



THE EFFECTIVENESS OF MEDIATION AS AN INSTRUMENT FOR LAND DISPUTE RESOLUTION: A NORMATIVE LEGAL STUDY OF THE ROLE OF THE NATIONAL LAND AGENCY IN LAMONGAN REGENCY

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Abstract

The strategic socio-economic value of land in Indonesia often triggers complex disputes that are inefficiently resolved through litigation, necessitating mediation as a more equitable alternative. This study aims to evaluate the effectiveness of mediation in resolving land disputes, particularly in Lamongan Regency. The research method used is normative juridical. The results indicate that the effectiveness of mediation is significantly determined by a constellation of factors, including the parties' good faith, mediator competence, documentary completeness, and public legal literacy. However, findings reveal that mediation in Lamongan remains suboptimal due to several critical barriers. Specifically, the research identifies that low public legal awareness and the persistent egoism of disputing parties often lead to deadlocks during the negotiation process. Furthermore, the inability of mediators to employ effective communication techniques and psychological approaches frequently results in a failure to reach a formal peace agreement (Akta Perdamaian). Literature studies at the Lamongan Land Office (BPN) confirm that these internal and external constraints prevent mediation from becoming the primary choice for dispute resolution. Consequently, many cases that could be settled through non-litigation channels eventually escalate to court, increasing the burden on the judicial system. To enhance effectiveness, this study recommends intensive legal socialization to the community, specialized certification and training for professional mediators, and the institutional strengthening of the BPN's role as a facilitator to ensure a more sustainable, fair, and legally certain dispute resolution framework in Indonesia.

Keywords: mediation, land disputes, legal effectiveness, alternative dispute resolution.

I. INTRODUCTION

Indonesia is an agrarian country, where land is very important for human life. Without sufficient land, the government cannot function smoothly.(Maulani, 2021). Land can be used economically and socially by humans, where it can be used as a productive asset or simply as a place to live.(Supriyo & Surabaya, 2022) Every human being carries out their daily activities on land, so it is impossible to separate humans from land. This makes land very important for life, so humans always want to try to own and control land..(Sukresno, 2012) Especially in era of

rapidly developing information technology, land disputes will continue to occur and cannot be avoided in society.(Makhfiroh, 2017) No one wants to be involved in a dispute, but disputes will arise and become an important issue that must be anticipated and dealt with.

Every dispute must be resolved, and of course in the best way possible, which is through reconciliation. Reconciliation can be achieved through a deliberative process aimed at reaching a win-win solution. However, in reality, achieving peace is not an easy task, and resorting to the courts to resolve the dispute can be exhausting, time-consuming, and costly.(Rosy et al., 2020) In fact, resolving disputes through peace or deliberation and consensus is better than resolving them through the courts. Resolving disputes through peaceful means or deliberative consensus offers several advantages, including: (1) shorter timeframes, (2) very low costs (as there is no need to pay lawyers and court fees), (3) faster resolutions, and (4) relatively fairer resolutions that tend to be win-win solutions (Rochmani, Safik Faozi, 2020).

Mediation is regulated in several laws and regulations, one of which is Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, as well as Supreme Court Regulation (PERMA) Number 1 of 2016 which regulates the process of mediation in court and other laws and regulations. PERMA Number 1 of 2016 emphasizes that all civil cases in district courts must go through a mediation process before further examination.(Rochmani, Safik Faozi, 2020) This is an effort to reduce the caseload in courts and provide more opportunities for the parties to resolve disputes amicably or through deliberation and consensus.(Hutabarat et al., 2021) This is an effort to reduce the caseload in court and provide more opportunities for parties to resolve disputes amicably or through deliberation and consensus. The main principles of mediation are: voluntariness, confidentiality, neutrality, and flexibility.(Rizaldi et al., 2023) Voluntary means that both or more parties can participate in mediation or that it is carried out based on the parties' own wishes..

Anggara Yudha also conducted similar research, the results of which showed that land disputes in Indonesia, particularly in Lamongan Regency, can be resolved through two channels, namely litigation and non-litigation. The litigation route is carried out through the courts as stipulated in Law Number 48 of 2009 concerning Judicial Authority, while the non-litigation route is carried out outside the courts based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In practice, The settlement of land disputes through mediation at the Lamongan District Land Agency resulted in two possibilities: agreement to settle or agreement to disagree. If no agreement was reached, the mediator recommended that the parties settle the dispute through the local District Court.(*Anggara Yudha Istiyarta, Yahman, 2019)

As land issues in Indonesia become increasingly complex, there is a need for a deeper understanding of the various alternative dispute resolution methods available to the public. One approach that is gaining popularity is mediation, a dispute resolution process that involves a neutral third party to help the parties reach an amicable agreement(Sulistianingsih & Fibriani, 2023). Therefore, to broaden knowledge and strengthen understanding of the application of mediation in the context of land disputes, this article will specifically discuss the effectiveness of mediation as an alternative means of resolving land disputes. This research is

important to assess the extent to which mediation can be a solution that is both effective and fair in resolving land conflicts, which are often emotional and protracted.

II. PROBLEM FORMULATION

1. What is the procedure for mediation as an alternative means of resolving land disputes?
2. How effective is mediation as an alternative means of resolving land disputes in Lamongan Regency?

III. RESEARCH METHODS

This research is normative legal research, which is research based on literature studies by examining laws and regulations related to legal issues, as well as legal theories relevant to the discussion. This research uses a legislative approach.(Aprilia & Supriyo, 2022) and various facts regarding land dispute resolution obtained through previous research literature. This method was used to improve understanding of the regulations related to this study. Primary and secondary legal materials were also used in this study. This study collected data through a literature review, which involved reading and analyzing various relevant legal literature and regulations.(Muhamad et al., 2023) This research method is expected to provide a clear picture of the legal aspects of mediation as an alternative means of resolving land disputes, as well as to assist in providing recommendations on the effectiveness of mediation as an alternative means of resolving land disputes in order to achieve legal certainty in land administration in Indonesia, particularly in Lamongan Regency.

IV. RESULTS AND DISCUSSIONS

1. Mediation Procedures as an Alternative to Land Dispute Resolution

Mediation is defined as an alternative method of dispute resolution outside of court, involving the services of a mediator or arbitrator. A mediator or arbitrator is an individual who plays a role in helping disputing parties resolve their disputes peacefully. Meanwhile, mediation is understood as a form of intervention in a dispute or negotiation process by a third party that is accepted by all parties to the dispute.(Khoirruni et al., 2022) This third party is neutral, impartial, and has no direct involvement in the conflict. Its main role is to facilitate communication and assist the parties in reaching a voluntary agreement without coercion. As a mediator, it does not have the authority to make decisions on behalf of the disputing parties, but only encourages the creation of a fair agreement that is acceptable to all parties.(Nansi, 2012) Mediation as a dispute resolution mechanism emphasizes the principles of voluntariness, confidentiality, and autonomy of the parties in determining the final outcome. The presence of a mediator aims to create an atmosphere of constructive dialogue, minimize tension, and open opportunities for solutions that not only resolve legal issues but also improve relations between the disputing parties.

The terms “conflict” and “dispute,” which people often hear, are an integral part of human social life. These two terms often appear in various everyday conversations, especially when discussing relationships between individuals or groups. In reality, conflicts and disputes often arise due to differences in interests,

views, or values held by the parties involved. Many experts from various disciplines have put forward various definitions and perspectives on the meaning of conflict and dispute, reflecting the complexity and breadth of the dimensions contained in these two concepts. Legal disputes over land often arise from complaints by individuals or legal entities who feel aggrieved or have certain objections(Kurniati, 2016).

The party filing the complaint hopes that the issue can be resolved through administrative channels in accordance with applicable laws and regulations. As a developing country that is actively pursuing development in various sectors, Indonesia faces major challenges in land management and spatial planning. Large-scale development activities, which often involve many parties, frequently trigger conflicts of interest. The imbalance between development needs and the protection of citizens' land rights is one of the main causes of conflict. Therefore, efforts to resolve land disputes require a comprehensive approach, covering legal, social, economic, and political aspects, in order to create justice and legal certainty for all parties involved. There are two steps that can be taken in the mediation process as an alternative to resolving land disputes, namely mediation in court and out of court, which will be further explained below.

a. Mediation Procedures in Court

In legal practice, dispute resolution can be carried out through two main channels, namely litigation and non-litigation. Dispute resolution through litigation refers to a formal process conducted before a court of law, where the resolution is decided by a judge based on applicable legal procedures. This process tends to be formal, takes a relatively long time, and incurs significant costs. In contrast, non-litigation dispute resolution is conducted outside of judicial institutions. This process is also known as alternative dispute resolution (ADR). One of the most common forms of non-litigation methods is mediation.(Muktamar & Syahida, 2023)

Provisions regarding mediation are generally regulated through regulations issued by the Supreme Court of the Republic of Indonesia. Based on Article 1 paragraph (1) of Supreme Court Regulation (PERMA) Number 1 of 2016 concerning Mediation Procedures in Court, mediation is defined as a method of dispute resolution through a negotiation process that aims to reach a mutual agreement between the Parties, with the assistance of a mediator. The mediator acts as a facilitator who helps to facilitate communication and negotiation, without having the authority to decide the final outcome.(Muhamad et al., 2023) The procedures for mediation in court are further explained below.

The initial stage in the mediation process conducted by a judge in a district court, who also acts as a mediator, is known as the pre-mediation stage. At this stage, the judge will set an initial meeting schedule between the disputing parties to prepare for further mediation. If both parties reside in the same jurisdiction as the District Court handling the case, the deadline for pre-mediation is no later than seven (7) days from the date the mediation order is issued. However, if one of the parties is located in a city or district different from the location of the District Court, the deadline will be extended to fourteen (14) days. The time and process of further mediation are determined based on the agreement of the parties, while still considering efficiency and good faith in dispute resolution.(Arwana & Arifin, 2019)

This stage is an important foundation for the success of mediation, as it determines the mental readiness and commitment of each party in seeking an amicable solution outside of a lengthy litigation process.

The mediator selection process outlined in Article 11 of PERMA No. 1 of 2016 stipulates that both parties have the right to select a mediator from the following options:(Arwana & Arifin, 2019)

- a. A judge who is not handling the case;
- b. A lawyer or legal academic;
- c. Non-legal professionals who are considered to be knowledgeable or experienced in dispute matters;
- d. A judge from the case examination panel if the parties agree;

After the mediator is selected and agreed upon by both parties to the dispute, the parties are required to submit their resumes within 5 working days. Next, the mediator summons both parties to conduct mediation, which is carried out a maximum of 2 times. If either party is absent, the mediation is considered a failure and will be reported to the panel of judges.(Dzulfikar et al., 2023) The absence of the plaintiff may result in the lawsuit being dismissed, while if the defendant is absent, the case will be decided in absentia by the panel of judges. If both parties are present and active, mediation will take place for a maximum of 30 working days and may be extended for 30 working days from the date the mediation order is issued, as agreed by both parties.(Putra & Utama, 2022) During the mediation process, both parties are required to act in good faith.

b. Mediation Procedures Outside of Court

Out-of-court dispute resolution is now better known as Alternative Dispute Resolution (ADR). This mechanism is officially regulated in Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. In the provisions of the law, Alternative Dispute Resolution refers to the process of resolving disputes or differences of opinion between parties through non-litigation procedures based on mutual agreement. Forms of ADR include consultation, negotiation, mediation, conciliation, and expert assessment Gede Aditya Pratama, S.H., LL.M. ALTERNATIF PENYELESAIAN SENGKETA, ed. Riana Kusumawati (kabupaten sumedang: CV. Mega Press Nusantara, 2023).. Furthermore, Article 1 paragraph (1) of Law No. 30 of 1999 explains that arbitration is a method of settling civil disputes outside of court, the implementation of which is based on an arbitration agreement made in writing by the disputing parties. Based on this definition, three main elements can be identified:(Sagoni et al., 2023)

1. Arbitration is a form of voluntary agreement between both parties;
2. The arbitration agreement must be in writing as a formality requirement;
3. Dispute resolution through arbitration is carried out outside the jurisdiction of the general court.

Thus, ADR, including arbitration, has provided an efficient, fast, and flexible alternative dispute resolution method, particularly for civil disputes, without having to go through litigation processes that often require a relatively long time and considerable costs. The implementation of ADR also reflects the principle of participatory justice, where the parties are given the space to determine for

themselves the settlement mechanism that is considered the most fair and in line with their mutual interests.

The National Land Agency (BPN) is a non-ministerial government agency that plays an important role in managing land affairs in Indonesia. One of the strategic tasks that must be carried out by the BPN is the resolution of land disputes and conflicts through non-litigation mechanisms or outside the court system. This is emphasized in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Number 21 of 2020 concerning the Handling and Settlement of Land Cases, which serves as the legal basis for BPN in carrying out its administrative dispute resolution functions. Through this regulation, the BPN is given the authority to handle various reports or complaints from the public regarding land issues. This authority includes a series of steps, ranging from receiving and verifying complaints, clarifying the parties involved in the dispute, facilitating the mediation process as an effort to reach an amicable agreement, to providing recommendations for a fair and balanced resolution.(Montolalu et al., 2023) With these powers, the BPN is expected to be an effective facilitator in creating agrarian justice and maintaining social stability in the community.

In the process of resolving land disputes conducted by the National Land Agency (BPN), there are several stages, namely:

1. Receipt and Registration of Complaints: The public can submit complaints related to land disputes to the local BPN office.
2. Clarification and Investigation: The BPN clarifies the parties involved in the dispute and collects data and information related to the object of the dispute.
3. Mediation: The BPN facilitates mediation between the parties to reach a mutual agreement.
4. Recommendation for Resolution: If mediation is successful, the BPN drafts a memorandum of agreement. If not, the BPN will provide a recommendation for resolution or suggest resolution through litigation.

2. The Effectiveness of Mediation as an Alternative to Land Dispute Resolution

Effectiveness is one of the important indicators in assessing the success of a policy, including in the field of law. Effectiveness can be understood as the relationship between output and the objectives to be achieved. A policy or activity is said to be effective if the output produced is able to make a significant contribution to the achievement of these objectives. In other words, the greater the contribution of output to the realization of objectives, the higher the level of effectiveness.(Mah et al., 2021) the context of law, effectiveness is a regulation that does not only depend on its formal existence, but is also determined by the extent to which the legal norm can be applied and obeyed in practice. Soerjono Soekanto argues that there are five main factors that influence the effectiveness of law, including:(Mah et al., 2021)

1. The legal factor itself, namely the content of legislation, which must be clear, consistent, and enforceable.
2. Law enforcement factors, namely the authorities or institutions tasked with formulating, implementing, and enforcing the law, such as the police, prosecutors, judges, and advocates.

3. Facilities or infrastructure, including the availability of budget, technology, and human resources that support optimal law enforcement.
4. Society, which refers to the active role of society in supporting law enforcement through compliance and constructive participation.
5. Cultural factors, namely the values, norms, and customs that exist within society, which can influence the acceptance and successful implementation of these legal norms..

These five factors are interrelated and inseparable. If one factor does not function optimally, the effectiveness of the law in achieving its social objectives will be hampered. Therefore, in order to create an effective legal system, there must be a balanced synergy between legal norms, law enforcement officials, supporting facilities, community participation, and existing cultural values.

The success of a mediation process basically depends on the willingness and good faith of both parties, namely the plaintiff and the defendant. Mediation will be effective if the parties truly have the desire to resolve the dispute peacefully. In this case, the effectiveness of mediation can be measured by the achievement of a mutual agreement that arises from an open and constructive negotiation process.(Dr. H. Endang Hadrian, S.H., 2022) However, if from the outset one party has closed itself off and has no intention of reconciling, then no matter how hard the mediator tries to persuade or facilitate dialogue, the outcome will most likely be unsatisfactory. This means that the success of mediation is not only determined by the role of the mediator, but also by the mental readiness and awareness of the parties to resolve the conflict through deliberation.

a. Obstacles in the implementation of mediation in Lamongan Regency

In the research results written by Anggara Yudha, in the mediation process of land disputes that occurred at the Lamongan District BPN office. The parties were summoned to participate in the mediation process for the land dispute at the Lamongan District BPN office. The first stage involved summoning the complainant to gather initial information in a closed session (caucus), the results of which were recorded in the Mediation Minutes. The second stage involved summoning the defendant to clarify the complaint and gather supporting data. In the third stage, both parties were brought together to find a mutual solution based on the legal and physical data collected by the mediator(*Anggara Yudha Istiyarta, Yahman, 2019).

After several stages of mediation, the final conclusion was that both parties agreed to disagree, meaning that the dispute resolution process in the mediation conducted at the Lamongan District BPN office had failed. The mediator recommended that the dispute be resolved in the local District Court. The causes of the failure of the mediation process are usually influenced by several obstacles, includin :

1. The absence of good faith between the two parties,(SAIDINA IRHAMNA, 2020) meaning that often during the deliberation process to resolve the dispute, both parties get carried away by their emotions and prioritize their own egos.
2. Lack of understanding among the public regarding mediation the public still believes that disputes resolved through non-litigation or mediation channels lack legal force.

3. Lack of mediator skills in the mediation process,(Jurnal et al., 2024) meaning that mediators are usually less skilled in building effective communication during the mediation process, less adept at managing the emotions of both parties, and less skilled at creating an atmosphere conducive to dispute resolution, which can hinder the mediation process.

The above obstacles, which commonly occur during the mediation process, can reduce the effectiveness of mediation as an alternative means of resolving land disputes in Indonesia, particularly in Lamongan Regency.

b. Factors Supporting Success in the Mediation Process

Although mediation procedures are widely regulated in government regulations, their implementation often fails to resolve disputes, particularly land disputes. In this case, there are several recommendations related to factors that support the success of the mediation process, namely;(Tami Rusli, Anggalana, 2025)

1. Good Faith of the Parties, meaning that the success of mediation greatly depends on the willingness of the parties to participate actively and openly in the mediation process. A lack of good faith can hinder the dispute resolution process.
2. Mediator Neutrality and Competence, this is important because a neutral mediator with a deep understanding of land law and good communication skills can facilitate the mediation process effectively.
3. Completeness of Documents and Data: The availability of complete documents and data, such as proof of land ownership and land history, will facilitate the clarification and resolution of the dispute.
4. Adequate Legal Understanding: This is fundamental because mediators and parties who have a good understanding of land law aspects can more easily formulate solutions that are in accordance with applicable regulations.
5. Effective Communication, meaning that the parties and mediators are expected to communicate more openly and constructively during the deliberation process, in order to create a conducive atmosphere for reaching a mutual agreement in resolving the dispute.

The mediation process as an alternative to resolving land disputes will be more effective if the above recommendations are implemented in the field. The most important and fundamental of the above points is point four, which concerns understanding the law on mediation in resolving disputes. The community must first understand the benefits of mediation and the procedures involved in mediation so that the community or the parties to the dispute have an overview of the dispute resolution process.

V. CONCLUSION

Mediation is a method of dispute resolution outside of court that emphasizes the principles of voluntariness, confidentiality, neutrality, and active participation from each party. In land disputes, mediation is a shorter, cheaper, and more peace-oriented option than litigation. However, the success of mediation depends heavily on several important components. These include the good intentions of both parties, the neutrality and competence of the mediator, the completeness of data and documents, and a strong understanding of the law. The mediation process that took

place in Lamongan Regency shows that mediation does not always succeed in reaching an agreement. The failure of mediation is usually caused by a lack of good faith on the part of the parties, a lack of understanding among the community or the disputing parties about the legal power of mediation, and the mediator's inability to communicate well during the mediation process. To improve the success of mediation, strategic actions are needed, such as increasing legal education for the community, improving the skills of mediators, and ensuring the completeness of data and documents during the mediation process. The parties must fully understand the benefits and procedures of mediation so that the process runs effectively and produces a fair and sustainable resolution of land disputes in Indonesia, especially in Lamongan Regency.

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