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The Effectiveness of Mediation in Resolving Land Disputes at the National Land Agency of Banyumas Distric

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ABSTRACT

Land disputes are a complex and frequent problem in Indonesia. This research aims to evaluate the effectiveness of mediation in land dispute resolution with a focus on the legal framework governing land dispute mediation. The research method used is normative juridical which focuses on analysing legislation and legal materials, as well as policies and procedures applied in conducting land dispute mediation. The results of the research examine how effective mediation is in the land dispute resolution process and provide a deeper understanding of the legal framework and policies governing land dispute mediation. The Law of the Republic of Indonesia No. 30 Year 1999 on Arbitration and Alternative Dispute Resolution provides the legal basis for the use of mediation as a method of resolving land disputes. The National Land Agency is one of the bodies that has the authority to conduct mediation, especially land disputes, so its effectiveness is needed so that mediation runs smoothly according to the procedures that have been regulated and can be resolved without going through a trial process that is costly and time consuming. However, there are still several challenges in the implementation of land dispute mediation, namely inadequate public understanding and lack of awareness of the benefits of mediation, as well as the lack of quality trained mediators. Therefore, more intensive efforts are needed in socialisation and education on land dispute mediation to the community and capacity building of mediators involved in the mediation process.

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I. INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the land and water and the natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people. Based on the provisions of the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 on Basic Agrarian Regulations was passed and enacted. The purpose of the Basic Agrarian Law (UUPA) is to lay the foundation for providing legal certainty regarding land rights for the entire community.[1]

[1] Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan Undang - Undang Pokok Agraria, Isi dan Pelaksanaannya)*, Jilid 1, Hukum Tanah Nasional, Jakarta : Djambatan, 2008 hlm. 219

Land disputes are one of the complex problems that often occur in various regions in Indonesia, including Banyumas Regency. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, land disputes, hereinafter abbreviated as Disputes, are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact.[2] Land disputes can arise due to unclear land boundaries, multiple ownership claims, invalid certificates, and various other factors. In general, resolving land disputes through litigation involves a lengthy, expensive and time-consuming judicial process. In an effort to improve the efficiency and effectiveness of land dispute resolution, the use of mediation as an alternative dispute resolution is gaining popularity.

In resolving land disputes, there are various methods that can be used, such as formal judicial channels, arbitration, and mediation. Mediation is a way of resolving disputes and conflicts through a negotiation process to obtain agreement between the parties with the assistance of a mediator.[3] Mediation can be an effective alternative in resolving land disputes, because it can reduce costs, time, and conflicts that occur in the formal justice process.

The National Land Agency of Banyumas Regency has an important role in resolving land disputes in its area. As an institution responsible for land management, the National Land Agency of Banyumas Regency can facilitate mediation as a way to resolve land disputes. The purpose of land dispute resolution by the National Land Agency is to provide legal certainty and justice regarding the control, ownership, use and utilisation of land.

To realise this goal, Agrarian Ministerial Regulation No. 11/2016 regulates land dispute resolution through mediation, which is a dispute resolution based on the principle of deliberation for consensus for the benefit of all parties. In the event that the mediation finds an agreement, a Peace Agreement is made based on the mediation report that binds the parties.

The research method used in writing this article is normative juridical which focuses on analysing laws and legal materials, as well as policies and procedures applied in mediating land disputes which according to Soetandyo Wignjosoebroto, states the term doctrinal legal research method.[4] The approach used is normative juridical so that the target of this research is law or method.

The first previous research used in this article is taken from the thesis by Rima Indriasari which was approved in 2021 from the University of Muhammadiyah Surakarta entitled "Settlement Of Land Disputes For General Interest Through Mediation (Case Study at the National Land Agency of Surakarta City)" which examines the process of resolving land disputes for the public interest through mediation and the mediation settlement used by the National Land Agency of Surakarta City.

Second, taken from Zhulfiany's thesis which was approved in 2013 from Hasanuddin University Makassar entitled "Function And Effectiveness Of Mediation In Resolving Land Disputes At The Regional Office Of The National Land Badan Of South Sulawesi Province" which examines the function of mediation in resolving land disputes and how the effectiveness of the application of mediation in resolving land disputes at the Regional Office of the National Land Agency of South Sulawesi Province.

The fundamental difference between the two previous studies and the research in this article is that the research method used by the two previous studies is an empirical juridical method obtained directly from the field through the interview process, while the research in this article uses a normative juridical method which focuses on analysing laws and legal materials, as well as policies and procedures applied in mediating land disputes.

II. RESEARCH PROBLEMS

How is mediation effective in resolving land disputes at the National Land Agency of Banyumas Regency?

III. RESEARCH METHODS

The preparation of this article uses a normative juridical approach method or can be called a literature approach, which means studying laws and regulations, books and other appropriate and relevant documents. The technique used by the author in this research is to use primary, secondary, and tertiary legal materials called library research.

This research uses data sources, namely using primary legal materials consisting of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Supreme Court Regulation Number 1 of 2008 concerning Court Mediation Procedures, Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 11 of 2016 concerning Settlement of

[2] Republik Indonesia, Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia *Nomor 21 Tahun 2020 Tentang Penanganan dan Penyelesaian Kasus Pertanahan, hlm. 4*

[3] Republik Indonesia, Peraturan Menteri Agraria Dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia *Nomor 11 Tahun 2016 Tentang Penyelesaian Kasus Pertanahan, hlm. 4*

[4] Soetandyo Wignjosoebroto, *"Hukum, ParadigmaMetode dan Dinamika Masalahnya*", Jakarta : Ifdhal Kasim, 2002, hlm. 14

Land Cases, Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020 concerning Handling and Settlement of Land Cases, and Decree of the Head of the National Land Agency of the Republic of Indonesia Number 34 of 2007 concerning Technical Guidelines for Handling and Settlement of Land Issues.

The approach used in this research is to use a statue approach or statutory approach carried out by examining all laws and regulations and regulations relating to the case under study. The data analysis technique used in this research is qualitative analysis by compiling the data obtained systematically.

IV. RESULT AND DISCUSSION

First Research Problem Discussion

According to H. Ali. A.C., a land dispute is a conflict between two or more parties who have different interests in one or more objects of land rights that can have legal consequences for both[5]. Disputes arise when one party wants the other party to do or not do something, but the other party refuses to do this.

Dispute resolution is essentially an effort or attempt to find a way out or end the conflict that occurs between the parties to the dispute. There is a theory put forward by Jeffrey Z. Rubin and Dean G. Pruitt, namely the theory of dispute resolution strategies. In this theory, there are 5 (five) dispute resolution strategies, namely:

- Contending is seeking a solution that is more favourable to one party or the other.
- Yielding is lowering one's own aspirations and being willing to accept less than one actually wants.
- Problem solving is finding a favourable alternative or satisfying the aspirations of the parties.
- Withdrawing is choosing to withdraw or leave the disputed situation, either psychologically or physically.
- Inaction is not doing anything.

Harry F. Todd Jr and Laura Nader suggested 7 (seven) dispute resolution in society, namely:

- Lumping it is where the party who perceives unfair treatment fails in its attempt to press its claim. The party chooses to ignore the problem that gave rise to his claim and he continues his relationship with the party he feels wronged. Second Research Problem Discussion
- Avoidance is where the aggrieved party chooses to reduce their relationship with the aggrieved party or to terminate the relationship.
- Coercion, where one party imposes a solution on the other.
- Negotiation is where the parties are decision-makers.
- Mediation is a third party who helps the disputing parties to find an agreement.
- Arbitration is where the parties to a dispute agree to select a third-party intermediary, the arbitrator, and agree from the outset that they will accept the arbitrator's decision.
- Adjudication is where a third party has the authority to interfere with the resolution of the problem, regardless of the wishes of the parties to the dispute. The third party also has the right to make decisions and enforce those decisions.

Traditional methods include lumping it, avoidance, and coercion. Alternative Dispute Resolution (ADR) includes negotiation, mediation, and arbitration. Dispute resolution through court channels is known in procedural law.

The dispute resolution procedure in the litigation route is very formalistic and very technical. As J. David Reitzel said *"there is a long wait for litigants to get a trial"*, let alone to get a legally binding decision, to settle in one judicial agency alone, you have to wait in line.[6]

In Indonesia, dispute resolution through non-litigation means is known as alternative dispute resolution (ADR), which is explained in Article 1 point (10) of Law Number 30 Year 1999 on Arbitration and ADR, which states, "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely out-of-court dispute resolution by means of consultation, mediation, conciliation, or expert judgment."

In Indonesia, the regulation on arbitration, Law Number 30 Year 1999, defines arbitration as a way of resolving civil disputes outside the public courts based on an arbitration agreement made in writing by the parties to the dispute.

Apart from dispute resolution by the aforementioned means based on Law No. 30/1999, in the Indonesian legal system, this matter has been regulated in Law No. 48/2009 on Judicial Power as mentioned in Article 58 and Article 60, which basically states about dispute resolution through mediation.

[5] H. Ali. A.C, *"Seri Hukum Pertanahan III Penyelesaian Sengketa Hak Atas Tanah dan Seri Hukum Pertanahan IV Pengadaan Tanah Instansi Pemerintah"*. Jakarta : Prestasi Pustaka, 2003. hlm. 62

[6] Djafar Al Bram, *"Penyelesaian Sengketa Bisnis Melalui Mediasi"*, Jakarta : Universitas Pancasila Press, 2011, hlm. 28

The end result of a series of out-of-court dispute resolution processes with reference to the provisions as stipulated in Article 6 paragraph (7) of Law No. 30 Year 1999 that are successful will result in an agreement or peace between the parties. If an amicable settlement has been agreed by the parties, they are bound by the results of the dispute settlement.

Legal Protection Theory

Law is made as a means or instrument to regulate the rights and obligations of legal subjects so that each legal subject can get their rights accordingly and carry out their obligations properly and correctly. On the other hand, the law also functions as an instrument of protection for legal subjects.

According to Philipus M. Hadjon's statement that legal protection can be divided into 2 (two) types, namely:

1. Preventive legal protection

Protection provided by the government that aims to prevent an offence or before an offence occurs. It is contained in laws and regulations with the intention of preventing an offence and providing restrictions on the exercise of rights and obligations.

2. Repressive legal protection

Repressive legal protection is the final legal protection that has the consequences of sanctions, namely fines, imprisonment, and additional penalties given if a dispute has occurred or an offence has been committed. One of the characteristics and objectives of the law is to provide protection to citizens or society. Therefore, legal protection of citizens or the community must be implemented in the form of legal certainty.

Legal Effectiveness Theory

The relationship between legal effectiveness and legal awareness and legal obedience is very close. In Krabbe's statement, he stated that legal awareness is actually the awareness or values contained in humans about existing laws or about laws that will exist. According to H.C. Kelman, the quality of legal obedience can be divided into 3 (three) types, namely:

- Compliance obedience, which is when someone obeys a rule only for fear of getting sanctions.
- Identification obedience, which is when a person obeys a rule only because he is afraid that his good relations with other parties will be bad or damaged.
- Internalisation obedience, which is when a person obeys a rule because he feels that the rule is in accordance with his intrinsic values.

According to Hans Kelsen, legal effectiveness means that people actually do or do something with legal norms as the person must do, that the norm is actually implemented and obeyed. Effectiveness is a quality of a person's actual actions and not the quality of the law itself.

Based on the above statement, it can be concluded that a rule can be said or seen as effective if the rule is valid and applicable and is obeyed and implemented by legal subjects.

Implementation of Mediation at the National Land Agency

In order to accelerate the handling and settlement of land cases according to the distribution map of cases of disputes, conflicts and land cases, good and measurable performance is needed in handling disputes, conflicts and land cases systematically both in thinking and acting so that it is not only informative but also presents data on disputes, conflicts and land cases, root causes, typology of problems, handling steps and solutions as regulated and contained in the Decree of the Head of the National Land Agency Number 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Problems, which consists of 10 (ten) Technical Guidelines, namely:

1. Technical Guideline Number 01/JUKNIS/D.V/2007 on Mapping of Land Problems and Root Causes;
2. Technical Guideline Number 02/JUKNIS/D.V/2007 on the Procedure of the Reception Counter for Land Problem Complaints;
3. Technical Guideline Number 03/JUKNIS/D.V/2007 on the Organisation of Case Title;
4. Technical Guideline Number 04/JUKNIS/D.V/2007 on Research on Land Issues;
5. Technical Guideline Number 05/JUKNIS/D.V/2007 on the Mechanism of Mediation Implementation;
6. Technical Guideline Number 06/JUKNIS/D.V/2007 on Court Proceedings and Follow-up Implementation of Court Decisions;
7. Technical Guideline No. 07/JUKNIS/D.V/2007 on the Preparation of Minutes of Data Processing (RPD);
8. Technical Guideline No. 08/JUKNIS/D.V/2007 on the Preparation of a Decision on Cancellation of a Decree on the Granting of Land Rights/Registration/Sertificate of Land Rights;
9. Technical Guidance Number 09/JUKNIS/D.V/2007 on the Preparation of Periodic Reports;
10. Technical Guidance Number 10/JUKNIS/D.V/2007 on the Work Procedure of Civil Servant Investigators within the National Land Agency;

Mediation has the main purpose of resolving a problem, not just applying norms or creating order, so its implementation must be based on the following general principles:

1. Voluntary

The parties have a free will to carry out legal actions against the object of the dispute, this is so that in the future there are no objections to the agreement that has been taken in the context of resolving the dispute.

2. Independent and impartial;

Dispute resolution through mediation must be free from the intervention or influence of the parties either from each party, the mediator, or third parties. Therefore, the mediator must be independent and neutral.

3. Personal Relationship Between Parties;

Dispute resolution will always focus on the substance of the issue. The relationship between the parties is endeavoured to be maintained even though the dispute has been resolved. This is the reason why dispute resolution through mediation not only seeks to achieve the best solution but also that the solution does not affect personal relationships.

Basically, land dispute resolution at the National Land Agency is carried out through the Operation Tuntas Sengketa (OPSTASTA) programme which uses the principle of dispute resolution through non-litigation in the form of mediation. Settlement of land disputes through the Operation Tuntas Sengketa programme is carried out in the following stages:

1. Preparation Stage

The preparation stage includes:

a. Conducting an inventory and identification of disputes, conflicts and land cases that have been designated as Target Operations (TO);

b. Developing an operation time schedule;

c. Carry out coordination meetings between units related to the operation team;

d. Prepare software and hardware (letters/administration, secretarial, personnel and budget).

2. Implementation Stage

At the implementation stage, the actions taken by the National Land Agency include:

(a) Conducting juridical/administrative and/or physical research;

(b) Conducting case studies and analyses of data obtained from problem research as compiled in the Minutes of Research (BAP), then reviewed by the research team and made a Research Report (LHP) which contains confidential settlement recommendations.

(c) Conduct internal/external coordination; coordination meetings are data collection in nature.

(d) Conducting a case title.

In implementing the mediation mechanism, the stages are:

1. Equalising understanding.

The parties are asked to convey their problems and alternative settlement options offered, so that the common thread of the problem is drawn so that the negotiation process is always focused on the issue of the case. The mediator and the National Land Agency of the Republic of Indonesia must provide corrections if the agreed understanding of the issue is not in accordance with the laws and regulations to avoid misunderstandings.

2. Setting the agenda of the deliberation which intends that the process of deliberation, discussion, negotiation can be directed and does not widen/get out of the focus of the issue. The mediator must maintain the moment of conversation so as not to be provoked or carried away by the parties' talks.

In the negotiation stage, the mediator of the National Land Agency can carry it out by:

(a) How to bargain for the options that have been determined, if an undesirable condition arises, the mediator must remind the aims and objectives and focus of the problem at hand.

(b) Private sessions (private talking sessions) with one party with the knowledge and consent of the other party. The other party should also be given the opportunity to use the same private session.

(c) The negotiation process may often be repeated at different times.

(d) The outcome of this stage is a list of options for alternative resolution of the parties' dispute. The parties decide whether to accept or reject these options. With consideration of calculating the profit and loss for each party.

3. Consolidation Stage

At this stage, the District/City Dispute Tuntas Operation Team prepares a report on the implementation of the Dispute Tuntas Operation, namely the Periodic Report and the Final Report. Based on this explanation, it is known that mediation at the National Land Agency is included in land dispute resolution efforts, which are regulated in Technical Guideline Number 05/JUKNIS/D.V/2007 on Mediation Implementation Mechanism. Mediation at the National Land Agency is included in the Implementation stage of Land Dispute Resolution, where the implementation process arrangements include equalising understanding, setting the agenda for deliberation, identifying interests, generalising the parties' options, negotiation, determining the option chosen, final negotiation, formalising the dispute settlement agreement, and making minutes of the agreement.

V. CONCLUSION

The form of mediation implementation at the National Land Agency is regulated in Technical Guidelines Number 05/JUKNIS/D.V/2007 concerning Mediation Implementation Mechanisms. Mediation at the National

Land Agency is included in the Implementation stage of Land Dispute Resolution where the implementation process arrangements include equalising understanding, setting the agenda for deliberation, identifying interests, generalising the parties' options, negotiation, determining the option chosen, final negotiation, formalising the dispute settlement agreement, and making minutes of the agreement.

The effectiveness of mediation in resolving land disputes conducted by the National Land Agency, especially in the Banyumas Regency area, is difficult to declare as effective or ineffective. The reason is because the results of mediation organised by the National Land Agency, especially in Banyumas Regency, have never been manifested in the form of transparency, either in the results of mediation in a land dispute case or in a report that presents the results of mediation recapitulation. Therefore, the National Land Agency, especially in the Banyumas Regency area, certainly cannot improve or increase the effectiveness of mediation and know the obstacles faced by mediators from the National Land Agency during the mediation process.

Mediation is expected to be an alternative solution to dispute resolution that is short, cheap, and does not harm the litigants, where the National Land Agency as one of the bodies that has the authority to conduct mediation, should need to present data related to mediation results, obstacles faced in the mediation process and need to find solutions to overcome the obstacles faced in carrying out the mediation process. For example, it is necessary to improve the quality of human resources and mediators at the National Land Agency, especially in the Banyumas Regency area itself, as well as improve equipment and supplies that can support the mediation carried out by the National Land Agency, especially in the Banyumas Regency area.

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