

LAND DISPUTE RESOLUTION THROUGH MEDIATION

Meta Permata Sari^{1*}, Surya Perdana², Farid Wajdi³

^{*1}Universitas Muhammadiyah Sumatera Utara

^{*1}email: metapsari10@gmail.com

Abstract: In land disputes concerning land can occur between individuals or between individuals with various disputed Legal Entities. Every land dispute issue can be resolved out of court first through the mediation process. However, if the dispute that occurs cannot be resolved peacefully or through mediation, then the last resort that can be done is to request a settlement in court. The procedure for resolving land disputes through mediation is a complaint by the disputing parties to the Land Office. Furthermore, the complaint is submitted to the Head of the Land Office to be disposed of to the Head of the Conflict Handling Section for Disputes and Cases to study the completeness of the administration of the complaint in question. Furthermore, the complaint is handled by the subsection for handling disputes, conflicts and cases by collecting data, analyzing, and reviewing the complaint. Then the disputing parties are summoned to carry out the mediation process. At the stage of starting mediation, the mediator establishes personal relations between the parties to prevent disputes between the parties, to ease the atmosphere between the parties and explain the role of the mediator.

Keywords: Dispute, Land, Mediation.

Introduction

Agrarian law is something that greatly affects people's lives because in agrarian law there are regulations on land where the people live. Law Number 5 of 1960 concerning Agrarian Principles is the legal basis as well as a fortress of national agrarian law, especially in prioritizing land redistribution for poor farmers, upholding the social function of land and prohibiting private sector domination in the agrarian sector. Land plays a very important role in the lives of the Indonesian people so that it is regulated in the Constitution of the State of Indonesia. For human life, land has a very important role because in reality there will be a relationship between humans and land forever. In this case, it can be described that the relationship between humans and land is very close because land is the capital of human life.

In Law Number 1 of 1960 concerning Agrarian Principles, Land is defined as the surface of the earth. However, in reality there are still many individuals who take advantage of conditions where there are weaknesses in law enforcement so that there is an increase in a number of land disputes. Land disputes are unavoidable in today's era, in addition to being caused by weak law enforcement officers, they are also caused by various very high land needs in today's era while the number of land plots is limited. Land disputes are disputes that arise due to conflicts of interest over land.

There needs to be improvements in the field of land management and use for the welfare of the community and especially in legal certainty in it. The government has made various efforts to resolve land disputes quickly in order to avoid the accumulation of land disputes, which can be detrimental to the community because the land in dispute cannot be used. In resolving land disputes, there are several resolution processes that can be carried out. The first is the dispute resolution process through litigation in court and the settlement process

through cooperation outside the court. The judicial process usually fails to meet common interests, adds new problems, and results in slow reconciliation of hostilities. On the other hand, it creates an agreement in the out-of-court process, which is a "two-way solution," cooperates and concludes comprehensively, and maintains good relations. What will be discussed in this article is discussing the general symptoms or causes of land disputes in Indonesia which have been mutually known that land is a very important thing in the dynamics of development and land disputes have become a classic problem for society. In land disputes relating to land can occur between individuals or between individuals with various disputed Legal Entities. Every land dispute problem can be resolved outside the court first through the mediation process. However, if the dispute that occurs cannot be resolved peacefully or through mediation, then the last resort that can be done is to request a settlement in court. So this article will explain about agrarian law, land disputes, causes of land disputes and the process of resolving land disputes.

Literature Review

1. Land Dispute

In the legal realm, it can be said that a dispute is a problem between two or more people where both of them are questioning a particular object. This happens because of a misunderstanding or difference of opinion or perception between the two which then gives rise to legal consequences for both (Limbong, 2011). A land dispute certainly has more than one subject, whether it is between individuals, groups, organizations or even large institutions such as State-Owned Enterprises (BUMN) or the state. The legal status between the subject of the dispute and the land that is the object of the dispute can be the owner, mortgage holder, buyer, recipient of rights, tenant, manager, cultivator, and so on. In essence, land cases are a conflict of interest in the land sector between anyone, for example between individuals and individuals, individuals and legal entities, legal entities and legal entities and so on. In relation to the above, in order to ensure legal certainty as mandated by the Basic Agrarian Law Number 5 of 1960, the land case in question can be given a response/reaction/resolution to the stakeholders (community and government).

According to Robbins, conflict or dispute arises because there are conditions that have caused it (antecedent conditions). These conditions, which are also the source of conflict, consist of three categories, namely communication, structure, and personal variables (Robbins, 1996).

Method

A study cannot be said to be research if it does not have a research method (Koto & Faisal 2021). The research method is a process of collecting and analyzing data that is carried out systematically, to achieve certain goals. Data collection and analysis is carried out naturally, both quantitatively and qualitatively, experimentally and non-experimentally, interactively and non-interactively (Koto, 2020). The research method used is normative juridical research, namely legal research conducted by examining literature or secondary data (Koto & Zainuddin 2022). In qualitative research, the process of obtaining data is in accordance with the research objectives or problems, studied in depth and with a holistic approach (Rahimah & Koto, 2022).

Result and Discussion

Regulation of the Head of BPN No. 3 of 2011 concerning Management of Assessment and Handling of Land Cases formulates that what is meant by land disputes according to article 1 number 2 of BPN regulation No. 3 of 2011, hereinafter abbreviated as disputes, are

land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact, while land conflicts according to article 1 number 3 of BPN regulation No. 3 of 2011 are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have had a broad socio-political impact. This means that BPN has the authority. Resolve land disputes, both in the form of disputes and land conflicts. The definition of land disputes can also be seen in the regulation of the Minister of Agrarian Affairs/KBPN No. 1 of 1999 concerning Procedures for Handling Land Disputes. It is concluded that both disputes and land conflicts are substantively differences or disputes between two or more parties regarding land resources. Based on the impact dimension, conflict has a broader impact when compared to the term dispute. Land conflicts that have been and are ongoing and may continue to occur if no objective solution is found will always be an interesting topic to discuss and resolve in the context of future implementation (Alting, 2013).

According to Mudjono, there are several factors that cause land disputes. First, incomplete regulations; Second, inconsistency of regulations; third, land officials who are less responsive to the needs and amount of land available; fourth, inaccurate and incomplete data; fifth, incorrect land data; sixth, limited human resources tasked with resolving land disputes; seventh, incorrect land transactions; and eighth, the existence of settlements from other agencies, resulting in overlapping authority.

Disputes are a continuation of the problem. A problem will turn into a dispute if the problem cannot be resolved. Mediation is a highly anticipated resolution method to resolve disputes fairly. This is because the mediation process is a deliberation between the disputing parties, so that if mediation produces results, the result is a win-win solution, so that the parties are satisfied with the results of the deliberation. Land apparatus, both central and regional, are required to actively resolve land disputes and conflicts through mediation as a top priority by prioritizing the neutrality of the National Land Agency as a mediator. As a vertical agency under the auspices of and directly responsible to the minister through the Head of the Regional Office of the National Land Agency, using a form of land dispute resolution with a mediation process that has been implemented for approximately the past 6 years. That this mediation title is carried out based on the Regulation of the Head of the National Land Agency Number 3 of 2011 concerning the Management of Land Case Studies and Handling.

The settlement of land disputes through mediation at the Land Office is handled by the Dispute, Conflict and Case Subsection which is under the coordination of the Land Problem Handling and Control Section. The Dispute, Conflict and Land Case Handling Subsection has the task of preparing technical guidance materials, coordination, monitoring, implementing prevention, handling and resolution of disputes/conflicts and land cases, as well as analyzing and preparing proposals for cancellation of land rights based on court decisions or peace results, as well as evaluation and reporting, as referred to in article 56 (a) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 38 of 2016 concerning the Organization and Work Procedures of the Regional Offices of the National Land Agency and the Land Office.

Conclusion

The procedure for resolving land disputes through mediation is a complaint by the disputing parties to the Land Office. Furthermore, the complaint is submitted to the Head of the Land Office to be disposed of to the Head of the Dispute and Case Handling Section to study the administrative completeness of the complaint in question. Furthermore, the

complaint is handled by the dispute, conflict and case handling subsection by collecting data, analyzing, and reviewing the complaint. Then the disputing parties are summoned to carry out the mediation process. At the stage of starting mediation, the mediator establishes personal relations between the parties to prevent disputes between the parties, to ease the atmosphere between the parties and explain the role of the mediator.

References

- Benhard Limbong. (2011). *Konflik Pertanahan*, Margaretha Pustaka, Jakarta.
- Husein Alting, “Konflik Penguasaan Tanah di Maluku Utara: Rakyat Versus Penguasa dan Pengusaha”, *Jurnal dinamika Hukum*, Vol.13, No. 2, Mei 2013.
- Koto, I., & Faisal, F. (2021). Penerapan Eksekusi Jaminan Fidusia Pada Benda Bergerak Terhadap Debitur Wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774-781.
- Rahimah, R., & Koto, I. (2022). Implications of Parenting Patterns in the Development of Early Childhood Social Attitudes. *International Journal Reglement & Society (IIRS)*, 3(2), 129- 133.
- Simatupang, R. S. A. (2024). Pelaksanaan Sistem Peradilan Pidana Anak Di Indonesia Perspektif Nilai Keadilan. *Jurnal Yuridis*, 11(1), 54-63.
- Stephen P. Robbins. (1996). *Organizational Behavior, Concepts, Controversies, Applications*, prentice-hall International Editions, USA, Bernhard Limbong.
- Zainuddin, Z. (2022). Implementation Of The Change Of The Chairman Of The Labuhan Batu Selatan Regional People's Representative Council. *International Journal Reglement & Society (IIRS)*, 3(1), 11-18.