

# Settlement of Land Plot Location Disputes Through Mediation (Case at Kediri Regency Land Office)

Rahmalia Pawestri<sup>1</sup>, Isdian Anggraeny<sup>2</sup>, Dwi Ratna Indri Hapsari<sup>3</sup>  
<sup>1,2,3</sup> Faculty of Law, University of Muhammadiyah Malang, Malang  
Corresponding: pawestriarahmalia@gmail.com

## Abstract

*A dispute over the location of a land plot is a dispute caused by confusion in the designation of land plots or boundaries. This dispute can cause losses for parties who have an interest in the land plot. Land dispute resolution, one of which is a dispute over the location of land parcels, can be resolved through non-litigation channels through mediation. Mediation as an alternative to dispute resolution is considered more profitable for the parties because it uses a win-win solution method. This research is an empirical juridical research, using primary and secondary data sources. The location of the research is at the Kediri Regency Land Office. The result of this study is the implementation of mediation at the Kediri Regency Land Office through several stages guided by Article 6 paragraph (1) of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases. The implementation of mediation at the Kediri District Land Office has obstacles including the parties to the dispute not being present at the time of mediation and having a bad faith. In this case, the solution that can be provided by the Kediri District Land Office is to advise the parties to resolve the dispute through litigation at the Kediri District District Court.*

**Keywords:** *Land Dispute; Land Parcel Dispute; Mediation.*

## Abstrak

Sengketa letak bidang tanah merupakan sengketa yang disebabkan oleh kekeliruan dalam penunjukan bidang atau batas tanah. Sengketa ini dapat menyebabkan kerugian bagi pihak yang memiliki kepentingan atas bidang tanah tersebut. Penyelesaian sengketa pertanahan salah satunya sengketa letak bidang tanah dapat diselesaikan melalui jalur non litigasi melalui mediasi. Mediasi sebagai alternative penyelesaian sengketa dinilai lebih menguntungkan bagi para pihak sebab menggunakan metode win-win solution. Penelitian ini merupakan penelitian yuridis empiris, dengan menggunakan sumber data primer dan sekunder. Lokasi penelitian berada di Kantor Pertanahan Kabupaten Kediri. Hasil penelitian ini adalah pelaksanaan mediasi di Kantor Pertanahan Kabupaten Kediri melalui beberapa tahapan yang berpedoman pada Pasal 6 ayat (1) Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 21 tahun 2020 tentang Penanganan dan penyelesaian Kasus Pertanahan. Pelaksanaan mediasi di Kantor Pertanahan Kabupaten Kediri memiliki hambatan diantaranya adalah para pihak yang bersengketa tidak hadir pada saat mediasi serta beritikad tidak. Dalam hal ini, solusi yang dapat diberikan oleh pihak Kantor Pertanahan Kabupaten Kediri adalah menyarankan kepada para pihak untuk menyelesaikan sengketa melalui jalur litigasi di Pengadilan Negeri Kabupaten Kediri.

**Keywords:** Sengketa Tanah; Letak Bidang Tanah; Mediasi.



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## A. INTRODUCTION

Land is a natural resource that plays an important role in human life. Land can be used to obtain food and as a production factor to meet the daily needs of humans. As the population in Indonesia increases, the need for land will also increase, this is due to the use of land needed to live and continue life. Indonesia, which is a country with the nickname of an agrarian country, certainly cannot be separated from the need for land.<sup>1</sup>

Therefore, in order for land to be used optimally, it must be managed carefully for future needs, in accordance with the content of the 1945 Constitution Article 33 paragraph (3) which essentially explains that the abundance of natural resources in Indonesia both from land, water, and space, all of these natural resources will be controlled and managed optimally by the state by considering the prosperity of the people.

Regarding the existence of land in Indonesia, the government has established a regulation of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter abbreviated as UUPA) which generally regulates agrarian law in Indonesia, this regulation was ratified as a form of implementation of Article 33 paragraph (3) of the 1945 Constitution. The allocation of land is actually used for the prosperity of the people in accordance with Article 9 paragraph 2 of the UUPA which explains that every Indonesian citizen has the right to obtain land rights that can be used as a result.<sup>2</sup> For this reason, in order for every person's land ownership to be legal and have legal certainty, the land must be registered through land registration organized by the government in order to ensure the certainty of their land rights, in accordance with Article 19 of the UUPA. With this land registration, if there is a land dispute, the parties to the dispute can easily find out the legal status of their land which includes who the person/legal entity is the holder of the land right and regarding the location, boundaries of the land plot, the area of the land plot and what burden is on it.<sup>3</sup>

However, by seeing the rapid growth of Indonesia's population, of course the amount of land needed will increase, this is because the land needed for a place to live and as a source of life for human food needs. This need for land ultimately changes the community's perspective on land value into a primary need. The availability of land when compared to the increasing population of Indonesia is certainly unbalanced, considering that land allocation is not only used as land for residence, but also used for development and as a source of livelihood.<sup>4</sup>

<sup>1</sup> Marwati Ulfah, Eda Laelasari, and Ismail Mustaqiem, "Implikasi Pendaftaran Tanah Sistematis Lengkap (PTSL) Sebagai Upaya Pencegahan Konflik Sengketa Tanah Di Kecamatan Batang Kuis," *AS- SYAR ' I: Jurnal Bimbingan & Konseling Keluarga* 3, no. 1 (2021): 85–94, <https://doi.org/10.47476/assyari.v6i1.6255>.

<sup>2</sup> Ferlyawan Isnanda Nuh, Herwastoeti Herwastoeti, and Dwi Ratna Indri Hapsari, "Implementation of E-Court in Civil Life Settlement to Realize Simple Principles Quickly and Low Costs (Study in Malang District Court Class 1a)," *Indonesia Law Reform Journal* 2, no. 3 (2022): 367–81, <https://doi.org/10.22219/ilrej.v2i3.23264>.

<sup>3</sup> Azminazilah Azminazilah et al., "Kepastian Hukum Pengenaan BPHTB Kepada Pemilik Tanah Dan / Atau Bangunan Yang Belum Bersertifikat Dalam Rangka Pendaftaran Tanah Sistematis Lengkap," *Jurnal Officium Notarium* 3, no. 2 (2023): 140–53, <https://doi.org/10.20885/jon.vol3.iss2.art5>.

<sup>4</sup> Randy Tulus Jordi Marpaung and Mella Ismelina Farma Rahayu, "Disputes Caused By Incompatibility With the Land Registration Process," *NOTARIAL Jurnal Kenotariatan* 9, no. 1 (2024): 15–22, <https://doi.org/10.22225/jn.9.1.2024.15-22>.

The imbalance between land and the increasing population of Indonesia ultimately causes conflicts and land disputes. Land, which has an important role in human survival, makes humans more ambitious to own and control land. Over time, land conflicts have increased as a result of development developments and increasing needs for land. The number of land-related disputes shows how important land is to Indonesia's economy and livelihoods.<sup>5</sup>

Talking about land disputes, it was found that there were 2 cases of land dispute list data entered at the Kediri Regency Land Office in early 2024, one of which was a dispute over the location of land plots. The case initially occurred around 2021, where the Applicant intended to apply for a certificate which at that time there was a Complete Systematic Land Registration (PTSL) program in Nyawangan Village, Kras District, Kediri Regency with Letter C No. 627 persil 19 Class S.I with an area of 2100 m<sup>2</sup> in the name of P (However), it turned out that the location of the field had been issued a Certificate of Ownership No. 286 in the name of AY (the Respondent) with an area of 2038 m<sup>2</sup>.

The primary reason of this land parcel disagreement is incorrect land parcel designation, which can lead to arguments and misunderstandings among the parties involved. As a result, those interested in the land will suffer losses. So, the Land Office's responsibility in this instance is to strive to find a solution to dispute resolution while prioritizing a sense of fairness as well as the parties' rights and obligations. Land disputes can be resolved through both litigation and non-litigation measures. Litigation conflict resolution is a dispute settlement process through the court, and non-litigation dispute resolution is disagreement resolution outside of the court.<sup>6</sup>

Mediation is one option for resolving land disputes. Mediation is a method of dispute resolution that uses a "win-win solution" or agreement and deliberation by the parties to achieve a conclusion that is acceptable to both sides. Mediation is also considered to have several advantages for the parties to the dispute,<sup>7</sup> namely the first is the mediation process which is carried out behind closed doors so that the resulting decision can be guaranteed confidentiality, second, because the results of mediation are in the form of decisions that have been agreed upon by the parties, they are not obliged to continue resolving disputes through a trial that is open to the public and public.<sup>8</sup> Third, the dispute resolution method is carried out peacefully so that it does not cause prolonged conflicts for the disputing parties, and the fourth is the process of implementing mediation that is relatively simple so that it can save time and reduce costs.

In terms of handling land disputes, the National Land Agency is a government agency that has the authority to take care of land issues in Indonesia. In Presidential Regulation Number 48 of 2020 concerning the National Land Agency, BPN is one of the government institutions responsible for managing the land sector. As mentioned in Article 2 of Presidential Regulation Number 48 of 2020, BPN is tasked with carrying out government duties in the land sector.

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<sup>5</sup> Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (Bandung: Sinar Grafika, 2014).

<sup>6</sup> Muhammad Amin Syarifudin, Herwastoeti Herwastoeti, and Dwi Ratna Indri Hapsari, "The Effectiveness of Application Mediation in Reducing Divorce Cases at Jombang Religious Court," *Indonesia Law Reform Journal* 2, no. 3 (2022): 352–66, <https://doi.org/10.22219/ilrej.v2i3.23339>.

<sup>7</sup> Dwi Ratna Indri Hapsari, Aditya Aji Syuhadha Ilmiawan, and Echaib Samira, "Non-Litigation as An Environmental Dispute Resolution Mechanism in Indonesia," *Indonesia Law Reform Journal* 2, no. 1 (2022): 55–66, <https://doi.org/10.22219/ilrej.v2i1.20756>.

<sup>8</sup> Vincentius Simon Suyanto et al., "Ensuring Legal Certainty of Land Through Effective Registration Processes," *International Journal of Religion* 5, no. 11 (2024): 5572–78.

Article 3 of Presidential Regulation Number 48 of 2020 outlines the functions of BPN, including creating and executing policies for resolving disputes, conflicts, and addressing land matters.

One of the National Land Agency's authorities is to resolve land disputes through mediation. This provision is governed by Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases in Article 43, which essentially states that land cases can also be settled through mediation.

It was found that the list of land disputes at the Kediri Regency Land Office that was resolved through expeditions in the period of 2022-2024 at the beginning of the year is as follows:

**Table 1.** List of Land Dispute Resolution Through Mediation at the Kediri Regency Land Office in 2022-2024

Year	Number of disputes resolved through mediation
2022	2 Cases
2023	4 Cases
2024	2 Cases

Source: Kediri Regency Land Office

Land disputes can be resolved through mediation at the Kediri Regency Land Office, and the matter has not yet been filed in court. Land dispute resolution is carried out through a third party, namely a mediator; in this example, the mediator is a Kediri Regency Land Office officer who is authorized to resolve a dispute that arises. In the implementation of mediation, the role of the mediator is very important to realize a peace agreement between the parties.

In practice, the parties to the dispute have the right to the decision taken, the mediator is only assigned as an intermediary to reach a mutual agreement. In addition, the success of mediation requires knowledge and understanding of how to manage disputes well, so that later the desired agreement can be obtained, as well as the good faith of the parties who are willing to accept and give in to the mediation process.<sup>9</sup>

## B. METHOD

This study uses an empirical juridical method. Empirical juridical is a research method that looks at the law in real circumstances that occur in society.<sup>10</sup> The focus of empirical law research is the work of a law in society, so that law is conceived as an *actual action* that includes actions and consequences in the relationship between people's lives.<sup>11</sup> This legal research is taken from the real situation or facts that occur in the field related to the mechanism for

<sup>9</sup> Eko Yuliastuti, Hakam Sholahuddin, and Lefita Dewi Liarasari, "Penyelesaian Sengketa Batas Tanah Melalui Mediasi (Studi Kasus Nomor Surat Undangan Mediasi 405/Und-18.72.UP.04.07/IX/2020 Kantor Badan Pertanahan Nasional Kota Blitar)," *Jurnal Hukum* 8 (2022): 86–96.

<sup>10</sup> Eka N.A.M Sihombing and Cynthia H, *Penelitian Hukum* (Malang: Setara Press, 2022).

<sup>11</sup> MH Muhammad Syahrur, ST., *Pengantar Metode Penelitian Hukum, Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi Dan Tesis*, ed. Irfan Marhani, Cetakan Pe (Riau: DOTPLUS Publisher, 2022).

resolving disputes over the location of land plots at the Kediri Regency Land Office and the obstacles and solutions to resolve them.<sup>12</sup>

## C. RESULTS AND DISCUSSIONS

### 1. Resolving Land Plot Location Disputes Mechanism Through Mediation by the Kediri Regency Land Office

Resolving land disputes through mediation is one of the duties of the Kediri Regency Land Office, which is regulated in the regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 17 of 2020 concerning the Organization and Work Procedures of the Regional Office of the National Land Agency and the Land Office in Article 33 which essentially states that the implementation of the handling of disputes, conflicts, and land cases is the task of the dispute control and handling section.

The Kediri Regency Land Office uses mediation to resolve land disputes in an efficient and familial manner. Mediation provides the parties to the disagreement with benefits such as faster, simpler, and less expensive dispute resolution, as well as the ability to restore good relations between the parties because the decision is made jointly.

Mediation is a method of settlement by involving a third party as a mediator in communication between the parties to the dispute, so that the differences of views between the parties can be united and understood for the possibility of making peace. The result of mediation, which is a mutual agreement, can be a complete settlement because mediation does not use the principle of *win or loss*, so that dispute resolution through mediation can provide comfort for the parties because the content of the agreement is the desire of each party.<sup>13</sup>

The Kediri Regency Land Office's dispute control and handling branch conducts mediation in accordance with the Minister of Agrarian and Spatial Planning/Head of the National Land Agency's Regulation 21 of 2020 on the Handling and Settlement of Land Cases. Mr. Riyanta explained that before the case is resolved through mediation, it must first go through the settlement stage, as outlined in Article 6 paragraph 1 of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 21 of 2020 Concerning the Handling and Settlement of Land Cases. The Kediri Regency Land Office's mechanism for implementing the settlement of disputes over the location of land parcels is as follows:

*First Complaint.* Parties who have complaints about their problems can make complaints in writing or orally at the complaint reception counter. The complaint must attach data in the form of the complainant's identity, photocopies of supporting data such as juridical data and physical data of the land as well as photocopies of other evidence. Basically, written complaints are the same as oral complaints, to the complainant who makes a written complaint, he will later be summoned by the Head of Dispute Control and Handling to provide an oral explanation related to the problem being complained about.

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<sup>12</sup> Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)*, ed. Elan Jaelani, *Angewandte Chemie International Edition*, 6(11), 951–952. (Bandung: Widina Media Utama, 2023), [http://repo.iain-tulungagung.ac.id/5510/5/BAB 2.pdf](http://repo.iain-tulungagung.ac.id/5510/5/BAB%202.pdf).

<sup>13</sup> Septi Wulan Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016," *Ahkam: Jurnal Hukum Islam* 5, No. 1 (2017): 1–16, <https://doi.org/10.21274/Ahkam.2017.5.1.1-16>.



In the case of oral complaints, interested people can directly come to the Kediri Regency Land Office, to be subsequently directed to the officer, namely the dispute control and handling section by expressing what problems are being faced. The complaint will be recorded by officers from the Land Office.<sup>14</sup> Furthermore, through the complaint, an assessment will be carried out and identified by the officer to find out whether the complaint material is included in the competence of the Land Agency or not.

If it turns out that it is not the competence of the Land Agency, then the officer will provide an explanation to the complainant and suggest that he submit his complaint to the agency authorized to resolve it. If the complaint material is included in the competence of the Land Agency, then an interview will be conducted with the complainant to check whether the material from the complaint has been reported or not.

*Second Case Study.* After complaints from the community, a case study will be carried out by the Kediri Regency Land Office. This case assessment is carried out to make it easier to understand the case being handled. The step taken by the Kediri Regency Land Office is to hold a coordination meeting. The coordination meeting was held by the dispute control and handling section to study and study more deeply about the problems experienced by the complainants using the data obtained related to the problem. The complainant's file is used as material to be analyzed and then checked for the physical completeness of the soil in question. The coordination meeting's final outcome takes the shape of opinions and assessments about whether or not the complaint can be further processed in compliance with existing regulations. The results of the case assessment form the basis for carrying out the Initial Case Title.<sup>15</sup>

*Third,* the initial title. The initial degree is not the same as the coordination meeting, the coordination meeting is still data collection while in the initial degree the required data must be available so that it can be used as a discussion and the participants have been specifically determined<sup>16</sup>. The initial title is an internal meeting held by the dispute control and handling section without involving the parties to the dispute to explain and review the land issue, so that it can be determined how the steps to handle and resolve a problem, and the initial degree activity is carried out with a discussion between the participants of the initial degree to find out a conclusion of settlement.<sup>17</sup>

*Fourth,* Research. The research stage is a stage to collect data that is still lacking, but if the data is complete, there is no need to conduct research so that it can be continued to carry out the mediation process or in accordance with the instructions for completion.<sup>18</sup> The purpose

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<sup>14</sup> Iswantoro, "Strategy and Management of Dispute Resolution, Land Conflicts at the Land Office of Sleman Regency," *Journal of Human Rights, Culture and Legal System* 1, no. 1 (2021): 1–18, <https://doi.org/10.53955/jhcls.v1i1.3>.

<sup>15</sup> Rasji, "Settlement of Policy Regulation Dispute Through Mediation," in *Proceedings of the Arbitration and Alternative Dispute Resolution International Conference (ADRIC 2019) Settlement*, vol. 472, 2019, 80–83, <https://doi.org/10.2991/assehr.k.200917.019>.

<sup>16</sup> Nur Annisa and Siti Nurhayati, "Settlement Of Disputes Over Multiple Land Certificates Related To Ownership Of Land Rights," *LITERACY: International Scientific Journals Of Social, Education and Humaniora* 2, no. 3 (2023): 209–23.

<sup>17</sup> Chenyang Zhang, "Settlement and Mediation," *Win in Chinese Courts*, 2023, 163–66, <https://doi.org/10.1007/978-981-99-3342-6>.

<sup>18</sup> Tatiana Stanislavovna Korobeinikova, "Areas of Concern in Mediation as a Way of Corporate Disputes Settlement," *SHS Web of Conferences* 118 (2021): 04016, <https://doi.org/10.1051/shsconf/202111804016>.

of the research stage is to collect physical data, juridical data, field data and information materials related to the disputed land object.

- a. Physical data containing land information maps
- b. Juridical data containing documents related to land ownership
- c. Field data contains facts that show real conditions, and land ownership and utilization that are the object of the case
- b. d. Information material is gathered from individuals interested in land activities, such as those who are familiar with the legal procedure or have a connection to the land in question.

Before continuing to the next stage, Mr. Riyanta explained that in certain cases, the settlement procedure is only up to the initial degree and then proceeded to the mediation stage, the case is classified as a minor case. This is in accordance with article 6 paragraph 3 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 20 of 2021 concerning the Handling and Settlement of Land Cases, which basically states that for the classification of medium or light cases, the handling can be carried out without going through all stages as referred to in paragraph (1)<sup>19</sup> Minor cases are complaints or requests for guidance that are technical administrative in nature, and the resolution is only accomplished through a letter of instruction for settlement issued to the complainant or applicant.

For cases that are classified as medium cases, the settlement is sufficient until the research stage and then continued with the mediation stage, such as the dispute over the location of land parcels that occurred in Kediri Regency. Medium cases are those that, if handled via the use of legal and administrative techniques, will not cause social, economic, political, or security disruptions.<sup>20</sup> In serious instances, the settlement procedure begins with the case assessment and ends with the final degree. Serious cases are those involving multiple parties and whose resolution and legal implications have the potential to cause social, economic, political, and security disruption.

*Fifth*, Mediation. After going through the process of the stages above, the next step is to mediate to find common ground on the problems faced by the complainant. Previously, the complainant would be informed in advance regarding the settlement of the case which would be resolved through the mediation process.

Mediation is carried out at the Kediri Regency Land Office in a specially designated mediation chamber. The mediation mechanism at the Kediri Regency Land Office is guided by Technical Instruction Number 05/JUKNIS/D.V/2007 concerning the Mediation Implementation Mechanism.<sup>21</sup> Mediation is an alternative to problem solving with the help of a mediator as a third party to achieve a solution that benefits the parties. It should be noted that the type of mediator used by the Kediri Regency Land Office is *an Authoritative Mediator*, namely a mediator as an authorized official. In this case, the mediator used is an official of the

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<sup>19</sup> Muhammad Rizaldi, Dian Aries Mujiburohman, and Dwi Wulan Pujiriyani, "Mediasi Sebagai Alternatif Penyelesaian Sengketa Tumpang Tindih Tanah Antara Hak Guna Usaha Dan Hak Milik," *Widya Bhumi* 3, no. 2 (2023): 137–51, <https://doi.org/10.31292/wb.v3i2.62>.

<sup>20</sup> Mega Puspa Kusumojati and Abraham Ferry Rosando, "Peran Badan Pertanahan Dalam Mereduksi Konflik Dan Perkara Sengketa Tanah Melalui Mediasi," *COURT REVIEW: Jurnal Penelitian Hukum* 1, no. 1 (2021): 1–23.

<sup>21</sup> Andhyka Martha, M. Citra Ramadhan, and Rizkan Zulyadi, "Implementasi Penyelesaian Sengketa Pertanahan Melalui Mediasi Oleh Kantor Pertanahan Kota Medan," *Journal of Education, Humaniora and Social Sciences (JEHSS)* 5, no. 2 (2022): 1408–18, <https://doi.org/10.34007/jehss.v5i2.1392>.

Kediri Regency Land Office who is competent in the field of disputes handled. For example, if the dispute is in the form of a survey dispute, then the official who has this competence is from the survey and mapping section.<sup>22</sup>

The process or stages of mediation at the Kediri Regency Land Office are carried out as follows:

*The first* mediation was carried out with the agenda of summoning the complainant in the mediation room of the Kediri Regency Land Office. On this agenda, the mediator will dig up initial information (caucus) and ask the complainant for information about the reason why the complainant applied for mediation. All information provided by the complainant will then be collected by the mediator and will be used as material to be able to find the common point of the problem.

Next, *the second* mediation. The second mediation was carried out with the agenda of summoning the complainant in the mediation room of the Kediri Regency Land Office. On this agenda, the mediator will provide information and explain to the complainant about the complaint from the complainant. Then the same as the first mediation, in the second mediation the mediator will dig up information and ask for information from the complainant to get the desired data. So, through the first and second mediation, the mediator gets data and information from the complainant and the complainant who will then draw conclusions to get a solution to the problems experienced.<sup>23</sup>

The next process is the third mediation. After the mediator digs up information and information from the parties, the next agenda is that the mediator will call both parties to attend the mediation session to conduct deliberation or negotiations together to resolve the problems complained about. In the third session when the mediation process took place, there were no specific guidelines for its implementation. The implementation is independent of the applicable legal provisions and depends on the ability of the mediator to resolve the dispute. The ability of mediators is needed to produce the desired decision for the parties to the dispute.<sup>24</sup>

Mediation is essentially the process by which parties address problems with the assistance of a mediator in order to reach a win-win agreement that does not affect the parties to the conflict. During the mediation process, the mediator will dilute the atmosphere between the two disputing parties in order to establish a familiar and non-rigid environment. The mediator will next explain his duty as an impartial mediator, as well as ensure both sides want to resolve the dispute through mediation by the National Land Agency. After that, the parties will be given the opportunity to convey their problems and arguments as well as alternative solution options offered, so that the mediator will draw a common thread from the problem and then use it as a limit for discussion so that the negotiation process can be directed and not widen from the problem.

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<sup>22</sup> Mahendra Tri Hartarto, Adonia Ivonne Laturette, and Jenny Kristiana Matuankotta, "Kedudukan Dan Peranan Kantor Pertanahan Sebagai Mediator Dalam Penyelesaian Sengketa Batas Tanah," *PAMALI: Pattimura Magister Law Review* 3, no. 1 (2023): 64–71.

<sup>23</sup> Leo Mardani and Isran Idris, "Pelaksanaan Mediasi Tentang Sengketa Perbatasan Tanah Di Kota Jambi," *Zaiken: Journal of Civil and Business Law* 2, no. 1 (2021): 47–63.

<sup>24</sup> Wita Sari Peranginangin and Devi Siti Hamzah Marpaung, "Penyelesaian Sengketa Tanah Yang Belum Bersertifikat Melalui Mediasi Oleh Badan Pertanahan Nasional," *Widya Yuridika* 5, no. 1 (2022): 191, <https://doi.org/10.31328/wy.v5i1.2493>.



Furthermore, the mediator will identify the major issue that arises so that it can be used as the focal point of mediation to reach a settlement agreement. The parties' alternative settlement option will then be generalized such that it is related to the problem. Both parties can suggest preferred resolution choices, and the mediator can impart other options or alternatives as an offer, which does not have to be accepted by the parties to the dispute<sup>25</sup>.

After the settlement options are collected and generalized, it will then be formulated in the form of a list of options to be then reviewed by each party related to accepting or rejecting the option, in which case the parties can consult with a third party such as lawyers or experts regarding the option to calculate the profits and losses for each party. Then the last process is to conduct final negotiations, the mediator will guide the parties to clarify and reconfirm the options that have been agreed, this clarification activity is carried out to ensure that the option is their choice to resolve the dispute voluntarily.<sup>26</sup>

The parties and mediators will next create and sign the collective agreement, giving them the right to bind the parties. The findings of the mediation will be recorded in the minutes of the Mediation Implementation, which include a peace agreement and follow-up of the mediation signed by the official/head of the settlement team/mediator.<sup>27</sup>

After the mediation process is completed, there are 2 (two) end points of the negotiations, namely:

a. An agreement is reached

Reaching an agreement means that the parties agree to agree on the results of the mediation and agree to reconcile. If the mediation results in an agreement, the mediation at the Kediri Regency Land Office is considered successful. In line with Article 44 paragraph 6 of the Minister of Agrarian Affairs/Head of BPN 21 of 2020 concerning the Handling and Settlement of Land Cases, the collective agreement will be transformed into a peace deed and registered at the Kediri Regency District Court to acquire a peace decision.<sup>28</sup> Furthermore, in terms of improving land administration, the Kediri Regency Land Office will improve according to the results of mediation based on the attachment:

- 1) Peace decision;
- 2) A peace deed; and
- 3) Documents regarding the land of the object of the case.

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<sup>25</sup> I Gede Artana and Deli Bunga Saravistha, "Mekanisme Jalannya Mediasi Penyelesaian Sengketa Tanah Di Pengadilan Negeri Semarang (Studi Kasus Putusan Pengadilan Negeri Semarang Nomor 53/Pdt.G/2022/PN Srp)," *AL-DALIL: Jurnal Ilmu Sosial, Politik, Dan Hukum* 1, no. 2 (2023): 16–22, <https://doi.org/10.58707/aldalil.v1i2.445>.

<sup>26</sup> Anastasia Yuli Susanti and Sabela Gayo, "The Use of Mediation as an Alternative Dispute Resolution in the Settlement of Banking Disputes," *International Journal of Research and Review* 10, no. 4 (2023): 330–39, <https://doi.org/10.52403/ijrr.20230441>.

<sup>27</sup> Eva Rahmawati, Siti Hajar, and Obed Bida, "Implementation of Land Dispute Resolution Policy Through Mediation at The Gayo Lues Land Office," *JDKP Jurnal Desentralisasi Dan Kebijakan Publik* 4, no. 2 (2023): 119–30, <https://doi.org/10.30656/jdkp.v4i2.7326>.

<sup>28</sup> Misbakhul Munir, Azis Budianto, and Rineke Sara, "Juridical Overview of Land Dispute Settlement," *Edunity : Kajian Ilmu Sosial Dan Pendidikan* 2, no. 1 (2023): 145–52, <https://doi.org/10.57096/edunity.v1i05.46>.

b. Not producing a deal

Not producing an agreement means that the parties do not find an agreement and reject the advice of the mediator so that mediation at the Kediri Regency Office is considered a failed mediation. In accordance with Article 44 paragraph 7 against mediation that does not result in an agreement or fails, the Land Office according to its authority makes a decision on the Case Settlement.<sup>29</sup>

## 2. Obstacles and Solutions of the Kediri Regency Land Office in Resolving Land Plot Location Disputes Through Mediation

According to the findings of the research, the dispute over the location of the land plot between the heirs of P and AY, which was resolved through mediation at the Kediri Regency Land Office, was a failed mediation because the complainant in this case, AY, as the owner of the Property Rights Certificate, did not respond to the Land Office's invitation to attend the mediation hearing.<sup>30</sup> To address this, the Kediri Regency Land Office attempted to invite the Complainant Party three (3) times, but there is still no good faith from the Complainant Party to attend the mediation, therefore the procedure cannot be completed.<sup>31</sup> The data obtained from the Kediri Regency Land Office as for the number of successful and unsuccessful cases resolved through mediation at the Kediri Regency Land Office, namely:

**Table 2.** List of Cases Successfully Resolved Through Mediation by the Kediri Regency Land Office in 2022-2024

Year	Number of Cases Resolved through Mediation	Mediation Failed	Mediation Succeeded
2022	2	1	1
2023	4	1	3
2024	2	2	-

Source: Kediri Regency Land Office

The interview with Mr. Riyanta revealed the challenges faced during mediation implementation at the Kediri Regency Land Office, including:

a. Absence of the parties to the dispute

The attendance of the disputing parties is critical to the mediation process. Mediation is essentially the process of working together with mediators to discover answers to problems and create a mutually beneficial agreement for both parties involved in a conflict.<sup>32</sup> This goal can be met if all parties participate in mediation and wish to address the issue peacefully. However, if one or both parties are not present

<sup>29</sup> Siti Rahmah et al., "Resolution of Land Disputes Through Mediation," *Mahadi: Indonesia Journal of Law* 3, no. 01 (2024): 51–62, <https://doi.org/10.32734/mah.v3i01.15763>.

<sup>30</sup> Sari, "Mediasi Dalam Peraturan Mahkamah Agung Nomor 1 Tahun 2016."

<sup>31</sup> Ulfah, Laelasari, and Mustaqiem, "Implikasi Pendaftaran Tanah Sistematis Lengkap (PTSL) Sebagai Upaya Pencegahan Konflik Sengketa Tanah Di Kecamatan Batang Kuis."

<sup>32</sup> Suyanto et al., "Ensuring Legal Certainty of Land Through Effective Registration Processes."

during the mediation, the process cannot be completed and will be hampered, resulting in unresolved difficulties.

- b. There is no will from each party that can be accepted by the other party

One of the keys to successful dispute settlement through mediation is each party's willingness to accept each other. Often, the mediation process does not go smoothly because the parties remain adamant in their respective opinions; both parties use emotions and refuse to listen to the other party's opinions; if it is compared to bargaining, nothing goes up or down. As a result, factors like these can cause both parties to fail to achieve an agreement in addressing the problem, as well as impede the mediation process.

In the event of disputes over land plot location, the Complainant Party's failure to respond to the invitation to attend mediation at the Kediri Regency Land Office is a barrier to settlement through mediation. According to Article 44 paragraph 3 of the Minister of Agrarian Affairs/Head of BPN 21 of 2020 on the Handling and Settlement of Land Cases, the Kediri Regency Land Office will re-invite the Complainant Party up to three (3) times<sup>33</sup>. If, after three (three) invitations, the Complainant Party remains absent, the mediation is ruled unsuccessful. In this case, the solution that can be provided by the Kediri Regency Land Office is to advise the Complainant to continue the case so that it is resolved through litigation at the Kediri Regency District Court.

The table above shows that the success rate of mediation at the Kediri Regency Land Office is influenced by the presence of the parties and the will of each party to accept each other. The Kediri Regency Land Office as the mediator does not have the right and authority to force the presence of the parties in mediation.<sup>34</sup>

#### **D. CONCLUSION**

The Kediri Regency Land Office carries out mediation in accordance with the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases. In this case, the mediator who is in charge of resolving land problems at the Kediri Regency Land Office is a Land Office official who has competence in the field of disputes handled. There are 2 (two) final results of mediation, namely reaching a mutual agreement and not resulting in a joint blockade. If a mutual agreement is reached, a collective agreement will be made so that it has legal force so that it binds both parties, but if it does not produce a mutual agreement, the mediation is a failed mediation. The factor that became an obstacle for the Kediri Regency Land Office in the process of resolving disputes over the location of land parcels through mediation was the absence of one of the parties to the dispute (the Complainant). To overcome this, the Land Office will re-invite the complainant 3 (three) times, but if the invitation is still not attended, the Kediri Regency Land Office will advise the Complainant to resolve the problem through litigation at the District Court. In addition, another obstacle is the absence of the will of each party to accept each other, so this can hinder the dispute resolution process through mediation.

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<sup>33</sup> Azminazilah et al., "Kepastian Hukum Pengenaan BPHTB Kepada Pemilik Tanah Dan / Atau Bangunan Yang Belum Bersertifikat Dalam Rangka Pendaftaran Tanah Sistematis Lengkap."

<sup>34</sup> Marpaung and Rahayu, "Disputes Caused By Incompatibility With the Land Registration Process."

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