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LEGAL CONSTRUCTION OF DISPUTE RESOLUTION MINING LAND OVERLAPPING WITH PLANTATION LAND

Arivan Halim
Department of Legal Science, Universitas Airlangga, Surabaya, East Java, Indonesia
arivanhalim@gmail.com

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ABSTRACT

Indonesian Agrarian Law recognizes the principle of horizontal separation which has consequences for classifying land rights. One of the granting and acquisition of land rights can be given to mining and plantation businesses. Even so, the granting of land rights to these two types of businesses still generates a lot of disputes . The dispute that occurred was overlapping in the granting of business licenses to mining businesses and/or plantation businesses, based on State Administration decisions issued by State Administration Officials that were not in accordance with statutory regulations and did not heed the General Principles of Good Governance in particular the principle of precision. The purpose of this scientific work is to provide a legal construction for resolving disputes over overlapping mining land and plantation land. The author uses a way of reviewing the applicable laws and regulations, existing theories and principles critically and systematically. The legal constructions offered are civil lawsuit to request compensation through the District Court to the State Administrative Officer who made the State Administrative Decision after the issuance of the State Administrative Court Decision which has a ruling granting the claim to cancel the State Administrative Decision which caused losses and has permanent legal force.

INTRODUCTION

Indonesia is an agrarian country, so most of the Indonesian people still depend on the agricultural, plantation and fishery sectors to carry out their lives and their economy. Earth, water and space as well as the natural resources contained therein as gifts from God Almighty have an important role for the community in improving their welfare. Philosophically normalized in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) states that "Earth and Water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people." Arrangements regarding land are specifically regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). This implies that the land is controlled by the State, and the State provides opportunities for the people to utilize the earth's surface and the Natural Resources contained therein.

Potential Natural Resources and metallic mineral reserves spread across Indonesia are mostly located in the western and eastern parts (Luckeneder et al., 2021), such as copper and gold in Papua, gold in Nusa Tenggara, nickel in Sulawesi and the Eastern Indonesian Archipelago, bauxite and coal in Kalimantan, and minerals others are still scattered in various places. Mineral resources as one of the natural wealth owned by the Indonesian nation, if managed properly will contribute

to the country's economic development (Supramono, 2012). Utilization of Natural Resources can be done through various processes, one of which is the mining process.

The mining process in Indonesia cannot be carried out immediately, there are regulations related to mineral and coal mining that are main and applicable, namely Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law 4 of 2009) (Salim, 2012). Article 36 of Law 4 of 2009 regulates 2 licensing stages, namely: a. IUP Exploration includes general investigation, exploration and feasibility studies; b. Production Operation IUP covers construction, mining, processing and refining activities, as well as transportation and sales. The meaning of IUP is a permit to carry out a mining business, as stipulated in Article 1 point 7 of Law 4 of 2009. So that an individual or legal entity must have a Mining Business Permit (hereinafter referred to as Mining IUP) first, and as a new Mining IU holder can carry out the mining process.

In addition to the mining sector, the plantation sector is also expected to contribute to improving people's welfare. The plantation sector is a mainstay of leading commodities in supporting the development of Indonesia's national economy, both from the point of view of increasing the welfare of society as a whole by opening wide-open employment opportunities (Supriadi, 2011). The implementation of Mining and Plantation activities requires land or land in carrying out its business activities. In an effort to meet this need, the UUPA has provided for various types of land rights that are used to carry out both mining and plantation activities.

Land is given to individuals or legal entities with the rights provided by the UUPA to be used or exploited, where these rights are called Land Rights. Land rights are rights over a certain portion of the earth's surface, which is bounded, has two dimensions in length and width. All rights to land, either directly or indirectly, are sourced from the Rights of the Nation which are shared rights (Harsono, 2008). Land rights provided for by the UUPA are grouped into 2 (two) groups, namely Primary land rights and Secondary land rights. Primary land rights are rights that are directly sourced from the Indonesian Nation's Rights and secondary land rights are rights that are not sourced directly from the Indonesian Nation's Rights but are sourced from agreements with landowners. Primary land rights consist of property rights, usufructuary rights, building use rights, and usufructuary rights. Meanwhile, secondary land rights consist of rental rights, production sharing rights, lien rights on land and passenger rights.

The right holder is only allowed to use it and even then there are limits as stipulated in Article 4 Paragraph (2) of the UUPA, namely "only necessary for interests that are directly related to the use of the land, within the limits according to the UUPA and other higher regulations" (Harsono, 2008). Land rights do not cover the ownership of natural resources contained in the body of the earth. This is also regulated in Article 8 of the UUPA, namely "on the basis of the State's right to control as referred to in Article 2, the taking of natural resources contained in the earth, water and space is regulated." Land rights are given or obtained from the state to be cultivated or managed in mining and plantation businesses that aim for the welfare of the people. Although the granting of land rights in carrying out mining and plantation businesses can also cause disputes. The dispute that occurred was the overlapping of mining and plantation lands, the specifications of the dispute,

namely in the granting of business licenses to plantation businesses or mining businesses which in this case related to land tenure rights.

The practice of granting business permits for one area of land does not rule out the possibility of overlapping land both in land for mining businesses and land for plantation businesses which causes disputes. Supposedly before giving a business license, it should properly respect the previous ownership of land rights. So that upon the issuance of the permit, the Civil Rights of a person or legal entity are violated.

Based on the phenomenon that occurs there are still many overlapping land disputes between mining land owners and plantation land owners, therefore the author is interested in conducting a deeper analysis regarding which party has the right to the land in dispute. So the authors try to reconstruct it in order to find ways to resolve disputes that are fair and also useful for resolving disputes in other cases. The author used a method of studying the applicable laws and regulations, existing theories critically and systematically, so the research is entitled "Legal Construction of Dispute Resolution Mining Land Overlapping with Plantation Land." In accordance with the description of the background above, the issue to be discussed is whether the legal construction that can be given to resolve disputes over overlapping mining land with plantation land.

METHODS

In performing this study, the author adopts a normative juridical research methodology, which focuses on analyzing how rules or norms are used in positive law. Normative juridical, or a strategy that applies a positivist understanding of legis. According to this theory, law is the same as written regulations created and issued by recognized institutions or officials. According to this perspective, the legal system is seen as being closed, isolated, and disassociated from social reality.

RESULTS AND DISCUSSION

Legal Construction of Overlapping Dispute Resolution of Mining Land and Plantation Land

Land disputes have now penetrated into complex social problems and require solutions with a comprehensive approach. Developments in the nature and substance of cases of land disputes are no longer just matters of land administration which can be resolved through administrative law, but the complexities of these lands have penetrated into the realm of politics, social, culture, and are related to issues of nationalism and human rights (Isnur, 2012). In addition to the lack of transparency in terms of land tenure and ownership caused by limited data and information on land tenure and ownership, as well as the lack of transparency of information available to the public, these are the causes of land disputes. Weak government administration in the land sector is also a cause of disputes in the land sector, weak government administration in the form of issuing business licenses in one land where in one land there are two business licenses owned by each party.

The philosophical foundation of government administration as set forth in Article 1 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "sovereignty is in the hands of the people and implemented according to the Constitution." Furthermore,

according to the provisions of Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state based on law. This means that the system of administering the government of the Republic of Indonesia must be based on the principle of people's sovereignty and the principle of the rule of law. Based on these principles, all forms of Government Administration Decisions and/or Actions must be based on people's sovereignty and the law is a reflection of Pancasila as the state ideology. Thus it is not based on the power attached to the position of the administration of the Government itself. The administration of government is regulated by Law Number 30 of 2014 concerning Government Administration (hereinafter referred to as Law 30 of 2014), this law guarantees basic rights and provides protection to citizens and guarantees the implementation of state duties as mandated by Article 27 Paragraph (1)), 28D Paragraph (3), Article 28F, and Article 28I Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. These articles essentially provide provisions that citizens are not objects, but subjects who are actively involved in administering government.

Law 30 of 2014 mandates that in order to guarantee protection to every member of the public, they can submit objections and appeals against decisions and/or actions to the Agency and/or Government Officials or superiors of the officials concerned. Every citizen submits a lawsuit against the decisions and/or actions of Government Agencies and/or Officials to the State Administrative Court because Law 30 of 2014 is material law of the State Administrative Court System. The State Administrative Court (hereinafter referred to as Administrative Court) is the result of reform in the judicial sector in Indonesia, which is constantly being strengthened for the sake of realizing an independent judicial power and for administering justice to uphold law and justice. As mandated by Article 24 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "the administration of justice is essentially based on the judge's decision which is the crown of justice". So that the substance must be able to describe the dignity, dignity, honor of judges, as well as for the sake of upholding law and justice in the corridors of a democratic rule of law.

Law 30 of 2014 is one of the regulations that contains the General Principles of Good Governance (hereinafter referred to as AUPB), as set forth in Article 5 of Law 30 of 2014 which states that "the implementation of Government Administration is based on: Principles of Legality, Principles of Protection of Human Rights People, and General Principles of Good Government". According to Bachsan Mustafa, the term "principle" in the General Principles of Good Governance, or AUPB, is intended as a "legal principle", namely a principle that forms the basis of a rule of law including the rule of law of governance (Mustafa, 1990). Rules or norms are provisions about how humans should behave in their association with other humans. The provisions regarding behavior in legal relations in their formation, as well as their application, are based on the applicable legal principles. The word "general" means something that is comprehensive and includes things that are fundamental and accepted as principles by society in general. The word "government" is also referred to as a State Administrative Agency or Officer as defined in Article 1 point 2 of Law Number 5 of 1986 Concerning the State Administrative Court (hereinafter referred to as Law 5 of 1986) states that " State Administrative Agency or Officer is

an Agency or Official who carries out government affairs based on applicable laws and regulations." While the word "Good" means that the generally accepted principles are based on things that are good or appropriate or appropriate to be used as guidelines in administering government as a condition for forming clean and good governance.

However, in its development, both in Indonesia and in the Netherlands, both the law and AUPB must serve as guidelines for government administrators in carrying out their functions to carry out actions and/or issue decisions. The reason is whether a government decision is valid if it fulfills both, that is, it is still guided by the applicable law and the AUPB. It is over confirmed as stated in Article 52 Paragraph (2) of Law 30 of 2014 regarding the legal requirements for government decisions, it is stated that "TUN decisions can be declared valid, if they are made in accordance with laws and regulations and based on AUPB."

The rationality and intellectuality of judges in using AUPB plays a very important role, especially in exploring and finding laws when dealing with State Administrative disputes (hereinafter referred to as TUN) where the regulations are unclear, abuse of authority, and there are no regulations capable of resolving TUN disputes. The existence of AUPB in law formation requires the creativity of judges in finding the values of truth and justice to build consistent and measurable legal constructions in the application of law when the existing law is still very vague. Basically, the application of law is interpreted as the application of legal regulations to concrete events (Mertokusumo & Pitlo, 1983). The function of applying the law so far has been mostly carried out by judges, while law discovery is still very rarely carried out. Jon Z. Loudoe suggests that legal discoveries can be made through interpretation, analogy, legal narrowing, and *a contrario.* Legal discoveries occur because of the application of provisions to facts and these provisions sometimes still have to be formed, while they cannot always be found in existing laws (Loudoe, 1995). This is where the existence of AUPB really helps judges in making legal discoveries so that they can produce permanent jurisprudence regarding AUPB.

AUPB has been regulated and stated in various laws and regulations in Indonesia explicitly with various types of principles and the number is constantly growing. This is different from the AUPB which is regulated in Law 5 of 1986 which is not explicitly stated in the body of the Act, and explicit arrangements regarding AUPB emerged after the first amendment to Law Number 9 of 2004 Concerning Amendments to Law 5 of 1986 (hereinafter referred to as UU 9 of 2004), to be precise in the Elucidation of Article 53 Paragraph (2) which contains AUPB with reference to Article 3 of Law Number 28 of 1999 Concerning the Implementation of a Clean and Free State from Corruption, Collusion and Nepotism (hereinafter referred to as Law 28 of 1999). Explanation of 13 (thirteen) important principles in AUPB which are often used by judges in court in deciding TUN cases. The thirteen important principles include the principle of legal certainty, the principle of public interest, the principle of openness, the principle of usefulness, the principle of impartiality, the principle of accuracy, the principle of not abusing authority, the principle of good service, the principle of orderly administration of the state, the principle of accountability (new principle), The Principle of Proportionality, the Principle of Professionalism, and the Principle of Fairness.

If it is related to the dispute over overlapping mining land with plantation land, which is where there is an overlap with the TUN Decree. On mining lands TUN officials authorized to issue Mining Business Permits as stipulated in Article 37 of Law 4 of 2009, which states that there are three officials authorized to issue Exploration Mining Business Permits and Production Mining Business Permits. The three officials include Regents/Mayors, Governors, and Ministers (the Minister referred to in this case is the Minister of Energy and Mineral Resources).

Meanwhile TUN officials authorized to issue Plantation Business Permits for Cultivation (IUP-B), Plantation Business Permits for Processing (IUP-P), and Plantation Business Permits (IUP) as stipulated in Article 48 of Law Number 39 of 2019 concerning Plantations (hereinafter referred to as Law 39 of 2019), including Governors for cross-regency/city areas, Regents/Mayors for areas within a regency/city, and Ministers for cross-provincial areas (the Minister referred to in this case is the Minister of Agriculture).

So that TUN Officers at each Government Agency who issue a TUN Decree in the form of mining business licenses and plantation business licenses can become an overlapping Dispute, if the mining business permits are issued in part plantation land , there are land rights over plantation land that are violated. If it is related to AUPB, then the TUN Officer who issues the business license does not carry out the principle of accuracy and can fulfill the elements as set out in Article 1365 BW. The principle of precision was not implemented because it did not see that there were land rights on plantation land that previously existed. The definition of the principle of accuracy according to Law 30 of 2014 is a principle which implies that a decision and/or action must be based on complete information and documents to support the legality of the determination and/or implementation of the decision and/or action, so that the decision and/or action concerned carefully prepared, before the Decision and/or Action is determined and/or carried out. The elements contained in the principle of accuracy based on Law 30 of 2014 are Decisions and/or Actions, Based on complete documents, and Careful before the Decisions and/or Actions are determined and/or carried out.

Based on the elements contained in the meaning of the principle of accuracy according to Law 30 of 2014, it can be understood that every State/Government Official must be careful and careful in making decisions or when carrying out an action always based on the information and documents provided. complete to support the legality of the determination and/or implementation of decisions and/or actions, so that the decisions and/or actions made lead to justice so as not to harm the parties affected by the decisions made by the Government Official. The principle of carefulness actually presupposes an attitude for decision makers to always act carefully, namely by comprehensively considering all aspects of the decision material, so as not to cause harm to the community (Nugraha, 2007). The principle of accuracy requires that government agencies before making a decision, examine all relevant facts and also include all relevant interests into their considerations. If important facts are not well researched, that means not careful. If the government mistakenly does not take into account the interests of third parties, that also means not being careful. In this framework, the principle of accuracy may require that interested parties must be considered , before they are faced with an adverse decision (Hadjon, 2005). This principle demands

accuracy from government officials in every time they commit an act. And every time the actions of government officials that result in law always give rise to rights and obligations, not only to themselves as legal subjects but also to other parties (Ali & Muhidin, 2012). In essence, there are three elements that must be considered, namely as minimal as possible to minimize the consequences that arise, the consequences that arise must be proportional to the goals to be achieved, and based on the public interest which is divided evenly, meaning that it does not mean that one or several or certain parties must suffer more than the others.

So that in this case when TUN officials do not adhere to the principle of accuracy, there are consequences that are detrimental to owners of land rights on plantation land in the form of violation of their land rights, damage to plantations because under the surface of the earth on the plantation land there is mineral and coal exploration. Therefore, it can be said that these losses occurred due to the issuance of a TUN Decree in the form of a mining business permit which was against the law

The foundation for acts against civil law is Article 1365 *Burgelijk Wetboek* (hereinafter referred to as BW), which historically has the same meaning as Article 1401 *New Burgerlijk Wetboek* (hereinafter referred to as NBW) Netherlands. Mariam Darus Badrulzaman breaks down this unlawful act into five elements, namely: (1) there must be an act (both positive and negative), (2) the act must be against the law, (3) there is a loss, (4) there is a causal relationship between the unlawful act with losses, and (5) there is an error (Agustina, 2003). An *Arrest Hoge Raad was put forward* in 1924 which in the Netherlands was known as the *"November Revolution"* through *"Ostermann Arrest"* , dated November 20, 1924. From this *arrest* it would be known that there were major steps or changes made by the Supreme Court of the Netherlands at that time. *The Hoge Raad* has determined that a public legal entity that does not fulfill its public legal obligations is deemed to have acted against the law within the meaning of article 1401 NBW or the same as article 1365 BW. Based on the provisions of this article, the public legal entity can be held responsible for compensation (Algra, 1983).

An unlawful act is defined not only as an act or omission that violates a person's rights, but also as an act or omission that is contrary to that person's legal obligations. Thus, that person has committed an unlawful act, which violates a statutory regulation , regardless of whether the regulation has the nature of private law or public law, just like a citizen who violates a criminal law, he also has committed an unlawful act. Opinion of *Hoge Raad* : "A public legal entity that acts through its parts, in fulfilling its governmental duties it must comply with statutory regulations and if it does not do this, then with that government it is without anything that it has committed an unlawful act and is responsible for the resulting loss" (Algra, 1983).

Hoge Raad 's opinion above is a form of legal construction by way of *argumentum per analogiam,* which means legal construction by abstracting the principle of a provision and then this principle is applied "as if" extending its validity to a concrete event that has not been regulated. Expanding the enforcement of unlawful acts is not only a civil law subject that is categorized as committing an unlawful act, but a TUN Officer who in issuing a TUN Decree without regard to

statutory regulations and without heeding the AUPB can also be categorized as committing an unlawful act if the TUN Decree issued results in a real loss.

The granting of compensation as described above is a form of legal consequences for the injured party in the realm of civil law, but in the realm of state administrative law in the form of changes, revocations, delays, and cancellations of state administration decisions. In the case of this overlapping dispute that can be carried out by the parties, namely canceling the TUN Decision as stipulated in Article 66 Paragraph (1) and Paragraph (3) of Law 30 of 2014 which essentially states that "Decisions can only be canceled if there is a defect: authority, procedure, and/or substance. And it can be done by Government Officials who make decisions, on Officials who make decisions or on court decisions. So that the aggrieved party can file a lawsuit with the State Administrative Court to cancel the TUN decision. After the Judge's Decision has been issued from the State Administrative Court which has granted the decision to annul the TUN Decision and has permanent legal force, the next step is to file a civil suit to the District Court where the object of the dispute is located to request compensation from the TUN Officer who issue it and the party who obtains the TUN decision.

Arrangement of Supply, Allocation, and Land Use for Mining and Plantation

Disputes over overlapping land cases in Indonesia, especially overlapping mining lands with plantation lands, are not necessarily due to the mistakes of the parties, but there are various factors. Elza Syarief in her book entitled "Resolving Land Disputes" expressed the opinion that, in general, land disputes arise due to factors such as incomplete regulations, non-compliance with regulations, land officials who are not responsive to the needs and amount of available land, inaccurate data (Syarief, 2014). and incomplete, erroneous land data, limited human resources in charge of resolving land disputes, erroneous land transactions, acts of applicants for rights, and settlements from other agencies resulting in overlapping authorities.

According to Bernhard Limbong, put forward two important things in land disputes, namely land disputes in general and land disputes in particular as follows (Syarief, 2014):

1) In General (Legal Factors)
    a) Inadequate Regulations: Regulations in the land sector do not fully refer to the basic values of Pancasila and the philosophy of Article 33 of the 1945 Constitution concerning morals, justice, human rights and welfare. On the other hand, law enforcement often stops at the formal mechanism of the rule of law and ignores its substantive values.
    b) Overlapping Judiciary: Currently there are three judicial institutions that can handle a land dispute, namely, the Civil Court, the Criminal Court, and the State Administrative Court. In a particular dispute, one of the parties who wins civilly does not necessarily win criminally or administratively. In addition, the resources of the agrarian apparatus are also things that can trigger disputes.
    c) Settlement and Convoluted Bureaucracy : Settlement of cases through courts in Indonesia is tiring, costs are high, and takes a long time to complete, especially if

you are stuck with the judicial mafia. So justice is not on the side of the right, this is of course no longer in line with our principles of a simple, fast and low-cost judiciary. Because his current condition in dealing with the court is not simple. Court bureaucracy is convoluted and long and expensive.

d) Overlapping Regulations : UUPA as the parent of other regulations on agrarian resources, especially land, but over time, laws and regulations related to agrarian resources were made but did not place the UUPA as the main law. In fact, it places the BAL on equal footing with other agrarian laws. The structure of agrarian law became overlapping, the UUPA which was originally a legal umbrella for land policy in Indonesia became dysfunctional and there was even a substantial conflict with the issuance of sectoral laws and regulations.

2) Specifically (Non-Legal Factors):

a) Overlapping Land Use: Rapid population growth results in an increase in population, while food production decreases due to changes in the function of agricultural land. The government, which also continues to carry out development projects, cannot be avoided if the same plot of land has or arises different interests. That is why the growth of land disputes continues to increase.

b) High Economic Value of Land : Since the New Order era, the economic value of land has been getting higher. This is related to the policy of increasing economic growth launched by the Government focus on development. The New Order government stipulated a policy in the form of land as part of agrarian resources which was no longer a source of production or land was no longer for the prosperity of the people, but land as a development asset in order to pursue economic growth which even the policy was very detrimental to the people. Even the social function of land is sidelined because everything is business oriented. The policies of the New Order government can lead to disputes over the control of agrarian resources between landowners, in this case the people, and owners of capital facilitated by the government.

c) Increased Public Awareness: Global developments and increased developments in science and technology have had an effect on increasing public awareness, people's mindset towards land tenure has also changed. In relation to land as a development asset, there has been a change in the mindset of the people towards land ownership, namely no longer placing land as a source of production but instead making land a means for investment or an economic commodity. If previously compensation in land acquisition for the development of interests was only given "sober" and even voluntarily and free of charge, it has slowly changed to refer to the NJOP (Sales Value of Tax Objects). Later, the community demanded compensation based on market prices and even more than that by demanding compensation in the form of complete resettlement with more or less the same facilities as their place of origin which was used as a development area.

d) Fixed Land, Increasing Population : Very fast population growth, both through birth and migration as well as urbanization. Meanwhile, the relatively fixed land area makes land an economic commodity with a very high value. So that every inch of land is defended desperately.
e) Poverty : Poverty is a complex problem that is influenced by various related factors. In fulfilling land needs, the poor face the problem of imbalance in the structure of tenure and land ownership. As well as uncertainty in the control and ownership of agricultural land. In fact, the life of a farmer's household is greatly influenced by his access to land and the mobility ability of his family members to work on agricultural land. Therefore, the increase in farmers reflects poverty in rural areas.

Of the various factors that cause land disputes, especially overlapping disputes over mining land with plantation land, based on Article 14 of the UUPA which essentially regulates "a general plan regarding the supply, allotment, and use of earth, water, and space as well as the natural wealth contained in it for the purposes of developing agricultural, livestock and fishery production as well as industry, transmigration and mining" the author tries to offer some legal advice based on the facts that occurred and related laws and regulations. Some of these legal suggestions include:

1) Single Window Policy: Derived from one window, which means that the Central Government as the coordinating center must determine the authority of the official who is authorized to issue permits related to business land in the land sector . So that business applicants both in the mining, plantation and other business fields before conducting their business must submit applications for permits related to their business fields to authorized officials from certain agencies that have been appointed by the Central Government, in this case the President, officials whose authority grants permits for land use in land sector. So that disharmony does not occur between the respective Officials currently authorized to issue land use permits for mining, plantation and other business fields.
2) There is coordination between the Central Government and the Regional Governments: There is coordination between the Central Government and the Regional Governments with regard to permits that will be issued by the competent authority if the land used for both mining and plantation businesses is located on the same land. Because in practice it seems as if the Central Government and Regional Governments have the impression that there is no coordination, as evidence there is overlapping authority issued by authorized officials in terms of issuing mining business permits and plantation business permits. So it should be before the authorized official, in this case the Minister, Governor or Regent/Mayor according to their business area, issue a permit, they must coordinate with each other. So that there is no overlap in the decree on the issuance of permits for mining businesses and plantation businesses by authorized officials.
3) Enforcement of the One Map Policy *in* the Land Sector: A number of regions in Indonesia have overlapping land ownership and tenure which has the potential to cause social conflict, this is because a number of agencies have maps based on sectoral and respective

interests. So that it can cause problems between the Government and employers, government and society, employers and society, even between fellow government agencies. One Map Policy *(One Map Policy)* based on Thematic Geospatial Information (hereinafter referred to as IGT) which is built does not refer to one base map reference source (Top Map). As stipulated in Article 1 number 6 of Law Number 4 of 2011 concerning Geospatial Information, the meaning of IGT is Geospatial Information that describes one or more specific themes made to refer to Basic Geospatial Information. There are at least four laws that contain basic information on IGT which are the basis for land tenure by a number of agencies, including the Ministry of Forestry based on Law Number 41 of 1999, the Ministry of Energy and Mineral Resources (ESDM) with reference to Law No. Number 4 of 2009, Ministry of Agriculture with reference to Law Number 39 of 2014, and Law Number 41 of 2009 concerning Protection of Sustainable Food Agricultural Land.

So far, the IGT does not refer to the Base Map that was developed by a competent and competent agency, so the IGT that is built will cause confusion which can lead to conflict. Meanwhile, from a non-technical perspective, access to thematic geospatial data for obtaining sectoral permits from relevant agencies is still difficult. Thus, the determination of land/area permits by one agency is often not supported by information on land or area permits from other agencies. Based on the Base Map owned by each related agency, the Geospatial Information Agency (BIG) integrates it into one base map *(One Map)* . One Base Map is used as an alternative tool for solving social conflict problems due to overlapping Basic Maps of land ownership or control. One Basic Map will later contain the location of land for plantations, mining, forestry, and other business sectors. So that later it will be clearer what business the location is used for and the official who is authorized to issue the permit.

Implementation of Inventory and Registration of Control, Ownership, Use and Utilization of State Land (P4T)

The legal basis for the implementation of P4T Inventory and Registration activities are various regulations related to P4T structuring efforts. The land issue is one of the development sectors that requires very serious and extra careful handling from the government. This extra caution is needed because land is a very vital need for the community, especially people who depend on the land for their lives. This is because the government's position in dealing with land issues is faced with difficult problems. On the one hand, as a government, it has the obligation to protect, regulate public order and welfare and on the other hand, demands for accelerated economic development which in the end require it as a foothold for all these economic activities (Supriadi, 2011).

Since the beginning of the Reformation Era in 1998, which was marked by the fall of the New Order regime, all homework in all fields of development, including the land sector, needs to be realigned. In connection with the demands for reform in all fields of development, the People's Consultative Assembly (MPR) in 2001 issued a Decree Number IX/MPR/2001 concerning

Agrarian Reform and Natural Resource Management. Article 2, Article 4 and Article 5 Paragraph (1) Tap. The MPR aims to realize a complete and integrated conception, policy and national land system, so that land management can truly become a source for the greatest possible prosperity of the people as mandated in Article 33 Paragraph (3) of the 1945 Constitution within the framework of the Republic of Indonesia (Supriadi, 2011).

Following up on the mandate of MPR Decree No. IX/ MPR/ 2001 concerning Agrarian Reform and Natural Resource Management, the President as the mandate holder of the MPR and the main executor of the development sector including the development of the agrarian sector, issued Presidential Decree Number 34 of 2003 concerning National Land Policy in 2003. Article 1 Presidential Decree No. 34 of 2003 stipulates in order to realize a complete and integrated national land policy and system conception, as well as the implementation of MPR Decree No. IX/ MPR/ 2001, BPN as an institution or non-departmental government agency is legally responsible for regulating and administering land throughout Indonesia. Article 2 Paragraph (2) Presidential Decree No. 34 of 2003 authorizes BPN to:

1) Compilation of the Draft Law on the Improvement of Law Number 5 of 1960 concerning Basic Agrarian Regulations and the Draft Law on Land Rights and other laws and regulations in the land sector.
2) Development of information systems and land management which includes:
    a) Compilation of a database of state/regional government asset land throughout Indonesia.
    b) Preparation of textual and spatial data applications in land registration services and preparation of land tenure and ownership databases, which are linked to e-government, e-commerce, and e-payment.
    c) Cadastral mapping in the context of inventorying and registering tenure, ownership, use and utilization of land using satellite imagery and information technology to support land reform implementation policies and the granting of land rights.
    d) Development and development of management of land use and utilization through a geographic information system by prioritizing irrigated rice field zones in order to maintain national food security, cadastral mapping in the framework of inventory and registration of tenure, ownership, use and utilization of land by using satellite imagery technology and information technology to support policies implementing land reform and granting land rights.

BPN as the institution responsible for managing land issues, issued Decree Number 2 of 2003 concerning Norms and Standards for Mechanisms for the Management of Government Authority in the Land Sector which are implemented by District/City Governments. Policy in the National Land Sector, this policy adheres to the dualism of authority, namely the authority of the central government and the authority of the regional government. The rights and authorities of 2 (two) structures for the implementation of land issues, namely first the rights and authorities of the BPN to formulate 9 (nine) policies to regulate and compile norms and/or standardization of management mechanisms, product quality and human resource qualifications, second , the rights and authorities

of the Provincial and Regency/City Governments to exercise the 9 (nine) powers that will be delegated and implemented, including the Granting of Location Permits; Implementation of Land Procurement for Development ; Settlement of Arable Land Disputes; Settlement of Compensation and Land Compensation for Development; Determination of Subjects and Objects of Land Redistribution, as well as Compensation for Land Loss, Excess Land, and Absentee Land; Determination and Resolution of Alayat Land Issues; Utilization and Settlement of Vacant Land Problems; Issuance of Land Opening Permit; and Regency/City Land Use Planning.

The National Land Agency of the Republic of Indonesia (BPN RI) through the Deputy for Land Arrangement and Arrangement in accordance with the Decree of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2006 stipulates that the task of the deputy is to formulate and implement policies in the field of land regulation and arrangement. Based on this regulation, one of its functions is to carry out an Inventory of Ownership, Ownership, Use and Utilization of Land (P4T) and evaluation of land for land reform objects. This is in accordance with the Decree of the MPR-RI No. IX of 2001, specifically Article 5 Paragraph 1 letter b and Paragraph 1 letter c, the intended agrarian reform policy directions are:

1) Paragraph 1 letter b states that "Carry out a just re-arrangement of control, ownership, use and utilization of land (Landreform) by taking into account land ownership for the people".
2) Paragraph 1 letter b states that "Conducting land data collection through inventory and registration of control, ownership, use and utilization of land in a comprehensive and systematic manner in the context of implementing land reform".

The implementation of the duties and functions of the Land Agency in the field of land reform requires strategic activities in accordance with the mandate of MPR Decree No. IX/ 2001, namely: Inventory of Control, Ownership, Use and Utilization of Land (P4T). Without sector-by-sector information within a certain government administration boundary (village/kelurahan or sub-district) it is very difficult to carry out these tasks and functions, especially finding lands that are land reform objects. P4T data collected systematically and presented spatially is needed in the implementation of policies in the field of land reform. The purpose of Landreform is to carry out a fair and equitable distribution of the people's source of livelihood in the form of land, in order to achieve a fair distribution of results. To anticipate this, the government took land that was former Landreform objects which later will be distributed to the people, especially those who do not own land *(landless farmers)* and those who have very little land (smallholders / *near landless farmers*) as stipulated in Government Regulation Number 224 of 1961 .

The implementation of the Inventory and Registration of Control, Ownership, Use and Utilization of State Land (P4T) is expected to be able to record all State Land spread over several regions and it becomes clear that the status of the land is state land or land owned by individuals or legal entities.

CONCLUSION

Of the various factors that cause land disputes, especially overlapping disputes over mining land with plantation land, administrative weaknesses in the land sector are the cause of overlapping land disputes. Administrative weaknesses in the form of slow issuance of permits, disharmony of related laws and regulations, and lack of coordination between authorized officials in issuing permits for both mining and plantations. From the various problems above, several legal constructions are based on facts that occurred and related laws and regulations. Some of these legal constructions, among others One Window Policy *(Single Windows policy)* ; Coordination between the Central Government and Regional Governments ; One Map Policy *(One Map Policy)* ; and Implementation of Inventory and Registration of Control, Ownership, Use and Utilization of State Land (P4T). From the various constructions offered by the author, it is hoped that it will be able to fix problems in the land sector where so far there has been no significant resolution. So that problems in the land sector do not continue and do not harm the parties whose business is related to the land sector.

The Central Government and Regional Governments in issuing TUN Decrees must heed laws and regulations, AUPB, as well as complete information and documents so that the TUN Decree issued does not cause any harm to the parties. The central government should make a One Window Policy, a policy which appoints officials who, in this case, have the authority to issue mining and plantation business permits. There should be coordination between the Central Government and the Regional Governments so that there is no overlapping authority in issuing mining business permits and plantation business. The Central Government should make a One Map Policy, a policy in which to make one map and delegate it to appointed officials which contain areas used for mining and plantation businesses. So that the use of the land is clear. The Minister of Agrarian Affairs who is delegated to the Regional Government should carry out the Inventory and Registration of Control, Ownership, Use and Utilization of State Land (P4T), which means that those who in this case are authorized to issue land permits must carry out an inventory in terms of control, ownership, use and utilization land which aims to record all state land scattered in several areas and it becomes clear that the status of the land is state land or land owned by individuals or legal entities. Mining companies and plantation companies should first look at the relevant regulations before conducting their business, so that they do not cause disputes.

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