

LAND RIGHTS DISPUTE RESOLUTION PROCESS THROUGH MEDIATION AT PADANGSIDIMPUAN CITY LAND OFFICE

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Abstract

This research aims to find out how the process of resolving land rights disputes through mediation is and what the obstacles to the process of resolving land rights disputes through mediation at the Land Office of Padangsidimpuan. This research uses an empirical juridical research method; that not only focuses on the positivity of legal aspects but is also concerned with its application or practice in the real field, in this case, the approach is used to qualitatively analyze the resolution of land rights disputes through mediation at the Land Office of Padangsidimpuan. Based on the results of the research and discussion, it was concluded that the procedures for resolving disputes carried out by the Land Office include stages (1) pre-mediation, and (2) mediation. In resolving land rights disputes at the Padangsidimpuan Land Office, there are several obstacles, namely (1) there are obstacles from the disputing parties, such as the absence of the parties to fulfill the invitation to mediate (2) there is no good faith from each party. (3) differences in ability and education between the parties (4) rules that are considered to slow down the dispute resolution process (5) complainants often do not know the requirements and procedures for dispute resolution at the Land Office of Padangsidimpuan.

Keywords: Completion Process, Disputes, Mediation, Land Office

I. INTRODUCTION

Land or territory is the main element of a country. Indonesian countries are called agrarian countries or islands, then land has a very important position in the frame maintenance of human life. This matter can be understood because land is a place for people to stay, get food, be born, the place where they buried even their ancestors, there is always a connection between man and land, between society and land.¹

In Article 16 paragraph (1) of Law Number 5 of 1960 concerning Regulation based on Basics Agrarian or normal called Constitution Tree Agrarian which reads:

(1) Rights on land as intended in Article 4 paragraph 1 is:

- a. Right of ownership,
- b. Cultivation right,
- c. Building right,
- d. Usage rights,
- e. Rental rights,
- f. Right to open land,
- g. Right to gain the forest product,

¹ Samun Ismaya, *Introduction to Agrarian Law*, Graha Science, Yogyakarta, p. 55.

- h. Other rights that are not included in the rights above that will be set with the constitution as well as the nature of rights temporary as mentioned _ in Article 53²

Based on the concept of a Unitary State Republic of Indonesia in 1945, nothing will regardless of dispute law on land which is one of the fundamental problems in society. In this kind of state, the government will include the majority aspect of people's lives and livelihoods, as well as individual and public. In reality, daily problem land appears and is experienced by all layers public. Dispute land is always an issue that appears from time to time, along with an increase in population, development, and more widespread access to various parties to obtain land as basic capital in various interests.

Land issues are a complicated and sensitive problem, because concerned with various aspects of life such as social, economic, and political, therefore the solution is not only noticing juridical aspects but also other aspects, to anticipate the other problem that can be disturbing the stability of the public.

The appearance of various problems with land showed that the using, control, and ownership of land in this country is still not orderly and directed. There are still many uses of mutual land, overlapping in various interests that are not by its designation. The facts also showed that control and ownership of land are still lame. There is a group of a small society that has land wildly and excessively and there are also a bunch of big just society own land in very limited quantity and also there are many people who have no land at all.

The complaints about land are the phenomenon of asking about the truth of laws related to land. This matter can be the products of the land, the history of land acquisition, control, ownership, use and utilization of land, liberation of land, and so on. There should be a regulation about land as well as State institutions that are specially involved and authorized in land or problem handling land. Regulation President number 10 of 2006, strengthened the establishment of the Land Agency National Analytical (BPN) prepared with notice sides and aspects aspirations and roles as well as public to use can support well-being generally. So, the Land Agency's national role in help and serve the public in getting his rights, as well as help the public in finding the solution when there is a dispute between the public about his rights in the field land.

Apart from the solution dispute through court/litigation, in system law national known with solution dispute through institution outside Justice as regulated in Constitution Number 30 of 1999 concerning Arbitrage and Alternatives Completion Dispute as stated by Rachmadi Usman: "One alternative solution dispute (land) is through effort mediation. Mediation as a solution dispute alternative offers a method of solving typical disputes. Because the process is relatively simple, then the time short and cost can press".³

Regarding dispute law with land, settlement dispute through outside lane _ court or in a way alternative is very possible and relevant. By the formal scope of the National

² Constitution _ Number . 5 of 1960, *Concerning Basic Rules Basics Agrarian* , p.4.

³Rachmadi Usman, *Choice Completion Disputes Outside Court* , PT. Citra Aditya Bakti, Bandung, p.3.

Land Agency through Regulation President Number 10 of 2006 the National Land Agency has formed deputy Field Assessment and Treatment Disputes and Conflicts Land in the structure National Land Agency organization. In technical the implementation of the National Land Agency has been published. Technical Instructions for Handling and Resolving Land Problems through Decree of the Head of BPN RI Number 34 of 2007. The latest to come out is 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 the Settlement of Land Cases. Remember that the Indonesian people are famous for solving problems through discussion to reach a consensus, guess utilization of institutional mediation can be an impactful alternative for solving disputes land.

II. DISCUSSION

Completion Process Land Rights Dispute Through Mediation at the Padangsidempuan City Land Office

As stated by Effendi Warin Tanah Dalam understanding juridical is: "Surface earth, right on land is right on part certain from surface the earth, which is finite, has two dimensions with size length and width. ⁴Basic certainty law in regulations law written as executor Constitution Tree Agrarian Number 5 of 1960, allows interested parties _ to easily know applicable laws and authorities _ as well as existing obligations _ on owned land. The National Land Agency is an institution of government in charge of implementing and developing administration land. In carrying out tasks the solution of _ problem land is one of the functions that become the authority of the Land Office. Completion of dispute land through mediation at the Land Office needs based on legitimate authority _ based on regulation legislation. Based on results of research and interviews, explains that solution disputes, conflicts, and cases land in a way effective has set 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 Land Cases. Land Agency Decision Republic of Indonesia Number 11 of 2009 concerning policies and strategies of the Head of BPN of the Republic of Indonesia to Handle and Complete Disputes, Conflicts, and Cases Land In 2009, where system handling problem Land with guidelines to the Decree of the Head of the National Land Agency Number 34 of 2007 concerning technical instructions for handling and resolving land problems. One method solution case land set through Mediation Where mechanism implementation Mediation arranged inside _ Technical Instructions for the National Land Agency of the Republic of Indonesia Number: 05/JUKNIS/DV/2007 (Decree of the Head of BPN of the Republic of Indonesia Number 34 of 2007) concerning Mechanism Implementation Mediation issued in Jakarta on 31 May 2007. Legal basis the authority of the National Land Agency /Ministry of Agrarian Affairs and Spatial Planning has been

⁴Effendi Wargan , *Indonesian Agrarian Law* , A Study from a Practical Legal Point of View , Jakarta, p. 17

listed in 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 Land Cases. Completion disputes and conflicts are done based on initiative from the Ministry and complaints public. In finishing case land Problem Handling and Control Land explained that Meaning solution case land as follows:

- a. knows the history and roots of problem Dispute, Conflict, or Case;
- b. formulates policy strategic solution Dispute, Conflict, or Case; And
- c. finish Dispute, Conflict, or Case, so that the land can controlled, owned, used, and exploited by the owner.

Settlement of Land Cases aims to give certainty law and justice about control, possession, use, and exploitation of land. Handler problem land through institutional mediation by BPN usually based on two principles, namely:

- a. Formal truths of underlying facts, the problem concerned;
- b. Free will from the parties to the dispute to the disputed object.

As a mediator, BPN has a role in helping the parties understand each other's views and help look for things considered important for the Mediators make things easier dispute information, encourage discussion about differences in interests, perceptions, interpretations of situations and problems, and regulate revelation emotion. As for form from news of the event is as follows:

- a. Title, in question title here is activities, objects, and locations of the land totally clear, so there is no confusion or no by it means;
- b. Date and time activities in question are day and date implementation of the activity in question in the minutes of the event;
- c. Basic implementation activities, mentioned base implementation activity discussion, means is implementation of the person assigned to do discussion or mediation;
- d. Assigned person, to carry out activities, mentioned name and identity official from the person assigned to carry out the discussion by a Decree;
- e. Gender, specified type activities that have been held;
- f. The parties present, the parties present also mentioned in the Minutes;
- g. Activity Results, which are included in the conclusion from deliberations that have taken place held
- h. Provision Conclusion, section This only loads sentences closing the minutes of the event ;
- i. Signature: The person who signs the Minutes is the person assigned by letter underlying task or the person who carries out the task meant because there is no one present, affix sign hand, then as the completeness of the minutes;
 - 1) After Minutes are made on the internal mediator matter, this BPN will stage mediation with the second split moderate party dispute to get mutual decisions profitable from the second split party;

- 2) If the second split parties to the dispute agree with the decision given by a mediator, then decision the will be followed up. As for follow-up decisions with deeds administration that is a solution dispute alone.
- 3) As for functions from the agreement, report the document written as base consideration head of BPN for formulate decision solution disputes received by BPN, meanwhile, realization physique nor its administration that is data changes as consequence from solution dispute the carried out by the Land Office Regency /City.
- 4) Decision mediation must be signed by the parties, mediator, and witnesses. Signing the hex carried out on the day and date moment he took it decision the in a way simultaneously or not permitted done in a way separated. One of the characteristics of solution problems with mediation is the verdict is formulated will in a way freely by the parties.

Media is fine for determining a choice solution to the problem because that decision solution problem is formulated in the form of something agreement (agreement). Consequently, the profits and losses that arise from the decisions are risk fully from the parties. Every institution's solution dispute contains the advantages and disadvantages of each because the approach solution used is different. The mediation process in frame solution dispute uses an approach that delivers attention primarily concerned with related interests with issues raised by the parties (interest-based).

1. Completion Process Dispute by Pre-Mediation

According to the Big Indonesian Dictionary, a dispute is something that causes different opinions, disputes, or debates.⁵ The dispute is a continuation of conflict, meanwhile conflict that is alone is something dispute between two sides party, but the dispute That only buried or not shown, and if the dispute That notified to the other party, then it will become a dispute.⁶

Emergence dispute law about land started from complaint something the party (person or legal entity) who contains it objections and demands _ right on land Good regarding land status, priority nor its ownership with hope can obtain a solution in a way administration by provision applicable regulation.

Based on the results study Problem Handling and Control Land explained that the settlement process disputes in a way pre-mediation, i.e., with stage complaint. At this stage, This is the Land Office open room complaint for people in Padangsidempuan City To convey the complaint related to existing problems their land is facing. How to complain in solution dispute or conflict stated in Article 6 paragraph (2) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the Land Agency Republic of Indonesia No.11 of 2016 is as follows: "complaint as referred to in paragraph (1) is submitted to Head of Land Office in a way written, through counter complaint, box

⁵ Department of Education and Culture , p. 643

⁶ *Logs. Sid . Choice Completion Disputes Out of Court* , Bandung: PT. Citra Aditya Bhakti, 2003. p. 1

letter or Ministry *website*. Complaint as referred to in paragraph (2) at least load identity complainant and description short case. The complaint as referred to in paragraph (2) must attached with a photocopy identity complainant, photocopy identity recipient's powers of attorney, and letters of power if authorized, as well as supporting data or related evidence with the complaint.

Activities carried out by the Head of the Land Office are as follows:

- 1) Checking material complaints.
- 2) Order and instruct head conflicts, Disputes, and Cases For call Complainant To use asked explanation about the problem complained of.
- 3) When the material contained in the letter complaint the No competence of the National Land Agency of the Republic of Indonesia, then the Head of Land Office can instruct directly to head conflicts, Disputes, and Cases to convey to the Complainant that material his complaint No competence of the National Land Agency of the Republic of Indonesia. Signing letter by the Head of the Land Office. People who complain about the problem with the method send letter complaint problem land or request blocking, accompanied with attached evidence related, such as a photocopy of certificate land, photocopy of book land, photocopy of evidence sell-buy, and so on. After complaints from society, the Padangsidempuan City Land Office did an analysis or study about the problem complained of.

Analysis problem, this done in two ways, namely:

1) Meeting Coordination

Meeting coordination carried out by Section Dispute Conflict and Cases to discuss complaints public with method learn complaint is accompanied by related data with the complaint. Meeting coordination This will look for a conclusion to follow further, whether held study continues later needs done title matter, or will attempt to do deliberation/mediation. Based on the results of research and interviews with the Head of Problem Handling and Control Land explained: the things discussed in meeting coordination between others:

a. File Complaint

Complaint material that enters the Land Office and is later distributed by the Head of Office arrives with the Head of Problem Handling and Control Land, then analyzed, studied, and researched, good completeness material nor correctness of administrative data juridical or physique on the land in question. Furthermore, followed up with opinions and considerations about the appropriateness of complaints that can or not be granted or processed more carry on by applicable rules and regulations. Consideration can be formed by calling the return Whistleblower / Complainant for information further, to confirm the truth, and to complete the existing data and evidence, for furthermore can analyze together attempted steps concrete like negotiation, blocking, mediation or strive step litigation.

b. Mediation Request

Mediation request at the Padangsidempuan City Land Office is the first point by public to ask the mediation. Before, there was an application written or oral from the public to the Padangsidempuan City Land Office that party the request to the Land Office for facilitate effort solution dispute medium soil faced party that which is because party the already tried completely at the RT/ RW (sub-district level nor subdistrict), however, there is not yet a completion, the end plead to the Land Office For helped with mediation. Then, consideration in meeting coordination by Section Dispute Land Office Conflicts and Cases For analyze is worth done mediation or not based on existing data good data from the applicant and related data held by the Land Office.

c. Application Blocking Land certificate.

By the application of blocking to something certificate considered land problematic, then from Padangsidempuan City Land Office, Problem Handling and Control Land do discussion and study about the problem, where is the party sender letter application blocking to the Padangsidempuan City Land Office to transition the land in question. Then, the Land Office considers it will do blocking or other efforts such as effort mediation.

2) Case Title

Case Title is an activity presentation delivered by an in-depth presenter matter Head Conflicts, Disputes, and Cases, for explore and or assessment in a way systematic, comprehensive, integrated, and objective problem land, steps handling and resolution in something discussion among the participant's title case for reach something conclusion. Case Title not the same with meeting nature of coordination data collection, because in maintenance title case required must sufficient data is available form completeness material nor correctness of administrative data juridical nor physique on the land in question to use fulfill material discussion, such as form certificate land, books land, evidence sell buy If through the sales process, and results research from data analysis by officials related. Based on the results conclusion maintenance title case There is sometimes a need to follow up with existing mediation. Then, after the Padangsidempuan City Land Office will strive exists mediation for to finish the problem land.

2. Mediation Process

After various pre-mediation processes have traversed, which in the end guide or did it something mediation for resolution something problem land. Based on the results of research and interviews writer with the Head Problem Handling and Control Land explained that: Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency of the Republic of Indonesia No.11 of 2016 Article 38 paragraph (2) implementation mediation done no later than 30 days. So that done effort mediation That with moreover formerly do various preparation.

The mediation step carried out by the Padangsidempuan City Land Office is as follows:

a. Preparation

1) Formation team mediation as referring to the Technical Implementation Instructions Mediation, established by an appointed official/employee of the Padangsidempuan City Land Office with a letter task from the Head of Land Office. The mediators consist of 1 Chairman Executor Mediation, 1 helper executor at a time as minutes, and some member executors all mediation totaling 3 mediators or more. Employees who can be a mediator, among others, Head of the Land Office, Head Section, Head of Sub- Section, or staff. These mediators in theory known as *Authoritative Mediators* a mediators from authorized officials / formal figures, who have competence in the field of disputes handled. This team applies still during ongoing effort mediation and ends during the mediation process until the result to the Head of Land Office.

2) Setup material

The mediators who have been appointed moreover formerly prepare material of the required data for mediation to principal dispute, with learn complaints, problem data, data about land those are related with land status, including book land, certificate land, evidence sell-buy, sale and purchase letter, and so on. Purpose and objectives from setup material, this is so that the mediator already controls substance problem, so when activity mediation is ongoing, the mediator can truly become mediator, capable advisor in straightening out problems, giving suggestions even warning If the agreement sought will tend violate regulation in the field land. At once, the mediator is capable of offering options the best solution to the parties to the dispute later can accepted by both split parties.

3) Determine the time and place of mediation.

Mediation time is during working hours office and for place mediation determined place special/closed representative to use guard ongoing activity conducive mediation and a common place used activity mediation at the Padangsidempuan City Land Office is room Land Office meeting.

b. Invitation

Before done activity mediation, initiate with delivery invitation in a way written in the name of the Head of the Padangsidempuan City Land Office, to the parties to the dispute and agencies related (if seen necessary) e.g., village districts from the area of occurrence of the dispute in question, for stage discussion solution dispute intended, and requested for bring as well as the data/ information needed to achieve it positive results between the second split party.

c. Initial Mediation Activities

1) Structuring structure meeting with position " *U Seat* " seating. At that time determined and all invited were present in the room meeting office Padangsidempuan City Land,

mediator arranges position seating for the parties as second split parties to the dispute and also the mediators with " *U seat* " position.

2) At startup mediation, the mediators try to overcome obstacles to the connection between parties (personal relationships between parties) with the method of melt atmosphere discussion between second split parties to the dispute, with an atmosphere familiar, not stiff, relaxed but still serious. For example, the mediator since beginning the meeting approaching mediation always displays expressions of a friendly and full face with smiles, and greetings, as well as gives jokes light towards the parties to the dispute.

3) Explanation role of mediator:

During the session, the mediator provides an explanation related to matters the way mediation later, which includes:

- a. Explanation about the existence of mediators as parties the third one does not take sides (standing neutral). As the party in position does not take sides, then the mediator only becomes the facilitator smoothness the way of mediation, so that the parties do not need to worry or suspect that the mediator will partially and heavily adjacent.
- b. Be delivered explanation about the role of the mediator, that in things certain based on the mediator's authority as recognized according to the regulation applicable official, mediator at the Land Office is those who become authorized officials / formal figures, who have competence in the field the dispute being handled (*authoritative mediator authority*) so that the mediators can do intervene/intervene hand in the search process agreement from the disputed issue (no taking sides), for put desired agreement achieved by law land.
- c. The parties welcome to convey explanations as detailed as possible with existing evidence as reinforcement and welcome to convey that nothing becomes his wish-related problem disputes the land he faces.
- d. The position of the parties and the position of the mediator are of a nature neutral, where the parties No may ask or intervening mediators to help win the dispute, because mediation here is more about the usage of heart conscience in uncovering problem based on evidence for then the mediator can give the best suggestions.
- e. The mediator confirmed return about willing whether or not the parties to finish the dispute through mediation and by the Land Office mediator Sleman Regency, if the parties are ready, then mediation will continue, however, If no, then welcome for the finish with the desired path, for example with negotiation between second split party that alone or through court.

d. Equalize understanding and setting a deliberation agenda

1) The parties requested to convey the problem as well as options and alternative solutions offered, so withdrawn thread red the problem lies in the negotiation process always focused on the problem (issue). The Potency in this session can be a wrong understanding of the problem, the meaning involved with the dispute, or a matter related to understanding state land status and individualization. need

effort/agreement for equalizing understanding about various matters. Internal mediator matters, this role in giving correct understandings agreed on issues by regulation legislation, so as not to happen error.

2) Determine the deliberation agenda (agenda setting).

After possible problems give rise to mis-achievement resolved, then determine the necessary agenda discussed (after is known surrounding issues dispute). The deliberation agenda intends for a process of deliberation, discussion, and negotiation that can direct and not widen / out from focus the problem of the mediator must be guard moment talks so that no provoked or carried away / dissolved by the discussion between the parties. The mediator then prepares an event/ discussion agenda that includes substance problems and allocation of time.

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