, and criminal courts that contradict each other concerning the same object. Such a situation complicates the National Land Agency's efforts to register the transfer of rights based on conflicting court decisions [14].

In disputes involving conflicting jurisdiction, the problems faced are related to legal choices and the selection of the court. Choosing between public law or private law in resolving land disputes involving conflicting jurisdiction means negating the other legal aspect and the competence of a specific judicial body, even though, from the perspective of the *objectum litis* and *subjectum litis* aspects, it meets the characteristics of the jurisdiction of a particular

judicial body. Using both forms of law, whether public law or private law, simultaneously in the resolution of land disputes involving conflicting jurisdiction and settled by two different forums will be fine if their decisions are consistent. However, if the decisions given by each judicial body are not consistent, it will create legal chaos and uncertainty.

Based on the background issues outlined above, the central legal problem related to this research is the scope of competence of the General Court and the Administrative Court in land disputes and what parameters constitute the absolute competence of the General Court and the Administrative Court in adjudicating land disputes. This research aims to analyze the existence of legal instruments, the scope of the competence of the Administrative Court and the General Court in land disputes, and to determine and analyze the absolute competence parameters of the General Court and the Administrative Court in adjudicating land disputes.

2 Methodology

Literally, the term "method" means describing the path or the overall way that one wants to achieve and build [15]. The method as a path or way is also stated by Van Peursen in Jhonny Ibrahim; literally, at first, the method is interpreted as a path that must be taken, becoming an investigation or research conducted according to a specific plan [16]. Based on the literal meaning and the development of the meaning of the method, the method plays a very important role in research, serving as a guide for a researcher in carrying out the research process. The research is a type of normative research. The normative approach method is based on legal logic and techniques [17]. In analyzing the issues, this research uses several approaches, namely the conceptual approach, the statutory approach, and the case approach. The conceptual approach involves examining and understanding legal concepts related to the research title and legal issues in this study. The statutory approach is conducted by examining and analyzing various legal regulations related to the title and legal issues in this study in-depth. The case approach involves examining and analyzing court decisions related to the title and legal issues in this study.

3 Results and Discussion

3.1 The Competency of Judicial Institutions in Settlement of Land Disputes

The substance that constitutes the competence of judicial institutions in legal literature and in everyday court practice is competence, which is also referred to by other names, namely authority, power, and jurisdiction. From a historical perspective, during the Roman Empire in the 3rd century, legal professionals (jurists) used the term *imperium* for power and *juridictio* for jurisdiction [18]. Initially, *juridictio* was used for terms related to the civil judge's authority to restore civil law [18]. In its development, the term *juridictio*, in Dutch *jurisdictie* and in Indonesian *jurisdiksi*, was used to determine the jurisdiction or authority of the court, both absolute and relative.

Act No. 2 of 1986, as amended several times, most recently by Act No. 49 of 2004 concerning General Courts (hereinafter referred to as UUPU), uses two terms, namely the authority of the court and jurisdiction. The authority of the General Court, in terms of its adjudicative function, is determined by Article 50 of the UUPU, which states: The District Court is tasked and authorized to accept, decide, and settle criminal and civil cases.

The provisions of Article 50 have already codified the term "case," not a dispute, as in Administrative Court, where the word "case", according to the online version of the Big Dictionary of Bahasa Indonesia (KBBI), means a problem or issue

(<http://kbbi.web.id/perkara>). Civil means the relationship between individuals and/or the relationship with civil legal entities (*rechtspersoon*).

From both theoretical and practical aspects, civil cases can be distinguished into contentious civil cases where there is a dispute (contentious) involving parties, namely the plaintiff and the defendant. There are also non-contentious civil cases (voluntary) because they do not involve a dispute, as there is only one party, such as in cases of child adoption, name changes, etc.

In land cases, according to the jurisprudence of the Supreme Court of the Republic of Indonesia dated April 6, 1978, No. 1341 K/SIP/1974 (<http://jdih.mahkamahagung.go.id/v2>), it contains a legal principle that the court is not authorized to examine and adjudicate applications for land rights determination without a dispute over that right. This legal principle is reinforced by the jurisprudence of the Supreme Court of the Republic of Indonesia dated May 11, 1987, No. 1210 K/PPDT/1985 (ibid), which contains a legal principle that the District Court that has examined and decided an application for the determination of land rights without a dispute is carrying out a voluntary function that has no legal basis, and such applications are deemed unacceptable.

The classification of civil cases according to the Supreme Court of the Republic of Indonesia consists of two types: general and special civil cases, classified as such [19]:

1. Tort (Unlawful Act)
2. Land Dispute
3. Resistance (seizure, execution, auction)
4. Agreement/Contract
5. Breach of Contract
6. Divorce (non-Islamic)
7. Inheritance
8. Objection to determination
9. Joint Property
10. Shares
11. Foundation
12. Class Action

Specific civil cases are further classified into:

1. PHI (Intellectual Property Rights)
2. Bankruptcy
3. Haki (Copyright)
4. Political Parties
5. KPPU (Business Competition Supervisory Commission)
6. BPSK (Consumer Dispute Settlement Board)
7. Arbitration
8. PKPU (Suspension of Debt Payment Obligations)
9. Information Dispute

The aspect of civil law in land disputes is related to the validity of land rights, the transfer of land rights, the revocation of land rights, and Unlawful Acts by the Authority (UMH) carried out by the Government related to land disputes. In adjudicating land disputes, the District Court is not authorized to use voluntary examination procedures and must proceed through contentious examination.

In Act No. 5 of 1986, which has undergone several amendments and was last revised by Act No. 51 of 2009 concerning the Administrative Court (abbreviated as UUPTUN), there is no mention of the authority of the Administrative Court to receive, examine, and decide on land disputes [20]. The *subjectum litis* in the Administrative Dispute Settlement (TUN) is a person or a civil legal entity against the state institution or official TUN (Article 53 of the UUPTUN). In the development of TUN court practices, a state institution or TUN official

can act as the plaintiff in defending the civil rights of an institution, and conversely, in practice, a person or civil legal entity can be the defendant through an intervention institution.

The *objectum litis* in TUN disputes is in the form of a TUN decision (*beschikking*) as referred to in Article 1 number 9 (UUPTUN) with an expansion of Article 3, known as the fictitious negative, with direct restriction, namely the provisions in Articles 2 and 49 of the UUPTUN.

The *fundamentum petendi* of TUN disputes is a dispute in the field of public law. Therefore, in the explanation of the lawsuit, it must be clearly depicted that the object of the dispute is a TUN decision that is challenged as contrary to the applicable laws and regulations and contrary to the general principles of good governance (AAUPB). A decision is considered legally defective if it is issued by a TUN official who is not authorized, violates formal procedural regulations, and violates substantial material regulations.

The *fundamentum petendi* in the case of a lawsuit based on Article 3 of the UUPTUN is the silent attitude of the TUN institution or official even though there is an obligation and authority to issue TUN decisions, or the silent attitude towards applications submitted by a person or civil legal entity even though there is an obligation and authority to issue TUN decisions [21,22]. The of the lawsuit in TUN disputes contains demands for the annulment or invalidation of the *petitum* TUN decision, with or without a claim for damages. The petitioner, in accordance with Article 97 of the UUPTUN, can request:

- a. The annulment of the relevant TUN decision.
- b. The annulment of the relevant TUN decision and the issuance of a new TUN decision.
- c. The issuance of a TUN decision in the case where the lawsuit is based on Article 3 of the UUPTUN.

The scope of land disputes, which includes registration, provision, designation, possession, use, and maintenance of land, as well as the issuance of proof of rights, may become TUN disputes if they meet the *subjectum litis*, *objectum litis*, and *fundamentum petendi* requirements as explained above. For example, the issuance of land certificates, the granting of rights, the rejection of rights, the extension or rejection of land rights, etc.

3.2 The Parameters of Absolute Competence for the General Court and PTUN to Adjudicate Land Disputes

As previously mentioned, the authority of the Administrative Court (PTUN) to examine and decide on decisions made by Administrative Institutions or Officials, including Certificates of Ownership for land, has been discussed above. If the certificate is declared null and void, it indirectly impacts the ownership of the respective land. However, determining the rightful owner of the land is not within the authority of the PTUN.

To determine the boundaries of authority between the PTUN and the General Court in land disputes related to the issuance of land certificates originating from state land, which can include ownership rights, land-use rights, building-use rights, usage rights, and management rights, including state land subject to land reform and rights granted according to Article 66 of Agrarian Regulation/Head of BPN No. 3 of 1997 concerning the provisions of implementing Government Regulation No. 24 of 1997 regarding Land Registration [23]. The decision to issue a certificate of land rights is considered a TUN decision. If viewed from the perspective of the legal act of land rights carried out before the PPAT (Land Deed Official), it is considered a civil legal act and, therefore, falls under the competence of the general court. This consideration is based on the material legal aspect, making it a civil law context, which falls within the competence of the general court. In the case of the Head of the Land Office, who has obtained authority based on the delegation of government authority to issue determination objects, the Head of the Land Office is deemed responsible for the issuance of the TUN decision, making it within the authority of the TUN.

Based on the above doctrines, there is a consensus regarding the resolution of land disputes falling under the jurisdiction of two different judicial authorities: the PTUN and the General Court. However, concerning the parameters (criteria) of the authority of these two courts, by combining the above doctrines, a method for measuring the parameters of adjudication is found according to the author's opinion, namely:

1. Determine whether the substance in dispute involves property rights or not.
2. Examine the origin of the issuance of the certificate.
3. Analyze the legal acts leading to the issuance of the certificate.
4. Examine the legal qualifications that lead to the issuance of the certificate.

4 Conclusion

The conclusion regarding the "Parameters of Absolute Competence of General Courts and Administrative Courts in Adjudicating Land Disputes" is that both judicial institutions have clear authority in handling land disputes. The general court is responsible for resolving disputes between individuals or private entities, while the administrative court deals with disputes involving the government or state institutions. Both types of courts have absolute competence in adjudicating land disputes, with a focus on ensuring fair legal proceedings based on applicable regulations. Each has specific procedures and jurisdiction to resolve land issues, and it is crucial for parties involved in disputes to understand the differences and scope of decisions that can be made by each court.

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