

OVERLAPPING FOR LAND OWNERSHIP RIGHTS: ALTERNATIVE DISPUTE RESOLUTION BY OMBUDSMAN

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Abstract

The research aims to find out the implementation of the function of ombudsman in resolving overlapping disputes for land ownership rights. It is a socio-juridical research, a combination of normative and empirical research. It was conducted in Tanjung Selor subdistrict, Bulungan district, North Kalimantan. The results of research indicated that the overlapping of land rights was caused by the consequent non-enactment of the law, unclear land boundaries, the ease of making Land Ownership Statement, and development. The measures that have been taken by the Ombudsman of North Kalimantan are written clarifications, field investigations, summons, issuance of the final audit report, and monitoring. Therefore, in resolving the overlapping dispute based on these rights, the ombudsman does not undertake a litigation or non-litigation resolution because the final product of the resolution made by the ombudsman is only a recommendation, and now the case of overlapping land rights has only just at monitoring stage. For this reason, an active role from the government is needed to conduct socialization related to land registration, so that the government community will always work together to keep land registration data up to date.

Keywords: Land; Land Rights; Dispute Resolution; Ombudsman

Table of Contents

Introduction

1. Method of Research
2. Historical Study for the Occurrence of Overlapping Land Rights in North Kalimantan
3. Effort to Resolves Overlapping Disputes on Land Rights by the Ombudsman of the Republic of Indonesia

Conclusion

Introduction

Land is an important aspect of community life. The importance of land for human life making peoples uses all means to own it, and it creates a land dispute in the community. For example, there are double certificates, overlapping, even there are land certificates that have been issued, but then the local government, namely the neighborhood association and the Head of Village, issued a Land Ownership Statement. It can be triggered by many factors, includes the failure to implement the provisions of the Basic Agrarian Law and its implementing regulations consistently, consequently and responsibly, in addition to the fact that there are still people who act for personal gain regardless of the rights of others.¹ Thus, land disputes cannot be avoided. Moreover, if the land is located in a strategic area, such as a government center site whose price increases along with the increase in development, which causes the need for land to increase. This is what happened in North Kalimantan Province, precisely in Tanjung Selor subdistrict.

¹ Anatami, D. (2017). Tanggung Jawab Siapa, bila Terjadi Sertifikat Ganda atas Sebidang Tanah, *Jurnal Hukum Samudra Keadilan*, Volume 12, Nomor 1, January-June 2017, p. 12

Tanjung Selor is youngest province capital in Indonesia, which was established on 22 April 2013. Certainly, as a new capital, it will require a lot of land to build facilities and infrastructure. To support the implementation of this development, the government will carry out land acquisition in accordance with its legal regulations. This legal arrangement is needed to prevent and overcome the negative impacts of development.² But in line with the development of *Kota Baru Mandiri* (KBM) Tanjung Selor, there have been many problems. Based on the report received by the ombudsman, certified transmigration lands are overlapped with a Land Ownership Statement (SPPT - *Surat Pernyataan Penguasaan Tanah*). The certificate which is owned on the transmigration land was issued in 1993, and it is claimed that SPPT issued in 2016 and 2017 on the same land.³ SPPT issued in 2016, 2017 is the basis for the issuance of certificate in 2018.

If a certificate has been issued, but in the future someone re-issues a new certificate with the same object, then in the process of issuing the certificate, it is necessary to trace the background of the issuance of the certificate. This is even more so if the issuance of certificates overlaps and SPPT is not only one in the same area. As report received by the ombudsmen, North Kalimantan in the Tanjung Selor subdistrict, at least 300 certificates are overlapped with 200 SPPT. One plot of land can be overlapped 3 to 4 SPPT. Therefore, this is not a logical thing.⁴ So, the certificate should provide a guarantee of legal certainty as evidence for the right-holder, but in reality the legal certainty has not been achieved, as it should be for the purpose of land registration.⁵

Ombudsman as external supervisors in realizing a good government system whose existence is expected to be able to control the duties of State administrators and government in administering public services and enforcing law. The ombudsman of the Republic of Indonesia handles public service complaints that in carrying out their duties and authorities are free from interference by other powers.⁶ The Ombudsman is an institution trusted by the community to solve various problems caused by public institutions, one of which is related to land issues.

Concerning the resolution of the overlapping certificate problem that occurred in Tanjung Selor which in line with the construction of *Kota Baru Mandiri* (KBM), it seemed that the community did not have legal certainty so they reported this to an external public service supervisory agency, namely the ombudsman, which is expected to be able to provide solutions according to its function of overseeing the implementation of public services organized by State and government officials both at the central and regional levels, including those organized by State-Owned Enterprises, Regional-Owned Enterprises, and State-Owned Legal Entities as well as private or individual bodies assigned the task of organizing. So that problems related to maladministration of ownership of land rights no longer occur, and can run as it should. The ombudsman is also expected to provide the best solution as a background for the occurrence of overlapping disputes over land rights, so that overlapping disputes over land rights can be resolved as expected by the parties.

² Aspan, Z. (2017). Advokasi Litigasi Kasus Reklamasi Pantai Makassar (Perspektif Undang-Undang Lingkungan Hidup), *Jurnal Ilmu Hukum Amanna Gappa*, Vol. 25 No. 2 September 2017, p. 13

³ Ombudsman, Sertipikat Tumpang Tindih, Ombudsman: Mantan Kepala Desa dan BPN Bisa Terseret Hukum, accessed on <https://benuata.co.id/index.php/2019/03/31/sertipikat-tumpang-tindih-ombudsman-mantan-kepala-desa-dan-bpn-bisa-terseret-hukum/>, 14 February 2020, 05.40

⁴ Ombudsman, Sertipikat Tumpang Tindih, Ombudman akan Telusuri, accessed on <https://benuanta.co.id/index.php/2019/02/26/sertipikat-tumpang-tindih-ombudman-akan-telusuri/>, 13 February 2020, 06.39

⁵ Nurhasan, I. (2012). Arah politik hukum pertanahan dan perlindungan kepemilikan tanah masyarakat. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Vol. 3 (1), 33-51.

⁶ Solechan, (2018). Memahami Peran Ombudsman Sebagai Badan Pengawas Penyelenggaraan Pelayanan Publik Di Indonesia, *Administrative Law & Governance Journal*, Vol. 1 No. 2 May 2018, p. 64



1. Method of Research

The research is a socio-juridical research⁷ or a combination of normative and empirical research, to examine the concept of law and its implementation in the field of law work in society. It was conducted in Tanjung Selor subdistrict, Bulungan district, North Kalimantan. The data obtained through activities were identified and grouped according to the characteristics of the research objectives, then analyzed qualitatively descriptively.⁸

2. Historical Study for the Occurrence of Overlapping Land Rights in North Kalimantan

A case of overlapping land rights is a most prominent dispute in the land sector. Such as a double certificate or multi-certificate, which means that one plot of land has more than one certificate and so on. This can be caused by several things:⁹

- a. The need for land is insufficient, especially land for settlement, the demand continues to increase, and the land supply does not increase or even decreases;
- b. Limited quality and quantity of human resources (HR) who are tasked with resolving land disputes, as a result, land dispute resolution takes an unlimited amount of time, and can even be said to be unsolvable;
- c. The occurrence of land transactions that are not procedural and non-normative, but have been approved by unscrupulous persons;
- d. Lack of transparency of information on land, the community cannot easily access land information. The goal of the government is to establish *Sistem Informasi Pertanahan* (SIMTA), by this system the public can easily access using various media.

The background of the overlapping of other land rights can be influenced by internal factors as well as external factors. In North Kalimantan itself, especially in Tanjung Selor, which is now the site for the construction of *Kota Baru Mandiri*, which causes overlapping of land rights, namely: not-enactment the law properly, unclear land boundaries, easy to issue SPPT, lack of public knowledge about the basis of land rights, and the development.

Based on the objectives of land registration, it is clear that by conducting a land registration, there will be legal certainty and legal protection to the community, who has registered their land. To realize the objectives of land registration, the government has repeatedly carried out a systematic land certification program, the last being carried out by issuing Presidential Decree No. 86 of 2018 concerning Agrarian Reform. But in reality, all these goals cannot be achieved without the cooperation of various parties, such as the community and the government.

In North Kalimantan, particularly in Tanjung Selor subdistrict, which is currently the location for the construction of KBM, there are overlapping due to the lack of compliance with the prevailing regulations. Like several areas affected by the development of *Kota Baru Mandiri*, currently experiencing many obstacles, in terms of land acquisition, because of the many land rights that exist on the same land. For example, on ex-transmigration land in Jelarai Selor village, several land rights were found, with different people on the same land. In line with this, Ruth Pryscilla, Head of the Sub-Section for Handling Disputes, Conflicts and Cases of the National Land Agency Bulungan, explained that the overlapping of these rights began when there was a program of re-distribution of agricultural land by the Regional Office.¹⁰

The problem of overlapping certificates on the transmigrant land, whose maps are still manual maps, started when a land certificate was filed by a farmer group from Jelarai village in the

⁷ Diane, Z. (2011). "Implementasi pendekatan yuridis normatif dan pendekatan normatif sosiologis dalam penelitian ilmu hukum." *Jurnal Pranata Hukum* Vol. 6 No. 2: 26-37.

⁸ Irwansyah. (2020). *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*, Yogyakarta: Mirra Buana Media, p. 41.

⁹ Permatasari, E, Adjie, H., Hardianto. (2018). "Perlindungan Hukum Kepemilikan Tanah Absentee yang Diperoleh Akibat Pewarisan." *Jurnal Varia Justicia* Vol. 14, no. 1: 1-9.

¹⁰ Interview with Ruth Pryscilla, Head of Sub-section for Handling the Dispute, Conflict and Case of the National Land Agency of Bulungan, on 7 August 2020, at 09.12.

redistribution program of the regional office in 2013. At that time, because the transmigrant map was still a manual map, it was considered as state land because there is no cultivated land so a new certificate is issued.

The issuance of the new certificate was based on SPPT made by the local village head, according to the Head of Jelarai village, SPPT was made based on recognition from residents who recognized or worked on the land, so that the village head at that time facilitated to issue SPPT in accordance existing rules. Furthermore, the current Village Head explained that the overlap with the certificate was due to the fact that the village did not have a database of transmigration land certificates.¹¹

The overlapping of land rights that occurred on the land of the former transmigrant was not only due to the granting of rights, but this overlap also occurred because of the transfer of rights that was carried out not in accordance with applicable regulations, such as buying and selling. According to the confession of one transmigrant land certificate owner, that the certificate was obtained through buying and selling, but it was carried out under the hands, by means of the buyer handing over the money, and the land owner surrendering the certificate as a basis for the right.¹² One of the ways of transferring land rights is one that triggers land disputes such as overlapping land rights, because registration is not carried out.

For transmigrant land still uses manual maps and there are no more activities on the land by transmigrant residents or people who have proof of transfer of rights to the transmigrant land. So that the land boundaries are no longer clear. Land that has been controlled by residents is issued SPPT by the Village Head, because no one is working on it anymore, and there are no clear boundaries and most of those who hold transmigrant certificates are new people, or local residents who buy from transmigrant residents, some also have transmigrant certificates, who claim to have obtained by buying and selling, but do not know the location of the land with the certificate.¹³

This statement from the ombudsman is similar with the statement from the head of Gunung Seriang Village, who revealed that one of the reasons for the overlapping of land rights, namely the unclear boundaries of the area, so that many residents who own land in Gunung Seriang village, instead ask SPPT in Jelarai village.¹⁴ Therefore, clear village boundaries are needed as explained in the Regulation of Domestic Affairs No. 45 of 2016 concerning Guidelines for Establishing and Confirming Village Boundaries. Village boundary is a government administrative area boundary between villages which is a series of coordinate points located on the surface of the earth which can be in the form of natural signs such as edges/ridges/mountains, median rivers and/or artificial elements in the field that are contained in map.¹⁵ So the village map should be in every village, this will also help the National Land Agency in registering land in that village.¹⁶

Apart from unclear village boundaries, the land boundaries in National Land Agency sometimes inaccurate, because some land has been certified, using manual measuring instruments, the results are sometimes inaccurate. Accurate measurement results should actually show the area and location of the land. If the measurement results have produced the area and location of the land by mentioning the longitude and latitude, if a natural disaster such as a tsunami occurs that makes physical

¹¹ Interview with Sumartoyo, the Section of Land of Jelarai Selor village, on 12 August 2020, at 20.41

¹² Interview with, Buyer of transmigrant land with the proof of certificate, on 06 September 2020.

¹³ Interview with Baku Dwi Tanjung, the Section of Conflict Prevention of Ombudsman of the Republic of Indonesia, the Representative of North Kalimantan, on 29 July 2020, at .26.

¹⁴ Interview with Mustani, a Staff of Gunung Seriang village, on 7 August 2020, at 17.32

¹⁵ The Regulation of Domestic Affairs Ministry No. 45 of 2016 Concerning the Guideline of Establishment and Confirmation of Village Boundaries.

¹⁶ Ilyas, Anshori, and Hamzah Hamzah. "Administrative Land Conflicts and Reforming State-Owned Enterprises in Indonesia." *Hasanuddin Law Review* 8, no. 2 (2022): 186-193. DOI: <http://dx.doi.org/10.20956/halrev.v8i2.2362>

boundaries no longer visible, such as the tsunami disaster in Aceh, Palu, it will be easy to find its location as well as its extent.¹⁷

Mistakes in mass measurements are still out of sync between one land and the surrounding land. If the measurement results of several plots of land are plotted (merged) in one block, between the block area and the total land area that are merged are not synchronized, so that it can be ascertained that there is an overlapping boundary between one plot of land and another.¹⁸ The determination of clear boundaries between one land and another is a very important thing in land registration. National Land Agency as the agency that organizes land registration is required to be thorough. In addition, each village needs to be completed with an area map so that the National Land Agency data and the area map match.

The results of research showed that there were quite a lot of SPPT making in the village, from 2015 to 2019 there were 3.020 SPPT issued by Jelarai Selor village, and the most in 2015 was 1064, and the lowest was in 2019, which was only 184. In addition, it can be seen that every year the data on SPPT preparation has decreased every year from 2015 to 2019. In the process of obtaining ownership rights over land, making SPPT is an initial process or a basis for obtaining a certificate of land rights. However, by obtaining a land certificate, some community groups feel that their rights are safe and protected, as happened in Gunung Seriang village and Jelarai Selor village, Tanjung Selor subdistrict, North Kalimantan. To prove that the owner of the land who is involved in the construction of KBM is a resident, only to prove it by holding the SPPT made by the Village Head, in accordance with the applicable regulations.

If it is based on the purpose of land registration to provide legal certainty, it is known as the *Legal Cadaster*. The guarantee of legal certainty to be achieved in land registration includes certainty of the status of the rights that are registered, certainty of the subject of rights, and certainty of objects of rights. By issuing a certificate as proof of rights, while the purpose of UUPA is to provide legal certainty, in which the government is given the obligation to implement it as regulated in Article 19 of the UUPA. Registration resulting in this certificate based on the elucidation of Article 32 is only a strong proof of rights, in the sense that as long as it cannot be proven otherwise the physical data and juridical data contained therein must be accepted as true data. Certainly, the physical data as well as the juridical data contained in the certificate must match the data listed in the land book and the relevant size certificate, because the data is taken from the land book and measuring documents. Thus, even though a land has been certified, there is still the possibility of losing rights as in the transmigrant land certificate in Tanjung Selor.

Although there is already a reason that new rights have been issued on the land of the transmigrants, there is still the possibility of re-possession, because indeed the registration system adopted in Indonesia does not use a positive publication system, where the correctness of the data is guaranteed by the State, but uses the negative publication system, the State does not guarantee the accuracy of the data presented, but also is not intended to use the publication system purely.¹⁹ Thus, whether on the basis of the old or new rights, there is no guarantee that they are the ones who are entitled to the compensation that will be given.

¹⁷ Lyster, R. (2011). REDD+, transparency, participation and resource rights: the role of law. *Environmental science & policy*, 14(2), 118-126.

¹⁸ Irwansyah, Librayanto, R., Hijrah Adhyanti, M., Hakim, M.Z., and Yunus, A. (2020). Initiating omnibus law in environmental field in indonesia: Between tradition and renewal, *European Journal of Molecular and Clinical Medicine*, 7(7), pp. 1157–1165

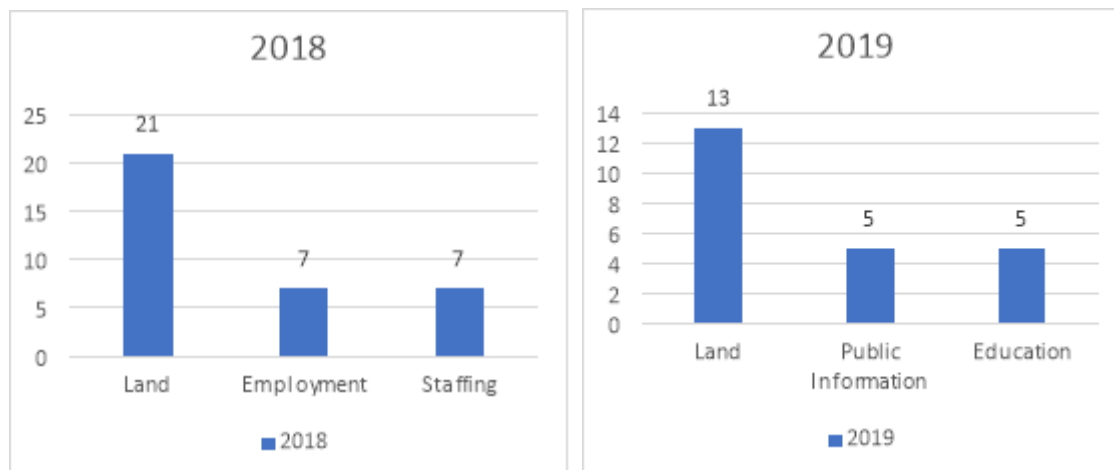
¹⁹ Elucidation of Article 32 paragraph (2) of the Government Regulation No. 24 of 1997, concerning Land Registration.

3. Effort to Resolves Overlapping Disputes on Land Rights by the Ombudsman of the Republic of Indonesia

The ombudsman of the Republic of Indonesia is tasked with receiving reports on suspected maladministration in the provision of public services, following up on public reports or complaints that fall within the scope of the authority of ombudsman, conduct investigations on initiative and coordinating cooperation and developing networks with state agencies or other government agencies.²⁰

The ombudsman is widely trusted to resolve various related cases under their authority, especially related to land, from year to year, especially the ombudsman in North Kalimantan. From 2018-2019, land-related problems were mostly handled by the Ombudsman (Graph 1).

The results of research indicated that land cases in 2018 were the most handled by the ombudsman for the last 3 (three) years, and the least in 2017, namely 11 (eleven) cases. In 2018, there were an increase of 10 (ten) cases, and in 2019 it decreased from 8 (eight) cases in 2018. As for the case of one of the land cases handled by the ombudsman of the Republic of Indonesia, the Representative of North Kalimantan Province, namely the land problem in *Kawasan Baru Mandiri* (KBM) area of Tanjung Selor, as a follow-up to reports received from the community regarding allegations of overlapping land which led to maladministration.



Graph 1. Data on types of case were handled by Ombudsman, 2020.

As for the steps that have been taken by the Ombudsman were written classification, field investigations, summons, issuance of the final examination report, and mentoring.

1. Classification

Request for clarification is a follow-up action from the ombudsman, after conducting review of the previous report, stipulating the report on the results of the document examination along with a follow-up decision.²¹ Therefore, before the ombudsman goes to an advanced stage, all of the above requirements must be fulfilled. For cases of overlapping rights that occurred in North Kalimantan, the Reporting Party, who is a representative of the residents holding the transmigrant land certificate, has completed all the documents.

²⁰ Anggraeni, N. (2018). *Ombudsman Republik Indonesia (Ori) Dan Pelayanan Publik (Studi Kasus Analisis Putusan Rekomendasi ORI dan Efektivitas Rekomendasi ORI)*, Publikasi Ilmiah, Program Studi Magister Ilmu Hukum Program Pascasarjana Universitas Muhammadiyah Surakarta, p.6.

²¹ Article 13 paragraph (3) the Regulation of Ombudsman of the Republic of Indonesia No. 26 of 2017 concerning the Procedure of Receiving, Examining and Completing Report.

Based on the findings of the ombudsman, it was found that the beginning of the problem was based on the transmigrant certificate rights, i.e because the agricultural land that was given by the government to be managed by transmigrants was peat, which is land that was not fertile. So that they do not cultivate on it as they should. Furthermore, the ombudsman explained that the transmigrants who worked on the land only worked on it until 1995, so that the land was no longer functional. Thus, since 1995 the land has no longer had the activities of the transmigrants.

The land that was not cultivated by the transmigrants became unusable, and according to the land authority, the land of the former transmigrants returned to become state land, because it was no longer functioned properly.²² As in Article 3 and Article 4 of Government Regulation No. 36 of 1998 concerning Control and Utilization of Abandoned Lands that:

Freehold land, land use rights, building use rights or usage rights can be declared as abandoned land if the land is deliberately not used by the right-holder according to its condition or nature and purpose of the right or it is not properly maintained.

Based on the formulation of Article 4, it can be seen that what is meant by abandoned land is land which is not deliberately not used and/or properly maintained, the land is not used in accordance with the circumstances, nature or purpose of the rights. Thus, transmigrant land which is no longer utilized properly and has even been transferred to another party fulfills this requirement as abandoned land.

In this request for clarification, the reported party is required to answer the ombudsman's clarification in writing within 14 (fourteen) working days from the receipt of the letter requesting clarification. If within 14 (fourteen) working days as referred to in paragraph (2) the reported party and/or the reported party supervisor does not provide an explanation, the ombudsman submits a request for a second clarification in writing. For this second request for clarification, the reported/reported superior is obliged to answer the clarification and if the reported party does not provide an answer, then it is considered that the reported party did not use the right of reply.²³

2. Clarification and Summons

Clarification is done in terms of reported problems requiring visual verification, confirming the substance of the problem and obtaining explanations from related parties. As for the clarification that has been made by the Ombudsman of North Kalimantan by conducting direct research by summoning more than 40 parties involved in the settlement of cases.

For the settlement of the case of overlapping land rights for transmigrants handled by the ombudsman of North Kalimantan, the Transmigration Service played an important role as the agency responsible for transmigration. Therefore, the ombudsman needs to conduct a direct interview regarding this issue. Regarding the duties of Manpower and Transmigration Service of Bulungan district, it has a vision that is a future perspective on where the government institution must be taken so that it can exist is anticipatory and innovative so that it has a picture of the future state desired by each government agency, and as for the future vision of the Manpower and Transmigration Service in Bulungan district is "Transmigration and productive and prosperous workforce to Bulungan district as an agro-industrial development area that is competitive, religious, cultured and environmentally sound."²⁴

Based on the results of field investigations conducted by the ombudsman, it was found that an area of 7000 m² is given to transmigrants was divided into 2 (two) lands, namely part of the land for

²² Lombard, M. (2016). Land conflict in peri-urban areas: Exploring the effects of land reform on informal settlement in Mexico. *Urban Studies*, 53(13), 2700-2720.

²³ Article 16 of the Regulation of Ombudsman of the Republic of Indonesia No. 26 of 2017 concerning the Procedure of Receiving, Examining and Completing Report.

²⁴ Hunaefi, Dase, Inas Zahidah, Zulfa Nur Hanifa, Philipp Fuhrmann, and Iryna Smetanska. "Consumer preference of food pairing tea: Sensory approach." *Canrea Journal: Food Technology, Nutritions, and Culinary Journal* (2022): 219-231.

settlements and partly for cultivation land, this cultivated land was used for the Development of Kota Baru Mandiri (KBM) and have been certified property rights by transmigrants.²⁵ However, the transmigrants took advantages of the property rights attached to the land by buying and selling under their hands when in fact the land could not be traded at that time, because to be able to transfer the land the transmigrants had to work on the land for at least 10 years.

The granting of ownership rights over the transmigrant's land did sometimes lead to various problems, for example, there were people who bought and sold the land to third parties, so that the actions carried out by the transmigrants distanced themselves from what the government was trying to achieve and was detrimental to the state because the transmigration had to pay a lot of money.

3. Field Inspection

Field inspection are conducted in terms of reported problems requiring visual proof, ensuring the substance of the problem and obtaining explanations from related parties, through 3 (three) stages, namely preparation, implementation and reporting. In the investigation conducted by the ombudsman, one of the obstacles faced was the lack of ombudsman personnel, because at the start of the ombudsman in North Kalimantan there were only 10 people. So this is a challenge for the ombudsman, especially since the ombudsman can only examine the case history for 2 (two) years before it is reported. As for the case of overlapping land rights for the transmigrants, the ombudsman only received a report in 2018. Meanwhile, the case occurred in 1994. Therefore, the ombudsman is only authorized to investigate all evidence starting in 2016.

4. Report of Final Audit Result

All report audit results are compiled in the Report of Final Audit Result (LHAP - *Laporan Hasil Akhir Pemeriksaan*). The ombudsman has kept his identity with the reporting person, so that the Report of Final Audit Result does not mention the identity of the reporting person. The audit unit exercise reviewing the report before establishing the Report of Final Audit Result by involving the member or Chief Representative of Ombudsman. If the Report of Final Audit Result stating that no maladministration is found, it is submitted to the reporting party with a copy to the reported party. While, the Report of Final Audit Result which stated that there was no form of maladministration, the Ombudsman delivered it to the reported party and asked for a response, such as the overlapping case of land rights in Tanjung Selor. In the Report of Final Audit Result as referred to but did not receive any follow-up from the reported party, it was submitted to the Resolution and Monitoring Unit to take settlement steps.

5. Monitoring

Currently, the ombudsman of North Kalimantan has been monitoring the implementation of corrective actions that must be taken by the reported party. So far the Ombudsman has arrived at the monitoring via the letter of the reported agency. The Ombudsman as an independent institution whose task is to oversee the implementation of public services, in completing reports from the public, the Ombudsman follows-up and the final product issued by the Ombudsman is a recommendation. Recommendation is a follow-up to the written clarification examination process, field investigations, summons, and systemic reviews. The recommendation issued by the ombudsman is not a judge's decision. However, the reported party is obliged to implement the recommendation if not implemented, the recommendation or only partially implement the recommendation for reasons that the Ombudsman cannot accept, the Ombudsman can publish the reported superior who did not implement the recommendation and submit a report to the House of Representatives and the President.

Based on the method of dispute resolution as conducted by the ombudsman, it can be concluded that the method used is the method of dispute resolution outside the court. Because all the steps taken by the ombudsman are only fact finding, then the final result is a recommendation with a persuasive approach so that the relevant government agencies have the awareness to resolve the

²⁵ Murphy, J. (2001). Alternative dispute resolution in the South African pension funds industry: An Ombudsman or a Tribunal?. *Pensions: An International Journal*, 7(1), 28-37.

problem of maladministration reports on their own according to the instructions given by the ombudsman.

In accordance with Act No. 37 of 2008 concerning the ombudsman of the Republic of Indonesia, although the settlement made by the ombudsman is an out-of-court resolution, the ombudsman has the authority to impose administrative and criminal sanctions on the parties concerned. Administrative sanctions can be given by the ombudsman to the reported or the reported superior. Meanwhile, criminal sanctions can be given to parties who try to obstruct the investigation process conducted by the ombudsman. Therefore, the disputes resolution by the ombudsman includes resolutions that are quite effective, because they do not have to go through a court process, but have the power to force the reported parties to implement them.

Conclusion

The overlapping of land rights in Tanjung Selor is caused by the consequent non-enactment of the law, unclear land boundaries, the ease of making SPPT, and the development. The measures that have been taken by the Ombudsman of the Republic of Indonesia, Representative of North Kalimantan are written clarifications, field investigations, summons, issuance of the Final Audit Report and monitoring. So in resolving the overlapping dispute over the basis of these rights, the ombudsman does not undertake a litigation or non-litigation resolution because the final product of the resolution as conducted by the ombudsman is only a recommendation and currently the case of overlapping land rights that occurred in Tanjung Selor has only just arrived at the monitoring stage. For this reason, an active role from the government is needed to conduct socialization related to land registration, so that the government community will always work together to keep land registration data up to date.

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