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## **A Legal Perspective of the Law Enforcement of Land Dispute**

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**Abstract:**

*Land dispute in Jakarta from year to year continues to increase. This case indicates that the land issue should be handled seriously so that land issues, especially land disputes can be resolved soon.*

*If the land disputes is not resolved, it will be feared to disrupt the development in Indonesia, especially in Jakarta. Jakarta as the capital city becomes a reflection of the settlement of land disputes for other areas. This study uses the normative juridical method, which describes how to examine the settlement of land disputes by taking into account the prevailing laws and regulations.*

*The study was conducted in Jakarta by obtaining data from the police in charge of land affairs. The research result of how handling the land dispute cases, which is involving law enforcers, hopefully can be used as a reference for how to settle land dispute with fair principle for all parties.*

**Keywords:** *Law Enforcement, Land Dispute, Jakarta.*

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## **1. Introduction**

National development must be ongoing and ongoing in order to create prosperity for the people, especially in Jakarta as the nation's capital. Development is reflected by the growth of towering buildings, offices, apartments, or the emergence of large and small residential estates. The growth of roads and other infrastructure also illustrates that the development is under way, and this growth is also offset by the rampant number of vehicles circulating on the road. This indicates that the development in Jakarta continues. In the construction of roads are also often arise dispute about the compensation for the land, because the payment is not in accordance with the desired then the land dispute arises.

Land ownership disputes are a problem that arises in Jakarta and this involves many parties to land ownership disputes. The dispute is between the government and the community or the dispute between the community and the community or between groups and groups. The dispute will ultimately seek justice by way of legal settlement by involving law enforcement officers.

In legal settlement the dispute is settled through court or out of court. Law enforcement which is done is how to resolve land ownership disputes for the parties so that it is created a justice for the community The formulation of the problem of this study shows that the research is done by normative juridical approach. Normative jurisdiction is to examine a legal problem and make the settlement through the applicable legislation. More specifically, the design of this study is descriptive analysis to provide an overview of the real facts along with an accurate analysis of laws and regulations that can be used as material analysis or analysis related to the settlement of land disputes.

## **2. Law Enforcement**

Law enforcement, objectively legal norms to be enforced include the definition of formal law and material law. This means that what is incorporated by the formal law is related to the written laws and regulations, while the material law covers the meaning of the values of justice living in the community, thus the intended study is law enforcement and justice enforcement, especially land disputes in Jakarta.

Law enforcement in a broad sense, in the sense of material law is termed by the enforcement of justice. So it can be argued that the law that must be enforced at its core is not merely the norm of the rule itself, but includes the values of justice contained therein. In a narrow sense, in terms of its subject, law enforcement is only defined as the efforts of certain law enforcement apparatus to guarantee and ensure that a rule of law is running as it should be. In ensuring the enforcement of the law, where necessary, the law enforcement apparatus is permitted to use force (Asshiddiqie, 2009).

In a broad sense, law enforcement includes the values of justice contained in the sound of formal rules and values of justice living in society. But in a narrow sense, law enforcement only concerns with the enforcement of formal and written rules (Asshiddiqie, 2009). It can be said that law enforcement is an attempt to realize the ideas and legal concepts that people expect to become reality. Law enforcement is a process that involves many things (Dellyana, 2008).

Law enforcement is an activity of harmonizing relationships of values that are elaborated in the principles / values of a stable and embodied and acting attitude as a series of translation the final value of the stage to create, maintain and maintain peace of life. Law enforcement in concrete terms is the enactment of positive law in practice as it ought to be obeyed. Therefore, to provide justice in a case means to decide the law in concreto in maintaining and ensuring compliance with material law by using procedural means established by formal law (Dellyana, 2008).

Basically, law enforcement is the process of the enforcement efforts or the actual functioning of legal norms as the guidelines of the perpetrators in traffic or legal relationships in the life of the society and the state. Implementation of law in the framework of law enforcement can be viewed from 3 aspects:

1. The application of the law is seen as a normative system, namely the application of the entire rule of law that describes social values supported by criminal sanctions.
2. Law enforcement is viewed as an administrative system that encompasses interactions between various law enforcement apparatuses that are sub-systems of the judiciary.
3. The application of criminal law is a social system, in the sense that in defining a crime, it must also be taken into account the various perspectives of thought that exist in the layers of society.

In realizing the rule of law, the existence of a transparent and open law enforcement, in order to raise the positive aspects of the citizens, the law will basically assure positive aspects of humanity and prevent negative aspects or negative impacts caused by the actions of the citizens State, or official or state apparatus. Basically in every human being there is the consciousness of the law, but the consciousness of the law is often not based on a conscience that is guided by moral values in its environment (Dellyana, 2008).

Law enforcement in its use to resolve land disputes should be sustained by legal effectiveness theory. It can be said that the effectiveness of the law implies the effectiveness of the effect of efficacy or efficacy effect, discussing the effectiveness of the law certainly can not be separated from the analysis of the characteristics or dimensions of the target object used (Arief, 2013).

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The degree of legal effectiveness according to Soerjono Soekanto is determined by the level of public compliance with the law, including its law enforcers, so it is known that the high level of compliance is an indicator of the functioning of a legal system and the functioning of law is a harbinger of law to achieve the legal objectives of trying to maintain and Protecting people in the social life (Soekanto, 1995).

Another view of the effectiveness of the law is revealed by Clerence J. Dias (1975) says that an effective legal system may be described as one in which there exists a high degree of congruence between legal rule and human conduct. Thus and a effective legal system will be characterized by at least the disparity between the formal legal system and the operative legal system is secured by:

1. The intelligibility of the legal system.
2. High level public knowledge of the contents of the legal rules.
3. Efficient and effective mobilization of legal rules; A committed administration and citizen involvement and participation in the mobilization process.
4. Dispute settlement mechanisms that are both easily accessible to the public and effective in their resolution of disputes.
5. A widely shared perception by individuals of the effectiveness of legal rules and institutions.

Rule is a human effort to explicit the law in the framework of structuring a society through the intermediate authority. Therefore, the rules are always local in accordance with the territorial jurisdiction of the competent authority. Unlawful acts are not only unlawful acts of Constitution but also acts that are inconsistent with the propriety and morals prevailing in society.

Aristotle in Mark Tebbit says that if the written law tells against the universal law, and that the principles of equity are permanent and changeless, and that the universal law does not change either, for it is the law nature, whereas written laws often do change (Tebbit, 2005).

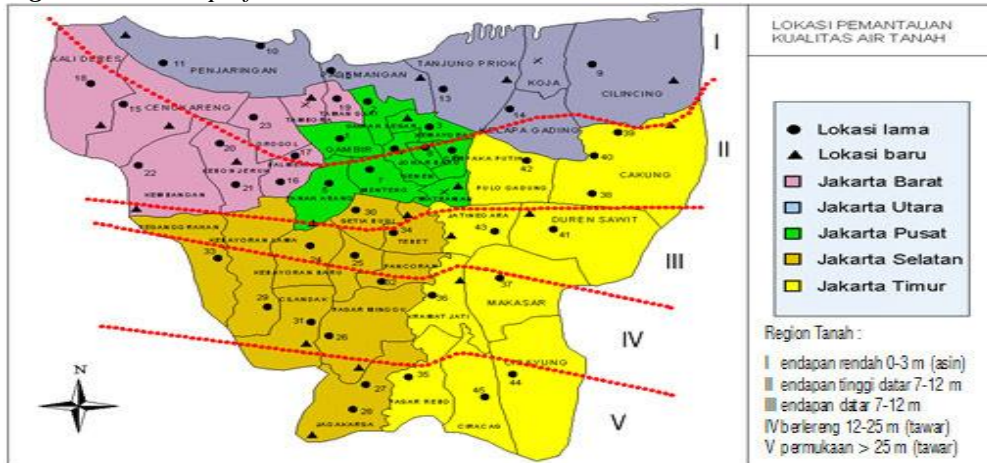
Law is a system, meaning that law is an order, is a unified whole consisting of parts or elements that are closely related to each other. In other words the legal system is an entity consisting of elements that have interaction with each other and work together to achieve the purpose of unity. This unity is applied to the complex juridical elements such as the rule of law, legal principles and legal understanding.

### **3. Land Dispute in Jakarta**

The availability of land is the main problem to increase the physical development of Jakarta. Land is getting less and less due to many designations used, either by society in general or by government. That case is also supported by the density of

the population in Jakarta so that land for housing also determines the level of land disputes occur.

**Figure 1.** *The map of Jakarta.*



Jakarta has an area of 661.52 KM<sup>2</sup> with a population of 2016 data of 10.3 million people ([www://jakarta.bps.go.id](http://www://jakarta.bps.go.id), 2017). This indicates how crowded Jakarta is, so that land issues become the main obstacle to increase development. Based on that fact, so the land for human life is not only has economic value, but more than that becomes a tool of religious, social, political, cultural, psychological, and national security aspects. Land can not in fact be made so that defending or claiming land is a problem that often arises in the midst of society.

Land issues in Indonesia related to land use, ownership and land ownership that are still not orderly and directed in the sense that there are still many overlapping land uses in various interests that are not in accordance with the land use plan whether viewed nationally or regionally. The basis of legal authority acting in regulating all matters related to land as formulated in Article 33 paragraph (3) of the 1945 Constitution; which states that "Earth, water and natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people".

As a follow up of Article 33 Paragraph (3) of the 1945 Constitution relating to the earth or land, the enactment of Law no. 5 of 1960 on the Basic Regulation of Agrarian Principles which furthermore known as the Basic Agrarian Law (UUPA). UUPA's principal purpose enacted is:

1. Laying the foundations for the preparation of national agrarian law, which is a tool for bringing prosperity, happiness and justice to the State and People, especially the people in the framework of a just and prosperous society.
2. Laying the groundwork for unity and simplicity in the land law.

3. Laying the groundwork to provide legal certainty of the land rights for the people as a whole.

Therefore, in order to achieve prosperity and welfare of the people, then in utilizing and using the land that is part of natural resources must be implemented wisely and in the management is handed over to the state. Human actions in social life can be related to the increase in activities and attitudes of criminal behavior that in the past is simple and then the pattern changed which is not simple anymore. Evolving crime in today's society is associated with land conflicts with various modes of operation and pretensions that were previously simple changed the pattern that becomes not simple. Because there is a problem of land not only related to civil problems but also criminal problem which is increasing.

Land grabbing and land disputes continue to matters land issues in Jakarta, and this is the case every year that land disputes continue to rise. As the case in Cengkareng until now there is still the judicial process. The grasping of land by a person or group of people belonging to another person's land often occurs in various parts of Indonesia. In general, the term land grabbing can be interpreted as an act of controlling, occupying or taking over the property of another person unlawfully, against rights or violating the rule of law in effect, therefore the act may be sued under civil law or prosecuted under criminal law.

The consequences of such actions can be said to be against the law, so the law must be enforced. Because land grabbing that does not belong to him will eventually hamper development. Law is directed entirely as a means to support development. Whereas that development should be only a means to improve the dignity of humanity. So it is clear that by law will create or make prosperity for society (Santiago, 2012). In the case of land grabs which is based on data that the authors obtained from Bareskrim (Criminal Resort Board), it can be seen in the Table 1:

**Table 1.** Number of Cases of Land Grabs in Jakarta.

No	Year	Number of Cases
1	2015	1.810 cases
2	2016	1.717 cases
3	2017 (until April)	422 cases

*Source:* Bareskrim, 2017.

This figure is a source of land conflicts in the form of criminal acts in the field of land which the modus operandi in the form of graft and forgery of documents or land certificates. Related to the criminal act of controlling the land owned by others without rights, until now there has been no law that gives severe sanctions and commensurate with the crime.

To the extent that the criminal act of controlling the property of another person without right, can only be subject to violation clause as stipulated in Government

Regulation in Lieu of Law no. 51 PRP of 1960 on the prohibition of unauthorized use of land without its authorization in Article 2 determines that 'it is prohibited from using the land without the rightful authorization or legal title. If this provision is violated, then it can be punished with a maximum penalty of 3 (three) months and / or a maximum fine of Rp. 5000 (five thousand rupiah).

The crimes against falsifying letters respectively set forth in Articles 263, 264, 266 and 274 of the Criminal Code, constitute a remarkable crime that this will result in harm to those who have the original title or title of the land and the occurrence of a conflict and there are still many more related to the criminal offenses in the field of land such as perjury and false information (Article 242 of the Criminal Code), forge false information into authentic acts (article 266 KUHP), embezzlement of immovable property rights (article 285 KUHP).

Observing the problems of land that are increasingly complex and increased in quality and quantity, it requires serious and systematic handling. Various efforts to settle land disputes through the judicial process that is considered capable of resolving existing disputes, so that alternative efforts to settle land disputes such as mediation, facilitation and others then surfaced with the goal to minimize land conflicts which is full of interests, both for the interests of development and society itself.

Law enforcement must be undertaken to avoid prolonged land conflicts .As a law-based country (*rechtstaat*), Indonesians need fair legal protection, so that the people feel welfare and prosperity which are part of the goals and interests of people living in a society, nation and state (Santiago, 2017a; 2017b). The law is made to have the objective of public order, so that no human beings and the people become victims of crime or interference of interests. So it protects people and society (Santiago, 2014). Land issues, especially concerning land disputes, should be attempted to be dealt immediately so as it does not spread to become a problem that can lead to social unrest that has social, economic, political and security impacts. In this context, land policy in handling disputes, conflicts and land affairs is done systematically, quickly, effectively and integrated.

#### **4. Handling and Resolving Land Conflicts in Jakarta Indonesia**

In this study, land dispute conflicts are land conflicts related to criminal proceedings. The land in the theoretical basis can be understood by various meanings of its use, especially in the juridical sense as a definition that has been duly authorized by the basic agrarian law formulated under Article 4 paragraph (1), that "on the basis of the right of control of the state as referred to in article 2 prescribed the existence of various rights to the surface of the earth, called land, which can be given to and possessed by persons, either alone or together with others and Legal bodies."

Land in the juridical sense covers the surface of the earth as stipulated in Article 4 paragraph (1) of the Basic Agrarian Law 1960 to be used or utilized. Given and owned by the land with these rights will not be meaningful if its use is limited only to the soil as the surface of the earth only.

Therefore, Article 4 Paragraph (2) of the Basic Agrarian Law states that:  
"The rights to the land referred to in paragraph (1) of this article authorize the use of the land concerned, as well as the earth and water bodies and aerospace are thereon, merely necessary for the immediate interest in dealing with the use of the land within limits according to the laws and other higher laws.

To prevent the occurrence of land disputes, law enforcement must firmly use the criminal justice system. It can be said that grabbing the land and falsifying documents is a criminal act. The objectives of the criminal justice system can be formulated by preventing people from becoming victims of crime, resolving the case of the crime so that the public is satisfied that justice has been established and the guilty is convicted and ensuring that those who have committed crimes do not repeat evil again (Reksodiputro, 1993).

The purpose of the criminal justice system as a law is directed to the recognition of norms of behavior derived from other fields of law, when the norms are violated in the nature of non-autonomous heteronomous and the criminal justice system determines the manner and by whom and by what measures of sanction - the criminal penalty that may be levied on him is adjudicated.

As the criminal justice system proceeds, the public sees that against the suspects certain actions are taken, that the authorities are taking action against the threatened punishment. If that is not done, then there will be a danger where the citizens themselves in ways that are prohibited by the law attack the suspect.

The goal of law enforcement in the short term is more directed to the perpetrators of criminal acts and those who potentially commit illegal crimes of land ownership, in order not to commit their actions so that crime will be reduced. The long-term goal is to create a comprehensive level of peace among the people. This goal is a consequence of short- and medium-term goals, so its success also depends on previous goals.

In terms of the working mechanisms of law enforcement apparatus and law enforcement agencies, law enforcement approaches to realize the "law enforcement" of police institutions are the main supporters. The success of crime countermeasures depends heavily on the effectiveness and efficiency of the work of the police organization. In law enforcement practice the police face many obstacles that are operational and procedural and this constraint does not give optimal results in an effort to suppress crime rate in land disputes problem.



The police as law enforcers not only respond to the interests of the state in enforcing the criminal law alone, but it can adapt the interests of the perpetrators, especially victims of crime. The victims of crime will certainly not receive any compensation if the perpetrator has been punished, as well as for the restoration of social relations with the perpetrator.

The handling and resolving land conflicts in Indonesia requires a proper and effective framework. The act of assessing, handling and resolving land conflicts aims to provide legal certainty of the mastery, thinking, use and utilization of land in a country which is full of natural resources, especially in Jakarta. The handling of land conflicts aims to provide legal certainty over tenure, ownership, use and utilization of land. In addition, this process is intended to prevent overlapping of utilization, overlapping of use, overlapping of tenure and overlapping of land ownership. Broadly speaking, the handling of state conflicts can be done through a study of the root causes, conflict prevention and conflict resolution itself.

Land conflicts where the problem is considered simple and easy to handle can be done by handling the procedures of handling land cases. If conflicts are impacted, planning and time targets are tailored to the conditions which are experienced and developments during the conflict process are addressed. In dealing with the land disputes, the first thing the authorities should do is to receive complaints and follow up on such complaints. A complaint is a preliminary notification that must be addressed and or the information which is submitted by the complainant to the appropriate authorities.

In the process of handling land disputes in general, the community can provide reports to the National Land Agency to check and clarify the ownership of the land to be searched for truth. If it has obtained valid information, then the data can be used and passed on to law enforcement to be solved the problem.

Handling by law enforcers in this case the police, has a standard of handling that can be used as a guide through problem solving, at this stage the role of the police is directed to create a conducive condition for the conflicting parties to transform the problem which is faced toward peace; creating peace, at this stage the role of the police is expected to be at the forefront of reconciliation and consolidation efforts with all elements related to intensive and intensive conflict resolution, as this stage is the toughest stage and will take the longest because it deals with both structural and horizontal aspects.

The form of a land dispute settlement constitutes a series of activities undertaken by the disputing parties using a strategy to resolve the dispute. Disputes can be resolved through deliberation, can also be done directly by the parties to the dispute. Can also through an intermediary through a representative or power appointed by each party.

While the dispute resolution by law enforcers in this case is the police, the handling which is done by the mediator, negotiator, the professional and proportional peace keeping officer is the ability of the police to help resolve quickly, comprehensively and thoroughly according to the root of the problem so as not to generate follow-up conflict, or exploited by a certain group.

## 5. Conclusion

Land ownership disputes should not be silenced continuously, it should be immediately resolved. The land ownership as early as possible should be detected by who owns it. The role of government institutions, especially the National Land Agency, plays a very vital role to prevent the occurrence of land ownership disputes. Public confidence, especially business actors or parties wishing to invest in Jakarta, should be maintained and supported by the local governments for the sustainability of industry and overall economic activities, to realize the national development in order to create a prosperous society. In the end, the law enforcement must be carried out without discrimination between one society and society at large, between the community and the government or between one group with the community, do not sharp down blunt upward in handling law enforcement, everyone is equal to the law that is law enforcement principles which should be run.

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