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Implementation of Land Dispute Resolution Through Mediation

ABSTRACT

This study discusses the understanding of land disputes from the perspective of the concept of dispute resolution through mediation and its inhibiting factors. As is known, land disputes are a social problem that governments everywhere face. Since the issuance of Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) No. 11 of 2011, the ATR has full authority over land disputes. This study explores the extent of understanding of this regulation. The research method used is the normative juridical method. The conclusions obtained are process of land disputes is proper by the rule; inhibiting factor in nonjudicial have several problems that effecting to mediation process.

Kata Kunci: dispute problem, land dispute, mediation, ATR/BPN

INTRODUCTION

Every land dispute requires resolution, either through litigation or non-litigation. For your information, litigation resolution is the resolution of a problem through legal channels, namely the courts. Meanwhile, non-litigation dispute resolution is a settlement outside the courts. Non-litigation resolution is often referred to as alternative dispute resolution. Article 1, number 10 of Law No. 30 of 1999, defines alternative dispute resolution as an out-of-court settlement institution through consultation, negotiation, mediation, conciliation, or expert assessment.

In the case of disputes, the Ministry of Agrarian Affairs and Spatial Planning (ATR) can take the initiative to provide dispute or conflict resolution facilities through mediation. Based on the above issues, this study examines land dispute resolution through mediation at the Bandar Lampung City Land Office.

RESEARCH METHOD

This research employs a normative juridical approach, a legal research method that focuses on the study of positive legal norms, statutory provisions, expert doctrines, and court decisions relevant to the problem. This approach aims to provide an overview of the mechanisms by which the criminal justice system operates in drug abuse cases, while also assessing its effectiveness both theoretically and in practice. Furthermore, this research incorporates an empirical juridical approach, through case studies of several court decisions and analysis of data obtained from relevant law enforcement officials.

RESULT AND DISCUSSION

Mediation Implementation

According to ATR Regulation No. 11 of 2016, the Ministry of ATR can facilitate land dispute resolution through mediation. This is stated in Article 38 of PM ATR/KBPN No. 11 of 2016. It states that mediation in resolving disputes is conducted based on the principle of deliberation to reach consensus for the benefit of all parties. The goal is to ensure openness and analytical rigor; produce collective and objective decisions; minimize legal challenges arising from dispute and conflict resolution; and gather information/opinions from all disputing parties and other factors considered, facilitating the resolution of disputes and conflicts through deliberation.

Mediation lasts a maximum of 30 days. Based on interviews with respondents, the mediation process facilitates deliberation between the disputing parties. In this regard, the role of the mediator is crucial. The presence of a mediator can accommodate the parties' arguments and then provide impartial guidance to either party.

The duration of mediation is approximately 30 days. This time is used to wait for the disputing parties to enter the mediation process. In some cases, disputing parties intentionally delay the process to further their own interests in winning the dispute. This delay can lead to the opposing party becoming bored while waiting for the mediation process to begin, leading to a decision to terminate the mediation process.

Mediation is essentially a dispute resolution effort outside of litigation, aimed at reaching an amicable agreement between the parties. Each mediation session must be recorded in a report, which serves as administrative evidence. This report contains a description of the main points of the case, a chronology of the issues, and the outcome of the mediation process. In practice, there are two forms of record keeping: the first, the mediation report, signed by the mediator and formalized in a deed. The second, the Mediation Report, is more formally signed by officials from the Ministry of Agrarian Affairs and Spatial Planning, the Regional Office of the National Land Agency, and/or the local Land Office, the mediator, and the disputing parties. Therefore, this report plays a crucial role as an official document explaining the mediation process and its outcomes.

However, mediation can be declared invalid if one or even all disputing parties fail to attend the mediation session. The presence of the parties is essential, as without them, communication and deliberation, which could lead to an agreement, are impossible. If a mutual agreement is reached during the mediation process, this agreement is usually formalized in a settlement agreement. Registration of this agreement with the District Court Clerk is not the responsibility of the mediator, but rather the responsibility of the disputing parties. The mediator only facilitates the process of reaching an agreement but is not responsible for any subsequent administrative steps. The parties are given full authority to determine whether the agreement will be registered with the District Court. In other words, implementing the agreement rests entirely with the commitment and responsibility of the parties.

The legal provisions related to this matter are stipulated in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land

Agency Number 11 of 2016, which does not explicitly require registration of the deed of agreement with the District Court. However, referring to Article 6 paragraph (7) of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, it states that if an agreement is reached, the document must be registered with the District Court in the location of the disputed land. This registration must be completed within a maximum of 30 (thirty) days of signing. With this registration, the deed of agreement gains stronger standing, is final, and is binding on the parties. However, its implementation remains highly dependent on the good faith of the parties involved.

If at a later date a situation arises where one party fails to sign the deed of agreement, the document lacks enforceable force even though it has been registered with the District Court. This means that the deed cannot be enforced through court enforcement mechanisms. This principle aligns with Article 1338 of the Civil Code, which stipulates that every legally entered into agreement is valid as law for the parties making it. This article embodies the principle of pacta sunt servanda, which states that an agreement is binding like law, and the principle of consensualism, which emphasizes that the validity of an agreement arises from mutual agreement. Therefore, the parties bound by a mediation agreement are obliged to comply with the agreement's contents as a form of respect for the law and a moral responsibility to maintain good faith in dispute resolution.

Inhibiting Factors

The low success rate of mediation in resolving land disputes is primarily influenced by two main categories: legal and non-legal factors. From a legal perspective, regulations governing land dispute resolution, specifically Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (PM ATR/BPN) Number 11 of 2016 concerning Land Dispute Settlement, do not pose significant obstacles to mediation practices. In fact, this regulation provides a clear legal basis for the National Land Agency,

through the Land Office, to handle land disputes more effectively. With this provision, the mediation process can be carried out more quickly, more precisely, and with legal certainty, so that legal factors are essentially no longer the primary cause of low mediation success.

The most dominant obstacles in mediation practice originate from non-legal aspects. Some of these include the following:

a. Lack of Good Faith from the Parties

It is not uncommon to find parties using mediation not as a means to achieve peace, but rather to delay the resolution of the case. This can take the form of feigning forgetfulness, dishonesty, or attempts to conceal the facts. For example, in determining heirs, a sub-district head or village head may sign the document but ignore the presence of one of the heirs, claiming they forgot, so their name is not included in the list of heirs. This attitude poses a serious obstacle to the mediation process.

b. Low Participation of the Disputing Parties

Another factor is the minimal active involvement of the parties. Often, one party fails to attend the mediation invitation, or both parties find it difficult to make time to attend. It is even common for one party to be reluctant to meet the other party in person. As a result, the National Land Agency (BPN) is forced to adjust its schedule to accommodate the parties, resulting in the mediation process lasting more than 30 days, exceeding the established deadline.

c. Limited Human Resources

The Land Office, particularly the Sub-Division for Handling Disputes, Conflicts, and Land Cases, frequently faces a shortage of manpower. With a significant number of cases in a region handled by only around two employees, the workload becomes unbalanced. This situation results in suboptimal land case resolution and the potential for exceeding the 30-day deadline stipulated in regulations. Therefore, additional assistance is needed to ensure more effective dispute resolution.

d. Limited Number of Certified Mediators

Another obstacle is the small number of certified mediators at the Land Office. Government-organized mediator training programs have not been fully targeted, resulting in a limited number of competent, officially certified mediators. This undoubtedly hinders the effectiveness of mediation, as the presence of professional mediators is key to successful dispute resolution.

e. Lack of Strict Sanctions

To date, the National Land Agency (BPN) has not established clear and firm sanctions for parties who intentionally obstruct mediation. As a result, invitations to mediation are often perceived as unilateral and ignored. This lack of clarity in sanctions weakens the legal standing of the mediation process for the disputing parties.

CONCLUSION

Based on the research results and the discussion in the previous chapter, several conclusions can be formulated as follows. First, regarding the implementation of mediation in land disputes. The mediation process in land disputes essentially adheres to applicable legal provisions, although in practice there are still some deviations from formal regulations. First, according to Article 38 paragraph (2) of the Minister of ATR/BPN Regulation Number 11 of 2016 concerning the Settlement of Land Cases, mediation should be completed within a maximum of 30 (thirty) days. However, in practice, the mediation process often lasts beyond this specified time limit. Article 39 paragraph (1) of the same regulation explains that mediation participants should consist of a processing team, ministry officials, a mediator, the disputing parties, and relevant experts or specialists. However, practice in the field shows that mediation participants generally only involve the mediator and the disputing parties, with experts or specialists only being brought in when deemed absolutely necessary.

Second, regarding factors inhibiting mediation. From a legal perspective, no significant obstacles were found in resolving land disputes through mediation. However, from a non-legal perspective, there are a number of obstacles that significantly affect the effectiveness of the mediation process. These obstacles include: the presence of parties who do not act in good faith and use mediation as a means to delay the resolution of the case; the presence of attitudes of pretending to forget or dishonesty in providing information during the mediation process; the low level of participation of the disputing parties, for example by not accepting invitations to attend; limited human resources in the Sub-Division for Handling Problems and Land Control at the Land Office, which results in suboptimal dispute handling; and the still minimal number of mediators available in that unit.

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