

THE USE OF MEDIATION AS AN ALTERNATIVE DISPUTE RESOLUTION IN THE SETTLEMENT OF AGRARIAN DISPUTES

Sabela Gayo

Fakultas Hukum Universitas Bhayangkara Jakarta Raya, Jakarta, Indonesia

Email: sabela.gayo@dsn.ubharajaya.ac.id

Abstract

In Indonesia the land dispute is a problem that always arises because it is related to one of the human needs, especially if there is currently an instruction to the settlement efforts of the land mafia in Indonesia. Usually land cases are always through the court diamana settlement of land cases through judicial channels a lot of shortcomings including very bureaucratic, time consuming labor and quite a lot of costs. Although the principle of dispute resolution in court is resolved with fast time and low cost but in reality it is difficult to implement. One way of Alternative dispute resolution settlement in agrarian dispute settlement is done through appropriate mediation, the management, assessment and handling of land cases which is the task of all levels of society in helping the task of the National Land Agency in resolving land cases can be resolved quickly.

Keywords: alternative dispute resolution; land; mediation

Introduction

In everyday life and often also in business activities, disputes or conflicts often arise. Conflict occurs because of change and conflict is a competing behavior between two or more people. Conflict occurs when two or more people race to achieve the same goal or acquire a limited number of resources. The onset of conflict is a sign of a crisis in human relationships, and the action that must be taken to resolve the conflict is to make efforts to improve the relationship. The terms conflict and dispute are two things that are conceptually different or the same and interchangeable. Some scholars argue that conceptually there is no difference between conflict and dispute, while others argue that the term conflict can be distinguished from the term dispute.

- a) the term conflict contains a broader sense than dispute, because conflict can include disputes of a latent nature.
- b) a dispute is a conflict that has arisen. Conflict refers to disputes that have or have not been identified or can be clearly identified. The dispute between the parties is clearly identified.
- c) the term conflict is more often found in the literature of social and political sciences, rather than the literature of Legal Sciences, while the term dispute is more often found in the literature of Legal Sciences.

The arrangement and arrangement of land in post-Independence Indonesia is the promulgation of Basic Rules of Agrarian principles, namely Law No. 5 of 1960 which is more familiar to us with UUPA. The purpose of the law is to lay the foundations for the preparation of the National Agrarian law which will be a tool to bring prosperity, happiness and justice for the state and the people, especially the peasant people in the framework of a just and prosperous society and then also to lay the foundations for the unity and simplicity of land law and to provide legal certainty regarding land rights for the people. UUPA is also a reference to the regulation of the rules governing the relationship of earth, water and space as well as the natural wealth contained therein. The need for land is not only known in the present but since man was created by Allah SWT and placed on Earth. Thus the land is a means and necessity that is very important for human life. Land is not only seen as an agrarian problem alone so far identified as mere agriculture, but has developed both the benefits and usefulness so that the negative impact is increasingly complex, even the land often causes shocks in the community as well as delays in the implementation of development.

Data on the number of land dispute cases recorded in the Justisia application of the Ministry of Agrarian Spatial Planning/ National Land Agency in the period 2015 to 2020 recorded 31,228 cases consisting of 11,540 disputes, 835 conflicts and 18,835 cases. From these data we can see that most of the 60% are included in the case of land disputes that are handling and resolving through the judiciary, 37% of disputes are land disputes on a relatively limited scale and 3% are conflicts that are land disputes that have had a wide impact.

The large number of land disputes at this time shows an increase in the number of disputes, conflicts and land matters while ideally the number of cases of disputes, conflicts and land affairs should be reduced. Settlement of land cases should be done with firmness in order to achieve legal certainty, measurable and complete. In the settlement of land cases there is a mechanism that can be taken through the path of litigation and non-litigation. Land cases are disputes, conflicts or land cases submitted to the Ministry of Agrarian spatial planning/ BPN and the ranks below to obtain handling and settlement in accordance with the provisions of applicable legislation. Land disputes are land disputes between natural persons, legal entities or institutions that do not have a wide impact while land conflicts are land disputes that have been tend to have a wide social impact. Settlement of land disputes through the court is included in the litigation group where in its implementation must follow the procedural law that has been established. One alternative to resolving land dispute cases outside the court is through a mediation mechanism. The mechanism of mediation implementation as one of the alternative land dispute resolution that needs to be optimized in its implementation either through the Land Office, court or independent Mediator.

That to resolve land cases that are effective, efficient and with legal certainty can be resolved through mediation. To reduce the existing weaknesses in dispute resolution through mediation, namely that its implementation depends on the good faith of the parties, mediation can be done in the manner specified in Perma Number 1 of 2008,

namely the implementation of land mediation carried out with the help of a certified mediator. To avoid default by one of the parties, the parties may submit a peace agreement to the competent court to obtain a peace deed by filing a lawsuit (Article 23 paragraph 1 Perma No. 1 of 2008). In this way, the agreement of the parties can be strengthened in the form of a peace act (*Acta van dading*). With the deed of peace, if one of the parties is in default, it can be applied for execution to the court.

Research Methodology

Thus, in principle mediation is a way of resolving disputes outside the court through negotiations involving third parties that are neutral (non-intervention) and impartial (impartial) and accepted by the parties to the dispute. The third party is called a mediator or mediator whose job is to assist the parties to the dispute in solving the problem, but does not have the authority to make decisions. With mediation, it is expected to reach a common ground in resolving the problems faced by the parties, which will then be poured as a mutual agreement. Decision - making is not in the hands of the mediator, but in the hands of the parties to the dispute. With the mediation venue, the parties can decide for themselves and choose where they want to hold this mediation. Mediation can be held anywhere in the world.

Results And Discussion

1. Alternative Dispute Resolution In Agrarian Dispute Resolution

History dated September 11, 2003, the chairman of the Supreme Court issued a regulation of the Supreme Court of the Republic of Indonesia (PERMA) no.02 of 2003, on the procedure for mediation in court. With the release of this PERMA revoke the circular of the Supreme Court No.1 year 2002 on the empowerment of the Court of First Instance implement the institution of peace, because it is considered incomplete. Consideration of the enactment of this PERMA is.

- a) the integration of mediation into the proceedings in court can be one of the effective instruments to overcome the possibility of accumulation of cases in court.
- b) the mediation process is faster, cheaper and can provide access to the parties to the dispute to obtain justice to obtain a satisfactory resolution of the dispute it faces.
- c) institutionalization of the mediation process into the judicial system can strengthen and maximize the function of judicial institutions in dispute resolution.

PERMA No.02 year 2003 revised with the release of PERMA no.01 of 2008, the Perma is expressly regulated which is the object (type of case that can be mediated), namely all civil disputes submitted to the court of First Instance, except :

- a) cases resolved through Commercial Courts.
- b) cases resolved through the Industrial Relations Court.
- c) objection to the decision of the Consumer Dispute Resolution Agency (BPSK).
- d) objection to the decision of the business competition Supervisory Commission (KPPU).

The mediation process outside the court is not regulated in the legislation, the regulation is only limited to the use of mediation, but not about the process of organizing mediation. therefore, the mediation process is based on the experience of mediation practitioners and expert research. Absence of settings the mediation process in the law is both a strength and a weakness of the mediation process. The absence of a mediation stage arrangement is seen as the power of mediation is because it provides flexibility for both parties and mediators.

To organize the mediation process according to the needs of the parties in accordance with the type of problem of the case. It is referred to as weakness because the lack of regulation shows the lack of standardization and certainty. The mediation process is basically not regulated in laws and regulations, so the mediation process tends to be universal and not legalistic. Therefore, knowledge of mediation processes and techniques can be obtained through written works of mediation practitioners, especially mediation practitioners in English-speaking countries, especially the United States and Australia.

Provisions of Article 23C Presidential Regulation No.10 of 2006 on the National Land Agency, which said that the deputy for the assessment and handling of disputes and conflicts at the National Land Agency held an alternative implementation function of solving problems, disputes and land conflicts through forms of mediation, facilitation and others. Provisions Of Article 23 Of Presidential Regulation No.10 of 2006 it was the government's policy to use mediation as one way to resolve land disputes. Previously, the approach was carried out by deliberation and consensus for the settlement of land disputes conducted by the National Land Agency. The use of new mediation is explicitly stated in Presidential Regulation No.10 of 2006, there are no detailed legal provisions on the use of mediation in the context of land disputes. The existing provisions namely Technical Guidelines published by the National Land Agency no.05 / Juknis / D.V/2007 on Mediation implementation mechanism. One of the laws that form the basis is law no.30 of 1999 on arbitration and alternative Dispute Resolution, in this law expressly stipulates that the use of Arbitration and alternative Dispute Resolution is voluntary, thus the use of mediation for land disputes is also voluntary.

There are 3 types of operational models of land disputes, namely

- a) land disputes, namely land disputes whose parties consist of individuals or groups.
- b) land conflicts, namely land disputes involving governments, institutions or groups of indigenous peoples against groups of citizens in a missal.
- c) Land cases, namely land disputes whose process has been through a trial in court and subsequently responded by the National Land Agency.

Article 39 paragraph (4) regulation of the head of the Land Agency (PERKABAN) No.3 year 20011 States, before the settlement decision is set to do the title of the case, after that new mediation with the parties to the dispute. at the BPN regional office level, dispute resolution is included in the field of assessment and handling of land disputes and conflicts.

There are several models of land dispute resolution. The following is explained by the dispute resolution model based on law no. 30 of 1999. Dispute resolution under this law is preceded by a direct meeting by the parties within a maximum of 14 days and in the event of a Pakatan agreement it is set forth in a written agreement. If the parties are unable to reach an agreement within 14 days, upon the written agreement of the parties the dispute or disagreement is resolved through ban tuan mediator. If the appointed mediator is also unable to help resolve the dispute or the mediator does not manage to bring the two parties together, then the parties may contact an arbitration institution or Alternative Dispute Resolution institution to appoint a mediator.

After the appointment of a mediator by lem бага arbitration or Alternative Dispute Resolution institutions, within a period of 7 days, the mediation effort must be initiated. Based on Article 6 paragraph (6) of Law No. 30 of 1999, efforts to resolve seng keta through a mediator appointed by lem бага arbitration or alternative institutions to resolve the dispute must be able to resolve within a maximum of 30 days and obtain a written agreement signed by all parties concerned. The agreement on the settlement of disputes or disagreements in writing is final and binds the parties to be implemented with ITI kad baik and must be registered in the District Court no later than 30 days from the marking nganan. The settlement agreement of disputes or disagreements must be carried out within a maximum of 30 days from the date of listing. If peace efforts are not achieved, the parties, based on the agreement in writing, may submit their settlement efforts through arbitration or ad-hoc arbitration.

The model of dispute resolution through mediation based on Law No. 30 of 1999 is that the parties must first undergo negotiation efforts. Furthermore, if negotiations fail, the parties may appoint a mediator. In Law No. 30 of 1999, in principle, it gives the parties discretion to determine who the mediator is on the basis of their agreement.

2. The Law Powers The Agrarian Mediation Agreement

Some stages in land mediation are:

- a) first, the preparation to bring the two parties together. In relation to these preparations, a Tor media must know the subject matter and sit down the problem. Analyze whether the problem can be solved through mediation or not. Furthermore, a tentative dispute handling team was formed, because there are times when the authorized structural officials can directly organize mediation. Furthermore, prepare the materials needed to mediate the subject of the dispute, then make a review resume so that the mediator has mastered the substance of the problem, straighten the problem, suggestions and even warnings if the agreement sought will tend to violate regulations in the land sector, for example me violating the interests of the holder of dependent rights, the interests of other heirs, violating the nature of the provision of rights. In this stage ends with the determination of time and forging mediation.

- b) second, the invitation. This invitation is submitted to the interested parties, relevant agencies (if deemed necessary) to hold a dispute resolution deliberation and asked to bring along the necessary data/information. The meeting structure is arranged with the position of Tem pat sitting "U seat" or circle.
- c) Third, mediation activities. This activity was initiated by an effort to overcome barriers between parties (personnel relations between parties). So that the atmosphere between the two sides of the dispute is more fluid, familiar and not rigid. It is at this initial stage that the mediator needs to provide explanations, among others: (A) as an impartial third party (neutral position); (b) the will of the parties is not limited; (c) the position of the parties and the mediator's own position must be neutral; (d) the key of this session is the affirmation of the willingness of the parties to resolve disputes through mediation and by the mediator of the National Land Agency of the Republic of Indonesia; and (e) in certain matters based on their authority (authoritative mediator may intervene in the process of seeking agreement on the disputed issue (not impartial), to place the agreement to be reached in accordance with land law. This needs to be understood by the parties so as not to cause a priori conjecture and clarification of the parties.
- d) fourth, equalize understanding and set the agenda of deliberation. The parties are asked to convey their problems and alternative settlement options offered, so that the common thread is drawn per problem so that the negotiation process always focuses on the issue (issue). Here there can be misunderstandings both about the problem, the type related to the dispute or things related to the definition of state land status and dual indivi rights. It takes effort/agreement to equalize understanding of things. The Mediator / BPN must provide correction if the understanding of the agreed issue is not in accordance with the laws and regulations, so that there is no error, selanjutnya agenda of the deliberation.
- e) fifth, identify interests. This identification is done to determine the actual subject matter, as well as whether there is relevant si as material for negotiation. The subject matter should be focused in the subsequent mediation process. If there is a deviation the mediator should remind to return to the focus of the problem. The interests that the mediation focuses on can determine the license agreement. The interest here does not have to be seen from the legal aspect only, it can be seen from other aspects as long as it is possible to conduct negotiations and the results do not violate the law.
- f) sixth, generalization of the options of the parties.
- g) Seventh, determination of the selected option.
- h) eighth, final negotiations.
- i) ninth, formalization of agreement on dispute resolution. Formulated in the form agreement or agreement. With the agreement substantially mediation has been

done. Each mediation activity is poured Da-lam mediation minutes as a report material to the authorized officials to ditin-d follow up in accordance with the regulations that are-sell. In order to have binding powers the minutes are signed by the parties and the mediator.

Mediation agreement is defined as an agreement reached by the parties with the help of a mediator to resolve or end a dispute. Article 39 Of Law No. 14 of 2008 on freedom of Public Information states :” the decision of the Information Commission derived from the agreement through mediation is final and binding”. This provision does not expressly mention that the decision of the Information Commission has an executorial title, so the understanding of jurists about the provisions of Article 39 may vary.

Article 6 paragraph (7) of law no.30 of 1999 on arbitration and Alternative Dispute Resolution, confirms that the agreement on dispute resolution in writing is final and binding on the parties to be implemented in good faith and must be registered in the District Court within 30 days of signing the mediation agreement. Article 72 Regulation Of The Head Of The National Land Agency No.3 of 2011 mentioned the criteria for resolving land disputes, one of which is with Category 3, namely by mediation.

The legal force of the mediation agreement in land disputes, that is, if the land has been certified, it can be executed because in the certificate there is a symbol of the garuda bird which is the same function as the court's decision which reads “For the sake of Justice based on the Godhead of the Almighty” , because the condition of a new decision can be executed if it has irah irah for justice based on the Godhead of the Almighty and if in the decision there is a symbol of the Garuda bird. If the land has not been certified then the power of the mediation depends on the parties who do so because the mediation is done voluntarily without coercion. This is if we connect with Presidential Regulation No. 1 of 2008, which orders every district court judge to examine civil cases, must mediate first.

Conclusion

Mediation provided for in law no.30 of 1999 on arbitration and Alternative Dispute Resolution can be used for completion of land disputes, with 3 stages of the mediation process, namely the preparation stage, the stages of mediation meetings and post-mediation stages. The legal power of land dispute resolution with mediation can be executed because if the land dispute has had a certificate because the Garuda bird symbol is equal in strength to irah-irah for justice based on Godhead.If it has not been certified, it depends on the parties who mediate because mediation is done voluntarily. BPN as an institution related to land disputes should be able to realize mediation in the BPN environment by making rules to be able to involve independent mediators to be involved in alternative Dispute Rosoluiton in agrarian disputes that are certified and competent so that not only employees or the BPN environment can become agrarian mediators.

BIBLIOGRAFI

- Amriani, Nurnamingsih. (2012). *menyelesaikan masalah perdata melalui pengadilan dengan cara mediasi alternatif*. PT. Raja Grafindo Persada.
- Gautama, Sudargo. (2010). *Aneka Hukum Arbitrase*. Bandung: PT Citra Aditya Bakti, 1996. \Ali, Zainudin, *Metode Penelitian Hukum*, (Jakarta : Sinar Grafika).
- Hamidi, S Gayo, A. Sitompul. (2021). *Juridical Analysis on The Procurement Of Goods/Service Of The Government To Realize Good Governance (Research Studies In The Department Of Human Settlement and Layout Batam City)*. International Journal Of Research and Review.
- J, Salindeho. (1978). *Masalah Tanah dalam Pembangunan*. Penerbit Sinar Grafika, Jakarta.
- Murad, Rusmadi. (1999). *“Penyelesaian Sengketa Hukum Atas Tanah.”* Bandung : Alumni.
- Rachman, Sofia. (2010). *“Alternatif Penyelesaian Sengketa Pertanahan.”* Jurnal Cita Hukum.
- Rahmadi, Takdir. (2011). *Mediasi Penyelesaian Sengketa melalui Pendekatan Mufakat*. (Rajawali Pers).
- Sitompul, A, P Hasibuan, M. Sahnan. (2021). *The Morality Of Law Enforcement Agencies (Police, Prosecutor’s Office, KPK) In Money Laundering With The Origin Of The Corruption* (pp. 55–63). pp. 55–63. European Science Review.
- Sitompul, A., & Sitompul, M. N. (2020). The Combination Of Money Laundering Crime With The Origin Of Narkotics Crime To Islamic Law. *In Proceeding International Seminar of Islamic Studies*.
- Sitompul, A. (2020). *he Criminal Replacement Of Fine In Law Of Money Laundering Number 8 Of 2010 (Case Study In North Sumatera)*. International Journal Of Creative Research Thoughts.
- Sitompul, A. (2022). E-Procurement System In The Mechanism Of Procurement Of Goods And Services Electronically. *International Asia Of Law and Money Laundering, 1(1)*, 59–60.
- Sri Hajati, Agus Sukarmadji, Srim wanarsih. (2014). *Model Penyelesaian Sengketa Pertanahan Melalui Mediasi Dalam Mewujudkan Penyelesaian Yang Efisiensi dan Berkepastian Hukum*. Jurnal Dinamika Hukum.
- Sutiyoso, Bambang. (2008). *Hukum Arbitrase dan Alternatif Penyelesaian Sengketa*. Yogyakarta: Gama Media.

Sabela Gayo

Wijayanto, Agus. (2021). *RB : Makalah Pada Lokakarya Pencegahan Sengketa dan Konflik Pertanahan di Hotel Melia Purosani Yogyakarta.*

Yani, Gunawan Widjaja dan Ahmad. (2003). *Hukum Arbitrase.* Jakarta: PT. Raja Grafindo Persada.

Copyright holder:

Sabela Gayo (2022)

First publication right:

Syntax Literate: Jurnal Ilmiah Indonesia

This article is licensed under:

