

# Peace in Civil Disputes After the Inkracht Ruling: A Progressive Legal Theory Approach



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## ABSTRACT

The problem of land ownership disputes is an unresolved problem, even increasing with the increase in population. Resolving land disputes through the court (litigation) is considered not fully effective in dealing with land problems in Indonesia. Therefore, a study was conducted with an analytical descriptive approach using a normative juridical approach. This research includes the collection of secondary data through literature research. The application of Progressive Legal Theory to the peace of the parties in a land dispute after the Inkracht ruling could be a relevant approach. Progressive Law Theory emphasizes the importance of prioritizing justice, peace, and human happiness in the context of law. The application of Progressive Legal Theory in the context of land disputes after the Inkracht ruling will involve collaborative efforts from all parties involved, including judges, advocates. Its main goal is to achieve peace, justice, and happiness.

## 1. INTRODUCTION

The purpose of the State of Indonesia as contained in the fourth paragraph of the preamble to the Constitution of the Republic of Indonesia in 1945 is to protect the entire Indonesian nation and all Indonesian bloodshed and to promote public welfare, educate the nation's life and participate in implementing a world order based on independence, lasting peace and social justice. In Chapter IX on judicial power, Article 24 of the 1945 Constitution of the Republic of Indonesia emphasizes that judicial power is an independent power. This power is exercised by a Supreme Court and the judiciary under it in the general judicial environment, the religious judicial environment, the military judicial environment, as well as the state administrative judicial environment and the Constitutional Court which is tasked with

organizing the judiciary with the aim of upholding law and justice. As previously explained, the Supreme Court is one of the institutions that implements judicial power in Indonesia in accordance with the provisions contained in the 1945 Constitution Article 24 paragraph (2) and Article 24A paragraph (1), and is further regulated by Law Number 48 of 2009 concerning Judicial Power and Law Number 14 of 1985 concerning the Supreme Court which has been amended through Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court, as well as Law Number 3 of 2009 concerning the Second Amendment to Law Number 14 of 1985 concerning the Supreme Court (Supreme Court Law).

The process of developing the law on judicial power in Indonesia began with Law No. 19 of



1964 which regulates the main provisions of judicial power, then amended with Law No. 14 of 1970 concerning the main provisions of judicial power. Further Amendment of Law No. 24 of 2004 concerning judicial power. The latest is Law No. 48 of 2009 concerning judicial power. Which aims to realize justice, benefits, and legal certainty. Article 27 (1) All citizens have the same position in the law and government and are obliged to uphold the law and government without exception.

The court, according to the community, is the final institution that is the goal in an effort to achieve justice and legal certainty for those who are in dispute. In terms of normative, the judiciary remains the main hope in law enforcement and justice.

One of the debates involving the community is land ownership conflicts, which are complex legal issues and often hinder social and economic progress in a number of countries. The legal field is continuously undergoing transformation in line with changing social dynamics. The complexity of problems related to land ownership in various regions reflects the escalation of conflicts that are difficult to avoid, in line with the development of social changes in various regions. The close relationship between social change and the legal dimension, especially in land tenure regulation, is a major focus that requires appropriate and thoughtful solutions.

Law enforcement and justice are theoretically declared effective if the five main pillars of law run and function as they should. These five pillars include legal instruments, law enforcement officials, community members affected by the scope of legal regulations, culture (legal culture), and facilities and facilities that can support the implementation of the law. The development of the society where the law is

enforced will affect the pattern of law enforcement, especially when society becomes more modern and the level of specialization is getting higher. This will cause the law enforcement system to become increasingly complex and bureaucratic.

The application of these five pillars must occur in harmony in various aspects of people's lives, including in the handling of cases and conflicts in the land sector. Land problems have always been a relevant issue from time to time. This situation is developing in line with population growth, progress in Science and Technology (IPTEK), expansion of development programs, and increasing community needs for land as a place to live or invest.

Land rights disputes are a complex and growing issue in Indonesia. These disputes involve various community entities, such as conflicts between customary law communities, tensions between citizens and the government, interactions between communities and non-governmental institutions, and internal conflicts within the community itself.

Land dispute resolution is usually through a litigation process. Now with the Regulation of the Minister of Agrarian Affairs Number 11 of 2016 concerning Land Case Settlement, dispute resolution can be carried out by non-litigation (mediation). Out-of-court dispute resolution, which results in an agreement between the parties involved, is much more effective in maintaining an ongoing relationship and for the future, compared to a win-lose litigation procedure. The court decision between the parties to the dispute, puts them in the position of the winner and the losing party. In this position, conflict often results in resentment and hatred, not peace and tranquility.



According to data from the Ministry of Agrarian Affairs and Spatial Planning, the number of land disputes in Indonesia continues to increase from year to year. In 2018, there were 7,739 cases of land disputes that were increasingly complex. Land disputes that cannot be resolved can give rise to conflicts and land disputes that ultimately resolve efforts to end up in court as the last bastion to obtain fair legal certainty. In addition, land disputes are very complex and multidimensional. Cassation decisions, as one of the stages of dispute resolution that often have final legal force, should provide a clear settlement related to land ownership. However, the reality on the ground shows that many land ownership disputes still continue after the cassation decision.

Disputes in principle arise when there are demands or requests from one party that are not fulfilled by the other party. These demands or requests are generally based on certain rights. However, when both parties do not file a claim for rights, then disputes or conflicts will not arise. Therefore, the existence of rights claims is a fundamental element in the emergence of disputes or conflicts. According to Bagir Manan, land disputes dominate the first place in disputes in the general judicial environment, exceeding other civil cases. In the settlement of civil disputes, including the settlement of land disputes before the process of examining the subject matter of civil cases, mediation is mandatory for the parties to the dispute.

Mediation procedures in court are regulated in the provisions of Article 3 of the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2016 concerning Mediation Procedures in Court, which is a necessity to carry out mediation in civil cases that enter the court. This is a rule that must be obeyed by various parties, because the violation has the potential to make the court

decision null and void. Therefore, the mediation procedure regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2016 must be taken seriously. With the enactment of the Supreme Court of the Republic of Indonesia Regulation Number 1 of 2016, there has been a significant change in judicial practice in Indonesia.. The role of the court is no longer limited to examining, adjudicating, and deciding the case submitted, but also includes reconciliation efforts between the parties involved.

The court, which has been known as a law enforcement institution of justice, has now transformed into an institution that actively seeks peaceful solutions for the parties. In general, mediation is one of the options in resolving disputes. There are two common forms of mediation, namely mediation that takes place in court and outside the court. Out-of-court mediation is generally practiced by private mediators, individuals, or through independent institutions such as the National Mediation Center (PMN). Meanwhile, mediation that occurs within the scope of the court is regulated by Supreme Court Regulation (PERMA) No. 1 of 2016 which requires the mediation stage before the core examination process of civil cases. Mediators in the context of the court usually consist of District Court judges who are not involved in the case in the case.

The explanation of Article 4 in the Supreme Court Regulation is that all civil disputes submitted to the court, including cases of resistance (*verzet*) against *verstek* decisions and resistance by litigants (*partij verzet*) against the implementation of decisions that have been in permanent force, must follow the previous mediation stage.

Peace after the *inkracht* ruling, with a



progressive theoretical approach is more relevant. The basis of Progressive Law Theory is the belief that law is an institution that plays a role in guiding human beings towards a just, prosperous, and happy life. This theory is based on the belief that there is a close connection between law and man, with the basic principle affirming that "law is to serve man," not the other way around.

The human factor takes center stage in this theory, and is considered a symbol of values such as compassion, empathy, sincerity, dedication, commitment, courage, and determination. The emphasis on human beings, not just the legal aspect, allows for a deeper understanding of the dynamics of law as a process that is constantly evolving. In this dynamic, the law interacts with various entities in society and moves in the sociological realm, not only in the legalistic-positivistic paradigm.

Through a dialogical approach, Progressive Legal Theory opens up the possibility to make corrections to the weaknesses of the modern legal system that are often trapped in bureaucracy and complicated procedures. The correction aims to bring the law closer to its original goal, which is to create conditions where human beings can achieve true prosperity and happiness.

In carrying out their duties, judges must have the ability to explore the meaning of the law and not always be the "mouthpiece of the law" absolutely, leading to a wiser interpretation compared to what is literally written in the law. According to the view of Progressive Law, judges should give priority to the values of justice and truth that serve humanity rather than insisting on rigid regulatory certainty. Through their decisions, the behavior of judges should encourage the creation of a better rule of law and encourage society

towards a more just and peaceful state. In this context, judges play the role of guardians of justice and as facilitators of conflict resolution, in addition to being the applicators of the law. In the context of the improvement and creation of social harmony, it is identified as one of the aspects that characterize the Progressive approach.

Conflicts related to land rights are often a problem that occurs in various regions, in remote villages and cities throughout Indonesia. This happens because the land area does not increase along with the growth of the number of human communities that continues to increase. Therefore, land rights disputes are not an issue that will end; In fact, this situation tends to get more complicated as the population increases.

The settlement of disputes over land ownership through litigation in judicial institutions still places great emphasis on the formal evidentiary aspect recognized by state law. Sometimes, in many disputes involving social, cultural, and political aspects in an area, such formal evidence is not always sufficient to give clear consideration to the judge in deciding land disputes. In addition, differences in legal views can also arise between judges, advocates, and parties involved in disputes. Some may refer to customary law, while others refer to applicable sectoral regulations, or to the Basic Agrarian Law (UUPA).

The implementation of court decisions, especially in land disputes that have been inkrach., has been regulated in the civil procedure law must be executed to maintain legal integrity. However, in practice, the execution of execution often becomes difficult and complicated, consuming significant time, effort, and cost when the losing party in the dispute seeks to hinder the execution process.



Judicial and jurisprudence practices in Indonesia often do not go according to expectations, with delays or suspensions of execution that occur due to various reasons such as in Decision Number: 2804 K/Pdt/2016, land disputes where the plaintiff wins in the Cassation decision, when the execution is about to be carried out, cannot be carried out because the defendant together with traditional leaders and the community obstruct the execution of the permanent house on the disputed land. and finally there was a peace between the plaintiff and the defendant where the plaintiff asked, asked the defendant to pay the price of the disputed land and the defendant accepted the plaintiff's request, so that peace was made in the Court which resolved the dispute at the first level. The execution of land cases that have been inkraht is a manifestation of the principles of justice and legal certainty. All parties, including parties involved in the case and related third parties, should give implementation of this decision. Court decisions that already have legal force must still be considered as truths that must be respected and fully implemented as moral and legal responsibilities. Normatively, the process of implementing court decisions that already have legal force is still clearly regulated, especially in the context of the general judicial environment.

With the above legal facts, this study focuses on the Progressive Theoretical Approach to Peace in Land Disputes After the Inkraht Decision in court. Where the research questions are:

1. What is the Progressive Legal Theory's Approach to the Peace of the Parties in a Land Dispute after an Inkraht Decision in Court ?
2. What are the implications of the peace of the parties in the land dispute after the Inkraht decision?.

## 2. METHOD

The type of research conducted is literature research. In the context of legal research, the research method used must be adjusted to the type of research object being researched. In this study, the research object includes the disparity of court decisions. The research methods applied involve normative legal research methods with a statute approach, a case approach, and a conceptual approach. In this case, the researcher refers to the laws, cases, and doctrines that are developing in the field. By studying views and by researching legal theories, researchers can find ideas that produce an understanding of legal terminology, concepts, and principles that are relevant to the issue at hand. The data sources used in this writing include two main types. First, primary legal materials consist of legislation and judges' decisions. Second, there are also secondary legal materials that include publications on law, including textbooks, legal journals.

## 3. RESULT AND DISCUSSION

### **Progressive Law Theory's Approach to the Peace of the Parties in a Land Dispute After an Inkraht Ruling**

The application of Progressive Legal Theory to the peace of the parties to a land dispute after an inkraht ruling could be a relevant approach. Progressive Law Theory emphasizes the importance of prioritizing justice, peace, and human happiness in the context of law.

According to Satjipto Rahardjo, law is not a fixed, final, or static entity, but it is always in motion and in the process of becoming (law as a process, law in making). This concept is very relevant, considering that the law, which is the result of human creation, can definitely undergo changes according to the needs and developments of the





times. In the view of Progressive Law, the proposed changes may be more dynamic. Does the change occur automatically, change itself (potential), or through an act (actus) that changes, as explained in Heraclitus, the Ancient Greek philosopher, that all things are always fluctuating and changing endlessly? It can be seen that in the Progressive Law, "becoming" or "flowing" is attached to the act of change.

The concept of Progressive Law emerged in Indonesia in 2002 and became a breakthrough idea introduced by Satjipto Rahardjo. The birth of Progressive Law was triggered by dissatisfaction with the application of the teachings of positive jurisprudence in the Indonesian empirical context. The idea arose in response to concerns about the quality of law enforcement in Indonesia, especially since the reform period that began in mid-1997.

In the context of land disputes after an inkraht ruling, Progressive Legal Theory encourages to avoid conflict and seek peaceful solutions. After the inkraht ruling, conciliation can be an effective tool in achieving peace between the parties to the dispute. It can involve a neutral third party to assist in conciliation. Progressive legal principles allow the parties involved to interpret the inkraht ruling by applying the principles of justice and peace. This situation may require the re-involvement of parties such as advocates, in order to find a solution that is acceptable to all parties involved. Progressive Legal Theory also emphasizes the importance of considering local and cultural values in the legal process. This can help build a better understanding between the parties to the dispute and support peace efforts. In the context of land disputes, the application of customary law or aspects of traditional law that are in accordance with Progressive Law Theory can be a tool to achieve peace. It can respect the traditional

rights and interests of local communities. Progressive Legal Theory also promotes legal education and increased legal awareness. In the context of land disputes after an inkraht ruling, legal education can help the parties to the dispute understand their rights and alternative resolutions.

The application of Progressive Legal Theory in the context of land disputes after an inkraht ruling will involve a collaborative effort from all parties involved, including judges, lawyers, and local communities. Its main goal is to achieve peace, justice, and happiness in accordance with the principles of Progressive Legal Theory.

The view of law from its philosophical perspective is that law should be centered on humanity. In this philosophical context, human beings are the main source and guide for the law. Law has an essential role to serve human needs, not the other way around, so it should not be considered as a separate entity from human interests. The quality of law is judged by its ability to contribute to improving human welfare. Consequently, a progressive legal approach fights for an ideology that supports justice and is in favor of the interests of the people.

The progressive legal approach seeks to deal with various irregularities, including conflict resolution, through the use of both state and non-state institutions. Its main focus is to become a force that supports liberation, directing transformation both in types, mindsets, principles, and theories that are innovative and not fixated on the conventional legal paradigm that is positivism. This trait ultimately encourages a progressive interpretation of the law. With this description, progressive law enforcement highlights the importance for all elements of society to constantly observe the



changes that occur in the local, national, and global scope. Facing these dynamics, progressive law enforcement is expected to prioritize the interests of the community and distance themselves from orientation to the interests of groups, factions, or investors. Progressive theory is not against the positive legal system, but wants to fill and animate the system with human values and justice. Progressive theory does not consider law as a neutral entity, but as an instrument that supports the weak, prioritizes the interests of society, and supports welfare..

### **Peace Implications of the Parties in the Land Dispute After the Inkracht Ruling**

The Peace Implications of the Parties to a Land Dispute After an Inkracht Award can have a significant impact depending on the nature and substance of the award. In this context, some of the implications are: If the inkracht decision is well received by all parties to the dispute, then this can bring satisfaction between the parties. If one of the parties feels that the decision is not in their favor, then further conflicts can arise. Peace After the Inkracht Judgment that respects and takes into account customary law and local values can support peace by strengthening relationships within the Community. Reconciliation After an Inkracht Judgment can create positive changes in social and cultural relations between the parties to the dispute. Peace Implications of the Parties in Land Disputes After the Inkracht Ruling, seeks to reach a solution that supports peace and stability within the Community, in the context of land disputes. This can involve efforts at open communication, and respect for the local interests and values of the communities involved.

According to M. Yahya stated that if the peace leads to the rejection of the execution by both parties, then the consequences will be seen as

follows, first, it is necessary to reschedule the execution process, second, the execution status will be maintained in accordance with the current conditions, the three objects that are the execution goods will be maintained in their original state or in accordance with the conditions at the time of termination of the process. M. Yahya's view, the withdrawal and maintenance of the status quo in the context of this kind of situation, can only be eliminated if the party who applied for execution decides to revoke the refusal. When the applicant refuses to carry out the execution, his right to the execution process will be extinguished until he decides to revoke his refusal statement.

The implications of peace between the parties involved in a land dispute after an inkracht ruling (a judgment that has become legally binding) can vary depending on a number of factors, including the nature of the dispute, the country's legal culture, and the wishes of the parties involved. In many cases, peace after an inkracht ruling can bring order back to the disputed area. This allows the parties involved to resume their activities without ongoing disruption or tension. The inkracht ruling shows that the legal decision has been final and binding on all parties involved. The implication of peace in this context is the importance of respecting and implementing the ruling. The losing party is usually expected to abide by the decision. Legal proceedings often leave heartache and tension between the warring parties. Peace after an inkracht ruling can help restore relations between the parties involved, although this is not always easy to do. Peace after a dispute can bring stability and a sense of security to the parties affected by the conflict. It is important to establish an environment conducive to social and economic life in the area involved. In some cases, peace after an inkracht ruling may include an additional agreement beyond the legal ruling that has already been



rendered. This could be a compromise agreement on land use, payment of compensation, or another agreement that facilitates the relationship between the two parties going forward. Peace agreements may include terms or mechanisms designed to prevent the possibility of similar conflicts in the future, such as dispute settlement clauses, cooperation agreements, or the establishment of clear boundaries. In land dispute situations, it is important to remember that peace after an inkraht ruling is not always easy to achieve. Often, there is a need to rebuild trust, negotiate additional agreements, or even engage third parties to help facilitate a sustainable peace process.

#### 4. CONCLUSION

The Progressive Law Theory approach to the peace of the parties in the post-Inkraht land dispute can be a relevant and effective approach. Progressive Law Theory emphasizes the importance of prioritizing justice, peace, and human happiness in the context of law. The application of Progressive Legal Theory in the context of land disputes after the inkraht ruling, will involve collaborative efforts from all parties involved, including judges, lawyers, and local communities. Its main goal is to achieve peace, justice, and happiness in accordance with the principles of Progressive Legal Theory. Implications of Peace of the Parties in a Land Dispute After an Inkraht Award, between the parties involved in a land dispute can have a significant impact depending on the nature and substance of the award. social and cultural. In many cases, the outcome of the Inkraht ruling can affect the direction and process of the peace between the parties to the dispute. Therefore, it is important to consider the implications of the ruling and seek to reach a solution that supports peace and stability in the context of land

disputes. This can involve consultation efforts, open communication, and respect for the local interests and values of all parties involved.

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