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**INTERNATIONAL JOURNAL OF  
ADVANCED RESEARCH (IJAR)**

Article DOI:10.21474/IJAR01/8030  
 DOI URL: <http://dx.doi.org/10.21474/IJAR01/8030>



### RESEARCH ARTICLE

#### SETTLEMENT FOR LAND CONFLICT IN TRANSMIGRANT COMMUNITY THROUGH MEDIATION BY INTEGRATING TEAM FOR HANDLING OF SOCIAL CONFLICT IN THE EAST KOLAKA REGENCY, INDONESIA.

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#### Manuscript Info

##### Manuscript History

Received: 06 September 2018  
 Final Accepted: 08 October 2018  
 Published: November 2018

#### Abstract

The aim of this research is to formulate a model for solving transmigrant community land tenure conflicts and to initiate the resolution of conflict over control of transmigrant community so as to provide certainty of ownership rights to transmigration community lands. This research uses empirical normative method. The results of the research that the model of land conflict resolution of land rights in transmigration areas that can be applied is by combining mediation model (as the method most often chosen by parties) by the involvement of Team for Handling of Social Conflict (as an institution whose existence is a law order to resolve social conflicts), village or adat leaders as mediators. In this settlement model, the success of a third party which functions as a mediator depends on the credibility and the role in it, including the approach in using.

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#### Introduction:-

The implementation of transmigration is the duty of the Government of Indonesia which pays attention to the development of values in people's lives, so that community participation is increasingly encouraged in the implementation of transmigration. The development of transmigration refers to development in the future by anticipating the era of globalization, free trade and investment, so that transmigrant business activity covers all business activities in existence, it is directed in efforts to increase efficiency and market-oriented production business activities, and it has a comparative and competitive advantage in order to be able compete in the domestic market and global market.

Increased welfare is one of the main interesting for the Indonesian people to migrate. In connection with that, improving welfare as mandated by the Law of No. 29 of 2009 on Amendments to Law of No. 15 of 1997 on Transmigration, which includes improving economic welfare and social welfare. This also includes the fulfillment of all transmigrants' lives, both for themselves and their families and for the development of their generation. Increased welfare is not only directed at transmigrant, but also to the people who live around transmigration settlement.

The selection of transmigration destination areas by the government is based on the criteria of fertile areas and rich in natural resources, but it has not been managed optimally due to lack of adequate human resources. In this

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condition, the transmigration program became a very strategic solution. However, the progress of transmigration areas in its implementation is determined, among others, by the existence of harmonious relations between transmigration communities and local community, especially in the management of land which is the right of transmigration community. The existence of land as a basic element that must be present in the transmigration program often becomes a source of land conflict between transmigrant itself and between transmigrant and local resident. Based on the result of previous years' research that land conflict in transmigrant land tenure which still often occurs because of the form of dispute resolution that has not touched the the main problem by the form of settlement which is in accordance with the socio-cultural transmigrant community.

The problem of this research focuses on the formulation of a model for resolving the dispute over land transmigrant conflict in the East Kolaka Regency, there is no model for resolving transmigration community land tenure conflict; the second is initiating the implementation of a model for resolving the dispute over land transmigrant conflict in the East Kolaka Regency.

This research aims: first, to formulate a model for resolving land tenure conflict in transmigrant community. Second, to initiate the resolution of the conflict of control over transmigrant community land so as to provide certainty of ownership rights to transmigration community land.

### **Method of Research:-**

The type of this research is empirical normative in using, namely the type of research that emphasizes the study of law and seeks to emphasize the rules of applicable law. The empirical research is the study of law to analyze the facts which occur in society related to the object of this research. The research location is the East Kolaka Regency as the transmigration implementation area which has land conflict in the transmigration area.

The population in this research is the community, the regional government of the Regency of East Kolaka and the Team for Handling of Social Conflict. The sample in this research is transmigrant community, local community, The Institution for local government which handles transmigration program and members of the Team for Handling of Social Conflict. The data needed in this study include primary data and secondary data. Secondary data is obtained by examining certain sources related to this research. For primary data carried out by observation (participatory observation), survey, and interview. Successfully completed data will be analyzed both at the time the research is underway and after the research in the field. The technique of analyzing interpretative qualitative data is processed through data analysis, data reduction, data categorization, data validity and data interpretation.

### **Literature Review**

#### **Definition of Agrarian Conflict**

Dispute or conflict as a situation where two or more people are openly involved in conflict<sup>1</sup>. Land or agrarian conflict is a process of interaction between two or more people or groups which each fight for their interests in the same object, namely land and other objects related to the land<sup>2</sup>.

#### **Land Status of Transmigration**

Program transmigrasi dalam pelaksanaannya memberikan hak atas tanah sebagai status hak milik bagi masyarakat transmigran. Pasal 32 PP Nomor 2 Tahun 1999 tentang Penyelenggaraan Transmigrasi menyatakan hak milik tidak dapat dipindahkan kepada orang lain kecuali transmigrasi meninggal dunia; atau setelah memiliki hak sekurang-kurangnya 20 tahun; atau transmigrasi Pegawai Negeri yang dialih tugaskan.

#### **Certainty of Land Rights Law**

Land Rights are rights received by individuals or legal entities as holders of land. Land rights give authority to those who have to use the land in question. Legal certainty for land rights by giving certificate to right holder. Legal uncertainty according to Rosmadi Murad<sup>3</sup> that the problem of legal uncertainty as well as the title of land rights

<sup>1</sup> Abu Rohmad, 2008, *Paradigm of Agrarian Conflict Resolution*, Walisongo Press, p. 9.

<sup>2</sup> Gunawan Wiradi, 1999, *People-oriented and Justice Agrarian Policy* (Paper at the National Land Seminar) Yogyakarta, February, 25<sup>th</sup>-26<sup>th</sup>, 1999, p. 35.

<sup>3</sup> Rahmat Rahmadhani, 2017, "Legal Certainty Guarantees Contained in Land Rights Certificates", *Journal of De Lega Lata*, Volume 2 Nomor 1, January 2017, p. 141.

concerning the legal subject, it can be in the form of claims from other parties concerning overlapping land tenure, multiple certificates and other disputes containing practical social aspects strategic<sup>4</sup>.

### Discussion:-

The development of transmigration areas is one of the areas of government affairs and development priority programs of the East Kolaka Regency. After the separation of Kolaka Timur from Kolaka City in 2013, so that, there is area which becomes the destination of transmigration in the East Kolaka Regency. It is Tongauna Village located in The District of Ueesi. Transmigrants in the East Kolaka Regency are divided into two regions based on place of origin, namely transmigrants from other areas and transmigrants from local region.

Data on the number of transmigrants in East Kolaka Regency in 2016 was 75 households or 265 people. The number which came from 48 families or 169 people of the local transmigrant and 27 families or 96 transmigrants from other regions, namely from Blitar, Purwakarta, and Mojokerto. Then the data for 2017, the number of transmigrants in the East Kolaka Regency was 75 Families or 270 people. The number came from 44 families or 152 people of local transmigrants and 31 families or 118 transmigrants from other regions, from West Lombok, East Lombok, Tabanan, Banjar, Jakarta, Tegal, Kendal, Pekalongan, and Serang<sup>5</sup>.

In the implementation of transmigration, each family of a transmigration participant has the right to obtain land and agricultural land through the status of land rights. The regulation of land distribution for transmigrants when referring to Law of No. 3 of 1972 on the Basic Provision of Transmigration in Article 7, stipulates that "transmigrants have the right to obtain land or agricultural land including land rights according to the applicable regulation". The explanatory section of this law regulates the land boundaries given at least 2 hectares. This is in accordance with the provision of the Act of Indonesia Agrarian, namely concerning the minimum land boundary which can be owned by individual. Someone can get a distribution of more than 2 hectares which is adjusted to the conditions of the local land, the type of agricultural production and the ability to process land<sup>6</sup>.

In the development of the opening of location for transmigration area, land conflict was occurred, namely land conflict between local resident and the Government of East Kolaka Regency. There was conflict. The land in Tongauna Village was established as a transmigration location followed by development activity, among others, there was opening of the road, and housing development. Claims by the local people that the land which was used as the transmigration location, it was the inheritance of their grandparents even though the local people did not have evidence of ownership of land right. Claim was only based on the existence of plants, such as coconut trees which they thought that the trees are planted by their grandparents<sup>7</sup>. According to the Department of Transmigration and Employment of the East Kolaka Regency, such claims was only as a method for local residents to become transmigrants in the transmigrant area<sup>8</sup>. The opportunity for local people to become transmigrants in their own area is indeed wide open. For local people or local communities whose regions are transmigration destination areas, for those whose land borders on transmigration locations are offered or given the opportunity to participate in the transmigration process as self-reliant independent transmigrants<sup>9</sup>. The opportunity for local people to become transmigrant in their own area. It was very open. For local people whose regions are transmigration destination areas, for those whose land borders on transmigration locations, they were offered to participate in the transmigration as independent transmigrant<sup>10</sup>.

Our observation is that there are still land conflict in the transmigration areas that have not been resolved. In general, land conflict which occur are resolved through the mediation. The mediation model is chosen because of the awareness of the transmigrant people as immigrants who wished that every land conflict with the local people would not become more prolonged, so that it is necessary to seek peaceful resolution of the conflict.

Land conflict is one form of social conflict that occurs a lot in Indonesian society. The Indonesia government has formed a Team for Handling of Social Conflict in several districts in Indonesia. The formation of the Team for

<sup>4</sup> Hasan Wargakusumah. 1992. *Agrarian Law I*. Jakarta. Gramedia Pusaka Utama. p. 72.

<sup>5</sup> Data Dinas Transmigrasi dan Tenaga Kerja Kabupaten Kolaka Timur, *Land Conflict Data for 2018*.

<sup>6</sup> Farida Fitriyah, 2016, *Law on Transmigration Land Procurement*, Setara Press, Malang, p. 85-86.

<sup>7</sup> Interview with Arisman, Head of District Administration of East Kolaka Regency, June 6<sup>th</sup>, 2018.

<sup>8</sup> Interview with Udin, Head of Office for Transmigration and Labor in East Kolaka Regency, June, 5<sup>th</sup>, 2018.

<sup>9</sup> *Ibid*, hlm. 87.

<sup>10</sup> *Ibid*, hlm. 87.

Handling of Social Conflict is a mandate of Law of No. 7 of 2012 on Performance for Social Conflict which was followed up with the publication of Government Regulation Number 2 of 2015 on The Performance for Social Conflict.

The team for Handling of Social Conflict, as an institution that is expected to be able to resolve land conflict, especially in relation to transmigrant land, does not have a significant impact. In general, people affected by conflict feel that Team for Handling of Social Conflict, not much help in solving land conflict in the transmigrant area. But instead of the government, in this case the Village Head (Lurah). The Lurah actually felt the existence of a Team for Handling of Social Conflict, it was very helpful in resolving land conflict<sup>11</sup>.

Land conflict in East Kolaka Regency is in transmigration area where there is land conflict. Settlement of conflict which is resolved through litigation, it often, the dispute resolution through mediation cannot be resolved properly, because the parties in conflict basically want firmness against the government to resolve conflict in mediation. This means that the resolution of land conflict through mediation should be taken through the involvement of local government, religious leader, youth leader and traditional leader.

On that basis, in our opinion, the model of conflict resolution that can be applied is by combining mediation model (as the method most often chosen by the parties) with the involvement of the Team for Handling of Social Conflict (as an institution recognized by law for settlement social conflict), leaders of village or adat. The Team for Handling of Social Conflict and traditional leader act as mediator between the parties. The existence of a Team for Handling of Social Conflict, as a representative of elements of the regional government and elements of society, it consists of community leaders, village leaders, and traditional leaders. These figures should be parties who know the history of the land in the conflict area or the leaders who have the influence to be heard in order to resolve the conflict by the parties in conflict.

The success of third parties as mediators in resolving conflicts depends on the credibility and role of the mediator, and the approach used. The relevant approach, in our opinion, is a non-judgmental approach which is based on trust in the mediator. In addition, it also depends on the ability of the mediator in an effort to resolve conflicts. Therefore, the mechanism and flexibility of mediation as well as the independence of the mediator determine the success of the mediation in resolving land conflicts.

In the pluralistic structure of Indonesian society, aspects of resolving land conflicts with family nuances remain the main factors as a foundation for resolving conflicts. Non litigation is an easy way of solving with low cost, as well as solutions offered. This becomes an agreement that becomes the will of the parties without coercion from any party.

### **Conclusion and Recommendation:-**

The conflict resolution model that can be applied is by combining mediation model (as the method most often chosen by the parties) with the involvement of Team for Handling of Social Conflict. (as an institution whose existence is a mandate of the law to resolve social conflict), community leaders and traditional leaders. In this conflict resolution model, which acts as a mediator is a Team for Handling of Social Conflict which is considered as a representative of elements of the local government, while the elements of the community are traditional leaders and community leaders. Community leaders appointed as mediators, should be a figure who knows the history of land in conflict areas or figures who have influence to hear their opinion in the context of resolving land conflict in the transmigration area of East Kolaka Regency.

In this settlement model, the success of the mediator depends on the credibility and role it has, as well as the approach used. The relevant approach is a value-free approach based on the belief of third parties. Besides that flexibility is related to the ability of mediator in an effort to solve problems. Therefore, the mechanism and flexibility and independence determine the position of mediator. The transmigration people involved in the land conflict wants the firmness of the government in making decision to resolve conflict, by the existence of the Team for Handling of Social Conflict, and leaders of the village or adat leaders are considered to be able to help resolve conflict.

<sup>11</sup> Interview with Hasmidar, head of the *Kelurahan Welala*, June 16<sup>th</sup>, 2018.

The role of the Team for Handling of Social Conflict, is highly expected because the membership involves government element. Moreover, the government element involved in the team understood data about social conflicts which occurred in East Kolaka Regency, especially land conflict involving transmigrant people and local residents.

The land conflict which has been protracted without a good solution at the mediation level, so that the parties finally took a solution to litigation. This, of course, affects the activities of transmigrant people. If the settlement of the land conflict is resolved through litigation, the duration of the conflict resolution process will be long. This can disrupt the purpose of the transmigration program, namely to improve the welfare of transmigrant participants. This also causes the provision of facilities in the form of land where the time used is supposed to process land productively, it cannot be used effectively because it is only used for resolving land conflicts.

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