

# Shifting Patterns in Settlement of Land Ownership Right

**Sri Puspitaningrum**

Lecturer at Faculty of Law, 17 Agustus 1945 Semarang University  
Email: sripuspitaningrum1959@gmail.com

*Abstract--That the population growth rate is directly opposite so fast with the land inventory, Indonesia's development paradigm shift that is slowly evolved from an agrarian country into the industrialized countries, as a consequence of the development of coastal development requires land as ingredients. The condition can be seen from the ownership of the land originally function as a place of farming, settlements became complex of offices, supermarkets, construction of a number of large factories, and other business locations. Conditions that can be seen in a number of cities including the city of Khanewal which was originally famous for rice production, has now turned into a new industrial city with a regional automotive industry that stands on agricultural land. Proof of ownership of land rights under article 19, paragraph 2 of the Basic Agrarian Law (Law No. 5/1960) and Government Regulation No. 24 of 1997 Article 1 (PP No. 24/1997 on Land Registration) is not a guarantee that the certificate is proof of land ownership for many people build and erect and occupy other people's land above the land that is not theirs, causing disputes over ownership rights soil. Mediation in land ownership is done through administrative procedures of government agencies conducted by the National Land Agency, in this case the Directorate of Agrarian become a place of mediation by the parties, if this effort was not successful, it can be pursued through the Institute of the General Court and Arbitration (Dispute Settlement Outside the court) as a bridge for the parties to obtain legal certainty on the status of the disputed land.*

**Keywords:** *land disputes, settlement of disputes, land rights*

## I. INTRODUCTION

Land has a big role in the dynamics of development, so in the 1945 Constitution article 33 paragraph 3 mentioned that the earth and water and nature resources contained inside, by the state and used for the greatest prosperity of the people. The provisions on land can also be seen in the Law of the Republic of Indonesia Number 5 of 1960 on the Basic Regulation of Agrarian Principles or usually we call it LoGA. The emergence of a legal dispute appear from a party (person) that contains objections and demands of land rights complaint, either from a land status, priority, and ownership with hoping in order to

obtain administrative resolution in accordance with applicable provisions.

Related to the many cases of land disputes, Head of National Land Agency Sofyan Djalil said that there are at least 2,820 cases of National Land Disputes. Recent disputes even reached 4,928 large-scale land disputes across Indonesia, while smaller ones were larger in scale.

Amount of land occupied by humans is currently very limited, while the number of people living in it is always liven up, in addition to the increasing number of people who need land for housing, as well as progress and development in any areas between economic, social and technological cultures also require the availability of land for such purposes, such as factories, offices, entertainment venues, sports facilities, roads for transportation, and much more areas needed by human along their life.

Sooner or later, it will feel like a land becomes narrow, becomes less and whereas for increasing land demand, it is not surprising that the land price increases. Unbalanced between the supply of land and lands necessity, thus creating various forms of problems.

Related to these social changes, the law is also changing in its application. This is evident in the question of land in different regions showing an increasingly unavoidable increase in disputes as it accompanies simultaneous social changes in different regions. Between social and legal changes, especially the law on ownership of land rights, becomes a fundamental problem that must be immediately solved.

In the underlying problem there are at least some problems, First, about social justice, secondly, about the relationship between the land, the state and the individual, the third, the position of farmers and peasants due to outside influences, the fourth is the univication of land law in relation to national unity

Land rights disputes are prevalent in many places throughout Indonesia, both in rural and urban areas, because the land will not increase in size while the number of human communities all the time is always increasing like a series of calculations. Thus a question of land rights disputes will never end, will even continue to increase as the number of people increases itself.

Various types of land rights disputes will continue to evolve over time, whether they concern the dispute over rights, land status disputes or other forms of disputes. The dispute will involve many community units, such as disputes among indigenous and tribal peoples, communities and governments, communities with other non-government institutions, amongst themselves, which

will continue to increase, so that the various disputes must be found in the format of the settlement.

Not all case resolution with different backgrounds can be resolved by the same rule of law, because the main factor of the settlement of a case is affected by economic, social, historical, political and soon. Completion by basing on the existing rules should be a guideline for any settlement of cases, but in its development there may be parties who feel defeated by the opponent or other parties, because there are parties who have been in for years but have no formal evidence while the other party has formal evidence.

## II. RESEARCH METHOD

This study belongs to the socio-legal domain that sees the law from a sociological perspective. Thus, this study combines two areas, namely law and social issues. This study is a legal study, because the ontological substance studied in this study is part of the legal system, namely the legal procedural component (in this case the settlement of land rights disputes which are legal disputes). This study is included in the sociological field of study, as the focus of this study relates to the behavior of the people who claim the right to land and at the same time the field of land politics that goes on and on in the transitional period.

## III. FINDINGS AND DISCUSSION

### 1. *Land Rights*

Given the importance of the role of land for human life, the right to ownership of land is absolute so this is indirect eliminating the possibility of ownership of a land disturbed by other parties who have no interest in the land.

Land rights consist of various kinds. These rights can be obtained based on transactions, legal acts, or statutory provisions governing them. Broadly speaking, the right to land there are only two:

- 1) Rights controlled by individuals or juristic person;  
and
- 2) Rights controlled by the state.

According to the above mentioned rights, other rights may be attached adjusted to the designation of the land so that on a land as well there are other rights that are owned by others.

About mentioned rights above are sourced from the State's Control over the Land, which can be given to individual persons, both Indonesian Citizens (WNI), as well as to Foreigners (WNA). Can also be given to a group of people together and also to the Legal Entity, both private legal entities and public legal entities.

In this section the authors will only describe the rights to the land consisting of Freehold Estate, right to cultivate, right of building, and the Right of Use only. The following will be described on various rights to the land concerned:

- 1) Freehold Estate.

Freehold estate is the most powerful right to the land, which gives the owner the authority to give back another right on the ownership of the Right of Owned property (which may be either Right of Building or Right of Use, with the exception of Right to Cultivate), which is almost the same with the authority of the state (as the ruler) to grant land rights to its citizens. This right, though not absolutely equal, but can be said to be similar to the eigendom of the land according to the Civil Code, which grants the most (and wide) authority to its owner, with the provision that the provisions of Article 6 of the BAL (UUPA) shall state: "the right to land has a social function"

### 2) Right to Cultivate

As has been described, the state holds the right to land so that in order to obtain the right to land it is necessary to transfer the ownership of the land from the state to the subject of title to another land, either an individual or a legal entity. The transfer of such ownership may be made in full and may also be made by partially delivering ownership of the land. That is, the land is transferred to the subject of another land for a certain period of time and if the period has been reached, the land must be returned to the state.

### 3) Right of Building

Land has two types of rights, the right to land and the right to the building that stands on the land. Therefore, it may happen that the owner of a land is different from the owner of a building standing on the ground. It is known that the right to use the building is the right to establish and own the building on land which is not owned by itself for a period of 30 (thirty) years and may be extended for a maximum period of 20 (twenty) years. Thus, in this case the owner of the building differs from the owner of the right to the land on which the building is erected. This means that a holder of building rights is different from the holder of property rights over the plot of land on which the building is erected; or in more general connotations, the holders of building rights are not the holder of the property rights of the land on which the building was erected.

### 4) Right of Use

In the preceding section it has been described on land rights, that the rights to the land are the right to use and own the land. In this section will be presented another function of the land, the function of the result of a land. The resultant function of a land is also called Right to Use. Right to Use is the right to use or collect the proceeds of land directly controlled by the state, or in accordance with the provisions of Article 41 paragraph (1) of the BAL, which reads:

"Right to Use is the right to use and / or collect the proceeds of land directly controlled by the state or land of another person, giving the authority and duties specified in the decision of

his award by the competent authority to give it or in agreement with the landowner, which is not an agreement leases or land-processing agreements, everything of origin does not conflict with the spirit and provisions of this law.”

## 2. *Alternative Dispute Resolution (ADR)*

Alternative Dispute Resolution (ADR) is a responsive expression of the dissatisfaction of settlement disputes (plantation lands) through a confrontational litigation process and *zwaarwichtig* (complicated, long-winded). Thomas J. Harron says:

“... people are tired of finding dispute resolution through litigation, they are not satisfied with the judicial system (dissatisfied with the judicial system), because the way in which the dispute settles inherent in the justice system is very long (the delay inherent in a system) in ways that are very harmful, among others: waste of time (a very expensive), questioning the past, not solving future problems, making people an enemy, paralyzing people.”

There are several reasons for the emergence of interest and concern for ADRs: First, the need to provide more flexible and responsive dispute resolution mechanisms for the needs of disputing parties; second, to strengthen community involvement in the dispute settlement process; and third, expanding access to achieve or bring about justice so that any plantation dispute with its own characteristics sometimes not compatible with one settlement form, will be compatible with other forms of settlement, so that parties can choose the best mechanism.

A brief description of the problem of dispute settlement by means of this non-litigation stage is also put forward by Schuyt that giving a prior understanding that what is meant by conflict is a situation where two or more parties are fighting for their own unbinding objectives in which each the parties try to convince others of the truth of their own ends.

The forms of conflict resolution are initially self-solving, then with third-party intervention, first pre-judicial settlement, then juridical settlement with a third party, to a political struggle and continuation of this struggle by using another means of violence.

There appears to be an increase in formality in the sequence of forms of conflict resolution followed by the reduction of formalities in the form of political actions and violence. The sequence of forms of conflict resolution reflects what in psychology is known by the reaction mechanism in the problematic state of reaction "And" flight "reactions where the third parties' negotiations and interventions are an alternative to consider.

If we look again at the sequence of conflict resolution forms it will be seen that another way of arrangement that is not in the form of a straight line will give a clearer picture. Formal conflict resolution is not always better than informal conflict resolution and political settlement should not be better than a juridical solution.

In closer examination, the court is an institution that does more work than just adjudication. It can be argued that the court is the place to:

- 1) administrative processing;
- 2) "record keeping";
- 3) status change ceremonies;
- 4) resolving disputes by negotiation;
- 5) mediation;
- 6) arbitration; and
- 7) becomes the battlefield (warfare).

The sociology of law will broaden the concept of the court as an institutional social. The extension of this concept provides an opportunity for legal sociology to observe the neglected aspects of the traditional concept of justice. The latter concept holds that people should only see and judge the court solely from legal presence, such as structure, status, judicial procedure and so on. This is called juridical optics which gives rise to qualified "formal justice" or "legal justice" decisions.

Whatever form or means used to "resolve" the dispute, it is accepted and recorded as a settlement. The legal sociology inventoried these forms which would not be observed if the court was seen as an institution resolving disputes with legal procedures, namely a legal forum. The sociology forum notes that the settlement also occurs through resignation, lumpingit, or exit by the disputing parties. The approach method of legal sociology does not depart from the rule of law, but from the world of reality.

In reality there are disputing parties, some people because of their ability to use the courts for the success of their claims, while for the opposite reason others can not do that.

## 3. *Transitional Situations Uncertainty of Legal Settlement of Land Rights Disputes from the Old Order to the New Order.*

After 15 years of independent Indonesia, then on 24 September 1960, was born Law no. 5 of 1960 on the Basic Regulations of Agrarian Principles, which later became known as BAL. The birth of the BAL because it is motivated by a long process of discussion. After Indonesia's independence, since the beginning the government has actually been concerned with agrarian issues. Beginning with the Agrarian Committee of Yogya (1948), Jakarta Committee (1951), Suwahjo Committee (1956), Sunarjo Design (1958), and finally Sadjarwo Design (1960).

BAL itself is a model of agrarian reform (land reform) called a populist model to replace the agrarian law that was previously not impartial to the interests of the people. One of agrarian politics during the Old Order regime was a land reform program implemented between 1962-1965.

The plan of land redistribution program will be implemented in two stages. The first phase will cover the areas of Java, Madura, Bali and the islands of Nusa Tenggara. The second phase covers the rest of Indonesia, the entire program is expected to be completed within 3 to 5 years.

Under the leadership of President Soekarno (Old Order) the space for participation of peasant organizations

is wide open. Those who are most ready to welcome this opportunity are the left group (the name for the PKI group). Farmers' issue became a vocal especially because of PKI agitation and mass actions of BTI farmers. Besides other issues, the most prominent issue is the land issue. The land disputes that occurred were internal, ie between peasants and poor land worker against landlords and rich land worker.

The launching of the land reform program during the Old Order was one of the efforts to prevent conflicts and prolonged post-independence disputes, but the program failed because:

- 1) Slowness of government practices in relation to the right of state control.
- 2) The demands of mass organizations of peasants who wish to redistribute land immediately, resulting in unilateral action.
- 3) The elements of anti-land reform undertake various mobilization forces to derail land reform.
- 4) The occurrence of disputes between anti land reform and those supporting land reform which is a widening of violent disputes at the State elite level.

The obstacles to the implementation of land reform are the reasons for the unilateral actions of landless peasants and landowners and the rich farmers of large landowners who triggered a general land dispute, including estate crops the former erfpacht rights of the Dutch heritage.

During Soekarno's presidency, agrarian politics was directed towards "populism" matters. This was marked by the policy of land reform and land redistribution that occurred in various regions throughout Indonesia, but it was regarded as a continuous transition period,

Since throughout 1959 until 1967 the period of guided democracy was the last period of Soekarno's presidency, which was characterized by a strong political conflict between the military (especially the Army) and the leftist movement (especially the Indonesian Communist Party).

Thus the question of agrarian politics stalled in the middle of the road, so it has not been completed in implementing the land reform program in Indonesia, the government during the Old Order ended. As a counter to the populist strategy adopted by the Old Order (Soekarno) government, the Suharto government established a "new" ideology, namely developmentalism, which is the new face of capitalism.

This development strategy is run by linking itself to international capitalism. Transition of the Old Order regime to the New Order caused a land dispute to not subside, increasing in intensity, so that the New Order government used violence and pressure in resolving the dispute because it must create national stability, growth and equity (development trilogy during the Order New).

#### *4. Transitional Situation Uncertainty of Legal Settlement of Land Rights Disputes under the New Order Reform.*

The dominant factors of national agrarian politics that have an impact on the emergence of disputes are evictions with formal approaches, approaches to community

leaders, civic political approaches, manipulation approaches, isolation and access approaches, stigma.

While other dominant factors cause of the dispute is the existence of social inequality, the existence of rights disputes, the existence of plantation attitudes that do not carry out environmental development around the plantation, and supported also external factors that encourage the community dare to ask (occupy) working on plantation lands. All the New Order's agrarian political efforts were guided by centralistic authoritarianism due to past traumas of the Old Order.

There are several things that the New Order regards in the context of national agrarian policy:

- 1) Land reform is merely a technical matter, the New Order does not make it a substantial development foundation.
- 2) Eliminate all legitimacy of farmer organization's participation in land reform program.
- 3) Implementation of mass floating policy (floating Mass) ahead of the 1971 election by cutting the relationship of rural masses with political parties. The organization of a political party should not have branches until the sub-district and village. The peasant organization was formed by the government of HKTI.
- 4) The enactment of Law No. 5 of 1979 on village governance, leaving the village to lose a dynamic participatory democratic political process.
- 5) The involvement of police and military elements in the supervision of village development.

Under these conditions, the New Order government's desire to create political, economic and social stability was done by suppressing all people's participation in development. No exception is the problem of plantations controlled from the center and emphasis is placed on farmers in the lower level.

The weakening of the legislative and judicial power, the barrenness of political parties and civic organizations, as well as the destruction of local political institutions in the New Order era, were the efforts of the New Order government to separate people from their rights to agrarian resources. The growth of capital, under the facilitation of the state, is rapidly and intensively changing the structure of land tenure in Indonesia. The result is a sharp, deep, and hard dispute, inevitably accompanied by the growth of capital movement itself, accompanied also by the emergence of imbalance land tenure structure.

Two persolan fundamental to the policy of the New Order at that time that is first, the inequality of land tenure structure and second, resulted in the rampant agrarian dispute, the main problem is the plantation of Dutch colonial relics.

This is a fundamental and urgent question that must be addressed through a comprehensive national policy and its fundamental nature.

In this context the change in the style and character of the disputes is closely related to three things:

- 1) The process of expansion and expansion of the scale of capital accumulation, both domestic and international capital;
- 2) The authoritarian character of the New Order government; and
- 3) The transformation of the strategy and orientation of the development of agrarian resources from a populist agrarian strategy (building socialist society) into a capitalistic agrarian strategy (integrating Indonesian society as part of the development of international capitalism).

The New Order government in terms of agrarian policy, took the path of what is known as a by-pass approach, or a shortcut approach, the Green Revolution without Agrarian Reform. Therefore development in Indonesia by foreign observers referred to as development without social transition. The by-pass approach is applied to implement a development strategy characterized by a central feature, relying on foreign aid to the forestry and plantation sectors as well as betting on the strong foreign investment.

As a result of the by-pass approach, agrarian disputes are not abating, but instead are rampant everywhere, all sectors, all regions, and involving all levels of society. Food self-sufficiency results are not long-lived. Issues of disputes themselves vary, among others, arbitrary evictions, compensation issues, location permit issues, forced cultivation problems, customary rights abuses, etc., while plantation disputes arise because:

- 1) The policy of sustaining and spurring the plantation sector to increase foreign exchange is the creation of a lame cropping structure in Indonesia, and large plantations form part of the constituent elements.
- 2) Disputes that occur between the people and the plantation company due to the claim of state land, as happened in the description of the case of the existing case.
- 3) Another dispute that often occurs is the matter of granting HGU to a plantation company over a number of lands claimed by an automated right from the company concerned in connection with the nationalization program of foreign plantation companies in the 1950s.
- 4) Land dispute disputes can occur because the government is less consistent, and even tends to ignore a number of existing rules governing the priority of land ownership.

In the face of the agrarian dispute, there is a general phenomenon of the actions of the New Order government apparatus, the suppression of coercion and conquest in the ideological ways (consent) to the peasants.

From the patterns of disputes that existed during the New Order period is a form of public dissatisfaction with agrarian politics which is carried out by prioritizing the investment and capital of large capitalists (both public and private) in Indonesia, but the settlement of the dispute is mostly done by way of approach security that relies on the

apparatus to exert pressure on the people under the pretext of national stability.

Settlement through the litigation route is also widely pursued by the community, but the results can be predicted that the community is often defeated by the government or large private investors. This has led to the community's skepticism of the judiciary.

The condition of the settlement of disputes in the New Order era failed with the approach of security that led to the settlement of litigation. This continued until the coming of the reform era, because once the New Order regime collapsed, sporadic disputes arose everywhere in all parts of Indonesia.

In the context of changes in the management of agrarian resources, many believe that the replacement of power will inevitably bring about a complete change of Indonesian politics. There is room for efforts by the government and the people to reform or reorganize the agrarian field by rearranging the control and utilization of agrarian resources fairly. Without a change of "basic" political power, there is no hope for anyone to see the change as expected.

In the transitional period (Habibie government) issued two laws, namely Law no. 22 of 1999 concerning Local Governments adopted on 4 May 1999 and Law no. 25 of 1999, adopted on 9 May 1999.

This package of legislation still places the country in a position of control, the central government gives its authority to the region to manage a certain power of agrarian agriculture while the potential of agrarian resources for public revenue is still controlled by the central government.

At the time of reform, the National Land Agency returned under the coordination of the Minister of Home Affairs. The implications of the BPN must adapt to the regulations on which regional autonomy is based, namely Law no. 22 of 1999 on the Regional Government passed on May 4, 1999 was revised by Law No.32 of 2004 on Regional Government.

Furthermore there has been no affirmation of recognition and respect for the rights of local communities, including indigenous communities as the most affected parties. This package of laws then gave birth to Presidential Decree no. 121 and 122 of 1999 on the full authority of regional governments to grant foreign investment permits without the approval of the central government. This authority is the implementation of regional autonomy.

So the role of a large state is still in the context of controlling people's rights such as political, economic, social, and cultural rights so that there is still unequal access to control and management of agrarian resources because the principle of "controlling" by the state is still very thick.

Since the National Unity Cabinet under President Abdurrahman runs the government (in 1999), there has been no real reform in the acquisition, use and utilization of the land and the accompanying natural resources. The makers and implementers of law and policy seem to have no sensitivity, awareness and sense of urgency to solve

agrarian problems. They can not find a mature strategy to handle it.

Along with the ongoing political democratization, so many parties hoped and waited for government action to make fundamental changes in the matter of mastery, use and utilization of land and natural resources. As a result, many residents who become victims of agrarian disputes are increasingly heavily claiming land and natural resources in the area that has been dominated and used by giant companies.

Phenomenally, they often perceive giant corporations and projects that operate directly on their lands are "landlifters". Though the company was pocketed a legal license from the central government. This condition eventually created disputes and new victims among the community.

There has not been any settlement of land disputes in various places in Indonesia, plus the lack of a clear legal umbrella on agrarian reform, a national unity cabinet under President Abdurrahman Wahid was dropped by the MPR and replaced by a government of a civilian government under the leadership of Megawati.

The condition of land in Indonesia in this gotong royong cabinet did not change significantly, land dispute, land dispute, deforestation, security and law enforcement did not work well, so the people protested the legislative body at the level the region requested a settlement of a land dispute that had previously occurred. The land dispute settlement paths are widely proposed through legislative bodies and are non-litigation, as they accelerate resolution without going through common legal procedures.

Many special land committees at Regency / Municipal DPRD level were formed to resolve the prolonged land dispute of the People's Consultative Assembly as the highest state institution in 2001 had issued MPR Decree No.IX / MPR / 2001 on Agrarian reform and Natural Resource Management, but follow-up of the decree has not yet resulted in Presidential Decree No.34 of 2003 as an extension of the realization of the concepts, policies and system of national land that fully and integratedly ordered the National Land Agency (BPN) to accelerate:

- 1) Drafting of Law on the improvement of Law no. 5 of 1960 and the Bill on Land Rights and other laws and regulations in the field of land.
- 2) Development of information systems and land management.
- 3) As the authority of the government in the field of land is implemented by the district / city government.

The imbalance of agrarian structures found in existing plantation cases during the reform period is still a major issue, thus in turn giving a considerable domino effect, especially in rural areas, especially people living around the plantation lands. Such an effect in government perception has always been seen as looting. This stigmatization of looting is actually part of a ruling scenario to paralyze the peasant movement in reclaiming

its land rights, and this scenario is a very heinous form of terror and intimidation.

This stigmatization of looting is actually intended by the ruler in order to protect his interests to maintain disputed production.

This peasant movement in the cycle of disputes can be categorized into two different types: first type of movement as a spontaneous reaction, unclear causes of unstructured information networks. (not deliberately constructed) to a particular state. The second is the organized *gerakan* farmers movement that is with the goals, strategies, and ways that are formulated. clear, conscious and based on a strong analysis of the problem, where they want an agrarian reform to make a fair redistribution of land to the people.

In addition to the two types of peasant movements there are also three typologies of different movements in the reformation period:

- 1) typology of thuggery (thieves)
- 2) typology of social plot (social banditry movement)
- 3) typology of reclaiming movement (reclaiming movement)

The birth of land disputes, especially estate crops during the reform period is unavoidable as a result of the relics of the previous period as well as differences in perceptions of ownership structure and land ownership and formal ownership held so far. Land disputes will not stop at any time if the normative legal approach (formal) as the fulfillment of social justice of society, let alone repressive approach that has been done by the authorities. For that reason, the alternative of solving land cultivation cases should be initiated with the spirit of social justice achievement (the people), especially the restriction of productive assets of land that is controlled monopolistically.

In such behavioral changes the impact on the demands of land rights in the area around the plantation sporadically so that in the end cause a dispute in the area of the plantation.

##### *5. Settlement of Land Dispute Through Mediation Dispute Settlement Mechanism.*

In order to determine the steps and direction in handling and resolve disputes, conflicts and land affairs effectively has been stipulated Decision of the Head of Land Agency of the Republic of Indonesia No.11 Year 2009 on Policy and Strategy Head of BPN RI Handling and Resolving Disputes, Conflict and Land Affairs Year 2009, where the system of handling land issues by referring to the Decree of Head of National Land Agency No.34 Year 2007 About Technical Guidance of Handling and Resolving Land Problems.

Settlement of land disputes (or civil disputes in general) is possible to use two means of settlement through courts and out of court. Although, the LoGA does not mention the mechanism of the settlement of land disputes, except the criminal provisions of Chapter III Article 57 paragraph (1) stating the criminal penalty for violating Article 15 of BAL for no more than 3 (three)

months or a maximum fine of Rp. 10,000 (ten thousand rupiah).

Paragraph (2) states that the Government Regulations and the laws and regulations referred to in Articles 19, 22, 24, 26, 1, 46, 47, 48, 49, 3 and 50, 2 may provide criminal penalties for violation of the law his invitation with imprisonment for a maximum of 3 (three) months and or a maximum fine of Rp. 10,000 (ten thousand rupiah).

Looking at the provisions of Article 15 of the BAL, the existence of a criminal threat indicates if a land dispute arises to be settled through the courts. The absence of provisions on the settlement of land disputes in the LoGA and the characteristics of dispute settlement in ordinary courts that often disappoint the justice seekers, encouraging various circles to propose the importance of the courts encouraging various circles to propose the importance of the court especially agrarian. Of course, this provision does not rule out the possibility of settling land disputes in a non-litigation manner.

There are several reasons why alternative solutions to land disputes need to be put forward:

- 1) Dissatisfaction with the role of the courts in resolving land disputes that are too formal, long, expensive and unfair;
- 2) The need for more flexible and responsive land dispute resolution mechanisms for the parties to the dispute;
- 3) Encourage communities to participate in participatory land disputes in a participatory manner; and
- 4) Expand access to bring about justice for society.

In the context of this study will be used alternative dispute resolution in the sense of alternative to adjudication, without reducing the meaning and truth of other terms. The purpose of developing alternative dispute resolution is to provide a forum for parties to work towards voluntary agreements in making decisions about the disputes they face.

Thus alternative dispute settlement is a potential means to improve the relationship between the disputing parties. A variety of reasons why one uses alternative dispute resolution. Besides acting as a potential dispute resolution tool to avoid high costs, the delays and uncertainties inherent in the litigation system, are also intended as a means to improve communication among the parties. Because the decision is taken by agreement, the result is a win-win, so the dispute resolution is complete (not pseudo).

The decision to use alternative dispute settlement methods depends on the consideration of the parties. It's just that there are at least 2 (two) things to consider to use alternative dispute resolution. First, alternative dispute resolution procedures are more appropriate than litigation procedures and second, it is necessary to determine which of the alternative dispute resolution options are best suited for the types of disputes encountered.

Settlement of land disputes through mediation obtains a legal basis in Article 23 C of Presidential Regulation No. 10/2006 on the National Land Agency. In the

Presidential Regulation, one of them mentioned that the Deputy for the review and handling of disputes and conflicts in the National Land Agency conducted the function of alternative implementation of problem solving, disputes, and land conflicts through mediation, facilitation, and others.

Mediation as one of alternative dispute resolution especially in plantation dispute settlement has advantages and disadvantages. the advantages contained in the mediation are:

- 1) The organization of the mediation process is not regulated in detail in the legislation so that the parties have flexibility and not trapped in forms of formalism, as in the litigation process;
- 2) Generally mediation is held in secret or secret. It means that only the parties and mediators attend the mediation process, while others are not allowed to attend mediation sessions;
- 3) In the mediation process, the material and principal parties may directly participate in bargaining to seek resolution of the problem without having to be represented by their respective legal counsel;
- 4) The parties through the mediation process may discuss various aspects or sides of their disputes, not only the legal aspects, but also other aspects;
- 5) In accordance with its consensual or consensual and collaborative nature, mediation can result in a win-win solution.

With reference to the above description, mediation has many advantages and advantages. However, mediation also has some weaknesses that need to be known by people who want to use settlement through mediation. The disadvantages are:

- 1) That mediation can only be effectively held if the parties have the will or desire to resolve the dispute by consensus. If only one of the parties has a desire to pursue mediation, while the other side has no desire to mediate, mediation will never happen and if it does not work effectively. This is particularly the case when using mediation is voluntary;
- 2) Non-stakeholder parties can take advantage of the mediation process with tactics to stall the time of dispute resolution, for example by disregarding the timetable of mediation sessions or negotiating simply to obtain information about the weakness of the opponent;
- 3) Some types of cases may not be mediated, especially cases related to ideological issues and basic values that do not provide a rung for the parties to make compromises.
- 4) Mediation is deemed inappropriate for use if the main issue in a dispute is a matter of determining the right because the dispute over the determination of the right must be decided by the judge, whereas the mediation is more appropriate to be used to resolve the dispute concerning the interest;

- 5) Normatively, mediation can only be taken or used in the field of private law and not in the field of criminal law.

In addition to the above weaknesses, the mediation that stems from cooperative paradigm also contains weaknesses, such as: First, the possibility of collusion between one of the disputed because the nature of mediation is voluntary rather than mandatory. Secondly, the agreement reached in mediation may not be enforceable because of the absence of force (enforceability). Third, mediation agreements can be misused, so as part of the ADR, the mediation according to Douglas Amy as quoted by Jonathan O'dea from The Politics of Environmental Mediation can be mal-distribution of power. Referring to the description above, then in solving land disputes should be done through non litigation through mediation. However, if the land dispute settlement through the alternative path is dead-end or does not meet the settlement then it is better for the parties to the dispute to settle through litigation or through the court.

#### IV. CONCLUSION

Most land disputes arise as a result of an unfinished problem in the settlement, due to the transitional period of a government that is never resolved, so the political problem affects the legal uncertainty, especially regarding land disputes. The study examined in this research has revealed that the law, whether in the form of law or otherwise, is neither free of value nor neutral in its existence, nor is it a national law, represents the tug of interest of the various political interests that surround it. The study of the settlement of land rights in this non litigation manner can be summarized as follows:

The first transition was during the New Order government which experienced a change in land policy including the land issue. Land issues are resolved in a repressive and security approach, so that the communities around the plantations are under constant pressure and the organization of agriculture and plantation affairs is controlled by the government, the culmination is the emergence of a transition in the reform government of 1998 in this transition period of community turmoil and disputes with the plantation on the pretext of claiming the rights that have been lost or taken away by the plantation company, this happens sporadically in various regions almost throughout Indonesia.

In the post-reform period, the transitional reform is not over, so in the research area there are many differences of perception about the ownership rights of estate land which then result in the dispute. The public understanding of the ownership of land rights is based on the history of the emergence of plantation lands previously employed by their "ancestors" based on substantial ownership under customary law, regarded as hereditary and lawful ownership. While ownership by the land party with formal ownership base (civil law of the West / civil law) by on the certificate of Right of Business obtained legally under formal law in force. From these transitional

conditions the settlement by litigation becomes ineffective, hence the settlement mechanism is applied by non-litigation method.

#### REFERENCES

- [1] A.P. Parlindungan, 1989, *Bunga Rampai Hukum Agraria serta Landreform*, Penerbit Mandar Maju, Bandung.
- [2] Azam, Syaiful, 2010, *Eksistensi Hukum Tanah Dalam Mewujudkan Tertib Hukum Agraria*, FH Bagian Hukum Perdata, Universitas Sumatera Utara, Medan,
- [3] Bakri, Muhammad, 2007, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)*. Citra Media. Yogyakarta
- [4] Budiono, Herlien. *Kumpulan Tulisan Hukum Perdata di Bidang Kenotariatan*. Cet. II. Bandung: PT. Citra Aditya Bakti: 2008.
- [5] Eddy Ruchiyat, *Politik Pertanahan Nasional Sampai Orde Reformasi*, Penerbit Alumni, Bandung 2004
- [6] Emirzon Joni, 2001, *Alternatif Penyelesaian Sengketa di Luar Pengadilan (Negoisasi, Mediasi, Konsultasi dan Arbitrase)*, PT. Gramedia Pustaka Utama, Jakarta
- [7] Harsono, Boedi. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jilid I Hukum Tanah Nasional. Cet. 12. Jakarta: Djambatan, 2008.
- [8] Margono, Suyud, 2000, *ADR & Arbitrase. Proses Pelembagaan dan Aspek-Aspek Hukum: Ghalia Indonesia*. Jakarta
- [9] Rahardjo, Satjipto, 2002, *Sosiologi Hukum, Perkembangan Metode dan Pilihan Masalah*, Universitas Muhammadiyah Surakarta.
- [10] Rahmadi, Takdir, 1994, *Mekanisme alternatif Penyelesaian Sengketa Dalam Konteks Masyarakat Indonesia Masa Kini*, makalah disajikan dalam Seminar Sehari Alternatif Penyelesaian Sengketa Dalam Kasus-Kasus Tanah, Perburuhan dan Lingkungan, Diselenggarakan Oleh Studi dan Advokasi Masyarakat bekerjasama dengan Dewan Pimpinan Pusat IKADIN
- [11] Rubai, Achmad, 2009, *Hukum Pengadaan Tanah Untuk Kepentingan Umum*, Baya Media, Malang.
- [12] Schuyt, CJM, *Recht En Conflict in Recht En Samenleving*, Van Gorcum, Assen, (1983) p55 and also cited again by Ronny Hanitijo Soemitro, "Law and Conflict Resolution in Society" (collection of Law and Society Paper, Undip Semarang, 1993)
- [13] Sodiki, Achmad, 1994, *Structuring of Land Ownership in Plantation Areas Malang Regency*, Dissertation of Graduate Program Doctoral of Law Science University Airlangga, Surabaya.
- [14] Soedjendro Kartini, 2001, *Perjanjian Peralihan Hak Atas Tanah yang Berpotensi Sengketa*, Penerbit Kanisius
- [15] T.M. Luthfi Yazid, 1996, *Penyelesaian Sengketa Melalui ADR*, Jurnal Hukum lingkungan