



Juridical Analysis of Land Rights Dispute Settlement Procedure Through Mediation in Jayapura State Court

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Abstract

Legal review through mediation at the Jayapura District Court is urgently needed by the disputing parties for alternative dispute resolution. The purpose of this article is to be able to understand land rights issues and the form of mediation as a settlement by the Court and to be able to understand the mediation process at the Jayapura District Court. The method in this research is normative and empirical law, normative law is an approach that refers to laws, literature, literature, written regulations or other secondary legal materials, while empirical law is to identify and conceptualize law as a real and functional social institution. The results of this research show that mediation is a form of resolving land rights disputes by general courts both internally and externally. The institution is based on Supreme Court Decision No. 2 of 2003, which was amended by MA Decision No. 01 of 2008 concerning Arbitration and Litigation to strengthen mediation in legal proceedings. While the mediation procedure at the Jayapura District Court is based on Supreme Court Regulation No. 1 of 2008 consisted of three stages, namely the pre-mediation stage, the mediation stage and the final mediation stage.

Keywords: *Procedure; Settlement; Dispute; Land; Mediation; Jayapura District Court*

Introduction

Actually land has the meaning of the skin of the earth, the body of the earth underneath and the space above it, with restrictions on its use. Land is owned by people, where in the Land Law (UUPA) that person has regulated rights. Land rights are rights to use certain parts of the earth's surface, called land, as well as the land beneath it and the water and space above it, as long as he may use it or not own it. [1]

Land as an economic right of every person tends to give rise to individual conflicts between people, especially because of differences in interests. Land disputes that arise financially force the parties to pay fees, the longer the dispute resolution procedure lasts, the higher the costs to be incurred. An additional consequence that may occur in this case is reduced work or business productivity, which is caused by the parties to the dispute having to devote their energy and thoughts, especially their time, during the dispute.

The current land for everyone is economic, it has the potential to cause personal conflicts among people, especially because of differences in interests. Land disputes result in economically pressing the

parties who are related to each other to bear the costs and the longer the process, the greater the costs incurred. In the problems faced, the possibility of a follow-up effect is the reduction of economic actors and businesses during the dispute.

The thing that often causes disputes in our society in Indonesia is that the land they owned when they bought the land actually belonged to other parties who also had an interest in the land, causing land disputes, where each of them fought over ownership of the land. Therefore, this is very concerning for the Indonesian people who still do not understand the importance of registering their land in order to avoid overlapping land ownership.

In terms of land, especially land disputes, it can be said that the number of incidents that may occur has not decreased because human activities have increased and the problems that arise between people have become more complex. This contradiction often causes conflicts of interest in the use and development of land, because the area of land cannot possibly increase or expand because population growth does not match the soil conditions.

Land disputes are differences in values, needs, thoughts and views between one another, both private and public, related to tenure and ownership status. [2] UUPA is indeed related to land and has 2 (two) elements, namely:

- a) Public Rights are the powers of the state specifically related to Article 33 paragraph (3) of the 1945 Constitution.
- b) Individual rights that belong to a person and can act fully as a seller or buyer.

As knowledge alone, namely when Indonesia was experiencing an economic crisis and the collapse of the real estate industry, many cases arose regarding land clearing, as well as land clearing for housing, industry as well as office development and others which were controlled by the big powers against the weak economic groups.

In addition, there are other things that cause disputes in society in Indonesia, namely the land owned from the land acquisition actually belongs to other people who also have rights/interests in the land. Land disputes arise as a result of deprivation of ownership status, legal rights to the land and this is very worrying for the Indonesian people because they still lack insight, the land they own must be registered to reduce dual ownership of the same land. The resulting land disputes are also inseparable from the different interpretations of general rights and individual rights regulated in the Basic Agrarian Law. Public rights include the document rights of state institutions, while individual rights are in transition.

The legal process usually takes a long time and is associated with high costs and there are winners and losers. This is an obstacle to seeking justice for litigants, especially individuals from the lower middle class who have not been able to pay for administration as a procedure. Therefore, if a dispute arises, you must prioritize a win-win solution.

Likewise, deliberation for consensus as a dispute resolution that is known and rooted in Indonesian society in daily life and is valued in inter-community relations, as well as the traditional society of resolving disputes through deliberation is very important. By focusing on maintaining harmony between nations, forms such as mediation or negotiation as dispute resolution. Mediation as an Alternative Dispute Resolution (ADR) that is more effective and can provide satisfaction for the parties.

Method

The method in this study is normative-empirical, where normative refers to laws, literature, written orders or other secondary legal materials, while empirical refers to identifying and conceptualizing law in real life.

Result and Discussions

Disputes can arise where there are interested parties who deceive/hurt him. This event for individuals or groups can experience it, feelings of dissatisfaction arise when there is a conflict of interest. The aggrieved party communicates to the concerned party, and when there is no meeting place for resolution, it is called a dispute, usually with two parties representing their own positions.

In the Basic Agrarian Law, land disputes result from different interpretations of general rights and individual rights. Disputes, differences in assumptions and long discussions usually do not lead to agreement, which leads to the breakup of a healthy relationship. To prevent unwanted things from happening, both parties need to respect or defend the right to be heard and the right to be heard to create a meeting place to resolve problems/disputes.

Mediation is applied to socialize the importance of strengthening peace institutions. Judges must maximize civil enforcement, which has the advantage of using/choosing mediation as an alternative to dispute resolution outside the court. These advantages include disputes between parties that can be resolved in a win-win/win-win manner which does not take too long to complete, lower costs, good relations between disputing parties can be maintained, and excessive disclosure of differences by the disputing parties can affect performance. Peace Effort means an agreement in which both parties end a pending case or prevent a case from arising by handing over, guaranteeing or withholding goods (article 1851 of the Civil Code).

According to Ms. Agustina as Organizational and Administrative Staff at the Jayapura District Court, in deciding cases in court, the principles of fast, cheap and simple procedures and the form of application of the principles of justice must be considered. Judges in handling cases as law enforcers do their best and allow the parties to resolve any problems that arise between them.

Regarding the general model of the mediator acting as a third party in dispute resolution, the mediator may be chosen by the disputing parties or in this case also appointed by a judicial body, that the mediator's duty is to meet or bring together the parties to the dispute. the parties to provide feedback on the main issues the parties to obtain. The mediator can then determine the circumstances, weaknesses and strengths of each party and then design proposals for resolving disputes. If an agreement is reached in mediation, the mediator prepares an agreement which is written and signed together and the witnesses who are present also participate in signing it.

Juridically, Mediation is contained in PERMA No. 01 of 2008, Article 2 Paragraph 2 which requires every judge, mediator and all parties to understand mediation comprehensively. There are 3 (three) aspects, among others:

a) Motivational Aspect

This aspect is where the litigants can calm down and not proceed with the case to further court. If there are previous problems, they must be resolved amicably to arrive at a mutual understanding. Therefore, mediation is a way of bringing together disputing parties assisted by one or more mediators to filter issues so that they become clear and the conflicting parties understand the point of peace between them.

b) Principle Aspect

Disputing parties must follow the procedure for resolving disputes through mediation. The non-implementation of the arbitration (mediation) procedure based on this PERMA violates article 130 HIR/article 154 Rbg. which overturns the decision. Where all cases that have been submitted to the Court of Level I (first) will most likely go through arbitration (mediation).

c) Substance Aspect

The substance of Mediation is not just fulfilling formal legal requirements, but serious efforts that must be made by interested parties to achieve peace.

Based on the rules of the Supreme Court, if all civil cases are referred to the court of first instance, they must first be resolved through mediation with the help of a mediator.

The Jayapura District Court is in the process of mediating land dispute resolution based on PERMA No. 1 of 2008 concerning mediation procedures in court, and the mediation process to be carried out consists of three stages:

- 1) Pre Mediation Stage, regulated in Article 7 PERMA No. 1 of 2008. If the trial time has been determined, the two participants are notified in advance about the obligation to use mediation. The judge must explain the mediation process and try to encourage the parties or lawyers to actively participate in the mediation process. Basically, the litigants first request mediation, and the judge must suspend the case so that the parties can enter the mediation process. The parties and/or their proxies will negotiate for 2 (two) working days after the first meeting to select a mediator from the list of valid mediators.
- 2) The mediation stage, in Article 13 PERMA No. 1 of 2008 concerning Procedures for Judicial Mediation, which basically lasts no longer than 5 (five) working days after the agreement on the choice or assumption of the mediator, which is mandatory for the parties to provide photocopies of related documents to the mediator, photocopies of the required documents and other matters - matters relating to the dispute. The mediation process takes 40 (forty) working days from the time the parties choose a mediator. If the mediation is successful, the parties must make a written agreement, while the mediation does not produce results within 40 days, the mediator must notify the failure to the judge.
- 3) The final stage of mediation. The results of the mediation are recorded or stored as a memorandum of understanding and signed and completed by the authorized officials of the disputing parties until a final agreement is reached, set forth in a peace deed. If an agreement is not reached, the judge will continue the case in accordance with the applicable procedural rules.

Conclusion

Based on the results of a juridical review of the procedure for resolving land rights disputes through mediation at the Jayapura District Court, it can be concluded as follows:

- a. That mediation is a form of resolving land rights disputes by the general court both internally and externally. The institution is based on Supreme Court Decision No. 2 of 2003, which was amended by MA Decision No. 01 of 2008 concerning Arbitration and Litigation to strengthen mediation in legal proceedings.
- b. Mediation procedures in court based on Supreme Court Regulation No. 1 of 2008 consisted of three stages, namely the pre-mediation stage, the mediation stage and the final mediation stage.

Based on the conclusions above, it can be suggested the following:

- a) For public court institutions, if a judge is appointed and acts as a mediator to resolve disputes between the parties, they must remain honest and fair by not taking sides with one of the parties.
- b) For the parties to the dispute, they must remain in good faith in resolving issues or problems assisted by the mediator by continuing to follow procedures in accordance with the applicable laws and regulations while still prioritizing a win-win solution.

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