

## Settlement Of Land Disputes Through Mediation at The South Solok Regencyland Office

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**Abstract:** *Land disputes are disputes between individuals, legal entities, or institutions that have no wide impact. However, land disputes can lead to disruption of security stability, decreased economic growth, and create social disharmony that demands settlement efforts. Settlement through the court is considered less effective for the character of the people of South Solok, because it puts the parties in the opposite position, plus to carry out community hearings must be South Solok District Government must spend a large cost and a long distance because of the absence of the District Court in the area. This includes the constraints of the reluctance of the community to resolve disputes due to the lengthy stages of the proceedings and the complexity of making the lawsuit material, which may not be accepted by the judge in his ruling. Therefore mediation as an alternative dispute resolution can be used as a solution for legal certainty of land rights of the community based on the initiative of the parties and the land office.*

**Key Words:** *Settlement, Dispute, Mediation.*

### 1. INTRODUCTION:

Land has a very important meaning for every individual and other legal subject. Even for indigenous peoples, land is a source of livelihood that must be maintained for survival, and maintained as a form of gratitude for the gift of God Almighty. Land is a place to live and a medium of liaison with predecessors or ancestors, so that the position of land is irreplaceable if forced to let it go, the community's way of thinking is how to get a replacement for the source of livelihood and the accompanying values. Perceptions of land are related to the relationship between people and land in various dimensions. From the economic aspect, rural communities and customary law communities tend to maintain ownership as a source of livelihood and not to be commercialized, pawned and used as a source of capital. In contrast to these communities, land and natural resource investors need to be processed/cultivated so that they can be traded and have high economic value. Thus, legally, formal proof of land ownership is an absolute must for investors, while for rural communities and customary law communities, evidence of physical possession takes precedence. Unfinished land registration throughout the territory of the Republic of Indonesia opens up opportunities for conflict due to territorial claims by various parties.[1] According to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Land Cases, land disputes are disputes between individuals, legal entities, or institutions that do not have a wide impact. Although in the explanation of the Ministerial Regulation a limitation is given to disputes which are disputes that do not have a broad impact, but this understanding is actually limited as disputes with small/not yet broad dimensions. This is different from the conflicts and cases that are also described in the regulation, with broader boundaries and have a big impact.

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) as one of the institutions that has the task of resolving land cases, in the implementing regulations of its authority, distinguishes the types of Land Cases into three parts, land disputes, land conflicts and land cases. Land registration is the first time to become a crucial area of the main problem of many land disputes. The pattern of the problem is in the form of unlawful acts committed before granting land rights. Another pattern is the dualism of claims to the same land object. Even if examined more deeply, injustice, inequality in land tenure/ownership also contributes to the causes of disputes. These conditions make dispute resolution originating from the segregation of conflicting parties, the collection of evidence of ownership, the making of position cases to be less targeted because it only touches the formal settlement of the surface area, while the deepest layer is agrarian injustice. Mediation as part of alternative dispute resolution can be used as an opportunity for more effective and efficient handling of land disputes. Mediation can be a strategic choice due to the large number of piles of civil cases that must be handled by the General Court or the diversity of other general court obstacles. So that mediation is an instrument or medium that can answer these obstacles.

#### 1.1. CONCEPTUAL FRAMEWORK:

- Settlement

Settlement is a process, steps and procedures that are taken, chosen or taken to complete/finish a condition and situation that is being faced. Completion is part of the process to achieve the desired goal properly. Completion in this concept is problem solving as a process and method used to achieve the goal of solving the problem properly.

- Dispute  
Dispute is something that causes differences of opinion, contention, dispute, subject of contention, dispute, dispute, including cases between two or more people who disagree with their respective interests.[2] This conception is also related to the discussion of land disputes, namely disputes, disputes between two or more people over land objects which are mutually considered rights and ownership of each.
- Mediation  
In general, the word mediation comes from English, called mediation, which means dispute resolution by mediating. According to the Big Indonesian Dictionary mediation is the process of involving a third party in the resolution of a dispute as an advisor.

## 1.2. THEORITICAL FRAMEWORK:

- Theory of Certainty  
In a state of law, legal certainty is needed so that the course of government, public services and state processes must be in accordance with the law. The teaching of law examines what was common in all legal systems in the past and what should not have been the same in legal systems. As to create the development of a legal system, to achieve state goals in a state of law.[3] Legal certainty is certainty regarding rights and obligations, regarding what according to law is allowed or not. [4]
- Theory of Restorative Justice and Alternative Dispute Resolution  
Alternative dispute resolution as a form of restorative justice is seen by many people as "a philosophy, a process, an idea, a theory and intervention. Restorative Justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behavior. It is best accommodated through cooperative processes that include all stakeholders. (Restorative justice is a theory of justice that emphasizes repairing the damage caused by criminal behavior. This is best done through a collaborative process that includes all interested parties.) [5] *Restorative justice is a valued-based approach to responding to wrongdoing and conflict, with a balanced focus on the person harmed, the person causing the harm, and the affected community* [6]
- Theory of Authority  
Authority in Black's Law Dictionary is defined as Legal Power; a right to command or to act: the right and power of public officers to require obedience to their orders legally issued in the scope of their public duties. [7]

## 2. LITERATURE REVIEW:

Disputes related to land objects by two or more people in the context of recognition and ownership of land objects. Disputes are often named disputes, conflicts, cases, and also land cases, as a problem in the land sector. Land issues can also be referred to as disputes in certain ways in fighting over economically valuable agrarian resources. The land case in social science is a conflict of interest between the parties over the ownership and use of agrarian resources based on social relations with regard to land control and ownership. The control and use of agrarian resources can occur between individual humans and can also occur between social groups and other social groups, including local communities, corporations and governments.[8]

Efforts to settle civil disputes can be carried out out of court through arbitration or alternative dispute resolution. So with this legal opportunity, in fact the settlement of civil disputes, such as land disputes, can be resolved through alternative methods/methods that accommodate legal certainty and the interests of each party in the case. One alternative form of dispute resolution regulated in Indonesian law is called mediation. Mediation is very difficult to define. The dimensions are very plural and unlimited. Many parties recognize that mediation is a process for resolving disputes with the help of a third party. The role of the third party is to involve themselves in helping the parties identify the issues in dispute and develop a proposal. The proposal is expected to be used as a reference for resolving the dispute. [9]

## 3. METHOD:

This research is empirical juridical (sociological), which compares the existing norms with the facts in the field in accordance with the research conducted. [10]

#### **4. DISCUSSION:**

The existence of land disputes/cases occurs due to the large interest of an individual or legal entity on land, by leaving the existence with the social function of the land. The existence of land objects that are mutually contested by two or more parties, is also caused by differences in perceptions and perspectives on who has the right to the land. governance is how every dispute must be resolved by taking into account the legal needs and development of Indonesian society. All the complexities of land issues must be answered by the government as an authority/organization given the authority to solve them by all Indonesian people. The government bureaucracy is the only organization that has the legitimacy to impose various regulations and policies on society and every citizen. [11] According to the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Land Cases, land disputes are disputes between individuals, legal entities, or institutions that do not have a wide impact. Although in the explanation of the Ministerial Regulation a limitation is given to disputes which are disputes that do not have a wide impact, but this understanding is actually limited as disputes with small dimensions The existence of land disputes/cases occurs due to the large interest of an individual or legal entity on land, by leaving the existence with the social function of the land. The existence of land objects that are mutually contested by two or more parties is also due to differences in perceptions and perspectives on who has the right to the land.

Settlement of land disputes through litigation to the Court for the people of South Solok experienced a number of obstacles, such as the absence of a District Court so that to carry out the trial, they had to spend a lot of money and a long time for each stage of the trial. The settlement of litigation that confronts the parties as opposing elements also does not match the character of the indigenous peoples in South Solok who have kinship relations, so that the settlement through deliberation and consensus in the form of mediation becomes more effective. Not to mention the many land cases that are still going through the long and piling stages of the trial, so that it can lead to increasing disharmony in the community due to land problems, the decline in the community's economy, plus the reluctance of the community to resolve their problems through formal trials, making disputes more protracted, and legal uncertainty over land ownership cannot be created.

#### **5. ANALYSIS:**

##### **5.1. Implementation of Land Dispute Mediation:**

Since the first land has been a source of dispute or conflict and not infrequently cause casualties. As a social phenomenon, agrarian (land) disputes or conflicts are a process of interaction between two (or more) people or groups who each fight for their interests over the same object, namely land and other objects related to land. [12] The unequal structure of land tenure and ownership, the land registration publication system with a negative pattern, the need for land that tends to increase so that these conditions cause the economic value to increase as well. As a result of the many overlapping regulations both vertically and horizontally, the lack of thoroughness of public officials related to land, differences in perceptions and interpretations of law enforcement against the legislation, inconsistency of law enforcers, enforcing regulations related to land. [13] Based on the Presidential Regulation of the Republic of Indonesia Number 48 of 2020 concerning the National Land Agency (BPN), it is stated that BPN has the task of carrying out a series of government tasks in the land sector in accordance with the provisions of the legislation. In Article 3 of the regulation, it is explained that the National Land Agency has a function, one of which is in letter (g): Formulation and implementation of policies in the field of handling and preventing disputes and conflicts as well as handling land cases. One of the tasks of the elements of the Ministry of ATR/BPN, namely the Adjudication Committee, has the authority, to help resolve disagreements or disputes between the parties concerned regarding the announced data.

Implementation of mediation in the context of dispute resolution begins with a series of activities, in three periods, namely Pre-Mediation, Implementation of Mediation, and Post-Mediation. This periodization division is carried out to determine the stages of preparation and reporting after the implementation is carried out, and as a series of activities that can be known by the parties before starting mediation. Land mediation will produce two forms of results, namely (1) Successful Mediation to reach a peace agreement, and (2) Failed Mediation / failed to reach a peace agreement. Based on the provisions of the above article on the results of the mediation that has met efforts to make peace, or the mediation is declared successful, then the parties must register the peace agreement, to obtain a local court decision. So that the peace agreement has permanent law.

##### **5.2. Problems and Obstacles in the Implementation of Mediation:**

The reasons for the failure of mediation can be drawn several conclusions: (1) The parties no longer have the intention to make peace because they have mutual interests that cannot be found a middle way, the parties remain with their respective stances and claims, or remain with their own reasons and opinions. (2) The parties have previously clashed and even used violence in the field (3) One party felt that the mediation process was no longer

independent, or that the mediator was not considered neutral in carrying out his duties. (4) The mediation failed because one of the parties stated that they did not agree with the mediation because he felt that the mediation forum was not producing results, because he already had a number of documents that were ready to be brought as evidence before the trial or according to the positive law applicable in dispute resolution. And (5) there is also the absence of the parties as a factor in the failure of mediation because they have been officially and properly summoned three times and have never attended or sent a power of attorney, or a letter of reason for their absence. Meanwhile, with regard to disputes that have not been mediated, because the parties have not fulfilled the summons to carry out mediation, there are parties who are undergoing the process of proving criminal acts related to disputes with the same object. As well as not scheduled further summons for the parties who have not arrived at the first summons by the District Land Office. South Solok. In connection with the unsuccessful mediation, a special peace was made regarding the object of customary land by the Land Office of South Solok Regency, then wrote to the Nagari Customary Density (KAN) where the land is located, to request the settlement of customary disputes. The existence of "legal uncertainty" regarding the settlement of land disputes which is also not in accordance with the achievement of legal certainty which has been firmly demanded for government officials who carry out the task of carrying out legal provisions. Including efforts to formalize the implementation of mediation is considered not in accordance with other laws and regulations governing mediation, due to the absence of registration of the peace agreement. Due to the absence of registration of the peace agreement with the court from the results of mediation that has been carried out at the land office, there are inconsistent conditions in the implementation of the ministerial regulation on handling land cases.

Some of the obstacles in the implementation of mediation at the South Solok Regency Land Office are:

- Lack of competence to be a Mediator for State Civil Apparatus in the Dispute Control and Handling Section so that the quality of mediation implementation is determined only from experience, not based on expertise certification legalized by the Supreme Court or other authorized body.
- There are still parties who are reluctant/do not have the intention to settle their land disputes through mediation, because many are not familiar with this alternative dispute resolution and still rely on settlement through the realm of general courts.
- There is no Standard Operating Procedure in the form of Technical Guidelines and Implementation Guidelines for Dispute Controlling and Handling Section Employees in the implementation of mediation that can be referred and guided. So there could be inconsistencies in the implementation of laws and regulations related to handling disputes through mediation.

## **6. CONCLUSION:**

From the discussion as explained earlier, several conclusions can be drawn, including:

- Land disputes within the limits of the first land registration period, At the South Solok Regency Land Office, efforts have been made to resolve through mediation as a form of initiative from the South Solok Regency Land Office based on its authority which is sourced from Government Regulation Number 24 of 1997 concerning Land Registration, Presidential Regulation Number 48 Regarding the National Land Agency and Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases, which in 2020 was revoked by Regulation of the Minister of Agrarian and Spatial Planning/Head of National Land Agency Number 21 of 2020 concerning Settlement Land Case.
- Although the settlement mediation has been running and has resulted in peace, there are still weaknesses in the implementation of the results of the mediation by the District Land Office. South Solok, namely the absence of a peace agreement registered with the District Court, as well as the implementation of mediation that exceeds the specified time limit, so that these problems make the implementation of mediation imperfect and do not get permanent legal force based on statutory regulations.

## **7. SUGGESTIONS:**

The suggestions given by researchers are as follows:

- The need for consistency from the South Solok Regency Land Office Officials in implementing the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Includes implementing mediation implementation only for cases that have been declared by initiative and with a period of not less than thirty days
- Socializing to Nagari government and Nagari Customary Density and communities in South Solok about the opportunity to resolve land disputes through alternative dispute resolution as a preliminary process without having to file a lawsuit to the Court of.

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