

RESOLUTION OF LAND DISPUTES THROUGH PEACE OUTSIDE THE COURT: ALTERNATIVE LEGAL REVIEW DISPUTE RESOLUTION (ADR)

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ABSTRACT

Land has a very important meaning in human life, because land is a basic need in human life. In everyday human life, disputes and bloodshed often occur due to land disputes, this is known to start from an objection to a land right, mediation is expected to resolve land disputes in accordance with applicable provisions. Legal regulations for land settlement are guided by the Decree of the Head of the BPN RI No. 34 of 2007 concerning the Implementation Mechanism of Mediation which provides direction on steps for handling and resolving land problems. The procedure for resolving land disputes through mediation at the Medan City Land Office isThe process involves summoning the parties separately to determine their respective wishes. After summoning the parties separately, data is reviewed, both physical and legal. Based on this data, the Land Office then finds a solution for both parties, explaining and guiding the mediator

1. Introduction

Land issues are issues that concern the most basic human rights. Land not only has economic value but also serves a social function, therefore, proof of land ownership is necessary to avoid disputes. Philosophically, land was not originally granted to individuals. Therefore, it is not true that someone who sells land is selling their property; rather, they are selling the service of maintaining and safeguarding the land for as long as they hold it.

Land is a natural resource essential for the survival of mankind. The relationship between humans and land is not merely a place to live, but more than that, land is a place where humans live and thrive. Land is a source for all human needs. Likewise, in the implementation of national development, which focuses on economic development and the achievement of a just and prosperous society based on Pancasila and the 1945 Constitution, land plays a very important role. Land is so important to human life that it is not



surprising that every human being wants to own or control it, resulting in land issues that can lead to disputes.

One of the objectives of the formation of Law Number: 5 of 1960 concerning Basic Agrarian Regulations, hereinafter referred to as UUPA is to lay the foundations for providing legal certainty regarding land rights for all Indonesian people. The constitutional basis for land development policies is essentially based on Article 33 paragraph (3) of the 1945 Constitution which states: "The land and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people." Based on this constitutional basis, with the ratification of UUPA on September 24, 1960, the foundation has been laid for the implementation of Land Administration to realize National Goals.

As human life has evolved, land has become so important to human life that everyone will always strive to own and control it. This can lead to land disputes within society. Disputes and conflicts are conceptually different or similar and can be interchanged. Some scholars argue that conflict is different from dispute, the difference lies in the broader definition of conflict, the parties in the conflict that cannot be clearly identified, and the term dispute is more relevant than the term conflict in legal literature.

Land disputes arise because land holds a crucial position, demonstrating the independence and sovereignty of its owners. Land serves a vital role in the integrity of the state and serves as the basic capital for achieving the greatest possible prosperity for the people

2. Research Method

This research is descriptive and analytical in nature, meaning it describes, examines, explains, and analyzes issues in insurance contracts, which are linked to laws and regulations, and then analyzed. This research is a scientific activity based on specific methods, systems, and thinking aimed at studying a particular law through analysis. The type of research conducted in compiling this thesis uses normative legal research methods (normative juridical) and empirical juridical. Normative juridical research refers to legal research that refers to legal norms contained in legislation. It examines literature or secondary data covering the principles of legal systematics, levels of vertical and horizontal synchronization, comparative law, and legal history





3. Results And Discussion

Mediation is a problem-solving negotiation process in which an impartial and neutral outside party works with disputing parties to help them reach a satisfactory agreement. Unlike a judge or arbitrator, a mediator does not have the authority to decide a dispute between the parties. However, in this case, the parties authorize the mediator to help them resolve their issues. The assumption is that a third party will be able to change the power and social dynamics of the conflict relationship by influencing the parties' personal beliefs and behavior, by providing knowledge or information, or by using a more effective negotiation process, and thereby helping the participants to resolve the disputed issues.

In connection with this mediation, it is stated in the general provisions of the Regulation of the Minister of Agrarian Affairs/Head of the Land Agency Number 11 of 2016 concerning the Settlement of Land Cases, that mediation is a way of resolving disputes and conflicts through a negotiation process to obtain an agreement between the parties with the assistance of a mediator, and the mediator is a party who helps the parties in the negotiation process to find various possibilities for resolving disputes or conflicts without using the method of deciding or forcing a resolution.

The existence of mediation as a form of alternative dispute resolution (ADR) mechanism is not something strange, because this method of conflict/dispute resolution is part of the social norms that exist, or at least have existed in society. This can be traced to the fact that community life is more oriented towards balance and harmony, the essence of which is that everyone feels respected, valued and no one's interests are defeated. In the case of resolving land disputes through this mediation mechanism, the Medan City Land Office as mediator is bound by the principles of mediation itself, namely maintaining independence and objectivity in assisting and facilitating the resolution of the dispute.

The results of mediation, when viewed from the legal regulations based on Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, there are 2 (two) results from mediation, namely:

1. Mediation successfully reached an agreement, namely a peace settlement.

This is regulated in Articles 27-28 of Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, which states:

Article 27 Paragraph: If the Mediation succeeds in reaching an agreement, the Parties with the assistance of the Mediator must formulate a written agreement in a Peace Agreement signed by the Parties and the Mediator. In helping to formulate the Peace Agreement, the Mediator must ensure that the Peace Agreement does not contain provisions that:





- a. Contrary to law, public order and/or morality;
- b. Harm third parties;
- c. Cannot be implemented.

In the Mediation process represented by legal counsel, the signing of the Settlement Agreement can only be done if there is a written statement from the Parties containing agreement to the agreement reached. The Parties, through the Mediator, can submit the Settlement Agreement to the Examining Judge to be strengthened in a Settlement Deed. If the Parties do not want the Settlement Agreement to be strengthened in a Settlement Deed, the Settlement Agreement must include the withdrawal of the lawsuit. The Mediator must report in writing the success of the Mediation to the Examining Judge by attaching the Settlement Agreement.

Article 28 paragraph (1) After receiving the Peace Agreement as referred to in Article 27 paragraph (6), the Case Examining Judge shall immediately study and examine it within a maximum of 2 (two) days. In the event that the Peace Agreement requested to be strengthened in a Peace Deed does not fulfill the provisions as referred to in Article 27 paragraph (2), the Case Examining Judge is obliged to return the Peace Agreement to the Mediator and the Parties accompanied by instructions regarding matters that must be corrected.

After holding a meeting with the Parties, the Mediator must resubmit the revised Peace Agreement to the Examining Judge within 7 (seven) days from the date of receipt of the revised instructions as referred to in paragraph (2). Within 3 (three) days of receiving the Peace Agreement that has fulfilled the provisions as referred to in Article 27 paragraph (2), the Examining Judge shall issue a determination of the trial date to read the Peace Deed. The Peace Agreement strengthened by the Peace Deed is subject to the provisions on information disclosure in the Court. Mediation fails or cannot be implemented.

Article 6, paragraph 7 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains that written agreements on dispute resolution are final and binding on both parties who have executed them in good faith. If both parties to the dispute have agreed to the settlement agreement, it must be registered with the District Court within 30 days of signing the mediation agreement.

The application of mediation in resolving land disputes has been used in practice by the National Land Agency, based on the Regulation of the Minister of Agrarian Affairs/Head of the Land Agency Number 3 of 2011 concerning the Management of Land Case Assessment and Handling. In the use of mediation methods that have been carried out by the National Land Agency, it has succeeded in resolving a land dispute submitted by both disputing parties.



Therefore, the mediation agreement is interpreted as an agreement that has been reached by the parties with the assistance of a mediator to resolve or end the dispute.

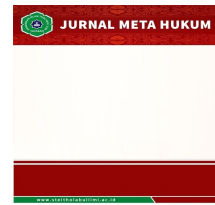
By reaching an agreement, the BPN as a mediator can make a peace deed to both parties in dispute so that they can know the status of the peace deed that has been made by both parties. This is regulated in Article 41 of the Regulation of the Minister of Agrarian Affairs/Head of the Land Agency Number 11 of 2016 concerning the Settlement of Land Cases, which states that Article 41 paragraph (1) In the event that Mediation finds an agreement, a Peace Agreement is made based on the mediation minutes that bind the parties. The Peace Agreement is registered with the local District Court Clerk's Office so that it has binding legal force. The Peace Agreement as referred to in paragraph (1) is made in accordance with the format as stated in Attachment XX which is an integral part of this Ministerial Regulation.

In the Technical Instructions: Number 5/JUKNIS/DV/2007 Concerning the Mediation Implementation Mechanism, it is stated that the Formalization of the dispute resolution agreement is formulated in the form of an agreement/contract, with this agreement the mediation has been substantially completed, while the follow-up to its implementation is the authority of the State Administration officials. Furthermore, it is stated that every mediation activity should be stated in the Mediation Minutes and the results of the mediation are reported to the authorized officials for follow-up in accordance with applicable regulations.

In this case, the formalization of the agreement in writing is done using an agreement format, and each mediation requires a report of the mediation results to be binding on the parties. The minutes of the settlement agreement are signed by the parties and the mediator.

The settlement agreement in mediation is registered with the district court clerk's office, thus having enforceable power. If one party fails to comply, the court can request execution. The settlement agreement's decision is also non-appealable, as it is the highest court decision.

Land dispute resolution through mediation by the National Land Agency (BPN) must be based on legitimate authorities based on statutory regulations. This is important as a basis for the BPN to act as a mediator in land dispute resolution. Because land is governed by public and private law, not all land disputes can be resolved through mediation institutions. Only land disputes that are within the full authority of the rights holder can be resolved through mediation institutions. Therefore, the agreement regarding dispute resolution through



mediation is subject to limitations. This is intended to ensure that the mediation decision does not violate the law and can be implemented effectively in the field. Land dispute resolution encompasses both the handling of land issues by the National Land Agency (BPN) itself and follow-up resolution by other institutions. In relation to submitted land issues, the BPN has the authority to resolve the issues on its own initiative. The legal basis for the BPN's authority, as explicitly stated, is stated in the Decree of the Head of the BPN Number 6 of 2001 concerning the Organization and Work Procedures of the BPN.

Based on the provisions of Article 1 Paragraph (1) of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency Number 1 of 1999 concerning Procedures for Handling Land Disputes, land disputes are differences of opinion regarding:

1. The validity of a right;
2. Granting of land rights;
3. Registration of land rights including transfer and issuance of proof of rights between interested parties.

Handling of land issues through mediation institutions by the National Land Agency is usually based on two main principles, namely:

1. The formal truths of the facts underlying the problem in question;
2. The free will of the disputing parties regarding the disputed object.

To determine the legal, physical, and administrative status of the case, research and assessment are necessary. A decision resolving a land dispute or issue is the result of examining the facts surrounding the disputed object. The output is a formulation of the problem's resolution based on the aspects of right or wrong, *das sollen* or *das sein*.

In order to resolve these disputes and provide equal treatment, the parties are given a transparent opportunity to express their opinions on the matter. Furthermore, in certain cases, they may be given the freedom to determine their own resolution. In these cases, the National Land Agency (BPN) only follows up on the administrative implementation of the decision as a result of the agreed resolution.

Based on the authority to resolve problems through mediation, it can influence the decision to resolve the problem so that in addition to realizing justice and benefits, it can also be within the framework of legal certainty and protection, thus mediation by the BPN is authoritative.

Land essentially holds a very strategic position in human life, both personally and socially, and for the nation. In personal life, human life and existence are inseparable from land. Throughout life, humans are constantly connected to land, and it is on it that they conduct their activities and earn a living. Therefore,





the relationship between humans and land is very close. Land is a source of prosperity and happiness, both physical and spiritual.

For the Indonesian people and nation in general, it is believed that land is a gift from God Almighty to all Indonesian people united as the Indonesian nation and constitutes a national treasure. Therefore, the highest right to control land throughout the territory of the Unitary State of the Republic of Indonesia belongs to the Indonesian people. Consequently, the use and exploitation of land for individuals must take into account the interests of the nation or the broader interests of society. Land rights have a social function

4. Conclusion

Legal arrangements for land settlement Out-of-court settlements in Indonesia are guided by Decree of the Head of the National Land Agency (BPN) of the Republic of Indonesia No. 34 of 2007 concerning the Implementation Mechanism for Mediation, which provides guidance on steps for handling and resolving land issues. The Medan City Land Office has made significant efforts in this regard, including fieldwork, including receiving reports or complaints from the public regarding land issues and following up on them.

Land dispute resolution procedures out of court This is done by summoning the parties separately to determine their respective wishes. After summoning the parties separately, they review both physical and legal data. Based on this data, the Land Office then finds a solution for both parties, explaining and guiding the mediator.

Obstacles in dispute resolution land outside the court is the absence of the disputing parties, there is no good faith from each disputing party and overcoming obstacles in attempting the mediation process more than once, confirming the good faith of each disputing party in deliberation, inviting the parties to include a trusted companion to help provide arguments and evidence

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