

MEDIATION AT THE REGIONAL OFFICE OF THE NATIONAL LAND AGENCY OF RIAU ISLANDS PROVINCE

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ABSTRACT

Juridical analysis of the National Port order to realize the sovereign and issues are issues that always arise and are always Actual from time to time, along with the increasing number of residents, development developments, and the expanding access of various parties who obtain land as authorized capital in various interests. Land disputes occur because the land has a critical position, which can prove the independence and sovereignty of the owner. The land has a function in the framework of State integrity and functions as an authorized capital to realize the greatest prosperity of the people. The choice of dispute resolution can be made with 2 (two) processes. The first process is dispute resolution through litigation through the judiciary, and the second process then develops the dispute resolution process through cooperation (cooperative) outside the judiciary. Research methods describe the way that will be done in formulating a scientific study. The research approach conducted by the author is a normative juridical Research Approach by identifying and conceptualizing law as a real functional social institution in the system of State Life; the type of research used in this study is also juridical. But not solely the normative nature makes this research passive. Any nation and state in the Class I TANJUNG UBAN port operator UNIT.”

Keyword: *Mediation, Land, Riau Islands Province*

1. INTRODUCTION

In everyday life and business activities, land disputes or conflicts often arise. Conflict occurs because of change, and conflict is a competitive behavior between two or more people. Conflict occurs when two or more people compete to achieve the same goal or obtain limited resources. The emergence of this land dispute or conflict is a sign of a crisis in human relations of land tenure and ownership. The action that must be taken to overcome the land dispute or conflict is to make efforts to improve the relationship [1].

Land issues always arise and are always Actual from time to time, along with the increasing number of residents, development developments, and the expanding access of various parties who obtain land as authorized capital in multiple interests. Land disputes occur because the land has a critical position, which can prove the independence and sovereignty of the owner. The land has a function in the framework of State integrity and functions as an authorized capital to realize the people's greatest prosperity [2]

From now on, land disputes are land disputes between individuals, legal entities, or institutions that do not have a broad impact. In contrast, land conflicts, now referred to as conflicts, are land disputes between individual, groups, groups, organizations, legal entities, or institutions with a tendency or broad impact [3].

The choice of dispute resolution can be made with 2 (two) processes. The first process is dispute resolution through litigation through the judiciary, and the second process then develops the dispute

resolution process through cooperation (cooperative) outside the court. The litigation process produces an adversarial agreement that has yet to be able to embrace the common interests of all parties and tends to cause new problems and slow resolution. On the other hand, the process outside the court through mediation will result in an agreement that is a "win-win solution," avoided from the slowness of the settlement process caused by procedural and administrative matters, creating a comprehensive settlement in togetherness while maintaining good relations. Mediation is a form or method of dispute resolution, especially land disputes or conflicts, whose primary purpose is to find a way out of land problems faced by the parties to achieve a more concise and flexible administrative settlement and settlement decisions that are acceptable to all parties.

In-court mediation, therefore, emerged as an answer to the growing dissatisfaction in the judicial system that boils down to the question of time, cost, and ability to handle complex cases.

According to Raharjo 1984 quoted from the book published by Maria S.W. Sumarjono⁴ that the existence of mediation as a form of Alternative Dispute Resolution Mechanism or alternative dispute resolution (ADR) is not a foreign thing because the way of conflict resolution is part of social norms that live, or at least, have lived in society. This can be traced to the fact that people's lives are more oriented towards balance and harmony, the essence of which is that everyone feels respected and valued and no one is defeated by their interests. However, balance and harmony were eroded (erosion) when the modernization process took place [4].

1.1 Problem-Solving

1. What is the Ministry of Agrarian Affairs and Governance/National Land Agency's role in settling land disputes through mediation?
2. What is the procedure for resolving land disputes through mediation facilitated by the Ministry of Agrarian Affairs and Governance/National Land Agency?

1.2 METHOD

Research methods describe the way that will be done in formulating a scientific study. To guarantee the nature of the test, an investigation should have normative foundations, as in this study. The research approach conducted by the author is a normative juridical Research Approach by identifying and conceptualizing law as a real functional social institution in the system of State Life; the type of research used in this study is also juridical. But not solely the normative nature makes this research passive. The dynamics of the development of legislation and literature studies used to remain as the basis that is filtered first.

The conception of the rule of law as the basis for the life of the nation and state in the archipelago becomes the normative Foundation in scientific writing. The pronouncement of "the state of Indonesia is a state of Law" ⁵ which has been clearly stated in the Constitution not only as written law but becomes real as a constitutional convention or state habit that has been and will continue to be carried out by a state of law. Therefore, the author carries this type of Juridical research with the legislation approach.

2. RESULTS AND DISCUSSION

2.1 Terms and procedures of land dispute settlement through mediation of the Ministry of Agrarian and Spatial Planning/National Land Agency

In implementing a legal act, the subject of the law must submit to and obey the applicable regulations. Administrative requirements in land dispute complaints are one thing that must be met before carrying out mediation. The implementation of mediation in the Ministry, Regional Office, and Land Office must all be in line with the procedures or processes established by the Ministry of ATR/BPN. The process is expected that all disputes that enter the debate, conflict, and land cases can be adequately

resolved and satisfy all parties to the argument. The ministry, Regional Office, and Land Office set out the process that must be passed by all parties who will use mediation in land dispute resolution.

Based on Chapter II Article 3-4 of Permen ATR/BPN number 21 of 2020 concerning handling and settlement of land cases, mediation procedures or procedures are carried out in the order of handling and settlement of claims, the Ministry receives complaints originating from [5]:

- a. Individuals / Citizens;
- b. Community Groups;
- c. Legal Entity;
- d. Government Agency; Or
- e. Technical Units Of Ministries, Regional Offices, and Land Offices.

As mentioned above, complaints are accepted through the counter for receiving complaint letters, the counter for receiving complaints directly, and through online media organized by the Ministry, Regional Office, and Land Office. The submitted complaint must meet the following requirements [6]:

- a. Identity/legality of the complainant, which includes:
 1. Individual:
 - a. Photocopy of proof of identity; or
 - b. Power of attorney and photocopy of the grantor's identity and a done when authorized.
 2. Legal Entity:
 - a. Photocopy Of Deed Of Establishment/Last Amendment;
 - b. Power of attorney from the Board of Directors; and
 - c. Photocopy of the identity of the grantor and done when authorized
 3. Community Groups:
 - a. Photocopy Of Deed Of Establishment/Last Amendment;
 - b. Power of attorney from the Board of Directors; and
 - c. Photocopy of the identity of the grantor and done when authorized.
 4. Government agencies: photocopy proof of identity of employees or officials of the relevant agencies accompanied by a letter of assignment or power of attorney from the appropriate agencies.
 5. Ministry, Regional Office, Land Office: report letter from the head of the work unit or work unit concerned.
 - a. Photocopy of supporting data or proof of ownership of the complainant's land;
 - b. Photocopy of other supporting data on the land object of dispute or conflict; and
 - c. Chronological brief description of the case.

Complaints that have been received, as referred to in Paragraph (2), submitted to the Directorate General VII or field V or Section V by its authority and recorded in the Register of complaints and entry into the mail information system for further distribution to officials appointed to handle land disputes. In the case of verbal complaints, the complainant must fill out a complaint form signed by the complainant and completed with the requirements document. For complaints submitted directly at the complaint reception counter, the complaint file is received, and the complainant is given a receipt of the complaint. A permit is issued through online media for complaints submitted through online media. Complaints that do not meet the requirements in paragraph (3) are declared incomplete and ineligible and returned to the complainant in writing or online media. Complaints submitted orally through the complaint counter are produced at the complaint counter [7].

The parties or power of attorney in implementing mediation

As provided in Supreme Court Regulation No. 1 of 2016, the parties are two or more legal subjects in dispute and take their argument to court to obtain a settlement. In a land dispute, the parties are subjects of law who wish to resolve a land dispute by involving a mediator. The Mediator himself is a mediator or

2. peace; or
- b. Rejection letters cannot be granted. Criterion two (K2) is
 1. letter of guidance for the settlement of the case or letter of determination of the parties entitled but not yet actionable settlement decision because there are conditions that must be met which is the authority of other agencies;
 2. Letter of recommendation for settlement of cases from the Ministry to the Regional Office or Land Office by its authority and the Regional Office to the Land Office or proposed settlement from the Land Office to the Regional Office and the Regional Office to the Minister.
- c. Criterion three (K3) in the form of a notification letter is not the authority of the Ministry.

2.2 Procedure And Time Of Mediation By Supreme Court Regulation Number 1 Of 2016

The mediation procedure regulated in Supreme Court Regulation Number 1 of 2016 is carried out in court. According to him, the mediation procedure in court as part of Civil Procedure Law can strengthen and optimize the functions of the judiciary in dispute resolution. Meanwhile, in the regulation of the Minister of Agrarian Affairs number 20 of 2021, it is more specific to discuss mediation in resolving land disputes outside the court or Non-litigation channels. However, the author seeks to compare the law with the Supreme Court Regulation No. 1 of 2016 to complete the rumpling section in resolving cases and land disputes, one of which is regarding procedures and mediation as stated in the Supreme Court Regulation No. 1 of 2016 [12].

In addition, the judge or mediator must convey the mediation procedure to the parties. For example, the parties can mediate openly if they wish. Similarly, regulation of the Minister of Agrarian Affairs number 20 of 2021 mediation must be attended by the parties with or without being accompanied by a legal representative. However, the Supreme Court Regulation Number 1 of 2016 specifically mentions the fundamental reasons for the absence in the mediation procedure, among others [13]:

1. Health conditions that do not allow attending a mediation meeting based on a doctor's certificate;
2. Under supervision;
3. Have a residence, residence or position abroad; or
4. Carrying out state duties, the demands of a profession, or a job that cannot be abandoned.

In addition to the obligations of the parties, a Mediator also has responsibilities in the mediation procedure, which are as follows [14]:

- a. Introduce Themselves And Provide An Opportunity For The Parties To Introduce Themselves;
- b. Explain The Purpose, Objectives, And Nature Of Mediation To The Parties;
- c. Explain The Position And Role Of Mediators Who Are Neutral And Do Not Make Decisions;
- d. Create Rules For Conducting Mediation With The Parties;
- e. Explain That The Mediator Can Hold A Meeting With One Party Without The Presence Of The Other Party (Caucus);
- f. Develop A Mediation Scheduled With The Parties;
- g. Fill Out The Mediation Schedule Form.
- h. Provide Opportunities For Parties To Address Issues And Peace Proposals;
- i. Inventorying Problems And Scheduling Discussions Based On A Priority Scale;
- j. Facilitate And Encourage The Parties To:
- k. Search And Explore The Interests Of The Parties;
- l. Find The Best Solution For The Parties; And
- m. Work Together To Settle;
- n. Assist The Parties In Making And Formulating Peace Agreements;
- o. Submit A Report Of Success, Failure, And Inability To Implement Mediation To The Case Review Judge;

- p. Declare One Or The Parties Are Not In Good Faith And Convey To The Examining Judge The Case;
- q. Other Duties In Carrying Out Its Functions.

Until the agreement of both parties produces the results, both mediators and both parties also need to pay attention to the grace period provided by the provisions of the legislation. The mediation process lasts 30 (thirty) days from establishing the mediation order. However, based on the parties' agreement, the mediation period may be extended for 30 (thirty) days from the end of the mediation period.

2.3 Results Of Mediation In Settlement Of Land Disputes

In the Supreme Court Regulation No. 1 of 2016, the peace agreement is considered the result of mediation which is drawn up in the form of a document containing the terms of dispute resolution signed by the parties and the Mediator. The implementation of land dispute/conflict resolution through mediation is regulated in Chapter VI, article 43-44 of ATR/BPN Regulation Number 21 of 2020 concerning the handling and settlement of land cases.

In principle, mediation must be attended by the parties/ principal. Suppose the parties cannot be present for health and other valid reasons. In that case, mediation may be represented by a power of attorney authorized to decide by agreement of the parties to the dispute. The mediation is declared failed if the parties have been invited 3 (three) times appropriately but are not present. Suppose the implementation of mediation can present experts and related agencies with the parties' agreement. In the event of conciliation reached, a peace agreement is outlined in the deed.

Peace and registered by the parties in the District Court of the jurisdiction of the location of the land that is the object of the case to obtain a peace decision.

The implementation of mediation results related to land administration is submitted to the Ministry, Regional Office, and Land Office by their authority by attaching: Peace decision, peace deed, and data/documents regarding the land object of the case. If mediation does not result in an agreement and fails, the Ministry, Regional Office, and Land Office, according to their authority, decide to resolve the case.

The mediation results are stated in the minutes of mediation implementation, which contain the agreement and follow-up of the mediation signed by the official/head of the settlement team/Mediator.

The role of a land mediator in embracing the parties to the dispute is critical. If the land mediator has the guile to reduce conflicts between the parties, then the land dispute or conflict can be planted and resolved with a win-win solution. However, regarding the settlement decision, everything returns to the parties, whether they maintain their respective positions and arguments or agree to waive some of their rights by providing incentives or compensation from the other party.

3. CONCLUSIONS

Based on the description and juridical analysis above, the authors conclude as follows:

1. The role of the Ministry of ATR/BPN, provincial BPN Regional Office, and Regency / City Land Office in resolving land disputes through mediation are as a mediator who mediates land issues of the parties. The role
2. A mediator at the time of mediation is to lead the discussion, maintain or maintain the rules of legislation, encourage the parties to convey issues and interests openly, encourage the parties to realize that the dispute is not a fight to be won but resolved, hear, record and ask questions, help the parties reach common ground. This type of mediator is an Authoritative mediator in resolving land disputes through mediation. This type of authoritative mediator only seeks to help the parties to the dispute to resolve differences and have a strong position so that they have the potential or capacity to influence the outcome of a mediation process
3. Procedures in resolving land disputes or conflicts through mediation are complaints by the parties to the dispute to the Ministry of ATR/BPN, provincial BPN Regional Office, and Regency/City Land Office. The stages of handling and resolving land disputes or conflicts include Case Studies, initial

degrees, Physical Research in the field, exposure of research results by inviting the parties to the dispute, coordination meetings, final degrees, and Case Resolution decisions. The role of a land mediator in embracing the parties to the dispute is critical. If the land mediator has the guile to reduce conflicts between the parties, then the land dispute or conflict can be planted and resolved with a win-win solution.

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