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**OUT-OF-COURT LAND DISPUTE RESOLUTION FORUM
BY THE NATIONAL LAND AGENCY IN INDONESIA**

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This study aims to determine how the process of resolving land disputes outside the court by the National Land Agency. The method used in this study is a normative juridical approach. The paper discusses the process of resolving disputes outside the court through mediation carried out by the National Land Agency as a mediator. It begins with an agreement between both parties to resolve the land dispute through mediation. Then both parties submit this agreement to the National Land Agency Office. The next stage is the implementation of mediation, starting from discussion to providing final decision. After successful mediation and reaching an agreement, a peace deed is made to be registered with the District Court. Fundamentally, a mediator acts as an intermediary who helps the parties to resolve the dispute they face. A mediator will also help the parties to provide an understanding of the existing problem to be fixed together. In addition, to reach an agreement, a mediator must also help the parties to formulate various dispute resolution options. Of course, these options must be acceptable and satisfactory to both disputing parties. At least the main role that a mediator must play is to bring together differing interests, in order to reach a meeting point that can be used as a benchmark for solving the problem.

Keywords: Indonesia, land disputes, National Land Agency, out-of-court, mediation.

**ВНЕСУДЕБНОЕ РАЗРЕШЕНИЕ
ЗЕМЕЛЬНЫХ СПОРОВ В ИНДОНЕЗИИ С УЧАСТИЕМ
НАЦИОНАЛЬНОГО ЗЕМЕЛЬНОГО АГЕНТСТВА**

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Целью работы является исследование того, как осуществляется внесудебное урегулирование земельных споров Национальным земельным

агентством. В качестве метода, используемого в данном исследовании, используется нормативно-правовой подход. В статье рассматривается процесс урегулирования споров во внесудебном порядке с помощью медиации, осуществляемой Национальным земельным агентством в качестве посредника. Все начинается с соглашения между обеими сторонами о разрешении земельного спора посредством медиации. Затем стороны представляют данное соглашение в офис Национального земельного агентства. Следующим этапом является осуществление посредничества, начиная с обсуждения и заканчивая предоставлением вариантов итогового решения. После успешной медиации и достижения компромисса составляется мировое соглашение, которое регистрируется в окружном суде. По сути, медиатор выступает в качестве посредника, который помогает сторонам разрешить возникший спор. Медиатор также помогает сторонам прийти к пониманию существующей проблемы, чтобы решать ее сообща. Кроме того, для достижения соглашения медиатор также должен помочь сторонам сформулировать различные варианты разрешения спора. Разумеется, эти варианты должны быть приемлемыми и удовлетворяющими обе стороны спора. По крайней мере, главная роль, которую должен играть медиатор, заключается в том, чтобы свести воедино различные интересы, чтобы достичь точки соприкосновения, которая может быть использована в качестве ориентира для решения проблемы.

Ключевые слова: Индонезия, земельные споры, Национальное земельное агентство, внесудебное урегулирование, медиация.

Introduction

Land is a gift from God Almighty to humanity [8]. Land plays a vital role in human life as a source of energy that is crucial for well-being and as a place for daily activities and living. The increasing demand for land among the community has made it a basic necessity that every human being must possess. Therefore, humans and land have a very continuous, very natural, and inseparable relationship. This is understandable and understandable, because land is a place to live, a place where they

are given food, a place where they are born, a place where they are buried, and even the place where their ancestors are buried. Therefore, there is always a bond between humans and land, between society and land. Therefore, land management and utilization must be properly considered and in accordance with the 1945 Constitution of the Republic of Indonesia.

Land is intimately connected to human life. Everyone needs land, not just for survival, but also for death. The amount of land that can be controlled by humans is very limited, while the number of people requiring land to meet their needs is increasing. Human needs are diverse, such as for building housing, offices, roads, places of worship, and so on. Land seems to be increasingly scarce, while demand is increasing. This imbalance between land supply and human needs for land gives rise to various problems and conflicts.

Land conflicts or disputes are a classic issue and are ubiquitous on earth. Therefore, land-related conflicts are on-going, as everyone has interests related to land. Cases involving land disputes are virtually unabated; in fact, they tend to increase in complexity and quantity in line with economic, social and political dynamics [10].

One of the most common types of land conflicts or disputes in society is land grabbing. Illegal land grabbing is an unlawful act and can be classified as a criminal offense. Land grabbing is not a new phenomenon in Indonesia. The term “land grabbing” itself can be defined as the act of taking rights or property arbitrarily or without regard for laws and regulations, such as occupying another person’s land or home, to which they are not entitled. Land grabbing in society is often caused by an individual or group of individuals intentionally and illegally seeking to control another person’s land. Land grabbing can also be caused by unclear land boundaries.

The complexity of land conflicts or disputes that occur in society can be resolved through litigation (court) and non-litigation (mediation) channels. As stated by Rusmadi Murad, disputes that occur between two or more parties who feel or have been harmed by these parties regarding the use and control of their land rights, which are resolved through deliberation or through the courts [q.v.: 6].

Currently, land disputes are understood by the public to only be resolved through litigation (court), not many people understand that land dispute resolution can also be resolved through non-litigation (outside the court) through the National Land Agency. In order to carry out the duties and roles of the National Land Agency in the regions, the National Land Agency Regional Office was established in the province and the Land Office in the district or city. Thus, several land problems that occur in the district or city can be resolved properly by the Land Office through non-litigation means, namely “Mediation” [q.v.: 2].

Methodology

This research is a normative legal research with a statutory approach and a conceptual approach. Normative legal research is used because the main focus is on the study of laws and regulations, legal doctrine, and court decisions relevant to land disputes [4]. With secondary data sources including:

1. The 1945 Constitution of the Republic of Indonesia.
2. Law No 5 of 1960 concerning Basic Agrarian Regulations (State Gazette of 1960 Number 104, State Supplement Number 2043).
3. Presidential Regulation of the Republic of Indonesia No 20 of 2015 concerning the National Land Agency.
4. Regulation of the Minister of Agrarian Affairs and Spatial Planning or the Head of the National Land Agency of the Republic of Indonesia No 11 of 2016 concerning the Settlement of Land Cases.
5. Regulation of the Head of the National Land Agency No 3 of 2011 concerning the Management, Assessment and Handling of Land Cases [9].

In addition to the normative approach this study also uses a descriptive approach, which encompasses the content and structure of positive law, which the author uses to determine the content or meaning of legal regulations. The method used is a qualitative method, namely a data analysis method that involves grouping and selecting data obtained from field research and connecting it with theories derived from library research.

Results and discussion

Regulations concerning land disputes through mediation

The enactment of Presidential Regulation (Perpres) No 20 of 2015 concerning the National Land Agency, which was preceded by the enactment of Presidential Regulation No 17 of 2015 concerning the Ministry of Agrarian Affairs and Spatial Planning, has given rise to the authority of the National Land Agency (BPN), which is a Non-Ministerial Government Institution under and responsible to the President to initiate the organization of dispute resolution forums outside the courts for disputes in the land sector. This authority is a provision in Article 2 of Presidential Regulation No 20 of 2015, namely that BPN is the executor of government duties in the land sector. Furthermore, Article 3 letter “f” states that BPN in its function carries out *the formulation and implementation of policies in the field of controlling and handling land disputes and cases*. For the implementation of the BPN function, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No 8 of 2015 concerning the organization and work procedures of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency was issued, which is stated in the provisions of Article 571 that the authority to handle land disputes lies with General Directorate VII which has the task of organizing the formulation and implementation of policies in the field of dispute resolution, conflicts and agrarian/land cases.

As a realization 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 concerning the Settlement of Land Cases (hereinafter referred to as Perkaban 11/2016) has been issued [5]. Land dispute resolution is one of the areas of government duties in the land sector. The implementation is carried out by the National Land Agency (BPN) referring to Article 1 paragraph (21) of Perkaban 11/2016 which explains that “the Head of Section hereinafter abbreviated as the Head of Section is an official of the Land Office who has the task of preparing materials and carrying out activities to handle disputes, conflicts and cases”. The objects of dispute that are the authority of the BPN are stated in Article 11 paragraph (3) of

Perkaban 11/2016, including procedural errors in the process of measuring, mapping and/or calculating area. The purpose of dispute resolution by the BPN based on the Perkaban 11/2016 is to provide legal certainty and justice regarding control, ownership, use and utilization of land. To realize this goal, Perkaban 11/2016 regulates the resolution of land disputes through mediation, namely dispute resolution based on the principle of deliberation for consensus for the benefit of all parties.

The Perkaban 11/2016 outlines the BPN's authority to resolve land disputes outside the courts. This constitutes government intervention within the context of implementing the concept of a welfare state based on the rule of law. Article 2 of the Perkaban 11/2016 states that the purpose of dispute resolution is "to provide legal certainty and justice regarding the control, ownership, use, and utilization of land".

According to a statement by the Minister of Agrarian Affairs and Spatial Planning (ATR)/Head of the National Land Agency (BPN) Sofyan Jalil in 2019 there were 8,959 land dispute cases received by the BPN [3]. Land disputes are only one part of all problems considered land cases. Based on Perkaban 11/2016 land cases consist of three types: land disputes, land conflicts and land cases. The parties involved in land cases need to understand how to resolve these problems properly to prevent similar cases from recurring. The same ministerial regulation explains the settlement methods that can be taken by the related parties. One of them is mediation. Quoted from the infographic belonging to the Ministry of Agrarian Affairs and Spatial Planning (ATR)/Head of the National Land Agency (BPN), mediation is a method of resolving disputes and conflicts through a negotiation process to reach an agreement between the parties with the assistance of a mediator.

Land dispute resolution through mediation is more effective

Settlement through mediation is simple and requires deliberation between the parties involved, resulting in a win-win solution, benefiting both parties. The mediator, as a third party, is tasked with helping the parties find an appropriate resolution without coercion. The type of mediator used by the Ministry of ATR/BPN is an Authoritative Mediator. This type of mediator is an official with competence

and knowledge of the dispute they are handling. The following are the stages of mediation as a method for resolving land cases:

1. Pre-Mediation: At this stage, all mediation-related procedures are carried out. These include the decision that both parties wish to resolve the case through mediation, the appointment of a mediator, and the determination of the location and time of the mediation. The following are the steps:

- a) Both parties agree to mediation.
- b) Both parties submit a mediation request to the Ministry of ATR/BPN.
- c) Appoint a mediator, who is an official of the Ministry of ATR/BPN with a letter of assignment.

2. Mediation: At this stage, the mediation process begins. The mediator will open a discussion regarding the core issues and will also offer settlement/reconciliation options to both parties. The following are the steps:

- a) Implementation of the mediation (from discussion to offering settlement options).
- b) Success of the mediation.
- c) Reaching an agreement.
- d). Drafting a settlement deed.
- e) Registration with the District Court (to create a final legal document).

3. Post-Mediation: Mediation will result in an agreement on a settlement agreement. The implementation of all settlement agreements agreed to by both parties falls under the post-mediation phase. Both parties must adhere to the established agreements, as these are legally enforced. Mediation is used as a method for resolving land disputes due to its numerous benefits for both parties.

Land dispute resolution encompasses both the handling of land issues by the Land Office itself and follow-up resolution by other institutions. In relation to submitted land issues, the Land Office has the authority, on its own initiative, to resolve the issues in question. In order to resolve these disputes, in order to provide equal treatment, the parties are given a transparent opportunity to express their opinions regarding the issue. Furthermore, in certain cases, they may be given the

freedom to determine their own resolution. In this case, the Land Office only follows up on the administrative implementation of the decision as the resolution they have agreed upon.

To improve public services and increase public trust the Land Office can expedite the handling of problems or cases that may arise in the future. Therefore, the Land Office has several principle policies for handling land cases. In accordance with Regulation of the Head of the National Land Agency of the Republic of Indonesia No 3 of 2011 concerning the management, assessment and handling of land cases, these include:

1. Settlement of land disputes and conflicts to enforce court decisions. The National Land Agency (BPN) of the Republic of Indonesia is obliged to enforce court decisions that have obtained permanent legal force, unless there are legitimate reasons for not enforcing them, namely:

- a) There is another conflicting decision against the object of the decision.
- b) A security encumbrance is being placed on the object of the decision.
- c) The object of the decision is being sued in another case.
- d) Other reasons stipulated in laws and regulations.

2. Settlement of land disputes and conflicts outside the courts; can take the form of land administration legal actions, including:

- a) Cancellation of land rights due to administrative legal defects.
- b) Recording in the Certificate and/or Land Book and other General Registers.
- c) Issuance of letters or other land administration decisions due to administrative legal defects in their issuance.

Apart from the principles, the BPN also sets several criteria for land cases as stated in Article 72 of the Regulation of the Head of the National Land Agency No 3 of 2011, namely:

- a) Criterion one (K1) involves the issuance of a Land Case Settlement Notification Letter and notification to all disputing parties.

b) Criterion two (K2) involves the issuance of a decree granting land rights, revocation of land title certificates, registration in the land register, or other legal actions in accordance with the Land Case Settlement Notification Letter.

c) Criterion three (K3) involves a Land Case Settlement Notification Letter followed up by mediation by the BPN until a settlement agreement is reached or another agreement agreed to by the parties.

d) Criterion four (K4) involves a Land Case Settlement Notification Letter, which essentially states that the land case will be resolved through the court process due to the absence of a settlement agreement.

e) Criterion five (K5) involves a Land Case Settlement Notification Letter, stating that the settlement of the land case being handled is not within the authority of the BPN and may be resolved through another agency.

The Role of National Land Agency officials in facilitating land dispute resolution in Indonesia

Based on Perkabab 11/2016 concerning the Settlement of Land Cases, Article 12 paragraph (5) states: In the event that a dispute or conflict is not within the authority of the Ministry, the Ministry can take the initiative to facilitate the resolution of the dispute or conflict through “Mediation”. Officials in the ranks of the National Land Agency can become mediators because of their positions so that an authorized mediator is created, namely an official at the Ministry, or Regional Office of the National Land Agency, or Land Office which is authorized to become a mediator to resolve land disputes which are not within the authority of the National Land Agency.

A mediator fundamentally acts as an intermediary, assisting the parties in resolving their disputes. A mediator will also help the parties understand the issues at hand, transforming them into collaborative solutions. Furthermore, to reach an agreement, a mediator must assist the disputing parties in formulating various dispute resolution options. These options must be acceptable and satisfactory to both parties. A mediator's primary role is to reconcile conflicting interests and reach common ground that can serve as a benchmark for resolving the issue.

As a mediator the Land Office's role includes providing new information or otherwise assisting the parties in understanding each other's perspectives and identifying issues of importance to them. Mediators facilitate the exchange of information, encourage discussion of differing interests, perceptions, interpretations of situations and issues, and manage emotional outbursts.

The mediator helps the parties prioritize issues and focuses discussions on common goals and interests. The mediator will often meet with the parties in person. As a conduit for information between the parties, the mediator will have more information about the dispute and issues than the parties themselves and will be able to determine whether there is a basis for reaching an agreement.

Mediators also provide new information or otherwise assist the parties in finding mutually acceptable ways to resolve the case. They can offer a neutral assessment of each party's position. They can also teach the parties how to engage in effective problem-solving negotiations, assess alternatives and find creative solutions to their conflicts, thus, a mediator does not only act as a mere mediator who only acts as an organizer and leader of discussions, but must also help the parties to design a resolution of their dispute, so that it can produce a mutual agreement.

Gary Goodpaster further explained that the mediator's role is to analyse and diagnose a specific dispute and then design and control the process and other interventions with the goal of guiding the parties toward a healthy consensus. Dispute diagnosis is essential to helping the parties reach consensus. The mediator's key roles are:

- a) Identifying critical issues and interests.
- b) Developing an agenda.
- c) Facilitating and controlling communication.
- d) Teaching the parties bargaining skills.
- e) Helping the parties gather important information.
- f) Problem-solving to create options [1, p. 24].

Dispute resolution is faced with a process undertaken by the parties without assistance from other parties who have no interest in the continuation of the existing

dispute. According to Cochrane's theory, which states that the one who controls social relations is the community itself, meaning that basically the community itself is actively finding, choosing, and determining its own law [7, p. 5].

However, sometimes it is resolved by other parties outside the dispute peacefully. If it is not resolved through an out-of-court process, then this dispute is carried out through a litigation process in the court or this dispute is brought to the "green table". Regarding dispute resolution that is resolved through cooperation (cooperative) outside the court is usually also called alternative dispute resolution (ADR).

Conclusion

The dispute resolution process through mediation is carried out by the National Land Agency (BPN) as a mediator. It begins with an agreement between the two parties to resolve the land dispute through mediation. Then, they submit the matter to the BPN Office. The next stage is the implementation of mediation, starting from discussion to providing peace options. After successful mediation and reaching an agreement, a peace deed is drawn up and registered with the District Court to produce a final legal basis. Essentially, a mediator acts as an intermediary who helps the parties to resolve their disputes. A mediator will also help the parties understand the existing issues so that they become problems that need to be addressed together. Furthermore, in order to reach an agreement, a mediator must also help the disputing parties formulate various dispute resolution options. Of course, the dispute resolution options must be acceptable and satisfactory to both parties. At the very least the main role that a mediator must play is to reconcile differing interests in order to reach a common ground that can serve as a benchmark for resolving the problem.

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