

Analyzing the Agrarian Conflict Between Administrative Court and General Court

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Abstract. Agrarian conflicts weakened the Administrative Judiciary and General Judiciary sectors in their settlement. The number of agrarian cases according to the Consortium for Agrarian Renewal for the period 2010-2019 amounted to 3,358 cases. The plantation, property, and infrastructure sectors become the largest agrarian conflicts in the last 5 years. Normative juridical research methods, statutory approaches and case studies, primary and secondary legal materials with analysis and technical descriptive analysis. So the author analyzes the Urgency of the Establishment of Agrarian Courts. The results of the study assessed that the judicial power is free without outside intervention. The type of court chamber has not been able to solve problems in the land sector properly. An Agrarian Court is needed as an effort to resolve land problems and reduce blur in the authority to file cases. The administrative court and the general court have a jurisdiction to handle and settle agrarian conflict. The jurisdiction of administrative court is in the administrative aspect while the jurisdiction of general court is in the rights aspect. With high percentage of agrarian cases unsettled, there is a need to establish agrarian court to expedite the settlement of agrarian case comprehensively.

Keywords: Agrarian Conflict, Agrarian Court, State Administrative Court, General Court

I. INTRODUCTION

Agrarian conflict and land dispute in Indonesia have increased and become national issue that potentially increasing social conflict escalation. The agrarian problems have a complex and multidimensional aspects because it covers economical, social, politic, ecology, and nation security and defense aspect. Current regulations and institutions are unable to settle the land dispute.¹ The main reasons for the dispute are land authority, land ownership, land management and land utilization, and land natural resources so that the society have to face injustice and legal uncertainty.² The abandonment of agrarian conflict settlement enables the cases to soar.

Based on the data from Agrarian Reformation Consortium (ARC), agrarian conflict in Indonesia during 2010 to 2019 amounted 3.358 cases. In the year 2019 alone, the number of conflict recorded is 279 cases. The conflict gives an impact to 109.043 households in all provinces in Indonesia. The data also shows that the amount conflict is greater in the plantation, property, and infrastructure sector.³ Based on the picture below, during year 2017, agrarian conflict was quiet high with 659 cases. In the subsequent year, 2018 and 2019, the number of cases is decreasing but it can not be regarded with any progress or achievement because still there are actually hundred of cases need to be settled.



Picture 1. The Number of Agrarian Conflict in Indonesia
Sources: Agrarian Reformation Consortium (ARC)

Referring to the actual agrarian conflict case about the changes of land governance in Surabaya based on the decree from Surabaya Major number 188.45/366/436.1.2/2007, the city of Surabaya determines to change the village governance to ward governance. People reject the Major decision because Waduk Sepat area have a cultural, economic, social, and environmental value for indigenous and also a conservation area. It seems that the lack of communication between the city of Surabaya and the citizen of Waduk Sepat was the main factor that trigger the conflict because the city of Surabaya did not socialized the program rightly more than three times. It is suspected that the data owned by the city of Surabaya is not accurate and have been manipulated to accurately shows the real condition. The city of Surabaya did not give information disclosure needed by the citizen of Waduk Sepat. The conflict is still going on.⁴

The agrarian conflict problems have become complex and creating injustice in the society. Many procedures are used by society to settle the conflict either by non-litigation process using hearing, negotiation, and mediation procedure or by litigation process through the administrative court and general court. The litigation process often does not give the expected result since the process often long and expensive. The citizens who have an agrarian conflict generally do not have a strong legal standing because they do not have land ownership formal evidence.⁵ The litigation to settle agrarian conflict could be conducted by administrative court or general court depending on the court's jurisdiction regarding the case.

Administrative court has a jurisdiction to handle the dispute of land's registration which is the faulty or legal defects in the administrative aspect while general court has a jurisdiction to handle civil case of land's dispute such as the rights of land because of the action against the law. The agrarian conflict settlement through administrative court or general court does not guarantee that the judicial process is conducted in the fast, simple, and low cost manner. Based in the interview with a judge from North Jakarta general court, Djumyanto, procedure in the formal and substantive law regarding to land's dispute is cumbersome and law reformed is needed to accommodate the necessities of current and future society.⁶

The above description clearly explains that the litigation process for land's dispute in the administrative court and general court is not adequate to expedite the settlement of conflict. To solve the problem in the litigation process, we should look in the historical context that cause the agrarian problem through analyzing the law number 21 year 1964 about landreform court.

The landreform court was established to settle the dispute that cause from the execution of landreform program. During new order era, the landreform court was banished in the 1970 because the new order government considered that the landreform program disturbed the economic development by oligarchy capitalist.⁷ The main focus of landreform program is the remodelling and redevelopment of land's ownership, land use planning, and abolishment the land's colonial law. The purpose of landreform was to heighten the farmer's welfare since most Indonesia's citizens are farmers who lived under poverty. The landreform court had a purpose to:

1. Prohibiting the land's ownership over a maximum allowed;
2. Prohibiting the ownership of absentee land;
3. Returning and replacement of farmer mortgage's land;
4. Limiting the minimum ownership of farmer's land.⁸

The land reform program did not last long since many chapter in the agrarian's law is not clear enough and the social, politic, and economic situation in that era unstable because there were not enough land to be distributed among farmers.

With the increase of the land's dispute cases, My opinion is it is necessary to establish a special court to settle agrarian cases namely the agrarian court. The establishment of special court does not mean to revive landreform program. The purpose of agrarian court is to create an institution that is specialized to settle land's dispute to accommodate the current conflict in Indonesia.

In the discussion about the establishing of agrarian court, one thing that have to be considered is the chambered in the Supreme Court that have an authority to supervise the agrarian court. According to the policy of Supreme Court in the decree number 142/KMA/SK/IX/2011year 2011, the supreme court is divided by five chambers which is civil case chamber, criminal case chamber, religion case chamber, administrative case chamber, and military case chamber. The objective for establishing chamber is to create unity in the decision for similar cases by supreme court judge so that it brings equality to each justice seeker since they get the same treatment for similar cases.⁹

Based on the discussed background above, the question arises to discussed in this paper are:

1. How important is to establish the agrarian court as a special court since there are administrative court and civil court that have a jurisdiction to settle land's dispute?
2. What chamber in the Supreme Court has authority to supervise the agrarian court?

II. METHODS

This study employs a qualitative approach, which is a technique for gathering detailed data that is meaningful actual data, i.e., a value hidden in the visible data. This method involves the researcher producing intricate visuals, editing text, reporting information based on the opinions of informants, and carrying out the research in real-world settings. As a result, generalizations are not emphasized in qualitative research; rather, the meaning behind them is (Sugiyono, 2016: 13). As long as the question is pertinent to the issue being investigated, research in practice explores numerous questions rather than just one. Through the dynamic interchange of social experiences that are perceived by individuals, qualitative research evaluates a reality with many dimensions (Suryani, 2016:94). As a result, it is predicted that qualitative research will be able to identify phenomena that are occurring in the real world and provide data that is precise, thorough, and trustworthy since it is based on real phenomena rather than being made up. To comprehend how study respondents perceive reality in a unique natural setting, qualitative research is performed.

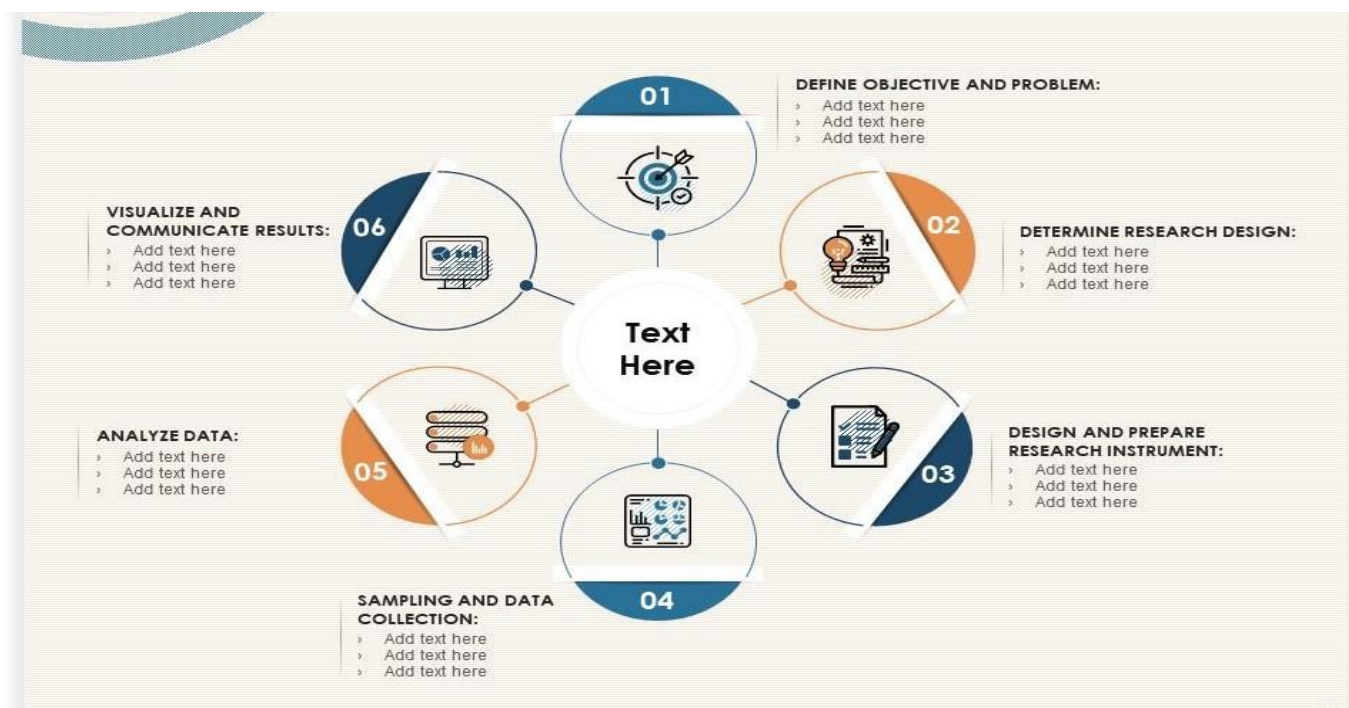


Figure 1: Research Method of Flowchart
(Surce: <https://www.slideteam.net/>)

III. RESULTS AND DISCUSSION

1. The importance for Agrarian Court Establishment

The settlement for agrarian conflict in court do not give enough satisfying result. The role of administrative court in the land's dispute settlement is different than the role of civil court. The role of administrative court according to the Law Number 5 Year 1986 about Administrative Court is to examine, to decide, and to settle administrative dispute.¹⁰ Based on this definition, the role of administrative court in the land's dispute settlement is in the administrative aspect.

The administrative aspect that become the jurisdiction of administrative court is concerning the decree from National Land Agency given to a person or a legal entity regarding the land's ownership certificate or the right's of land certificate. The common disputes arise from the issuance of the decree are the issue about rule applied, the determination of subject or object, the determination of land's status, the error in the determination the land's area, limit, or position, and other administrative errors.¹¹ The jurisdiction of administrative court according to article 53 paragraph 1 the law number 5 year 1986 about administrative court states that:

"A person or a legal entity that his interest harmed by a certain administrative decree could make a lawsuit to the authorized court which states that an administrative decree issued to be cancelled or revoked, with or without compensation or rehabilitation."

The jurisdiction of general court in the land's dispute settlement is concerning the civil aspect of land. The general court's jurisdiction is based on article 50 the law number 2 year 1986 about general court which states that general court has a duty and an authority to examine, to decide, and to settle criminal and civil case in the first level.

The common cases in the general court jurisdiction are cases regarding the legality of land's right, the land's clearance, the transfer of land's right, and the unlawful acts. The example of case regarding the legality and the transfer of land's right is the default in the rental agreement or in the purchase of land. The example of the unlawful acts is the forgery of land's certificate.

The land's dispute settlement either through administrative court or general court should give justice, benefit, and certainty to the justice seeker. The court ruling in the agrarian matter should give a just decree.¹² However, based on data from The Ministry of Agrarian Affairs and Spatial Planning, the number of land's dispute in the year 2019 is 4,431 cases from which only 3,230 is settled and the rest of cases about 1,201 cases is still in process.¹³

The number of pending cases in the administrative court and general court indicate that settlement process is not optimum and do not give certainty to justice seeker. The possibility of dual decree by administrative court and general court for the same disputes indicates the settlement in the land's dispute is not comprehensive. Thereby, there is a need to establish a special court to settle land's dispute to give certainty and to expedite the dispute's settlement.

The agrarian conflict does not involve just one aspect since there are broader issues need to be taken care of. According to article 1 paragraph 2 the Law number 5 year 1960 about The Basic Principle of Agraria, it is clearly stated that:¹⁴

"All lands, water, and space, including resource inside it in the Indonesia territory is a blessing from God Almighty is belong to Indonesian and part of Indonesian's wealth"

Agrarian Law gives a social, politic, culture, and religious meaning. Also, agrarian matter has an economic function because it become economic's production factor and a basis for social structure. The implication from the ownership of agrarian factors is wealth accumulation in the physical and social aspect.¹⁵

The impact of the complex relationship between agrarian subject and agrarian object is a possibility of agrarian conflict. Empirically, the agrarian conflict happens because of the opposite claims on the resources.¹⁶ The severity of agrarian conflict is represented by the number of cases increased every year despite ineffectiveness the judicial institution performance. Many people is in disadvantaged and there are no law certainty given.

The establishment of agrarian court would give law certainty and effectiveness to solve the agrarian conflict so that the society receive the benefit and justice by court decree. The judge in the agrarian court should consist of competent people who have a comprehensive knowledge in agraria. It is hoped that through agrarian court, the ineffectiveness of administrative court and general court is resolved.

During old order era, there is a landreform court which is established under The Law Number 21 year 1964 to handle the dispute in the agrarian matters. There two reasons why the law is enacted. The first reason is to expedite the settlement of disputes because of the enactment landreform program. The second reason is referring to the specialty of disputes. The landreform court as a special court had a certain arrangement, jurisdiction, and procedural law.

The landreform court had been abolished in the 1970 through The Law Number 7 year 1970 about the abolishment of the landreform court because:

- a. The arrangement of landreform court which consist of three representatives from Farmer Mass Organization as judge member to represent national mutual cooperation based on Nasakom is in the contrary with The Decree of Temporary People Consultative's Assembly Number XXV/MPRS/1966 and Number XXXVIII/MPRS/1968;
- b. Many landreform cases under the landreform court was stucked;
- c. The court that handling the civil and criminal matter, which includes the landreform cases was under jurisdiction of general court;
- d. The Law Number 21 year 1964 about The Landreform Court had not existed anymore by The Law Number 6 year 1969, however the application of those law begin when the replacement law enacted;
- e. Based on the above reasoning and for efficiency, The Landreform Court is abolished and all cases remaining was handled and under jurisdiction of general court;¹⁷

The proposal to establish agrarian court does not mean to reactivate landreform court because the landreform court is used as a guidelines for agrarian conflict settlement and procedural law. The purpose of agrarian law is to reconstruct the present court structure to handle the agrarian conflict. The establishment of agrarian court is to fulfill Article 33 paragraph 3 Indonesia Constitution which stated that *all lands, water, and inside resources are under the ownership of the country and would be used for the greatest wealth for all citizens*.¹⁸

Other juridical aspects that support the establishment of agrarian court are:

- a. Article 24 paragraph 1, Article 28D paragraph 1, Article 28H paragraph 2, and Article 33 paragraph 3 Indonesia Constitution. Those articles give a guidance to guarantee the justifiable law enforcement. Article 24 paragraph 1 states that the recognition and the guarantee for every citizen to have a same treatment in the face of the law so that they have a law protection and law certainty according to Article 28D Paragraph 1. The court decree should give the same law benefit and justice according to Article 28H paragraph 2. The establishment of agrarian court becomes the ideal objective to carry out the constitution so that all resources from agraria give prosperous and wealthy to all citizens;
- b. Article 6 paragraph 1 letter d, letter e, and letter f, and paragraph 2 letter E People Consultative's Assembly Decree Number IX/MPR/2001. Those articles states that the States has to settle the conflict of ownership and the utilization agrarian resources for the sake of law enforcement based on the principles stated in Article 5. Other mandate from those articles is the States has to strenghten institution including the jurisdiction and the finance of that institution which have a duty to settle the agrarian conflict and the agrarian reform. It is clearly stated that if there is a special court to handle agrarian conflict established under this decree, this attempt can be categorized as an effort to strenghten general court.¹⁹
- c. Article 1 Number 8 The Law Number 48 year 2009 about Judicial Power states "*Special Court is a court that has a jurisdiction to examine, to judge, and to decide a certain cases which is established under one of the judicial chamber under Supreme Court which its establishment is based on Law.*" Article 27 paragraph 1 states "*A Special Court only can be established under the judicial environment under Supreme Court according to Article 25.*" Both article enable to establish an agrarian court based on the law because the general court is not optimal and ineffective.

Based on the juridical argument above, it can be concluded that the esatblishment of agrarian court has a purpose for 1) to handle agrarian conflict which cannot be handled by current judicial institution, 2) to realize the mandate of Consultative's Assembly Decree Number IX/MPR/2001 about The Agraria Reformation and The Utilization of Natural Resources, 3) to enable the establishment the agrarian court under Supreme Court Jurisdiction under certain law, 4) to create the agrarian court that can fulfill the judicial principles which is simple, expedite, and low cost to achieve legal certainty, legal benefit, and justice.²⁰

2. The Authority of Chamber in the Supreme Court to Supervise Agrarian Court

According to the Article 1 number 8 Law of Criminal Procedural Law, judge is defined by a state official who has authority by law to conduct judicial matter. By definition, judge is a guardian of justice who has authority based on law. Judicial power based on Article 1 paragraph 1 the Law Number 49 year 2009 mean "*an independent state power to conduct judicial matter to enforce law and and justice based on Pancasila and Constitution for the sake of the rule of law.*" Judicial power is a characteristic of rule of law. in Indonesia.²¹ Judicial power is stated in the ChapterIX Article 24.²²

One of the manifestation of judicial freedom is an independent court. The meaning of independent is no intervention whatsoever and the freedom from any threat, pressure, or physical and physical actions. Based on the internal conference of commision of jurist in Bangkok on the year 1965, the meaning of the freedom of justice with no inclination is a requirement in the democratic government.²³ The judicial power in Indonesia should have freedom with no intervention but the freedom alsom means “*Independence does not mean that the judge is entitled to*” so that still there is a limitation in the freedom of power.²⁴

The judicial system in Indonesia does not recognize jury system which commonly used in the criminal court.²⁵ In every country, a special court could be established to accommodate social problem. The judicial system in Indonesia consists of 4 (four) chambers which are general court chamber, religion court chamber, military court chamber, and administrative court chamber.

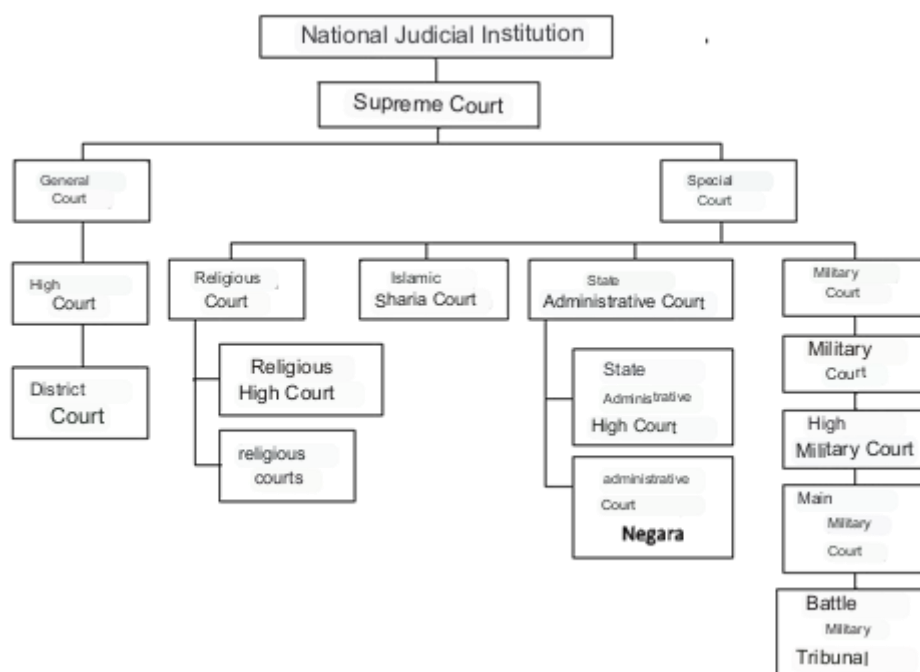


Figure 2. Scope of Courts in Indonesia
Source: Musni Umar (arahjaya.com)

Based on the above picture, any court have an absolute authority regarding cases. General court which has an equal position with special court has an authority according to Law Number 49 year 2009 about General Court to conduct the judicial matter in the state court, then in the high court, and lastly the cassation stage in the Supreme Court.²⁶ Article 50-51 of that law gives an expalantion the authority of general court which is in the criminal cases (general and specialty), civil cases (general and trade). Other civil cases such as marriage and heritage for islamic people are handled by religion court.

Administrative court as a special court has an authority to make judgment about state adminstrative cases according to the Law Number 51 year 2009 about Administrative Court. The cases in administartive law usually regarding the problem between person and legal person and state official with the settlement in the administrative court, high administrative court, and Supreme Court as a final settlement.²⁷ The authority of administrative chamber in the Supreme Court is on the administrative matters involving state official according to Article 2 paragaph 1, 2, and 3 Supreme Court Decree Number 2 year 2019.²⁸ Practically, judicial process in the court is not as simple as the division of authority in theory, especially in determinig which chamber is involved such as whether a case is belon to the administrative court or not since administrative case often ambiguously is referring to general court.

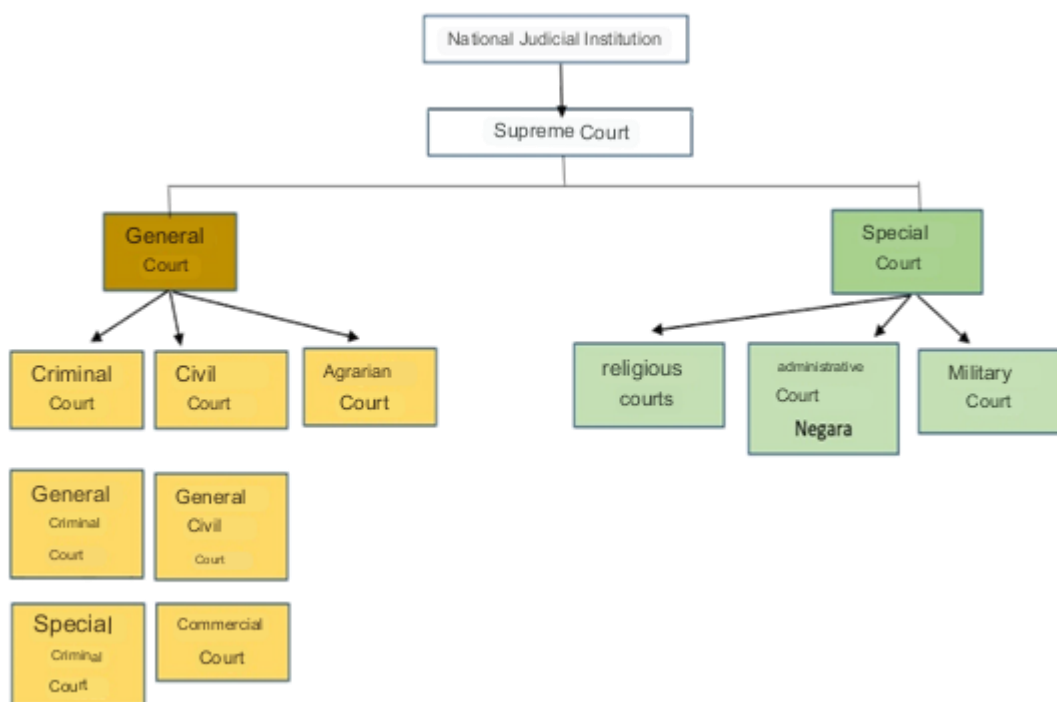
With the increase of law awareness in the society, many problems arise in the interaction between citizen with state official. The agrarian problem is one aspect developed in the society which make a confusion about which court should handle

the case. One solution is to establish an agrarian court to handle agrarian matter as part of judicial power to give justice for society in the agrarian matters.²⁹

An effort to handle agrarian conflict needs a comprehensive strategies which are:³⁰

- a. The executive strategy is in the determination of state administrative strategy should be held by a professional.
- b. The legislative strategy is in the ruling of authority in the agrarian matter.
- c. The judicative strategy is in the establishment of state's land commission.

The establishment of state's land commission is not enough because there is a need to establish an agrarian court as a comprehensive strategy to anticipate and reduce the number of agrarian cases.



Picture 3. Illustration of the court environment in Indonesia after the existence of the Agrarian Court

Source: Author's Creation

Bases on the above illustration, the agrarian court is under jurisdiction of general court side by side with criminal court and civil court. The agrarian court has a three tier hierarchy which is in the first level is agrarian court in the municipal capital which is established under Presidential Decree, in the second level is high agrarian court in the province which is established under Laws, and in the third level is cassation agrarian court under Supreme Court.³¹

With the establishment of agrarian court, the jurisdiction of agrarian court involves with agrarian conflicts such as the dispute of land's ownership whether in the material aspects, phisically and juridically, the dispute of customary land, and the ownership of no man land. For the dispute because of the state official product like land's certificate and the procedure of making a certificate in the National Land Agency, the jurisdiction for case settlement is on the civil court. The dispute of originality of land's certificate which formerly is handled by administrative court would be handled by agrarian court.³² The existence of agrarian court would be synergized with other court. One case for example is the decree of administrative court number 27/G/2017/PTUN.DPS in which the heirs could not make a certificate because of the land's dispute. The settlement of the case would be done in the agrarian court because of the misdeed of state's official in the cancelation of certification process in the administrative court.

The judge's arrangement in the agrarian court follows the basic principle which are:³³

- a. Supreme Court

According to Article 40 paragraph 1 Law Number 14 year 1985 about Supreme Court, the number of judge to handle the trial is three person. The number must be odd in case there are one person have different opinion.³⁴ The three judge is categorized as one person as chief judge and two person as member judge.

b. Constitutional Court

According to Article 4 paragraph 2 Law Number 2 year 2011 about The Amendment of Law Number 24 year 2003 about Constitutional Court, the amount of judge in the trial is nine person which consist of one person as chief judge, one person as vice chief judge, and seven person as a member judge.³⁵

Based on the above principle, the agrarian court would be consist of three judge which consist of one person from career judge and two person from adhoc judge who are chosen by Supreme Court.

IV. CONCLUSIONS

The administrative court and the general court have a jurisdiction to handle and settle agrarian conflict. The jurisdiction of administrative court is in the administrative aspect while the jurisdiction of general court is in the rights aspect. With high percentage of agrarian cases unsettled, there is a need to establish agrarian court to expedite the settlement of agrarian case comprehensively. The establishment of agrarian court would give a law certainty and law benefit based on the principle of simple, fast and low cost trial and also give a justice for justice seeker through the court decree that represents the value in the society and current regulation. The independent judicial power without intervention from anyone is a must. The chamber in the judicial power consist of general court chamber which include criminal court (general and specialty), civil court (general and trade) and special court (religious court, military court, and administrative court). All courts have a certain jurisdiction determined by law. However, current juridical structure could not solve the agrarian problem comprehensively so that there is a need to establish an agrarian court so that there is no confusion in the society about the court that is responsible to solve the agrarian dispute. The proposed agrarian court would consist of three judge with one judge is a career judge and two judge is adhoc judge.

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