


Alternative Land Dispute Resolution Outside the Court Through Mediation

Irwan

Faculty of Law, Puhuwato University

Article Info	ABSTRACT
<p>Keywords: Alternative Land Dispute Resolution, mediation</p>	<p>Land disputes are issues that always arise and are always relevant from time to time. Basically, land dispute resolution can be done in two ways, the most commonly used is dispute resolution through the courts and out of court through mediation. The process of dispute resolution through mediation is not something new in the cultural values of the nation, because the soul and nature of Indonesian society are known for their familial and cooperative nature in solving problems. In civil cases, dispute resolution through mediation has the highest legal force as long as it is carried out together and does not violate the provisions of applicable laws. The purpose of this study is to determine the advantages of alternative land dispute resolution outside the courts through mediation. The research method used is normative research using primary and secondary legal materials. Legal materials are obtained through literature studies such as books, journals, legislation and other documents related to the research. The results of the study explain that most Indonesian people feel that land dispute resolution through mediation can be implemented quickly because it does not rob or suppress individual freedom and delivers values of togetherness (community).</p>
<p>This is an open access article under the CC BY-NC license</p> 	<p>Corresponding Author: Irwan Faculty of Law, Puhuwato University bangsabung11@gmail.com</p>

INTRODUCTION

Land as a gift from God Almighty is a natural resource that is very much needed by humans to meet their needs, both directly for their lives such as for farming or housing, or for carrying out business, such as for trade, industry, agriculture, plantations, education, construction of other facilities and infrastructure (Suardi, 2005: 1). The Basic Agrarian Law hereinafter abbreviated as (UUPA) states that the state determines the types of land rights granted to individuals and legal entities. UUPA is a national agrarian law that is a designer of customary law (Boedi Harsono, 1989: 3). In UUPA there are elements of religious communalism of the National Land Law concept that are applied in the legal institution of National Rights. According to Boedi Harsono (2002: 30) it is indirectly said that the legal institution of "National Rights" is indeed not explicitly mentioned in UUPA as a form of land ownership rights. The terminology "National Rights" is given by agrarian law scholars to describe the relationship between the Indonesian nation and the territory of Indonesia. In the UUPA, this relationship is stated in Article 1 paragraph (2) of the Republic of Indonesia Law Number 5 of 1960 concerning Basic Agrarian Principles, which reads: "All the earth,

water and space, including the natural resources contained therein in the territory of the Republic of Indonesia as a gift from God Almighty, are the earth, water and space of the Indonesian nation and constitute national wealth."

Based on the attachment to Law Number 17 of 2007 concerning the National Long-Term Development Plan for 2005-2025 in CHAPTER IV concerning the direction, stages, and priorities of long-term development for 2005-2025, Point IV.1.5, to realize more equitable and just development, several things need to be done as mentioned in point 11. In that point, it is stated that it is necessary to implement an efficient and effective land management system; in addition, it is necessary to enforce the law on land rights by applying the principles of justice, transparency, and democracy. It is also necessary to improve the control, ownership, use, and utilization of land through the formulation of various land reform implementation regulations and the creation of tax incentives/disincentives that are in accordance with the area, location, and use of land so that people in the lower economic class can more easily obtain land rights. In addition, it is necessary to improve the legal system and land legal products through an inventory and improvement of land laws and regulations by taking into account customary community rules, as well as increasing efforts to resolve land disputes through administrative, judicial, and Alternative Dispute Resolution (ADR) authorities.

In Indonesia, the process of resolving disputes through Alternative Dispute Resolution (ADR) is not something new in the cultural values of the nation, because the soul and nature of Indonesian society are known for their familial and cooperative nature in solving problems. In various ethnic groups in Indonesia, they usually use a method of resolving deliberation and consensus to make decisions. For example, in the Batak community, in their customary *runggun* forum, disputes are resolved through deliberation and family, in the Minangkabau community, there is a peace judge institution which generally acts as a mediator and conciliator in resolving a problem faced by the local community (Sujud Margono, 2004: 38). UUPA as a national agrarian law is a designer of customary law (Boedi Harsono, 1999). In the Civil Code, land is classified as private law. However, in reality, land regulation is full of government intervention. In practice, land dispute resolution is not only carried out in court but also usually carried out outside the court through a negotiation process to obtain an agreement between the parties. The purpose of this study is to determine the advantages of alternative land dispute resolution outside the court through mediation.

RESEARCH METHODS

The research method used is normative research using primary and secondary legal materials. Legal materials are obtained through literature studies and then analyzed qualitatively. The main topic of study is law which is conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discoveries in in concreto cases, legal systematics, synchronization levels, comparative law and legal history. The data in this writing are secondary data, namely library materials that include official documents, library books, laws and regulations, scientific works, articles, and

documents related to the research material. Primary legal materials, namely all legal materials/materials that have a legally binding position. Primary legal materials consist of laws and regulations related to research and secondary legal materials, namely in the form of materials or materials related to and explaining the problems of primary legal materials consisting of books and literature related to alternatives for resolving land disputes outside the court through mediation.

RESULTS AND DISCUSSION

Source of Land Disputes.

Land disputes or conflicts are chronic and classic problems and last for years or even decades and are always everywhere. Land disputes and conflicts are a form of problem that is complex and multidimensional (Sumarto, 2012: 2). It has been an inherent phenomenon in the history of human culture and civilization, especially since the agrarian era where land resources began to play an important role as a production factor to meet human needs (Hadimulyo, 1997: 13). According to Rusmadi Murad (Rusmadi Murad, 1999: 22-23), land rights disputes, namely: the emergence of legal disputes begins with complaints from a party (person/body) containing objections and demands for land rights, both regarding land status, priority, and ownership with the hope of obtaining administrative resolution in accordance with applicable regulations.

According to the Regulation of the Minister of Agrarian Affairs/Head of BPN Number 1 of 1999 concerning Procedures for Handling Land Disputes, Article 1 point 1 explains that Land Disputes are differences of opinion regarding the validity of a right, the granting of land rights, and the registration of land rights including their transfer and the issuance of evidence of rights, between interested parties or between interested parties and agencies within the National Land Agency.

Land disputes occur because land has an important position, which can prove the independence and sovereignty of its owner. Land has a function in the context of state integrity and a function as basic capital in order to realize the greatest possible prosperity of the people (Abdurrahman, 2004: 1). The importance of the position of land for the Republic of Indonesia can be seen in the provisions of Article 1 of Law Number 5 of 1960 concerning Basic Agrarian Principles which states:

1. The entire territory of Indonesia is a unified homeland of all Indonesian people who are united as the Indonesian nation.
2. All earth, water, and space including the natural resources contained therein in the territory of the Republic of Indonesia as a gift from God Almighty are the earth, water, and space of the Indonesian nation and are national wealth.
3. The relationship between the Indonesian nation and the earth, water and space referred to in paragraph (2) of this Article is an eternal relationship.
4. In the sense of earth, in addition to the surface of the earth, also includes the land beneath it and is under water.
5. In the sense of water, includes both inland waters and the territorial sea of Indonesia.
6. What is meant by outer space is the space above the earth and water referred to in paragraph (4) and paragraph (3) of this Article.

Based on these provisions, it can be understood that for the Indonesian people, land has a very close and eternal relationship, so that the position of land for the Indonesian people is a complete unity that cannot be separated from one another. Furthermore, in the provisions of Article 2 paragraph (1) of the Basic Agrarian Law, it is emphasized that on the basis of the provisions in Article 33 paragraph (3) of the Basic Law and matters as referred to in Article 1, the earth, water, and space including the natural resources contained therein are at the highest level controlled by the state as an organization of power for all the people. State control so that the earth, water, and natural resources contained therein, which are placed in the highest control, are used to realize prosperity for all the people of Indonesia. According to Rusmadi Murad (2003: 6-8) land disputes that arise every year indicate that the handling of land policies in Indonesia has not been able to run as expected. Several factors that cause land disputes include:

1. Administrasi pertanahan pada masa lalu kurang tertib.
Administrasi pertanahan mempunyai peranan yang sangat penting dalam upaya mewujudkan kepastian hukum. Penguasaan dan pemilikan tanah pada masa lalu, khususnya tanah adat, sering kali tidak didukung oleh bukti-bukti administratif yang tertib dan lengkap dimana penguasaan dan pemilikan tanah yang data fisiknya berbeda dengan data administratif dan hukum.
2. Tumpang tindih peraturan perundang-undangan.
Tanah merupakan subsistem sumber daya agraria dan sumber daya alam yang mempunyai hubungan yang sangat erat, baik dari segi hubungan antar subsistemnya maupun dari segi hubungannya dengan manusia/masyarakat dan negara. Kurangnya keterpaduan peraturan perundang-undangan di bidang sumber daya agraria dan sumber daya alam dengan peraturan perundang-undangan di bidang pertanahan, bahkan dalam beberapa hal tampak saling bertentangan, sering kali menimbulkan konflik penguasaan, pemilikan, penggunaan dan pemanfaatan tanah.
3. Implementation of land law is inconsistent.
As a result of the lack of synchronization of these regulations, conflicts of authority and conflicts of interest arise, so that land law is often less consistently applied. This greatly affects the quality of guarantees of legal certainty and legal protection. In the midst of the reform era, there is a lack of harmonization in order to realize the demands of reform, namely the supremacy of law, openness and siding with the interests of the people. Of these three things, the supremacy of law has not received balanced attention from all elements of the nation. This can be seen from the frequent resolution of problems that prioritize strength, either through mass strength or mass mobilization, compared to using a regulatory basis that emphasizes the legal aspect of juridical law.
4. Law enforcement that has not been implemented consistently.
Law enforcement is also an important part of efforts to provide guarantees of legal certainty, especially to avoid the increasingly rampant occupation of land, falsification of land ownership certificates, encroachment on plantation land, and so on.

In daily practice, there are various land disputes caused by the lack of consistency in the implementation of laws and regulations. In other words, in practice, the term public

interest is often used as a justification for taking or can be interpreted as seizing people's lands for various public interests or the interests of certain large entrepreneurs so that this results in prolonged land disputes. Based on data from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), land cases throughout 2024 that have been resolved are as explained in the table.

Tabel 1. Spatial Planning/National Land

NO	LAND CASE TYPES	COMPLETION
1	Dispute	936
2	Conflict	32
3	Land Matters	1.193
	AMOUNT	2.161

Source: Ministry of Agrarian Affairs and Spatial Planning/National Land Agency 2024

The Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) recorded significant achievements in resolving land cases throughout 2024. Of the 5,973 cases received, 2,161 cases have been successfully resolved. The resolution includes 936 disputes, 32 conflicts, and 1,193 land cases and the approach used is mediation (Linfo.id, Jakarta, 2024).

Effectiveness of Mediation in Resolving Land Disputes.

Land disputes are an issue that always arises and is always relevant from time to time. Basically, land dispute resolution can be done in two ways, the most commonly used are dispute resolution through the courts and out of court. The process of resolving land disputes through the courts results in an adversarial decision that has not been able to embrace common interests, because it produces a win-lose solution decision, with the existence of the winning and losing parties, on the one hand they will feel satisfied but on the other hand they will feel dissatisfied, so that it can cause a new problem between the disputing parties. Not to mention the slow dispute resolution process, long time, and relatively more expensive costs. Meanwhile, the process of resolving land disputes outside the courts, produces a "win-win solution" agreement because the resolution of disputes outside the courts through agreement and deliberation between the parties can produce a joint decision that can be accepted by both parties, and the resulting decision can guarantee the confidentiality of the parties' disputes because there is no obligation for the trial process to be open to the public and published. This out-of-court dispute resolution is generally called Alternative Dispute Resolution (ADR) (Rachmadi Usman, 2003: 2-3).

Mediation is a problem-solving negotiation process, in which impartial parties work together with the disputing parties to seek mutual agreement. The external party is called a mediator, who is not authorized to decide the dispute, but only helps the parties to resolve the issues authorized to him (Khotibul Umam, 2010: 10). Efforts to resolve the dispute between the parties by mutual agreement through a mediator who is neutral and does not make decisions or conclusions for the parties but supports the facilitator to carry out dialogue between the parties with an atmosphere of openness, honesty and exchange of opinions to reach consensus (Susanti Adi Nugroho, 2011: 25). A mediator must have expertise in analyzing each problem and be a person who is trusted and respected by both parties to the case. In many cases, mediation is cheaper than going through the court

process. In the mediation process, all parties meet privately and directly with the mediator together and/or in different meetings. In this meeting, all parties provide each other with information, statements, explanations, and also exchange documents. In civil cases, especially in dispute resolution through mediation, it has the highest legal force as long as it is carried out together and does not violate the provisions of applicable laws.

In Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, it can be seen that mediation must be carried out by the parties in a civil case in court which is carried out on the first day of the trial. Mediation is carried out so that the parties can resolve the dispute between them peacefully. Supreme Court Regulation Number 1 of 2016, emphasized, Article 1 states that Mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the Parties assisted by a Mediator. Mediation is one alternative way to resolve disputes or disagreements. Regulations governing mediation are also regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. The main purpose of mediation is compromise in resolving a dispute. Mediation is a process that is private, confidential (not exposed to the outside) and cooperative in solving problems. Because the mediator as an impartial third party helps the parties (individuals or institutions) in dispute in resolving the conflict and resolving or closing their differences. Data from the National Land Agency (BPN) shows that around 65% of land dispute cases that were successfully mediated involved parties who were willing to compromise and follow the mediation procedure in good faith. This figure indicates that the success of mediation does not only depend on the legality or legal substance aspects that are the basis of the dispute, but also on non-legal factors, such as mental readiness, the desire to reach a joint solution, and openness in negotiating (Riska Kurnia Ningsih, 2025: 76). Mediation is an important step to maintain harmony, legal certainty, and create certainty of land rights for all parties (Tri Utami, 2025). The process of dispute resolution through mediation is simple and focuses on deliberation between the parties concerned, therefore the results obtained are beneficial to the parties involved in the dispute (Kadek, 2022: 1675-1685).

The mediation process used by the BPN to resolve land disputes has not resolved the dispute finally, because the results of the mediation which contain a joint agreement to end the dispute are only morally binding for the parties, so it is still possible for the parties to deny the joint agreement (Mulia Kartiwi, 2024 : 37). Indonesian society feels that peaceful land dispute resolution has brought about communal values in society. Society seeks to resolve their disputes quickly while upholding the values of togetherness and not taking away or suppressing individual freedom (Timothy Lindsey, 2009: 283).

CONCLUSION

Land disputes occur because land has an important position, which can prove the independence and sovereignty of its owner. Several factors that cause land disputes include (1) Land administration in the past that was less orderly, (2) Overlapping laws and regulations, (3) Implementation of land laws that are less consistent, (4) Law enforcement that has not been implemented consistently. Settlement of land disputes can be done outside the courts, generally called Alternative Dispute Resolution (ADR) through mediation.

Dispute resolution through mediation has the highest legal force as long as it is carried out together and does not violate applicable laws and regulations. Most Indonesian people feel that land dispute resolution through mediation can be carried out quickly because it does not rob or suppress individual freedom and conveys values of togetherness (community). The researcher's suggestion is that the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency should be more active in providing legal counseling and facilitating land dispute resolution through mediation in the community in order to create legal order in recording and issuing certificates of land ownership rights.

REFERENCE

- Abdurrahman, (1985). *Spread of Thoughts on Agrarian Law* Bandung: Alumni.
- Boedi Harsono, (1985). *Indonesian Agrarian Law: Collection of Land Law Regulations*, Djambatan, Jakarta.
- Hadimulyo, (1997). *Considering ADR, Study of Alternative Dispute Resolution Outside the Court* ELSAM, Jakarta.
- Lininfo.id, Jakarta, 2024, .161 Land Cases Successfully Handled by the Ministry of ATR/BPN Throughout 2024, <https://linfo.id/2-161-kasus-pertanahan-berhasil-ditangani-kementerian-atr-bpn-sepanjang-tahun-2024/news/4063/>
- Khotibul Umam, (2010). *Settlement Of Disputes Outside The Court*, Pustaka Yustisia publisher, Yogyakarta.
- Kadek Dinda Maharani Sedana Putri, (2022). *Mediation as an Alternative to Resolving Land Disputes*. Kertha Wicara Journal Vol 11 No 10.
- Mulia Kartiwi, (2024). Government Policy In Resolution Of Land Disputes And Conflicts, Res Nullius Jurnal Vol. 6 No. 1.
- Sujud Margono, *ADR (Alternative Dispute Resolution) and Arbitration Institutional Process and Legal Aspects* Ghlmia Indonesia, Bogor, 2004.
- Rusmadi Murad, (1999). *Resolution of Legal Disputes Over Land*, Alumni, Bandung.
- Riska Kurnia Ningsih, (2025). *Hadi Tuasikal, Challenges and Solutions in the Implementation of Mediation as an Alternative to Resolving Land Disputes*, Journal of Dual Legal Systems.
- Rachmadi Usman, (2012). *Mediation in Court in Theory and Practice* Sinar Grafika, Jakarta.
- Sumarto, (2012). *Handling and Settlement of Land Conflicts with the Principle of Win-Win Solution by the National Land Agency of the Republic of Indonesia* Presented at the Training of the Directorate of Land Conflicts, Ministry of Home Affairs of the Republic of Indonesia on September 19.
- Susanti Adi Nugroho, (2011). *Mediation as an Alternative to Dispute Resolution, Tangerang, PT. Telaga Ilmu Indonesia*, 2nd Edition.
- Timothy Lindsey, (2009). *Introduction: An Overview of Indonesian Law*, in the book by Syahrizal Abbas, *Mediation in the Perspective of Sharia Law, Customary Law, & National Law*, Kencana Prenada Media Group, Jakarta.
- Tri Utami, (2025), *Implementation of Land Dispute Mediation*, Editorial Team, <https://kot-magelang.atrbpn.go.id/berita%20/pelaksanaan-mediasi-kasus-tanah>
- Law of the Republic of Indonesia Number 5 of 1960 *Concerning Basic Agrarian Principles*

Law Number 30 of 1999 *Concerning Arbitration and Alternative Dispute Resolution*
Law Number 17 of 2007 *Concerning the National Long-Term Development Plan 2005-2025*
Law Number 30 of 1999 *Concerning Arbitration and Alternative Dispute Resolution*