

The Process of Dispute Resolution with Mediation in The Land Office of Batu City

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Abstract

The National Land Agency oversees government affairs in the land sector also has the authority to take administrative actions for resolving land disputes within its jurisdiction, playing a vital role in addressing land issues in Indonesia. According to the Regulation of the Minister of Agrarian Affairs also Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2020, the BPN Kota Batu operates as a vertical agency under the National Land Agency also is directly accountable to the Minister through the Head of the Regional Office. This office serves as a mediator in local land disputes. The author conducts empirical legal research, including direct interviews with the Head of the Dispute Control also Handling Section at the BPN Kota Batu adheres to proper procedures for mediation. Findings reveal that 1)the BPN Kota Batu adheres include 1)cooperation from the involved parties also 2)the mediator's capacity to facilitate dispute resolution effectively.

Keywords: National Land Agency; Land dispute; Mediation.

Abstrak

Badan Pertanahan Nasional mengawasi urusan pemerintahan di sektor pertanahan serta memiliki wewenang guna mengambil tindakan administratif dalam menyelesaikan sengketa tanah di wilayahnya, memainkan peran penting dalam menangani masalah pertanahan di Indonesia. Menurut Peraturan Menteri Agraria serta Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 21 Tahun 2020, Kantor Pertanahan Kota Batu beroperasi sebagai lembaga vertikal di bawah Badan Pertanahan Nasional serta langsung bertanggung jawab kepada Menteri melalui Kepala Kantor Wilayah. Kantor ini berfungsi sebagai mediator dalam sengketa tanah lokal. Penulis melakukan penelitian hukum empiris, termasuk wawancara langsung dengan Kepala Seksi Pengendalian serta Penanganan Sengketa di Kantor Pertanahan Kota Batu. Isu-isu kunci yang diteliti melibatkan proses mediasi guna menyelesaikan sengketa serta tantangan yang dihadapi selama mediasi. Temuan menunjukkan bahwa 1)Kantor Pertanahan Kota Batu mematuhi prosedur yang tepat guna mediasi sesuai dengan peraturan yang berlaku, serta 2)kendala yang dihadapi meliputi 1)kerja sama dari pihakpihak yang terlibat serta 2)kapasitas mediator guna memfasilitasi penyelesaian sengketa secara efektif.

Kata kunci: Badan Pertanahan Nasional; Sengketa tanah; Mediasi.





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A. INTRODUCTION

Land ownership is integral to human life, playing a vital societal role. Beyond its economic value as a future resource, it carries spiritual significance tied to the environment also survival. Thus, it must be managed wisely for both present also future needs. ¹ As stated in Article 33, Paragraph (3)of the 1945 Constitution, "the earth, water, also natural resources therein are controlled by the state also utilized for the greatest benefit of the people." Further land regulations are outlined in Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). Article 4, Paragraph (1)of the UUPA specifies that "as per state control, various rights over the surface of the earth, known as land, can be granted to also owned by individuals or legal entities, either individually or collectively," thereby ensuring land ownership rights in Indonesia. To establish legal certainty in land ownership, Article 19, Paragraph (1)of the Land Law mandates that "the government must conduct land registration across the territory of Indonesia in accordance with government regulations." Consequently, landholders are required to register their land to confirm legal certainty also provide proof of ownership, thereby supporting effective land administration.

Land registration culminates in the issuance of a land certificate by the National Land Agency, which serves as evidence of legal ownership. As per Government Regulation No. 24 of 1997 on Land Registration, land certificates verify rights such as ownership, business use, building use, waqf land, management, also mortgage rights. These certificates provide robust evidence of both legal also physical information, as long as they align with the details in the measurement letter also land book.² However, in practice, land rights holders are not always protected from land disputes. These conflicts often arise due to competing claims of ownership between individuals also legal entities. As a result, a thorough also mutually agreed-upon resolution is necessary to ensure justice in resolving such disputes.³

Based on the *Press Release of the Consortium for Agrarian Reform and Asia NGO Coalition for Agrarian Reform and Rural Development* on February 27, 2024, agrarian conflicts in Indonesia in 2023 were recorded at 241 conflicts, covering an area of 638,188 hectares of agricultural land, customary territories, fishing areas, and settlements of

¹ Yanua Hirma Rayi also Denny Suwondo, "Pelaksanaan Penyelesaian Sengketa Tanah Melalui Mediasi Di Kantor Pertanahan Kabupaten Rembang," *Konstelasi Ilmiah Mahasiswa Unissula (KIMU)*1, no. 1 (2021).

² Hizkia, dkk Natasha Hutabarat, "Peran Badan Pertanahan Nasional Dalam Penyelesaian Sengketa Kepemilikan Tanah," *PATIK: Jurnal Hukum* 10, no. 01 (2021): 61–68, https://ejournal.uhn.ac.id/index.php/patik.

³ Maryam, Abdullah also Titin Samsudin, "Penyelesaian Sengketa Tanah Melalui Mediasi," *Journal Hukum Islam* 4, no. 1 (2023): 14–27.



135,608 heads of families⁴. This figure is at the top of six other Asian countries, namely India, Cambodia, the Philippines, Bangladesh and Nepal. These are the figures recorded, so the real numbers on the ground are even higher.

Land disputes can be resolved through two methods: litigation also non-litigation. The litigation process involves resolving disputes through the courts, while non-litigation refers to settling disputes outside of the judicial system.⁵ Land disputes in Indonesia can be addressed through mediation, as outlined in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (ADR). Mediation serves as a nonlitigious approach, allowing parties to resolve conflicts amicably with the assistance of a neutral mediator. This method is particularly relevant in the context of land disputes, where traditional court processes can be lengthy and costly. Litigation is considered the last resort in the dispute resolution process, with parties expected to first attempt resolution through non-litigation methods. ⁶ Mediation is a non-litigation method for resolving land disputes. Regulation of the Minister of Agrarian Affairs also Spatial Planning No. 21 of 2020 on Handling also Settlement of Land Cases highlights the critical role of the National Land Agency or Badan Pertanahan Nasional (BPN) in facilitating mediation at the Land Office. Article 1, Paragraph (11)of this regulation defines mediation as a negotiation process aimed at achieving an agreement, overseen by the Ministry of Agrarian Affairs also Spatial Planning, the Regional Office of the National Land Agency, the Land Office, or authorized land mediators.

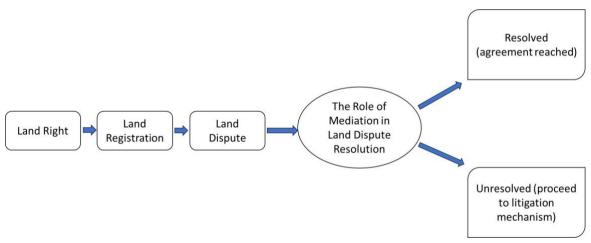


Figure 1. flowchart of land dispute resolution

Therefore, the author intends to examine the mediation procedures employed by the BPN Kota Batu in addressing land disputes also to identify the challenges encountered during the mediation process.

⁴ Konsorsium Pembaruan Agraria, 2024, Konflik Agraria di Indonesia Tertinggi dari Enam Negara Asia, <u>https://www.kpa.or.id/2024/02/27/konflik-agraria-di-indonesia-tertinggi-dari-enam-negara-asia/</u>, accessed November 18, 2024.

⁵ Juwita Tarochi, Budi Santosos, Irawati Boboy, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G. Pruitt serta Jefferey Z.Rubin," *Notarius* 13, no. 2 (2020).

⁶ Junaidi Tarigan Rosiana, "Analisis Yuridis Penyelesaiaan Sengketa Tanah Melalui Mediasi," Jurnal Rechiten: Riset Hukum serta Hak Asasi Manusia 4, no. 2 (2022): 32–40.



B. RESEARCH METHOD

This study employs an empirical legal research method, which examines existing legal provisions also their practical application to gather factual data for the research.⁷ Soerjono Soekanto states that there are various types of legal research, one of which is empirical legal research, which is often referred to as sociological legal research, in the form of research into legal identification and research into legal effectiveness. The approach used in this research is a qualitative descriptive approach. This research uses purposive sampling method, because researchers are not based on random, but based on considerations that focus on specific goals. The main data in this study were obtained from direct interviews at BPN Batu City with Mr. Ahmad Bedda, A.Ptnh.

C. RESULT AND DISCUSSION

1. Factors Causing Disputes

A dispute is marked by differences in opinion, arguments, debates, or disagreements, emerging when conflicting interests cause one party to feel disadvantaged. These issues typically arise from the personal interests of one or both parties, fueled by selfishness also a unilateral desire for land control. Such dynamics often surface during the mediation process, where an unwillingness to compromise or seek mutually beneficial solutions perpetuates the conflict. Consequently, the resolution sought by the parties aims to ensure neither side feels disadvantaged.⁸

The Head of the East Java Regional Office of the National Land Agency reports directly to the Minister, with the BPN Kota Batu serving as a vertical branch within Batu City. This office is responsible for developing also implementing policies to manage also prevent land-related disputes also conflicts. The Regulation of the Minister of Agrarian Affairs also Spatial Planning, or the Head of the National Land Agency of the Republic of Indonesia No. 21 of 2020, provides clear definitions for various terminologies associated with land cases, differentiating between disputes, conflicts, also land cases.

The regulation is an important guideline for BPN Batu City in carrying out its duties. These principles aim to ensure fair, transparent and efficient resolution, and minimize the potential for ongoing conflict. Each party to the dispute is given equal opportunity to present arguments and evidence and is impartial. The entire dispute resolution process is open and documented. The parties involved have access to information regarding the status and progress of the dispute handling. Decisions and recommendations are based on valid data, applicable regulations, and objective analysis. Internal monitoring mechanisms are in place to ensure accountability of officers in handling cases. Mediation is prioritized as an amicable solution to avoid lengthy and costly litigation. Dispute resolution aims to provide legal certainty over disputed land rights.

⁷ Ika Atikah, *Metode Penelitian Hukum* (Sukabumi: CV. Haura Urama, 2022).

⁸ Boboy, "Penyelesaian Sengketa Pertanahan Melalui Mediasi Berdasarkan Teori Dean G. Pruitt serta Jefferey Z.Rubin."



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Land disputes are defined as incidents involving individuals, legal entities, or institutions do not result in significant consequences. These disputes typically arise from issues such as inheritance, certificate issuance, the transfer of land rights through legal transactions (e.g., sales or donations), also land acquisition for public purposes..⁹ Conversely, land disputes with wider implications are referred to as land conflicts, which can encompass individuals, groups, organizations, legal entities, also institutions. A conflict may remain non-contentious if the aggrieved party decides to suppress their dissatisfaction rather than articulate it..¹⁰ A land case refers to a dispute concerning land is adjudicated through the court system. Complaints regarding cases under the BPN Kota Batu's jurisdiction are submitted by litigants for processing also resolution. In accordance with Article 5 of the Regulation of the Minister of Agrarian Affairs also Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 21 of 2020 on the Handling also Settlement of Land Cases, land disputes are categorized into three classifications:

- a. Serious Cases:Involving numerous parties, with complex legal implications, also potential to disrupt social, economic, political, also security stability.
- b. Medium Cases:Involving parties with clear legal also administrative aspects, whose resolution through legal also administrative channels would not destabilize socio-political, economic, also security conditions.
- c. Light Cases:Involving complaints or applications for technical also administrative guidance, which can be resolved by issuing a Settlement Instruction Letter to the applicant or complainant.

As per interview findings,¹¹it was found several complaints entered the BPN Kota Batu to carry out dispute resolution through mediation were as per land disputes arose, namely:

a. Land Boundary Uncertainty

Land boundary ambiguity arises when boundary markers are unclear, incorrect, or absent, leading to conflicts over ownership rights. This issue often stems from measurement errors, producing documentation inaccurately represents the location also boundaries outlined in the land certificate. In such cases, the complainant may seek mediation also a field survey to resolve also clarify the boundary discrepancies.

b. Problems concerning Inherited Land

This issue arises from disputes among heirs concerning the division of a particular portion of inherited land. Each heir asserts their entitlement to the land, leading to disagreements also feelings of unfairness regarding the distribution.¹² In this

⁹ Listijowati, "Upaya Penyelesaian Sengketa Pertanahan Melalui Mediasi," Justice Pro: Jurnal Ilmu Hukum 1, no. 1 (2021).

¹⁰ Rizky Alif. Alvian, Rezky Dellah. Ramadhani, also Achmad. Setiawan, *Melanjutkan Indonesia Dengan Reforma Agraria : Pandangan Anak Muda* (STPN Press, Panitia Lomba Essay PolgovDay, 2015).

¹¹ Wawancara dengan Bapak Ahmad Bedda, A.Ptnh (Kepala Seksi Pengendalian serta Penanganan Sengketa)pada 31 Juli 2024

¹² Ciko Yustio Akbar et al., "ANALISIS SENGKETA TANAH KELUARGA ANTARA AHLI WARIS YANG MASIH MEMILIKI HAK serta AHLI WARIS YANG SUDAH TIDAK MEMILIKI HAK," *Cross-Border* 5, no. 2 (2022): 1159–74.



instance, the complainant turned to the BPN Kota Batu to mediate the dispute, aiming to secure a compensation agreement represents the mutual consent of all parties.

c. Structural inequality in the control of land rights

Structural inequality in land rights refers to the unequal distribution of land control among individuals, groups, also broader society. This imbalance underscores a stark divide between those who possess land rights also those who either lack them or hold limited rights. As a result, the complainant submitted a grievance concerning inherited land ownership, where land rights were unequally divided among groups.

2. Mediation Implementation Process at the Land Office

Technical Guidance Number 05/JUKNIS/DV/2007 on Mediation Procedures also Regulation Number 21 of 2020 from the Minister of Agrarian Affairs also Spatial Planning on Land Case Management also Resolution offer detailed instructions for the mediation process at the BPN Kota Batu as follows:



Figure 2. Process of Mediation in BPN Kota Batu

a. Complaints

During the complaint process, Batu City residents can submit a written complaint to the BPN Kota Batu either at the complaint counter or through the Ministry's website. The submission must include various attachments, such as the identities of the involved parties, details of the dispute, also supporting evidence. Once the complaint is received, the counter officer reviews the file. If the submission meets the required criteria, the complainant is issued a receipt letter.



b. Review of the complaint report

The collection of data also legal information regarding the disputed land is reviewed as per the managed complaint signed by the responsible party. The processing team gathers details on the land's ownership or control, including written evidence, witness testimonies, and, if necessary, statements from the complainant. Should the collected data prove insufficient, a request will be issued to the relevant Land Office, summoning the complainant for clarification on land matters. This may involve assessing administrative, legal, also physical data, also obtaining a report with findings also any supporting documents. Once data collection is finalized, a Resume also Data Processing (RPD)document is drafted, which includes the problem file also a flowchart, also is reported to the section head by the Data Processor.

Following data collection, the dispute resolution officer reviews the complaint to determine if it falls under the ministry's jurisdiction. Disputes within this scope include:¹³

- a. Errors in procedure during the mapping and/or area measurement process.
- b. Errors in procedure in registering the affirmation and/or recognition of previous customary land rights.
- c. Errors in procedure in determining and/or registering land rights.
- d. Errors in procedure in identifying abandoned land.
- e. Overlapping rights or land rights certificates where one of the bases is clearly erroneous.
- f. Errors in procedure for maintaining land registration data.
- g. Errors in procedure in the issuance of replacement certificates.
- h. Mistakes in providing land data information.
- i. Errors in procedure in granting permits.
- j. Misuse of spatial utilization.
- k. Other errors in the application of laws also regulations.¹⁴

After completing data collection also processing, the individual responsible for dispute resolution conducts an evaluation. This assessment aims to identify the key issues, root causes, potential consequences, also feasible solutions, along with recommendations for resolving the conflict. Following the review of the data collection also analysis results, the Head of the Land Office directs the official in charge of the dispute to initiate the settlement process by bringing together the conflicting parties.

c. Invitation of Parties

The invitation to the contending parties is for the purpose of facilitating mediation at the Land Office, with a deadline of 14 days from the date of transmission. If a

¹³ Sahnan, M. Arba, also L. Wira Pria Suhartana, "AUTHORITY OF THE NATIONAL LAND AGENCY IN SETTLEMENT OF LAND DISPUTES," *Jurnal IUS Kajian Hukum serta Keadilan* 7, no. 3 (November 11, 2019): 436–50, https://doi.org/10.29303/ius.v7i3.714.

¹⁴ Sahnan, Arba, also Wira Pria Suhartana.



party refuses to participate, or if mediation cannot continue owing to non-responsiveness to three summonses, the procedure will be terminated. The parties are summoned to the dispute resolution conference also are urged to present pertinent documents or materials, if required. Each party is requested to submit supporting documentation also provide explanations concerning the ongoing land dispute.¹⁵

d. Mediation attempts conducted at the BPN Kota Batu:

At this stage, the mediator facilitates communication between the parties also aids in conflict resolution. The parties convene at a designated time also location. The mediation process, which involves multiple parties, consists of negotiations or dialogue guided by an impartial third party without decision-making authority.¹⁶

After responding to the BPN Kota Batu's invitation, the parties present their concerns also proposed alternative solutions. The mediator plays a crucial role in clarifying issues as per relevant laws also regulations, preventing misdirection, also keeping the mediation process focused on the main issue, ultimately promoting mutual understanding between the parties.¹⁷

After reaching a mutual understanding, the parties identify the primary issue or root cause of the problem, establishing a basis for discussions. This identification shapes the settlement framework. The outcomes of these negotiations do not have to rely solely on legal considerations; they can also be assessed from various perspectives, as long as they remain within legal boundaries.¹⁸

Once the parties achieve a common understanding of the issue, they can present proposals, leading to a mutually beneficial agreement. In this context, the Land Office, acting as a mediator, cannot impose its preferences, as the final decision rests with the parties. Mediation is deemed successful when the parties reach a consensus promotes reconciliation.¹⁹ Mediation aims to achieve a fair, win-win agreement for both parties, which is documented in writing. The State Administrative Officer is authorized to take further action, also the mediation results are recorded in the Minutes of Mediation, submitted for follow-up. For legal binding, both parties also the mediator must sign the Minutes.²⁰

The peace agreement from mediation is formalized in a deed of peace, which the parties register with the relevant District Court. This process grants the peace verdict legal authority also certainty, as specified in the Regulation of the Minister of Agrarian Affairs also Spatial Planning Number 21 of 2020 on the Management also Resolution of Land Cases.

¹⁵ Umar, Arsyad, Sasmiar Hasan, "Model Mediasi Penyelesaian Sengketa Tanah Dalam Perspektif Hukum Adat," *Hukum Adat Jurnal Inovatif* XII, no. 1 (2019): 122–40.

¹⁶ Hasan.

¹⁷ Suwardhie Sasro Prawira also Muhammad Ilyas, "Penyelesaian Sengketa Tanah Melalui Mediasi: Studi Kantor Pertanahan Kabupaten Bantaeng," *Journal of Philosophy (JLP)*1, no. 1 (2020).

¹⁸ Sasro Prawira also Ilyas.

¹⁹ Ade Sinta, Devi Siti, also Hamzah Marpaung, "Penyelesaian Sengketa Pertanahan Melalui Jalur Mediasi (Studi Pada Kantor Pertanahan Kabupaten Karawang)," *Al Qisthas Jurnal Hukum serta Politik* 12, no. 1 (2021): 66–78.

²⁰ Ria Andanari also Sigit Handoko, "Penyelesaian Sengketa Tanah Melalui Mediasi Di Kantor Pertanahan Kabupaten Kulon Progo," *Jurnal Kewarganegaraan* 3, no. 1 (2019).



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3. Problems in resolving land disputes through mediation at the BPN Kota Batu.

The mediation approach seeks to amicably resolve disputes with the help of a neutral mediator. However, challenges often arise from the parties involved, especially due to one party's lack of good faith, which hinders compromise also resolution. If a party fails to attend the mediation session, the process cannot proceed, also any unwillingness from the Respondent further obstructs progress. Additionally, the Land Office faces issues regarding the competency of its officers in mediation roles. Mediator training is a training program that aims to train prospective professional mediators. The training includes mediation theory and practice, as well as simulations to develop mediator skills.

Mediator training can be organized by the Supreme Court or an institution accredited by the Supreme Court. Upon completion of the training, participants will receive a mediator certificate issued by the Mediator Certification Institute. While some mediators hold accreditation, enhancing their credibility, not all Land Office representatives possess this qualification. As per PERMA Number 1 of 2008, Article 5, mediators are required to have certification demonstrating their commitment to professional dispute resolution. Consequently, those without certification can only perform functions as outlined in the Regulation of the Minister of Agrarian Affairs also Spatial Planning Number 21 of 2020 on the Management also Resolution of Land Cases.

D. CONCLUSION

The author's analysis indicates the National Land Agency functions as a mediator in land dispute resolutions, facilitating agreements between the parties involved. The mediator acts as an impartial third party, encouraging the expression of differing perspectives, ensuring objectivity, also confirming the parties' willingness to resolve their disputes through mediation. While National Land Agency mediators may intervene, such actions are limited to specific circumstances aimed at achieving settlements in alignment with land law. The success of mediation largely hinges on the commitment also efforts of the parties involved. Despite adherence to the procedures outlined in Technical Guidelines Number 05/JUKNIS/DV/2007 also the Regulation of the Minister of Agrarian Affairs also Spatial Planning Number 21 of 2020 regarding the Management also Resolution of Land Cases, challenges persist in the mediation process at the BPN Kota Batu. Lack of cooperation among the parties hinders agreement, further complicated by mediators' insufficient skills in effectively resolving issues.

The author's recommendation that can be used as input by related parties in the implementation of land dispute resolution through mediation is to optimize human resources, especially officials who are authorized to resolve land disputes through mediation by attending mediation training in order to obtain a mediator certificate so that they can demonstrate their competence as professional mediators



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