

SETTLEMENT OF LAND DISPUTES THROUGH MEDIATION

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Abstract: In essence, a land case constitutes a conflict of interest in the land sector between one party and another, as a concrete example between an individual and an individual, an individual with a legal entity, a legal entity with a legal entity and so on. For legal certainty mandated by the main agrarian law, settlement of land dispute cases, among others, to provide response/reaction/settlement to interested parties (community dan government). In addition, it provides equal treatment to the parties and the opportunity in a transparent manner to present their opinion on the issue. In certain cases, they may be given the freedom to determine their own dispute settlement formulas.

Keywords: Settlement, Dispute, Land, Mediation.

Introduction

Living humans always carry out activities on the ground so that every time humans are always in contact with the land, it can be said that almost all human life activities, either directly or indirectly, always require land. When humans die, they still need land for burial. So important is land for human life, so everyone will always try to own and control it. With this, it can lead to a land dispute in the community. The dispute arises as a result of an agreement between 2 or more parties in which one of the parties demands / feels that they have received injustice.

The recent emergence of land dispute cases in Indonesia has reaffirmed the fact that during Indonesia's independence, the state was still unable to guarantee land rights to its people. Law No. 5/1960 concerning the Basic Agrarian Law (UUPA) was limited to marking the start of a new era of land ownership, which initially developed into individual ownership.

1. Problem Formulation

The formulation of this paper is how to resolve land disputes by means of mediation and knowing the implementation of mediation according to applicable regulations.

2. Research Objectives

The purposes for writing this final report are as follows:

- a. To find out how to resolve land disputes by means of mediation.
- b. To find out the implementation of mediation according to the applicable regulations.

Discussion

1. Definition of Soil

The term "land" in this discussion can be understood with various meanings, so its use needs to be defined so that it is known in what sense the term is used. In land law the term "land" is used in a juridical sense, namely covering the surface of the earth, this is based on Article 4 of the Basic Agrarian Law (UUPA) it is stated that; "On the basis of the right to control from the State ..., various rights over the surface of the earth are determined which are called land which can be given and owned by people". Land rights include rights over certain parts which are limited on the surface of the earth.

Land is given to and owned by people with the rights provided by the LoGA to be used or utilized. Therefore, Article 4 Paragraph (2) of the Basic Agrarian Law (UUPA) states that land rights not only give the authority to use a certain part of the surface of the earth in question which is called land ", but also the body of the earth on under it and the water and space above it, thus what is owned by the rights to the land is the land, in a certain sense of the earth's surface, but the authority to use what is sourced from that right is extended to include the use of part of the earth's body that is under it. land, water and the space above it.

According to A. Hamzah, land conflicts are termed offenses in the land sector, which in general can be divided into two parts, which include: (1). Land conflicts that are regulated in the criminal law codification, namely land conflicts (offenses) which are regulated in several Articles scattered in the criminal law codification (KUHP); (2). Land conflicts that are regulated outside the codification of criminal law, namely land conflicts (offenses) specifically related to land laws and regulations outside the codification of criminal law.

2. Definition of Land Disputes

In essence, a land case is a conflict of interest in the land sector between one party and another, as a concrete example between an individual and an individual; individuals with legal entities; legal entity with legal entity and so on. In connection with the foregoing, for legal certainty mandated by the UUPA, the said land case can be given response / reaction / settlement to interested parties (community and government).

According to RusmadiMurad, the definition of a land dispute or it can also be said to be a dispute over land rights, namely:

The emergence of a legal dispute that starts with a complaint by a party (person or entity) containing objections and claims for land rights, both regarding land status, priority, and ownership with the hope of obtaining an administrative settlement in accordance with the provisions of the applicable regulations.

Conflict in the legal sense is a difference of opinion, a dispute of understanding, a dispute between two parties regarding rights and obligations at the same time and in the same situation. Referring to this definition, it can be understood that the word "conflict" has a broader meaning, in land cases, conflicts related to criminal proceedings, as well as in civil case proceedings and state administrative case processes.

3. Mediation

a. Definition of Mediation

Etymologically (language), mediation comes from the Latin *mediare* which means "being in the middle" because the person who is doing the mediation (mediator) must be in the middle of the person in dispute. In terms of terminology (terms) there are many opinions which give different emphases on mediation. The definition provided by the National Alternative Dispute Resolution Advisory Council defines mediation as follows:

"Mediation is a process in which the parties to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavor to reach an agreement. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation where by resolution is attempted."

(Mediation is a process in which the conflicting parties, with the assistance of a dispute resolution practitioner (mediator) identify the disputed issues, develop options, consider alternatives and attempt to reach an agreement. In this case a mediator does not have a decisive role in relation to the content / material of the dispute or the outcome of the dispute resolution, but he (the mediator) can provide suggestions or determine a mediation process to seek a resolution / settlement), so in brief it can be described that mediation is a process of party resolution - warring parties to reach

b. Mediation Model

There are several models of mediation that need attention. Lawrence Boulle, professor of law and associate director of the Dispute Resolution Center, Bond University argues that these models are based on classical models but differ in terms of objectives to be achieved and how mediators view their positions and roles. Boulle said there are four models of mediation, namely: settlement mediation, facilitative mediation, transformative mediation, and evaluative mediation.

Settlement mediation, also known as compromise mediation, is a mediation whose main purpose is to encourage compromise from the demands of the two conflicting parties. In this model of mediation, the desired type of mediator is one who is of high status even though he is not very skilled in mediation processes and techniques. The role that the mediator can play is to determine the bottom lines of disputants and persuasively encourage disputants to both lower their positions to the point of compromise.

Facilitative mediation which is also referred to as interest-based mediation and problem solving is a mediation that aims to prevent disputants from their positions and negotiate the needs and interests of disputants from their rigid legal rights. In this case the mediator must be an expert in the process and must master mediation techniques, although mastery of the material on the matters in dispute is not very important. So the mediator must be able to lead the mediation process and promote a constructive dialogue among disputants, as well as increase negotiation efforts and seek agreement.

In the Transformative mediation model, which is also known as therapeutic mediation and reconciliation, is a mediation that emphasizes looking for the underlying causes for the emergence of problems among disputants, with the consideration of improving the relationship between them through recognition and empowerment as the

basis for resolution (solution) of disputes. which exists. In this model, the mediator must be able to use professional therapy and techniques before and during the mediation process and raise the issue of relations through empowerment and recognition.

Meanwhile, evaluative mediation, also known as normative mediation, is a mediation model that aims to seek agreement based on legal rights in the areas anticipated by the court. The mediator must be an expert and master the disputed areas even though he is not skilled in mediation techniques. The role that the mediator can play in this case is to provide information and advice as well as persuasion and provide predictions about the results that will be obtained from the mediation.

4. Things that cause land disputes

According to the Head of Central BPN, there are at least three main things that cause land disputes:

- a. The administrative problem of land certification is not clear. The result is that there are two people who have their respective certificates.
- b. Uneven distribution of land ownership. This imbalance in the distribution of land ownership for both agricultural and non-agricultural land has created imbalances both economically, politically and sociologically. In this case, the grassroots community, especially the farmers / land cultivators, bear the heaviest burden. This unequal distribution of land cannot be separated from economic policies that tend to be capitalistic and liberal. In the name of the development of land cultivated by farmers or land belonging to indigenous peoples, investors are taken over at low prices.
- c. Legality of land ownership based solely on formal evidence (certificates), without regard to land productivity. As a result, legally (de jure), it may be that a lot of certified land is owned by companies or big investors, because they have bought it from farmers / land owners, but the land has been neglected for a long time. Maybe some people underestimate this land dispute issue with one eye, even though this problem is a problem that must be immediately sought a solution. Why is that? because land disputes have the potential for conflicts between races, ethnicities and religions.

5. Provisions on the procedure for conducting mediation at the National Land Agency office

Land dispute resolution includes handling land problems by BPN itself as well as handling follow-up problem solving by other institutions. In connection with the proposed land issues, BPN has the authority of its own initiative to resolve the problems in question. The legal basis for the authority of BPN as stated explicitly is stated in the Decree of the Head of BPN Number 6 of 2001 concerning the Organization and Work Procedure of BPN.

Based on the provisions of Article 1 paragraph (1) PMNA / KBPN No. 1 of 1999 concerning Procedures for Handling Land Disputes, land disputes are differences of opinion regarding:

- a. The validity of a right;
- b. Grant of land rights;
- c. Registration of land rights including transfer and issuance of proof of rights between the parties concerned.

Meanwhile, Maria S.W. Sumardjono outlines the typology of cases in the land sector which can be divided into five groups, namely:

- 1) cases relating to people's cultivation of plantation lands, forestry, and others;
- 2) cases relating to violations of land reform regulations;
- 3) cases relating to access to provision of land for development;
- 4) civil disputes with respect to land issues;
- 5) disputes relating to ulayat land.

The handling of land issues through mediation institutions by BPN is usually based on two main principles, namely:

- a) Formal truths from the facts that underlie the problem in question;
- b) The free will of the disputing parties to the disputed object.

In order to find out the position of the case, it is necessary to carry out juridical, physical, and administrative research and assessment. The decision to settle land disputes or problems is the result of testing the truth of the facts of the disputed object. The output is a problem solving formula based on true or false aspects, *das Sollen* or *das Sein*.

In the context of resolving the dispute problem, in order to provide balanced treatment to the parties, it is given the opportunity in a transparent manner to submit an opinion on the matter. In addition, in certain cases they can be given the freedom to determine their own formulations for solving the problem.

In this case, BPN only follows up on the implementation of decisions administratively as a formulation for resolving the problems they have agreed on. Based on the authority to resolve problems by means of mediation, it can have an influence on the decision to resolve the problem so that in addition to realizing justice and benefit, it is also in the context of legal certainty and protection, thus mediation by BPN is authoritative.

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In general, land management can be seen from the public and private aspects. From the public aspect, land is controlled by the State to be used for the greatest welfare of the people. Based on this, the State has the authority to regulate the land sector. From the private aspect, land rights contain the authority for the right holder to use the land and perform legal actions. So, the control, ownership, use and utilization of land by the right holder is limited by statutory regulations. It is the interests of the community and the interests of the State that cause disputes in the land sector to be completely resolved through pure mediation institutions.

Settlement of land disputes including through mediation by the National Land Agency needs to be based on legitimate authorities based on statutory regulations. This is important as the basis for BPN to become a mediator in resolving land disputes because land is controlled by aspects of public law and private law, not all land disputes can be resolved through mediation institutions.

Only land disputes that are within the full authority of the right holders can be resolved through mediation institutions. Therefore, the agreement in the context of dispute resolution through mediation is subject to restrictions. This is intended so that the mediation decision does not violate the law and can be implemented effectively in the field. If there is a definite settlement, then there are problems that must be resolved, the case originates in a civil dispute related to land issues, and in the dispute involves parties, namely the plaintiff and the defendant.

In general, the procedure for resolving land disputes through this mediation institution is carried out by both parties to the dispute, namely by appointing BPN as the mediator and witnessed by witnesses. Settlement of disputes at the land office is carried out in accordance with technical guidelines number 05/juknis /D.V/2007 concerning the mechanism for implementing mediation and Regulation of the Minister of Agrarian Affairs no. 11/2016 on the settlement of land cases.

The level of success is influenced by the obstacles in the mediation process of the disputing parties who are sometimes more emotional. If the parties use the services of a lawyer, there are several attorneys who prefer to win cases in court and even the absence of one of the parties in the mediation process.

The national land agency's general effort in resolving State land disputes is that every dispute that is complained of will be subject to a land dispute study to determine the root and causes of the problem. Furthermore, the BPN will carry out the handling of land dispute cases by examining complaint data with existing data stored in the BPN office or other related institutions /agencies to facilitate dispute resolution. BPN also conducts field research to investigate disputed land objects.

Furthermore, the BPN that handles the fields of disputes, conflicts and land cases under the coordination of the head of the BPN office shall resolve land cases according to the data obtained.

The BPN will invite and also propose to carry out mediation for the disputing parties to attend and resolve the land dispute. The BPN party facilitates the disputing parties and also provides decisions with its authority and the results of the studies and research results carried out. However, if the dispute does not find a resolution that matches the wishes of each party, the parties in the district can continue the settlement of the land dispute through court channels.

Dispute resolution does not always have to be done in court, but can be done alone between them on the basis of deliberation and consensus, and most importantly there is a sense of kinship, because this method does not damage the kinship between them. However, if the deliberation to reach a consensus fails, then usually they bring the problem to the village or the land office, in this case the village head or the Head of the Land Office who helps the settlement, in this case they only act as a mediator or are often referred to as a mediator.

Land disputes and problems arise because of the mandate as formulated in Law No. 5 of 1960 (LN of 1960) is not run properly. The UUPA does not regulate how to resolve land disputes or problems, but only explicitly formulates what law enforcers should do.

According to the provisions of Article 2 of the UUPA, it is requested that the Government regulate, determine and administer the designation, use, supply, maintenance

(P4T), legal relations between people and land and legal actions between people and the person concerned with land. If the legal provisions that are regulated experience irregularities in their implementation, then a situation called land problem or dispute arises. According to Sunarjati Hartono stated that things like the one above also arise because of the changing needs that occur in society. Differentiation that occurs in society requires attention from the Government by planning the development of its legal system.

6. The Power of Evidence in Land Dispute Resolution

Proof, according to Prof. R. Subekti is meant by proving something, namely convincing the judge about the correctness of the arguments or arguments put forward in a dispute. Strength of Evidence, In general, the power of proof of written evidence, especially authentic deeds has three kinds of evidentiary powers, namely:

- a. The power of formal proof. It proves between the parties that they have explained what is written in the deed.
- b. The power of material proof. It proves between the parties that the events mentioned in the deed have actually occurred.
- c. Binding strength. To prove between the parties and the third party, that on that date the deed concerned had appeared before the public official and explained what was written in the deed.

Because it involves a third party, it is stated that the word authentic has the power of legal proof of exit. A certificate is a land book and a measuring letter after it is bound together with a cover paper whose form is determined by government regulation. Certificate Evidence Strength, consisting of:

1) Positive System

According to this positive system, a given land certificate is valid as proof of absolute land rights and is the only proof of land rights.

2) Negative System

According to this negative system, everything stated in the land certificate is deemed true until it can be proven otherwise (incorrect) in court.

Closing

Conclusion

From the above explanation, it can be concluded that the role of the mediator is to help solve problems between the disputing parties to understand their respective views by paying attention to even the smallest things because in mediation everything is very useful in dispute resolution. So that there will be discussions and exchange of ideas regarding issues that may become problems. The purpose of this mediation is to solve problems in a family manner with the help of a mediator without having to go through a court. So the mediator must be approved by both parties so that a mediator cannot side with one of the parties and must be fair according to the facts obtained.

Suggestions

The mediator in every land dispute settlement must be able to make wise decisions, so it is not permissible to choose a mediator arbitrarily. Because the mediator is the key to resolving land dispute problems.

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