

**AGRARIAN DISPUTE RESOLUTION RELATING TO COMMON  
LAND USE NON-LITIGATION CHANNELS TO  
REGISTER AREA 45 IN MESUJI**

**PENYELESAIAN SENGKETA AGRARIA TERKAIT  
PENGUNAAN LAHAN BERSAMA MELALUI SALURAN  
NON-LITIGASI UNTUK MENDAFTARKAN AREA 45 DI MESUJI**

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**ABSTRACT**

The agrarian dispute over customary land in the Register 45 Mesuji Forest Area is a structural conflict involving the state, corporations, and local communities. The verification of production forest areas and the issuance of management permits to private entities without taking into account the rights and existence of the communities that have long managed and used the land are the main causes of this dispute. The current settlement strategy, which has involved coercive measures and litigation, has not worked and has even prolonged the war and exacerbated human rights abuses. The objectives of this study are to evaluate the efficacy of non-litigation dispute settlement, analyze the features of agricultural conflicts in Register 45 Mesuji, and investigate how customary land disputes are resolved in other nations. Statutory, conceptual, and comparative legal techniques are all part of the normative juridical research methodology. The research results of the study demonstrate that agricultural conflicts in Register 45 are complex and cannot be adequately settled by a formal court system alone. Since non-litigation dispute resolution techniques like discussion and mediation promote inclusive discourse, lessen conflict escalation, and uphold community rights, they have a higher chance of achieving substantive justice. Studies comparing South Africa, Brazil, and the Philippines demonstrate that the state's active mediation role and acknowledgement of indigenous peoples' collective rights

are essential to the long-term settlement of agricultural disputes. This study suggests a Register 45 conflict resolution approach that uses multi-party mediation focused on restorative justice and human rights protection, temporary acknowledgment of community management rights, and participatory inventory.

**Keywords : Agrarian Disputes, Customary Land, Non-Litigation.**

### **ABSTRAK**

*Sengketa agraria atas tanah adat di Kawasan Hutan Mesuji Register 45 merupakan konflik struktural yang melibatkan negara, korporasi, dan masyarakat setempat. Verifikasi kawasan hutan produksi dan penerbitan izin pengelolaan kepada entitas swasta tanpa mempertimbangkan hak dan keberadaan masyarakat yang telah lama mengelola dan menggunakan lahan tersebut merupakan penyebab utama sengketa ini. Strategi penyelesaian saat ini, yang melibatkan tindakan paksaan dan litigasi, belum berhasil dan bahkan memperpanjang konflik serta memperburuk pelanggaran hak asasi manusia. Tujuan penelitian ini adalah untuk mengevaluasi efektivitas penyelesaian sengketa non-litigasi, menganalisis ciri-ciri konflik pertanian di Mesuji Register 45, dan menyelidiki bagaimana sengketa tanah adat diselesaikan di negara lain. Teknik hukum statutori, konseptual, dan komparatif merupakan bagian dari metodologi penelitian yuridik normatif. Hasil penelitian menunjukkan bahwa konflik pertanian di Register 45 bersifat kompleks dan tidak dapat diselesaikan secara memadai hanya dengan sistem pengadilan formal. Karena teknik penyelesaian sengketa non-litigasi seperti diskusi dan mediasi mendorong wacana inklusif, mengurangi eskalasi konflik, dan menjunjung tinggi hak-hak masyarakat, teknik ini memiliki peluang lebih tinggi untuk mencapai keadilan substantif. Studi yang membandingkan Afrika Selatan, Brasil, dan Filipina menunjukkan bahwa peran mediasi aktif negara dan pengakuan hak-hak kolektif masyarakat adat sangat penting untuk penyelesaian sengketa pertanian jangka panjang. Studi ini mengusulkan pendekatan penyelesaian konflik Register 45 yang menggunakan mediasi multi-pihak yang berfokus pada keadilan restoratif dan perlindungan hak asasi manusia, pengakuan sementara hak pengelolaan masyarakat, dan inventarisasi partisipatif.*

**Kata Kunci : Sengketa Agraria, Tanah Adat, Non-Litigasi.**

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## **I. INTRODUCTION**

Human life has an unbreakable connection to land, which is a strategic resource with economic, social, political, and cultural aspects. Particularly for groups governed by customary law, property in Indonesia is not just viewed

as a financial resource but also as a place of residence with spiritual and historical significance. As a result, disputes over customary land in agriculture can turn into intricate, protracted, multifaceted battles. The Constitution of the Republic of Indonesia through Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the earth, water and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people<sup>1</sup>. This provision provides legitimacy to the state to regulate the control and utilization of agrarian resources, but at the same time contains a constitutional obligation to guarantee welfare and social justice for all Indonesian people.<sup>2</sup>

In fact, the social reality of indigenous tribes' customary rights frequently conflicts with the state's authority to manage land. Across Indonesia, this contradiction between local community rights, investor interests, and governmental policy has led to a number of agricultural conflicts. The land dispute in Lampung Province's Register 45 Mesuji Forest Area is one of the most intricate and drawn-out agricultural conflicts. Conflict has arisen between the government, businesses, and people as a result of the Register 45 area being designated as a production forest and PT Sylva Inhutani Lampung being granted management powers under Forestry Ministerial Decree No. 93/Kpts-II/1997.

This conflict becomes more complex when the people who live and manage the land are categorized as forest encroachers and illegal communities, so that their constitutional rights as citizens are neglected.

The resolution of the Register 45 agrarian conflict has yet to find a just solution. Repressive and litigation approaches have proven ineffective and have actually deepened the conflict. Therefore, an alternative approach is needed through non-litigation channels that emphasize deliberation, mediation, and a humanitarian approach. The resolution of the agrarian conflict in the Register 45 Mesuji Forest Area through a non-litigation approach stems from the structural, multidimensional, and protracted nature of the conflict itself. This conflict not only demonstrates a legal dispute over land ownership but also reflects a clash of interests between the state, corporations, and communities whose socio-economic dependence on the land as a source of livelihood is crucial.<sup>3</sup>Therefore, solutions that rely solely on a formalistic approach to positive law tend to fail to address the root of the problem and instead exacerbate the escalation of the conflict.<sup>4</sup>

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<sup>1</sup> Boedi Harsono. 2008. *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Its Contents and Implementation*. Djambatan, Jakarta, pp. 5-9.

<sup>2</sup> S.W. Sumardjono, Maria. 2001. *Land Policy: Between Regulation and Implementation*. Kompas Book Publisher, Jakarta, pp. 3-6.

<sup>3</sup> *Op.Cit.* Boedi Harsono. 2008. pp. 371-375.

<sup>4</sup> *Op.Cit.* S.W. Sumardjono, Maria. pp. 145-150.

The litigation approach to Register 45 conflicts has proven to have serious limitations. The judicial process generally positions communities as structurally disadvantaged, both in terms of access to legal aid, the ability to provide evidence, and control over land and forestry administration. The positive legal system requires formal evidence, while communities that have long managed land for generations often lack legal documents recognized by the state. As a result, court decisions often favor the state or corporations, without considering the dimensions of substantive justice and human rights.<sup>5</sup>

Furthermore, the repressive approaches that accompany litigation, such as forced evictions, criminalization, and the use of security forces, actually deepen social trauma and reinforce public distrust of the state. This situation has the potential to create horizontal conflict between citizens, increase violence, and threaten social stability and security at the local and regional levels. In this context, the state risks losing its moral legitimacy as the protector and guardian of the people.<sup>6</sup> A non-litigation approach is urgent because it offers a more inclusive and humane space for dialogue. Deliberation and mediation mechanisms allow the parties to sit together as equals, not simply as winners or losers. Through dialogue, the interests and needs of each party can be identified more comprehensively, including the community's need for land as a source of livelihood, the state's interest in protecting forest areas, and the corporation's interest in conducting business sustainably.<sup>7</sup>

The urgency of a non-litigation approach is also closely related to the state's obligation to respect, protect, and fulfill human rights. The right to adequate housing, the right to work, and the right to security are constitutional rights of citizens that cannot be ignored solely for the sake of law enforcement. In the Register 45 conflict, disregard for the humanitarian dimension has led to the marginalization of communities and the violation of their basic rights.<sup>8</sup> Furthermore, a non-litigation approach aligns with the values of customary law and the culture of deliberation that exist within Indonesian society. Deliberation and consensus, as a principle of dispute resolution, reflects local wisdom that emphasizes social harmony and sustainable relationships between individuals and groups. In the context of communities that have long resided in the Register 45 area, this approach is more readily accepted and has a greater chance of creating sustainable solutions.<sup>9</sup>

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<sup>5</sup> *Ibid.*

<sup>6</sup> Bernhard Limbong. 2012. *Land Conflict*. Margaretha Pustaka, Jakarta, pp. 213–218.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Loc.cit.* S.W. Sumardjono, Maria.

<sup>9</sup> Safitri, Myrna A. 2015. *Legal Pluralism in Indonesia: Land and Forest Law Reform*. ISEAS Publishing, Singapore, pp. 98–102.

From a public policy perspective, non-litigation resolution also has strategic urgency because it can prevent the waste of state resources. Prolonged conflicts require high costs, both in the form of security enforcement, legal processes, and post-conflict recovery. Conversely, effective mediation can produce agreements that benefit all parties, such as joint management schemes, social forestry-based agrarian reform, or the recognition of limited and controlled community management rights. Thus, the urgency of resolving Register 45 agrarian conflicts through non-litigation channels is based not only on considerations of effectiveness, but also on moral, constitutional, and sociological demands. The state is required to move beyond the paradigm of power alone and shift to a paradigm of justice and humanity. A participatory, transparent, and equitable non-litigation approach is a strategic step to end agrarian conflicts with dignity and realize the goal of state control over land as mandated by the 1945 Constitution, namely for the greatest possible prosperity of the people

## **II. METHOD**

This research uses a normative juridical method with a constitutional, regulatory, and conceptual approach. Primary legal materials include the 1945 Constitution, regulations related to corruption and judicial power, and relevant court decisions. Secondary legal materials consist of legal literature, scientific journals, and doctrines of Constitutional Law and State Administrative Law. The analysis was conducted qualitatively using normative-perspective reasoning.

## **III. ANALYSIS AND DISCUSSION**

### **a. History of the Determination of the Register 45 Mesuji Area**

The Register 45 Mesuji area was designated as a production forest area based on Decree of the Minister of Forestry No. 93/Kpts-II/1997, covering an area of approximately 43,100 hectares. Management rights for the area were granted to PT Sylva Inhutani Lampung for the development of industrial forest plantations. This permit was granted within the framework of national forestry development policies oriented towards investment and economic growth. However, this policy did not fully consider the social and historical conditions of the Register 45 area, particularly the presence of communities who have long controlled and utilized the land, both indigenous communities and immigrant communities who migrated due to economic pressures.

During the economic crisis and reform period of 1996–1998, there was a massive migration of people from Java to Lampung Province. Limited employment opportunities and structural poverty pushed people to seek cultivated land in the Register 45 area, which was considered abandoned. One of the largest communities is the Moro-Moro Block, inhabited by approximately 1,200 families with a population of approximately 5,000. These

communities cleared land, built settlements, and managed the land to meet their needs. However, their existence was considered illegal by the state and the corporations holding permits. The consequence of this illegal status was the loss of various constitutional rights, such as the right to population administration, education, health, and political rights. The agrarian conflict in Register 45 thus developed into a structural conflict involving power relations between the state, capital, and society.<sup>10</sup>

#### **b. State Control Rights and Customary Rights**

The UUPA recognizes the customary rights of indigenous communities as long as they exist and do not conflict with national interests. However, this recognition is conditional and often lacks clear implementation mechanisms. As a result, customary rights are subordinate to state interests and investment.<sup>11</sup>

From a socio-legal perspective, agrarian conflict arises when state law is inconsistent with the laws prevailing in society (living law). This tension becomes a source of structural conflict that is difficult to resolve through formal legal approaches alone.<sup>12</sup> The Indonesian land registration system adheres to a negative system with a positive tendency, meaning that land certificates are not absolute proof of ownership. Legal certainty is only guaranteed if the physical and legal data match the reality on the ground.<sup>13</sup> In the Register 45 dispute, this discrepancy is a major source of conflict and legal uncertainty. Resolving agrarian disputes through the courts is often time-consuming, expensive, and insensitive to social aspects. Furthermore, the litigation approach tends to produce win-lose decisions, potentially prolonging the conflict.<sup>14</sup>

#### **c. Settlement of Agrarian Disputes through Non-Litigation Channels in Indonesia**

Non-litigation dispute resolution is a conflict resolution mechanism outside the courts that emphasizes the principles of deliberation, voluntary agreement, and an orientation toward peace and substantive justice. In the context of Indonesian law, non-litigation dispute resolution is known as Alternative Dispute Resolution (ADR) and is regulated by Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

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<sup>10</sup> D. Hal., P. Hirsch, and Li, T. M. 2011. *Powers of exclusion: Land dilemmas in Southeast Asia*. University of Hawai'i Press, Honolulu, pp. 56.

<sup>11</sup> Sumardjono S. W, Maria. 2008. *Land in the Perspective of Economic, Social and Cultural Rights*. Kompas, Jakarta, pp. 46-48.

<sup>12</sup> Santos, B. de S. 2002. *Toward a new legal common sense*. Cambridge University Press, Cambridge, pp. 87.

<sup>13</sup> *Ibid.*

<sup>14</sup> D. Fitzpatrick. 1997. *Disputes and pluralism in modern Indonesian land law*. Yale Journal of International Law, 22, pp. 171-212.

Although the law is more commonly used in civil and commercial disputes, ADR principles are also relevant in resolving agrarian disputes. Agrarian disputes have unique characteristics, namely, they involve unequal power relations, large-scale economic interests, and strong social and cultural dimensions. Therefore, a formalistic litigation approach is often unable to provide just solutions.<sup>15</sup>

The National Land Agency (BPN) plays a strategic role in resolving land disputes through administrative mediation mechanisms. This is stipulated in Regulations of the Minister of Agrarian Affairs/Head of BPN No. 1 of 1999 and No. 5 of 1999 concerning Guidelines for Resolving Customary Land Rights Issues of Indigenous Communities.

In practice, the BPN's mediation mechanism involves a dispute inventory, clarification of physical and legal data, and facilitation of deliberation between the parties. This mediation aims to reach an agreement without resorting to judicial proceedings. However, the BPN's authority is limited to administrative aspects and does not encompass material examination of the underlying dispute, which remains the jurisdiction of the courts. Resolving agrarian disputes through non-litigation channels must prioritize a humanitarian approach and restorative justice. This approach positions communities as legal subjects with rights and dignity, not merely as violators of the law.

In the context of Register 45, a humanist approach is crucial, given that the majority of people living in the area are driven by economic needs and lack of access to land. Criminalization and forced evictions without alternative solutions have the potential to violate human rights and deepen the conflict.<sup>16</sup>

#### **d. International Comparative Study of Customary Land Dispute Resolution**

Brazil is one of the countries that constitutionally recognizes the rights of indigenous peoples to land through the concept of *Indigenous Lands*. The 1988 Brazilian Constitution recognizes that indigenous peoples have indigenous rights to the lands they traditionally occupy. The state is obligated to demarcate and protect these indigenous territories. Indigenous land disputes in Brazil are resolved through a combination of administrative approaches and state mediation. Institutions such as FUNAI (Fundação Nacional dos Povos Indígenas) act as mediators between indigenous peoples, the state, and the private sector. This approach emphasizes dialogue and the recognition of collective rights as the basis for conflict resolution.<sup>17</sup>

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<sup>15</sup> *Loc.Cit.* Sumardjono S. W, Maria.

<sup>16</sup> L. Cotula. 2012. *The international political economy of the global land rush. Journal of Peasant Studies*, 39(3-4), pp. 649-680.

<sup>17</sup> Almeida, A. W. B. de. 2015. *Territorial rights and indigenous peoples in Brazil*. Oxford University Press, pp. 34.

In addition, the Philippines has a progressive legal framework in recognizing the rights of indigenous peoples through the Indigenous Peoples' Rights Act (IPRA) of 1997. This law recognizes the rights of indigenous peoples to *ancestral domain* and authorizes the National Commission on Indigenous Peoples (NCIP) to resolve disputes through customary-based ADR mechanisms. The resolution of customary land disputes in the Philippines prioritizes customary deliberation before resorting to legal channels. This approach has proven effective in mitigating conflict and maintaining social cohesion among indigenous communities.<sup>18</sup>

Furthermore, post-apartheid, South Africa faced significant challenges in resolving agrarian conflicts resulting from systematic land grabbing. The South African government established the Restitution of Land Rights Commission, tasked with facilitating land restitution claims through mediation and negotiation. The approach used was restorative, emphasizing reconciliation, compensation, and land redistribution. The courts were used only as a last resort if mediation failed.<sup>19</sup>

From these three countries, we can learn that recognizing collective community rights, an active role for the state as a mediator, and a non-litigation approach oriented toward restorative justice are key to sustainable agrarian dispute resolution. These principles are highly relevant for application in resolving the Register 45 Mesuji dispute.

#### **e. Dispute Resolution Model for Register 45 Mesuji**

The agrarian dispute in the Register 45 Mesuji Forest Area is a clear example of a structural conflict born of unintegrated state policies that tend to ignore the social realities of the community. The designation of forest areas without prior adequate social inventory, weak inter-agency coordination, and minimal oversight of investor activities have created unequal land ownership and utilization. In these circumstances, communities who have long lived and depended on the land for their livelihoods are positioned as violators of the law, while large-scale economic interests gain state legitimacy.<sup>20</sup>

The Register 45 conflict is further exacerbated by the state's failure to responsibly exercise its land control function. The state's right to control, as stipulated in Article 33 paragraph (3) of the 1945 Constitution and the Basic Agrarian Law, should be interpreted as an obligation to regulate, manage, and supervise land use for the greatest prosperity of the people. However, in practice, the state prioritizes its repressive control function over its protection

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<sup>18</sup> M. Colchester, et al. 2013. *Indigenous peoples and land tenure in the Philippines*. Land Use Policy, 30(1), pp. 620–632.

<sup>19</sup> C. Walker. 2008. *Land reform in South Africa*. Third World Quarterly, 29(4), pp. 673–691.

<sup>20</sup> *Op.Cit.* Bernhard Limbong. pp. 213–218.

and service functions for the community. As a result, legal certainty and social justice, the primary goals of state land control, are not achieved.<sup>21</sup>

The Register 45 dispute resolution model proposed in this monograph stems from a critique of litigation and repressive approaches, which have proven ineffective. These approaches tend to position the public as objects of regulation, rather than as legal subjects possessing constitutional rights. Therefore, a resolution model oriented toward substantive justice, community participation, and the protection of human rights is needed.<sup>22</sup>

The first step in this model is a participatory inventory and verification of the subjects and objects of the dispute. The inventory encompasses not only the physical and administrative aspects of the land, but also social aspects, the history of land ownership, and the community's relationship with the disputed land. A participatory approach is crucial to ensure that the data collection process is not solely dominated by the state's perspective but also accommodates local knowledge and community claims. This process can serve as a foundation for building trust between the state and the community, which has been eroded by the ongoing conflict.<sup>23</sup>

The second step is the temporary recognition of community management rights as a form of social protection. This recognition is not intended to immediately validate property rights, but rather as a transitional mechanism to prevent criminalization, eviction, and socio-economic vulnerability of communities during the dispute resolution process. Temporary recognition of management rights is also in line with the principle of protecting economic, social, and cultural rights, particularly the right to work and a decent livelihood. In the context of agrarian conflict, this approach is seen as more humane and just than rigid and formalistic law enforcement.<sup>24</sup>

The third step is the implementation of multi-stakeholder mediation facilitated by the state, involving communities, investors, and local governments. This mediation must be positioned as a forum for equal dialogue, not simply a means of legitimizing predetermined policies. The state's role in mediation is not only as a regulator, but also as a facilitator and guarantor of justice for parties in vulnerable positions. The involvement of local governments is crucial given their close relationship with the social conditions of the community and their role in policy implementation at the local level.<sup>25</sup>

The fourth step is the development of a legally and socially binding joint agreement. This agreement must be established in a written document that

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<sup>21</sup> *Op.Cit.* Sumardjono S.W., Maria. pp. 145–150.

<sup>22</sup> *Op.Cit.* Boedi Harsono. pp. 371–375.

<sup>23</sup> *Op.Cit.* Safitri, Myrna A. 2015. *Legal Pluralism in Indonesia: Land and Forest Law Reform*. ISEAS Publishing, Singapore, pp. 98–102.

<sup>24</sup> *Loc..Cit.* Sumardjono S.W., Maria.

<sup>25</sup> *Loc. Cit* Boedi Harsono.

has legal force and social legitimacy from the community. The agreement can include joint management patterns, division of authority, oversight mechanisms, and subsequent dispute resolution in the event of violations. An inclusive and transparent agreement has a greater chance of being adhered to and implemented sustainably.<sup>26</sup>

This dispute resolution model is also relevant to customary land conflict resolution practices in various countries that prioritize the recognition of collective rights and community-based resolution mechanisms. This experience demonstrates that agrarian conflict resolution cannot be separated from the recognition of legal pluralism and the importance of social justice as the ultimate goal. Therefore, the proposed model is oriented not only toward short-term conflict resolution but also toward a more just and sustainable transformation of agrarian policies.

#### **IV. CONCLUSION**

Based on the description above, the following conclusions can be drawn:

1. The agrarian dispute over customary land in the Register 45 Mesuji Area is characterized as a structural and multidimensional conflict involving the state, corporations, and local communities. This dispute concerns not only land ownership and utilization but also social, economic, cultural, and human rights dimensions. Unequal power relations, the dominance of formal legal approaches, and the neglect of customary law-based land tenure systems have made this conflict protracted and difficult to resolve.
2. Resolving agrarian disputes through non-litigation channels has been shown to be more effective than litigation, particularly in the context of complex agrarian conflicts. Non-litigation mechanisms such as deliberation and mediation can create a space for inclusive dialogue, reduce conflict escalation, and provide opportunities for achieving substantive justice. This approach is also more aligned with community social values and the principle of respect for human rights.
3. Practices in resolving customary land disputes in several other countries demonstrate that recognizing the collective rights of indigenous peoples and community-based resolution mechanisms can create more sustainable solutions. This experience is relevant to the context of Register 45, particularly in promoting the recognition of community management rights and conflict resolution oriented toward social justice and sustainability.

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<sup>26</sup> *Ibid.*

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