

LAND DISPUTE SETTLEMENTS IN SOCIAL PHILOSOPHY PERSPECTIVES (A Case Study in PTPN VII of Bergen Unit Business in South Lampung Regency)

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Abstract

Land dispute is a complicated problem, especially when this problem includes some parties or mass public. The rise of land dispute is caused by inequality of land possessing and control amongst government, state plantation, private, and tenant farmers. Land dispute in Sidodadi Asri versus PT Perkebunan Nusantara VII is a conflict of land control based on Right to Cultivate (or HGU) and *erfpacht* right which was a conversion from colonial law upon land control of colonialist heritage that caused effects such as eviction and expulsion with force to tenant farmers. The objective of this research is to study event chronologies causing the land dispute, to elaborate causing factors, to identify efforts that have been done, and to find out solutions upon land dispute based on social approach. This research is studied through social philosophy approach and descriptive analysis.

Land dispute in Sidodadi Asri village of South Lampung regency has been occurring since 1999. Many efforts of settlements had been conducted either by means of traditional mediation, formal method (court), or land mediation which was formed in environment of National Land Agency (or BPN). Court settlement and mediation did not always give solutions to satisfy and give sense of justice for public. Main findings in this research are that [1] land disputes cause miseries to tenant farmers; [2] land dispute causing factors are historical backgrounds; [3] based on philosophical perspective, land disputes are state negligence in making provisions that regulate basic natural rights of people upon land, and based on theology philosophy and limited state power; a state is built by people and to welfare people and this become philosophical foundation from egocentric ethic; [4] the land dispute involving public requires settlements based on social, culture and theological aspects because land dispute settlement process based on normative law always produces weak position for people; [5] reformation of right upon land right cannot be limited by proof of possession, land use, or land control only, but it should embark from democratic government policies oriented to tenant farmer welfare. Therefore, the Right to Cultivate granted by the state should not be absolute, but considering public and social factors.

The author recommends philosophically and socially compromised efforts for land dispute settlements with public by involving roles of limited state power and by not prioritizing law channel factors that cause people miseries, and the efforts need to honor local wisdom values. Government should be wiser in giving land right and more concern about local people's interests who physically control the land, and to give proper compensation. Government should be able to improve social order with more justice related to land controlling, possessing, and using.

Keywords: Land Conflict, and Social Philosophy

1. INTRODUCTION

A land dispute is a very complex problem, because land is a resource that possesses strategic and important position in human life. Besides having social positions, a land also has political, economic, and cultural values, so that it is undeniable that people land necessity is growing.

Land dispute case in Sidodadi Asri village between PT. Perkebunan Nusantara VII in Bergen Business Unit and public was started in 1979. This happened when PTP VII started to ask people to leave the location with an argument that the land was a concession from former Dutch government and then the management was endorsed to *Perusahaan Perkebunan Negara* (State Plantation Company) based on

Right to Cultivate (or HGU) from government. This company's claim was strengthened by Regent of South Lampung by issuing Provision Letter in September 20th 1980 containing order for people to empty the land. People in Sidodadi Asri village, however, had been occupying the land since 1939 and had been legalized as Autonomous Village by local government, and even some of them had certificate of land possession. The conflict was subsequently continued into legal suit and the company prevailed. However, people did not want to leave the location until this time, so that coercion, intimidation, and violence occurred and caused people's miseries.

Based on this condition, it is considered to be necessary to study the land conflict thoroughly by examining land settlements in social philosophy perspectives.

The objectives of this research are 1) to examine and elaborate factors causing land dispute between PT. Perkebunan Nusantara VII of Bergen Business Unit and public in Sidodadi Asri village in South Lampung regency; 2) to identify and find out land dispute settlements between PT. Perkebunan Nusantara VII of Bergen Business Unit and public in Sidodadi Asri village in South Lampung regency with social philosophy approaches.

2. THEORITICAL FRAME OF WORK

This research was composed based on theories in land laws and social philosophies. The social philosophy understanding is commonly described as a social notion or thought where its philosophical thinking characteristics, according to Suriasumantri (2007:20), are comprehensive. A scientist is no longer satisfied about a scientific object based on views in the knowledge itself, but he/she also wants to find out the relation between knowledge and morality; the relation between knowledge and religion. He or she wants to be sure if the knowledge will bring happiness to him/herself. According to Hobbes social philosophy, human natural rights and society social contract; human being is equal, but naturally human being is not social, but they decide based on their own interests by setting out single individual above all individuals and to allow a ruler to create level distinctions in the society (Fink, 2003: 58).

According to Aquinas social philosophy, a basic truth is that this world is created by Allah as an ordered integrity. Universe order is an expression of eternal Allah's law to regulate all creations, rocks, plants, animals, humans, angels, earth, moon, sun and stars (Fink, 2003: 25). Locke social philosophy states that natural right is a series of specific rights related to obligation on other people, including right to live, right for self working results (Fink, 2003: 65).

A characteristic of law state is restrictions of power and state power conduct. These restrictions are conducted by law which then becomes a basic idea of modern constitutionalism. Therefore, the concept of law state is also referred as constitutional state; the state restricted by constitution. In the similar context, the notion of democracy state or people sovereignty is also referred as *constitutional democracy* which is related to democracy understanding based on law (Asshidiqie, 2006:11).

Land is a part of society's life and even part of honor. Therefore, land is not only seen in economic relationship a production factor. Therefore, land is not only seen as one of production factors, but more than that, it has emotional relationship with society, especially agrarian society where 60% of residents make their living from agricultural sector and commonly live in villages as little farmers with narrow farming fields in which its fertility continues to decrease.

3. METHOD OF RESEARCH

This research used descriptive method where the objective of research is to provide detailed data of human being, his conditions and other phenomena (Soekanto, 1991:10).

This research used social philosophy approach with descriptive analysis. Descriptive approach is a method in studying particular objects such as human culture values, philosophical systems of thoughts, ethic values, art work values, a group of people, events, or other cultural objects. The objective of this approach is to make systematic and objective descriptions or illustrations about facts, their characteristics, and relationships with other existing elements or to particular phenomena (Kaelan, 2005: 58).

Data collection procedures in this research were collecting secondary data by conducting literary study and field research. The literary study examined philosophical works of Thomas Hobbes, Thomas Aquinas, John Locke and other literary sources related to this research. Besides studying philosophical works, this research also examined documents possessed by Sidodadi Asri society and PTPN VII. Field research studied point of views of Sidodadi Asri village people and PTPN VII through interviews related to plantation land dispute.

This research used historical descriptive method in analyzing data; this method described social philosophy based on objective facts in the field. The analysis results were interpreted in form of inductive conclusions of problem answers based on research findings.

4. COMMON DESCRIPTION OF LAND DISPUTE LOCATION IN SIDODADI ASRI VILLAGE AND PTPN VII OF BERGEN BUSINESS UNIT.

PT. Perkebunan Nusantara VII (limited) of Bergen Business Unit was established in 1918 by Dutch government under Robert Onderneming (RO) Watering & Loeber NV with 6000 Ha concession areas and at that time only 1500 Ha of the area was planted. In Japanese colonialism era, this company was under Nemora Company, and then back to RO Watering & Loeber NV, and the later company conducted plantation rehabilitation upon damaged caused by war. Based on policy of Board of PT. Perkebunan X (limited) through Letter of Decree Number: X.6/Kpts/126/90 in July 20th 1990, Kalianda plantation, since August 1st 1990, was integrated to Bergen Business Unit, so that it became part (*afdeling*) of Bergen Business Unit.

Sidodadi Asri village historically is one of villages located in Jati Agung sub district in South Lampung regency, and this village was a result of Kertosari village expansion as the main village. Since this time, housings and farming fields became *susukan* or sub villages from Kertosari village based on policy of South Lampung regional government in 1974 to be a formal separate village into Sidodadi Asri village. This was strengthened by Letter of Decree Number SK.73/V/Des in May 14th 1975. Historically, the land in Sidodadi Asri village originally was the plantation areas of NV Nederlandsche Noorshe Plantage Maatschappij under Dutch colonial government and led by PK Bergen Mr. Kelud. Inhabitants at that time were plantation contracted workers. Under Mr. Kelud order, inhabitants logged forest area located at the north of Way Galih for housing and to plant crop for these workers' families. In 1973, PT, Perkebunan Nusantara VII of Bergen Business Unit planted palm oil trees in the area of Sidodadi Asri village without informing this activity to inhabitants.

5. RESULTS OF STUDY

Indonesia land conflicts along decades after Indonesia Independence Day until 1960s mainly occurred in rural areas and they were triggered by patron-client relationship patterns between land possessing farmers who usually possessed very wide fields with poor little farmers and farmer workers. These conflicts focused on problems of accessing land by individuals and this was known as "land hunger". However, land hunger in this era were mostly dealing with poor people survivals, while for the land lords, this included social status. In New Order era, traditional people's rights or local society were denied in such ways. The patterns of denying traditional rights were started from legal-formal aspect through regulations to practical levels in the name of "development". Instead of Article 2 Clause 4 of UUPA in 1960 that allowed traditional people to "conduct rights of controlling which was granted by the state", regulations in some sectors such as forestry and mining showed that traditional rights were barren or even frozen.

Consider Article 2 Regulation 5/1967 about Forestry that divided forest into two parts; "State Forest" and "Possessed Forest". The explanation of Article 2 strictly omits law possessed by traditional people by stating that: State Forest is a forest that grows on non possessed lands. Forest that grows or is planted on lands granted to *Swatantra* Region with rights to use or to manage has status as a State Forest. Therefore, there are no longer clan forests, regional forests, *swapraja* forests and so on.

Land conflict pattern changed in 1980s decade. The changes were caused by two factors. First, the change of development characteristic in Indonesia from projects of improving people's economy and social life into mega projects purposed to improve Indonesian export capability. Besides the rise of mega projects, development also brought what we called as *consumptive development project* to fulfill consumptive life of elite groups in urban areas such as building golf court, luxurious housings, super markets, and so on. This change caused wide scale *land hunger* in Indonesian development. Thousand hectares of land including potential agricultural lands were back bones of food autonomy program sustainability in Indonesia, and these lands were turned into lands for consumptive projects. Second, there was a double standard in land administration in Indonesia. Besides Main Agrarian Law in 1960, there were other Main Laws regulating the land use and control published by some departments which were against the Main Agrarian Law in 1960. There were at least four main laws: (a) Mining Principal Law; (b) Transmigration Principal Law; (c) Irrigation Principal Law; and (d) Forestry Principal Law. Concerning some land conflicts, the settlement processes always prioritize formal law processes and ignore social

factors. Land dispute settlements should not always be in formal law processes, mediations that include public figures sometimes are effective enough in finishing the land disputes.

Land dispute problems especially in Sidodadi Asri village were not separated from social problems coming from land owning system that created conflicts so that this inspired people to conduct resistances against enforcing situations. This was expressed by Rizer (1980: 52) about social conflicts that:

1. People were always being in changing processes that were indicated by continuous conflicts amongst the changing process elements.
2. Every element or each institution contributed social disintegration.
3. Regularity order in society was imposed and caused with oppression by the ruling parties. Thus, values were not a result of concusses, but instruments of super ordinate groups to impose their interests to sub ordinate groups.

Relating these concepts of central theory to land dispute problems in Sidodadi Asri village, these are social facts of a society caused by norm and life disorders to local society. This is an effect of unevenly distributed power that becomes determining factor for systematic social conflicts. The authority distinctions are indicators of some positions in some societies. Authority and power are then considered to be rights to position individuals in top or bottom positions in every society structure and life. Therefore, this authority makes individuals in the society to disobey prevailing positive law and not afraid of sanctions.

Thus, the society condition in Sidodadi Asri actually was a form of forced coordinated alliance when the land disputes occurred. Furthermore, this social problem presents a fact that in society there will always be groups in conflicts; between the ruler and the ruled. Every group is united by real interest bonds that are conflicted substantially. These conflicts occur in situations where the ruling group will make effort to maintain *status quo*, while the ruled group will endeavor changes.

Aquinas philosophy is closely related to theology (religiosity). However, philosophy basically can be seen as a pure natural philosophy, because Aquinas really knew about guidance of truth research and recognized that human knowledge could be relied on. Aquinas defended the rights of mind and to maintain mind freedom in its own field.

Concerning with land disputes in Sidodadi Asri village, there are some ways to do for improving sensitivities in social problem studies. One of them is selecting a theoretical frame to be a thinking path to understand symptoms and relationship amongst symptoms. This theoretical frame can be perspectives that are based on particular theory to determine point of views in seeing concerns of social problem study in Thomas Aquinas theological philosophy. By giving focus of concern in observation, every dynamic of observed symptom will be easier to recognize. In the implementation, this selection of concern focus will be observation and analysis units in land dispute study in Sidodadi Asri village.

Dealing with Thomas Aquinas theological philosophy relevance, in the social problem study of land dispute, some perspective would be developed in order to try explaining and analyzing land dispute settlements in theological point of views. As we know, the object of social problem study is the society itself especially the Sidodadi Asri society that experiences social problems. In social science, there are some paradigms able to use as references and orientations to explain a social phenomenon. Therefore, in some discussions, some basic point of views about whatever to be principal issues will be found.

The land dispute in Sidodadi Asri village was one of negative development side effects that sacrifice society with economic development arguments. The dispute settlements were more emphasized on law approach, and this condition was against Aquinas philosophy where the law may prevail when the law fulfills natural criteria. Factually, the land dispute was likely to legalize powers as basic of law. These facts showed that the economy development process based on agro industry and modernization with a main objective to improve life condition, in another side, may cause susceptibility or at least potential of susceptibility to be seen from farmer society oppression. This susceptibility will be easier to understand, considering that in improving society's life standard with process of development, more intensive efforts have been conducted to mobilize resources including natural resources. To optimize added values, these resources are driven with more sophisticated technologies. It seems as if there were a kind of conflict amongst development objectives, especially the economical development to improve public welfare. The impression of this land dispute will be sharper when the development approach is more oriented to rapid productions.

According to Hobbes, the absolute sovereignty would give strong impacts to regulate and give peace, social order and welfare. Therefore, the sovereignty of state is needed to overcome individuals who are "being wolves" to other individuals.

In the land disputes between Sidodadi Asri residents and PT. Perkebunan Nusantara VII of Bergen Business Unit, a turning point was found when villagers submit their rights as citizens to the sovereignty with agreement of promises to be given other lands as compensations. The ruler did not fulfill the promises to give proper compensations and to relocate villagers to promised lands, and the ruler even oppressed and conducted violence to farmer society.

In this description, the state is not a guard for poor people, but cooperating with anti people forces; with businessmen (business, capital). This step taken by power and authority would bring a very wide implication. Large scale land providing for investment directly means “steps of land acquisitions”. The state (or state apparatus) is consistently involved in this effort. A turning point occurs in this situation. Previously, state is an organization of people to work in realizing public welfare mission, but practically the state becomes an organization of elite force working to drive economic growth. The land disputes become inevitable and this causes people’s miseries.

Based on Thomas Hobbes philosophy about state power, it can be reconfirmed that: first, land conflict in Sidodadi Asri village is a phase of releasing people lands for interests of “economic growth improvements” with “national interests”, in this case is PT. Perkebunan Nusantara VII of Bergen Business Unit, as an argument. This land releasing is a practice of land acquisition devoted for capital accumulation interest, and this is predictable that the conflict is purposed for improving economic growth, because the only way to sustain the economic growth is by intensifying the uses of lands that are controlled and possessed by people. The ruler is aware of this and purposively the ruler prepares a particular “capacity of power” to sustain processes to undergo. Not only relying on policies, the ruler factually organizes an organized power such as bureaucracy, mass, and military. Second, the problem is not in the conflict or conflict momentum, but in the ongoing process of transformation. The basic motive of economic growth makes the conflict direction to be no other than a process to strengthen capital and to weaken people. Thus, it is so understandable that after land dispute, life conditions of people are uncertain and their life qualities decrease.

Then, according to Hobbes, the state theory should be based on human character theory. In building psychology, Hobbes commonly describes human desires and ethics from movement aspect. Hobbes comes to a final conclusion that human is naturally egoist, love to conflict, hunger of power, cruel and wicked. This character is a result of human efforts to continually add human’s necessities, because by fulfilling necessities, human will be happy. Relating this theory to land dispute case in Sidodadi Asri village with PT. Perkebunan Nusantara VII of Bergen Business Unit, the incompatible compensations with people’s economic necessities encourage them to conduct actions, which in their perceptions are considered to be true, to take over lands of PT. Perkebunan Nusantara VII of Bergen Business Unit. The natural character of human is continually to add and fulfill their necessities to make them happy. Therefore, the action of people to take over the lands is based on factors to fulfill life necessity, that are naturally as accumulations of protests upon intimidation and physical violence by certain parties, as efforts to survive themselves and their families.

According to Hobbes, human could ensure guarding themselves only by willing to make agreement with other humans to omit absolute rights of all things. However, Hobbes still assumes that human being cannot be trusted because human has natural deviated character. Therefore, he reconfirms that human has character and controlled by desire, and social contract should fulfill social security criteria. Hobbes view is relevant to case in Sidodadi Asri village that in 20 years from 1980 to 2001, the land disputes did not produce settlements that satisfied disputing parties. Law suits, protests, violence, physical and non physical intimidations colored land dispute between people of Sidodadi Asri village and PT Perkebunan Nusantara VII of Bergen Business Unit. Formally by law the land is legally possessed by PT. Perkebunan Nusantara, but people of Sidodadi Asri village do not give up to take over the land. Until 2001, a social contract occurred between people of Sidodadi Asri village and PT. Perkebunan Nusantara VII of Bergen Business Unit; that legally the land was possessed by PT. Perkebunan Nusantara VII of Bergen Business Unit, but the 10 results of plantation belonged to the Plantation Company while 90% of the results belonged to people of Sidodadi Asri village.

In the context of land dispute in Indonesia, the land dispute between people of Sidodadi Asri village and PT. Perkebunan Nusantara VII is dealing with society condition that undergoes economy pressures as a result of not possessing land for agriculture to make a living. People’s lands are taken by plantation company, and naturally it drove them to reoccupy the plantation land, and this was also driven by their self defense as the agreement was not conducted by government as well as the plantation company. This description shows once again that in 20 years the economy system was not developed based on the principle of public welfare, so that it made weak farmers’ positions and caused susceptibilities in some

sectors that were mainly caused by economical and political factors as results of rural policies that were beneficial for agribusiness companies. The susceptibilities were caused by unable to control factors including lower incomes, limited information, less access to proper technology, and not possessing agricultural land. So far, government program in agricultural sector, including agricultural sub sectors, is purposed to improve agricultural productions, unfortunately this is not followed by protection policies upon farmers' rights.

Locke thoughts are efforts to resist natural rights. Locke argues that in natural environment, nobody will have natural right to take anything that much until no remaining left for other persons to take. Relating this thought to land problem in Sidodadi Asri village, there are similarities between farmer society in Locke period and farmer society in Sidodadi Asri village that experience pressure, in which state role is big enough. Locke resists the absolute role of state. In his philosophy book about his society (the Two Treatises of Government), Locke argues that the state is formed based on will of people, so that the state should protect people and should be servant of people.

Based on this thought, Sidodadi Asri people may conduct efforts to defend their natural rights and to conduct settlements of land disputes autonomously through mechanism of their social system. In this case, the conditions of land dispute problems can be considered as product of process taking place in social system that involves some elements. As the people see that the problem is denial upon agreement between people of Sidodadi Asri village and PT. Perkebunan Nusantara VII, people have the right to determine and make effort to resist against social conditions that they consider as improper. For these people, protests and resistances against denial of agreement are thought to be able to fix social order previously belonging to them. The condition of Sidodadi Asri people in the land dispute period is just like what Locke argues that the most basic and important character of social contract is to avoid natural condition disorder, where land dispute is not only a problem of recognition legally and formally about who has the right upon the land, but it is beyond law issue. Land dispute in Sidodadi Asri village reaches the peak when factually people lost their source of living and home by force. Locke argues that moral rights and obligations are intrinsic and prior to law. Locke also thinks that individuals do not submit their basic natural rights, but they merely conduct law upon anything they have done such as processing the land or harvest it. Individual rights and obligations are not submitted to a particular person or group, but to all community.

In the context of land dispute settlements based on democracy according to Locke, it gives wide impact of farmer society life. Land reform cannot only limited by proofs of land possession, land use, or land control, but it should be embarked from democratic government policies that are farmer society welfare oriented. Inclinations to marginalized farmers cannot be inhibited by economic growth arguments because the state is compulsorily protect and defend people's interests. Locke says that a state that is formed based on social contract should protect farmers.

Locke's people sovereignty is a critical notion in creating democratic state climates to position people as the most important subject inside the state. However, sovereignty in the name of people often becomes a means to control people by ignoring citizen's basic right; in the name of state. John Locke explains that in the society, human has basic rights that cannot be violate by and submitted to the state; the individual rights. Therefore, in the context of land dispute settlements in Sidodadi Asri village, the state should assure public welfare. In conducting this public welfare, the state should be a power organization of people, so that the state is granted with big power and given hint of "as much as possible for public welfare" to refuse state role as owner of agrarian sources as in principle of absolute state. Thus, the land conflicts and deviations in giving right of agrarian sources to people can be avoided.

Based on social philosophy formulation elaboration from Thomas Hobbes, Thomas Aquinas, and John Locke for land conflict settlements, based on complexity of land issues that develop in the future, the findings in this research will be proper for source of revision for Land Law especially Right to Cultivate (or HGU), land compensation for people, and land conflict settlements outside the court.

1. Historically and philosophically, land and farmer society are factors unable to separate along their life. Therefore, it is important to emphasize that the state role to regulate land possession is not only regulating function but it must be emphasized to public welfare. Therefore, the Land Law formulation is not sufficient to merely emphasize regulation aspect of land possession but also people protection.
2. Factors causing land conflict are different perceptions between related parties, where every party needs understandings based on comprehensive approaches to give mutually beneficial settlements. Based on these causing factors, an independent organization needs to be formed to be able to give mediation between both parties.

3. Based on philosophical reviews of Thomas Hobbes, Thomas Aquinas and John Locke, the formulations for land conflict settlements should be based on social and ethic values that develop in society. Land Law does not prevail universally, and this cannot be used as law foundation in land conflict settlements. This encourages farmer society to disobey prevailing law. Land Law, especially the Right to Cultivate (or HGU), absolutely needs to change; at least editorial changes.

6. CLOSING

Based on research and review about land conflict settlements in philosophy perspective in Sidodadi Asri village of Jati Agung sub district in South Lampung regency, the conclusions are as follows.

First, factors causing land disputes between PT. Perkebunan Nusantara VII of Bergen Business Unit in people in Sidodadi Asri village in South Lampung are that PTPN VII (limited) had acquired land areas in Sidodadi Asri from tenant farmer society by paying compensation land processing costs, houses, and plants in 1980/1981 based on Letter of Decree of South Lampung regent number 128/KPTS/BHK/1980 in September 10th 1980, and expressed in Official Report of Clearance Team or Cadangan Kulon Rowo areas in Bergen Business Unit No. 1790/BA/08/1981 in July 17th 1981. The promised and agreed compensations were not conducted so that people demanded PTPN VII (limited) but they received no settlements until these people reoccupied the disputed land.

Second, land dispute settlements by involving people should emphasize social factor or social contract, and not only relying on normative law. The settlements need to honor local wisdoms, because land dispute settlements based on normative law always produce settlements that make people in weak positions. Government should be wise in giving rights upon lands by considering local society interest that physically control the land and to give them proper compensation. Therefore, land dispute in Sidodadi Asri village needs settlements based on social philosophy of Aquinas about culture and theology of local society; based on Thomas Hobbes philosophy about social contract and natural rights that land settlements are not separated from human natural rights – where when human loose source of living and hunger, then human will act based on natural characteristic and back to primitive situation which is indicated by suspiciousness and insolence of individuals to mutually attack other individuals (or *homo homini lupus*); based on John Locke social philosophy about democracy where land conflict settlements should be conducted by mediation and agreement in which there are human basic rights cannot be violated by state or be submitted to state.

Based on discussions and findings, recommendations are given as follows. *First*, the land use should be adjusted with its condition and characteristics that are beneficial for public welfare and state; to strengthen people positions in land possessing, to enable people obtaining justice through recoveries and getting proper compensation upon land rights. *Second*, the act of land acquisition by the state for public interests either by land providing or revocation upon land right should not violate human rights and the state must give proper compensation. *Third*, reformation of land right cannot be limited merely by proof of land possession, land use, and land controlling, but it should be embarked from democratic government policies which is farmer society welfare oriented. Therefore, the Right to Control from state should not be absolute, but should be seen from its purposes by considering society social factors. Democratic compromised efforts that involves roles of limited state power and do not emphasize in law channel factors which result in society's miseries in land dispute settlements are required.