

Dispute Resolution on Overlapping Land Certificate Through Mediation Based on The Regulation of The Minister of Agrarian Affairs And Spatial Planning Number 11 Year 2016

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Article info

Received: Jan 12, 2024

Revised: Feb 21, 2024

Accepted: Mar 18, 2024

DOI: <https://doi.org/10.31599/krtha.v18i1.1610>

Abstract : *This study has the purpose of examining and analyzing mediation efforts in resolving land ownership disputes at the Bekasi City Land Office. In addition, it also analyzes the legal protection for parties to land disputes based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 11 of 2016. The research method used is normative juridical research method. The normative juridical research method is a legal analysis based on legal norms, principles, and doctrines. The results showed that the application of mediation in land ownership disputes at the Bekasi City Land Office has not been effective enough. In 2017-2020, the Bekasi City Land Office was only able to resolve disputes through mediation with a limited number of cases. This is due to external and internal obstacles experienced by the section for controlling and handling land disputes. In addition, legal protection in resolving land disputes at the Bekasi City Land Office is actually not enough to provide legal protection, because the results of the mediation carried out are still not optimal. Internal and external obstacles experienced, causing repressive legal protection has not been fulfilled for the parties to the dispute.*

Keywords : *Dispute, Overlapping, Land and Mediation*

Abstrak : Penelitian ini memiliki tujuan untuk mengkaji dan menganalisis upaya mediasi dalam penyelesaian sengketa kepemilikan tanah pada Kantor Pertanahan Kota Bekasi dan menganalisis perlindungan hukum terhadap pihak-pihak yang bersengketa pertanahan berdasarkan Peraturan Menteri Agraria dan Tata Ruang Nomor 11 Tahun 2016, dengan metode analisis yuridis normatif, adapun hasil penelitian menunjukkan Penerapan mediasidalam sengketa kepemilikan tanah pada Kantor Pertanahan, pada seksi bagian pengendalian dan penanganan sengketa pertanahan pada Kantor Pertanahan Kota Bekasi, sejatinya belum cukup efektif, dimana seksi bagian pengendalian dan penanganan sengketa pertanahan pada Kantor Pertanahan Kota Bekasi pada tahun 2017-2020 hanya mampu menyelesaikan sengketa dengan mediasi dengan jumlah perkara yang terbatas karena adanya kendala eksternal maupun internal yang dialami oleh seksi bagian pengendalian dan penanganan sengketa pertanahan pada Kantor Pertanahan Kota Bekasi, dan perlindungan hukum dalam penyelesaian sengketa pertanahan pada Kantor Pertanahan Kota Bekasi, pada seksi bagian pengendalian dan penanganan sengketa pertanahan, sejatinya belum cukup memberikan perlindungan hukum dimana hasil mediasi yang dilaksanakan masih belum cukup maksimal, baik karena



ada kendala internal maupun kendala eksternal yang dialami, sehingga belum memenuhi perlindungan hukum secara represif terhadap para pihak yang bersengketa.

Kata kunci : Sengketa, Tumpang Tindih, Tanah, dan Mediasi.

I. INTRODUCTION

Facts about land cases, both in the criminal and civil fields, up to those related to state administration, basically still often occur in Indonesia. Based on the results of a report from the Directorate General of Land Dispute and Conflict Management at the Ministry of Agrarian Affairs and Spatial Planning of the Republic of Indonesia, from 2016 to 2020, problematic land cases occurred up to 16,404 (sixteen thousand four hundred and four) cases, and cases examined in court reached 9,717 (nine thousand seven hundred and seventeen) cases.¹

Settlement of land disputes through judicial channels has many shortcomings, including being very bureaucratic, time-consuming energy and considerable costs. Although the principle of dispute resolution in court is to be resolved quickly and at low cost, in reality this is difficult to implement. Slow and complicated land dispute resolution will harm justice seekers in all aspects. When it comes to the business world, it results in a high cost economy, and can drain the potential and resources of the company. This can lead to disharmonious relationships among business colleagues. While in the business world it is very necessary to resolve disputes quickly, at low cost and informal procedures.

The rise of cases in the land sector, of course, has an impact on the high number of cases and disputes that must be handled by the judiciary, based on the results of the Government Agency Performance Report at the Supreme Court of the Republic of Indonesia, it is known that land cases that touch the realm of criminal law reached a total of 2,061 (two thousand sixty one) cases from 2016 to 2020, and cases in the realm of civil law reached 5,281 (five thousand two hundred eighty one) cases, and cases in the realm of state administrative justice reached 2,375 (two thousand three hundred seventy five) cases.² From the high number of cases in the land sector, of course the government needs to optimize efforts to resolve land case disputes by maximizing alternative dispute resolution efforts, so that efforts to resolve conflict disputes in the land sector do not only rely on litigation efforts, but can also take advantage of non-litigation efforts.

In the positive law literature itself, the problem of dispute resolution in the land sector is basically resolved through mediation, where this has a regulation in the provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration. The provisions of Article 27 state that:

¹ Direktorat Jenderal Penanganan Sengketa dan Konflik Pertanahan, *Road Map Penanganan Perkara Pertanahan 2021*, Kementerian Agraria dan Tata Ruang Republik Indonesia, Jakarta, 2021. hlm. 4

² Mahkamah Agung Republik Indonesia, *Laporan Kinerja Instansi Pemerintah 2021*, Mahkamah Agung Republik Indonesia, Jakarta, 2021. hlm. 21

- 1) If within the announcement period as referred to in Article 26 paragraph (1) any person raises objections regarding the physical data and/or juridical data announced, the Chairman of the Adjudication Committee in systematic land registration or the Head of the Land Office in sporadic land registration shall endeavor to resolve the objections raised by deliberation to reach consensus as soon as possible;
- 2) If the deliberative settlement efforts to reach consensus as referred to in paragraph (1) bring results, minutes of the settlement shall be drawn up and if the intended settlement results in changes to what is announced according to the provisions referred to in Article 26 paragraph (1) such changes shall be made on the map of the land parcels and or the list of entries concerned;
- 3) If the deliberative settlement efforts for consensus as referred to in paragraph (1) cannot be carried out or do not bring results, the Chairman of the Adjudication Committee in systematic land registration and the Head of the Land Office in sporadic land registration shall notify in writing the objecting party to file a lawsuit regarding the disputed physical data and or juridical data to the Court.³

The provisions of Article 27 of Government Regulation No. 24/1997 on Land Registration then have implementation arrangements as stipulated in Regulation of the Minister of Agrarian and Spatial Planning or Head of the National Land Agency No. 11/2016 on Settlement of Land Cases. Specifically, mediation is explained in the provisions of Article 1 point 7 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Land Case Settlement which states, "Mediation is a way of resolving disputes and conflicts through a negotiation process to obtain an agreement of the parties with the assistance of a Mediator." Where the procedure for mediation in the land sector itself is regulated in the provisions of Article 4 through Article 36 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.⁴

Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases, land cases are differentiated into land disputes, land conflicts, and land cases. Land disputes are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact. In the Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 11 of 2016, what is meant by "Land Case" is a dispute, conflict, or land case to obtain settlement handling in accordance with the provisions of laws and regulations and/or land policies, which in it provides a definition of disputes, conflicts and land cases.

³ Lembaran Negara Nomor 59 Tahun 1997 tentang Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

⁴ Berita Negara Republik Indonesia Nomor 596 Tahun 2016 tentang Peraturan Menteri Agraria dan Tata Ruang atau Kepala Badan Pertanahan Nasional Nomor 11 Tahun 2016 tentang Penyelesaian Kasus Pertanahan.

The mediation of the Land Office is carried out based on 3 things according to Article 5 to Article 6 of the Minister of Agrarian Affairs and Spatial Planning Regulation Number 11 of 2016, namely based on the initiative of the Ministry, and public complaints, where the mediation scheme at the Land Office according to Article 7 to Article 24 of the Minister of Agrarian Affairs and Spatial Planning Regulation Number 11 of 2016 the mediation scheme includes:

- 1) Ministry findings/Public complaints;
- 2) Receipt of Reports from the National Land Agency;
- 3) Invitation to the parties by the National Land Agency;
- 4) Agreement of the parties to conduct mediation;
- 5) Appointment of a mediator by the National Land Agency evidenced by a letter of assignment;
- 6) Implementation of mediation;
- 7) If Mediation is declared a failure/deadlock then the parties may proceed to court;
- 8) If the mediation is successful the parties are asked to make a joint agreement;
- 9) Mutual agreement is set out in a deed of peace;
- 10) The deed of peace is registered at the district court;
- 11) Ratification of the deed of peace by the district court has permanent legal force.

Land conflicts are land disputes between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have a broad socio-political impact. Meanwhile, a land case is a land dispute whose resolution is carried out by a judicial institution or a decision of a judicial institution that is still requested for handling the dispute.

In reality, mediation in the land sector is still not running effectively enough, where from the findings of researchers, based on the results of reports from the Directorate General of Land Dispute and Conflict Handling at the Ministry of Agrarian Affairs and Spatial Planning of the Republic of Indonesia, namely the National Land Agency / Bekasi City Land Office, from 2016 to 2020, it is known that out of 3,015 land cases mediated by Land Offices throughout Indonesia, only 119 cases were successfully resolved through mediation, the rest of the cases continued to the stage of examination in court, both criminal, civil and state administrative courts.⁵

Concrete examples of mediation efforts successfully implemented by the National Land Agency/Land Office are:

- a) In the mediation case between Achmad Falak as the applicant against the Head of the Land Office of the South Jakarta Administrative City as the respondent, related to a land dispute based on report register number 0013/VIII/KIP-DKI-PS/2020,

⁵ Direktorat Jenderal Penanganan Sengketa dan Konflik Pertanahan, *Road Map Penanganan Perkara Pertanahan 2021*, Op. Cit., hlm. 4.

where the dispute issue was due to a request for data information on the history of the land for certificate of ownership No. 84 Cipedak submitted by Achmad Falak which was rejected by the Head of the Land Office of the South Jakarta Administrative City, and this dispute has been resolved based on a peace agreement letter dated August 10, 2020.⁶

- b) There is also another example of mediation successfully mediated by the Directorate of Land Conflict Prevention and Handling at the National Land Agency / South Jakarta Administrative City Land Office based on report register number 002/VIII / KIP-DKI-PS / 2021 is Daniel Adityajaya who is the applicant in a dispute over overlapping land ownership against R.B. Agus Widjayanto as the respondent where this dispute has been resolved based on a peace agreement letter dated August 9, 2021.⁷
- c) Then another example can be found in the dispute between Firdaus as the applicant against R.B. Agus Widjayanto as the respondent based on report register number 10/XI/2021/PPSKP where the dispute over overlapping ownership has been resolved based on a peace agreement letter dated January 7, 2020. Where this dispute was successfully resolved through mediation carried out by the Directorate of Land Conflict Prevention and Handling at the National Land Agency / South Jakarta Administrative City Land Office, where the mediation results stated that the Firdaus party was required to compensate R.B. Agus Widjayanto according to the agreed price, and R.B. Agus Widjayanto was required to submit HGB land certificates Number: 05083 of 2012, Number: 05080 of 2012, Number: 05081 of 2012, Number: 05082 of 2012.⁸

Based on this description, it can be identified the problem to be investigated in this study that there is a problem of the lack of effectiveness of mediation carried out by the Land Office which is still not effective enough, and of course it can lead to the problem of accumulation of cases and wasted time of the parties to the dispute in resolving land disputes, this is known from the results of a report from the Directorate General of Land Dispute and Conflict Handling at the Ministry of Agrarian Affairs and Spatial Planning of the Republic of Indonesia, namely the National Land Agency / Bekasi City Land Office, where the ineffectiveness of handling land disputes through mediation can be seen from 2016 to 2020, it is known that from 3. 015 land cases mediated by the Land Office throughout Indonesia, only 119 cases were successfully resolved through mediation, the rest of the cases continued to the examination stage in court, both criminal, civil and land courts. 015 land cases mediated by Land Offices throughout Indonesia, only 119 cases were successfully resolved through mediation, the rest of the cases continued to the examination stage in court, both criminal, civil and state administrative courts, so that they often found failures in the process, which of course requires an increase in the rules

⁶Direktorat Penanganan Sengketa Pertanahan Kantor Pertanahan Kota Administrasi Jakarta Selatan, *LAKIP Direktorat Penanganan Sengketa Pertanahan Kantor Pertanahan Kota Administrasi Jakarta Selatan Tahun 2021*, Direktorat Penanganan Sengketa Pertanahan Kantor Pertanahan Kota Administrasi Jakarta Selatan, Jakarta, 2021. hlm. 15.

⁷*Ibid.*, hlm. 16.

⁸ *Ibid.*, hlm. 17.

and implementation of mediation so that mediation which is expected to shorten dispute resolution at low cost, fast and fair can be realized according to the objectives of the existence of mediation, and fair can be realized in accordance with the objectives of Government Regulation Number 24 of 1997 concerning Land Registration which has been updated with Government Regulation Number 18 of 2021 and Regulation of the Minister of Agrarian Affairs and Spatial Planning Number 11 of 2016, namely to obtain legal protection and legal certainty of land rights, so that researchers want to further discuss the problems and causes of the failure of mediation by the Land Office and are limited to only one area, namely the Bekasi City Land Office, and how the legal protection of the implementation of the rules governing mediation at the land office.

II. RESEARCH METHOD

In this study, researchers used the type of Normative Juridical research. Where normative legal research places the norm system as the object of study.⁹ The research approaches used in this research include the Statute Approach, Conceptual Approach, Analytical Approach, and Case Approach.

The collection of legal materials is carried out by identifying and inventorying positive legal rules, examining library materials (books, scientific journals, research reports), and other sources of legal materials relevant to the legal issues studied. Legal materials that have been collected, then classified, selected and ensured that they do not conflict with each other, to facilitate analysis and construction. As for research analysis techniques, researchers use interpretive analysis techniques, namely Historical Interpretation and Systematic Interpretation.

III. DISCUSSION

Mediation Method in Land Dispute Settlement

Disputes can happen to anyone and anywhere. Disputes can occur between individuals and individuals, between individuals and groups, between groups and groups, between companies and companies, between companies and countries, between countries and each other, and so on. In other words, disputes can be public or civil in nature and can occur locally, nationally or internationally.¹⁰

The notion of dispute is close to conflict in meaning, so to gain a comprehensive understanding, one must know the meaning of the terms Dispute and Conflict. According to the Indonesian Dictionary, a dispute is anything that causes a difference of opinion, contention, and argument. Conflict, on the other hand, is a dispute or disagreement. The dispute process occurs because there is no common ground between the disputing parties. Potentially, two parties who have different stances or opinions have the potential to move into a dispute situation.

⁹ Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum*, Yogyakarta : Pustaka Pelajar, 2016. hlm. 27.

¹⁰ *Ibid.*, hlm. 59-60.

According to Suyud Margono, disputes usually start from a situation where a party feels aggrieved by another party, which is preceded by a subjective and closed feeling of dissatisfaction. This incident can be experienced by individuals or groups. Feelings of dissatisfaction will surface if there is a conflict of interest.¹¹

According to Rachmadi Usman, a conflict will not develop into a dispute if the injured party only harbors feelings of dissatisfaction or concern. A conflict will develop into a dispute if the aggrieved party has expressed dissatisfaction or concern, either directly or indirectly.¹²

According to Nurnaningsih Amriani, a dispute is a situation where a party feels aggrieved by another party, who then conveys this dissatisfaction to the second party. If the situation shows a difference of opinion, then there is what is called a dispute. In the legal context, especially contract law, what is meant by a dispute is a dispute that occurs between the parties due to a violation of the agreement that has been outlined in a contract, either in part or in whole. In other words, there has been a default by the parties or one of the parties.¹³

According to Christopher W. Moore, Mediation is an intervention in negotiations or conflicts from an acceptable third party who has limited or no authoritative decision making power, but helps the parties involved in voluntarily reaching a mutually acceptable settlement in the dispute.¹⁴

According to Laurence Boulle, Mediation is a decision-making process in which parties are assisted by a Mediator, in this case the Mediator's efforts to improve the decision-making process and to help the parties achieve the results they want together. According to J. Folberg and A. Taylor, Mediation is a process by which participants, together with the assistance of a neutral person, systematically isolate disputes in order to develop options, consider alternatives and reach a dispute resolution that will accommodate their needs.¹⁵

Garry Goopaster suggests the definition of mediation, Mediation is a problem-solving negotiation process in which an impartial outsider works with the parties to the dispute to help them reach a satisfactory agreement.¹⁶ The definition of Mediation expressed by Laurence Boulle above emphasizes that mediation is a decision-making process carried out by the parties assisted by a third party as a Mediator. Boulle's statement shows that the decision-making authority is entirely in the hands of the parties and the Mediator only assists the parties in the decision-making process later. The presence of the Mediator is a very important factor because the Mediator can assist and strive for a better

¹¹ Suyud Margono, *Alternative Dispute Resolution dan Arbitrase*, Ghalia Indonesia, Jakarta, 2000, hlm. 34.

¹² *Ibid.*, hlm. 35.

¹³ A. Nuzul, *Penyelesaian Sengketa Tanah*, Komisi Yudisial Republik Indonesia, Jakarta, 2012. hlm. 170

¹⁴ Harifin Tumpa, *Pelaksanaan Mediasi Di Pengadilan*, Puslitbang Mahkamah Agung Republik Indonesia, Jakarta, 2008. hlm. 12.

¹⁵ Tim Penulis Ombudsman Republik Indonesia, *Mediasi/Konsiliasi*, Ombudsman Republik Indonesia, Jakarta, 2021. hlm. 8.

¹⁶ Amzulian Rifai, *Mediasi Sebagai Alternatif Penyelesaian Sengketa Bisnis*, BPHN Republik Indonesia, 2016. hlm. 4

decision-making process so as to produce a final decision that can be accepted by those in conflict.¹⁷

The definition of mediation expressed by Folberg and Taylor above emphasizes the concept of mediation on the efforts made by the Mediator in carrying out mediation activities. These two experts state that dispute resolution through mediation is carried out jointly by the disputing parties and assisted by a neutral party, namely the Mediator. The Mediator can develop and offer options for dispute resolution and the parties can also consider the Mediator's offer as an alternative to an agreement in dispute resolution. The alternative in resolving a dispute offered by the Mediator is expected to be able to accommodate the interests of the parties to the dispute. Mediation can lead to winning or losing parties.¹⁸

The definition of mediation expressed by Goospaster above describes the process of mediation activities, the position of the parties and also the role of third parties, as well as the purpose of conducting a mediation. Goospaster clearly emphasizes that mediation is a negotiation process, where a third party conducts a dialogue with the disputing parties and tries to find a possible resolution of the dispute. The presence of a third party is intended to help the disputants find a way to solve the problem at hand, so that in the end it will lead to an agreement or agreement that satisfies both parties.¹⁹

In mediation, the resolution of disputes arises more from the desire and initiative of the parties, so that the Mediator plays a role in helping them reach an agreement. In assisting the disputing parties, the Mediator is impartial. This position of the Mediator is very important because it will foster a trust that makes it easier for the Mediator to carry out mediation activities. A non-neutral mediator makes it difficult to resolve disputes in mediation and can lead to failure.²⁰

The definition of mediation expressed by Moore above explains the relationship between mediation and negotiation, in the form of mediation as a form of intervention in negotiations conducted by third parties. The mediator has limited decision-making authority and only assists the parties in reaching an agreement for dispute resolution. Therefore, the presence of the Mediator must be accepted by both parties who are neutral and impartial.²¹

From the previous description, it is known that dispute resolution in the land sector is basically resolved through mediation, based on the provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration. The provisions of Article 27 states that, "1) If within the announcement period as referred to in Article 26 paragraph (1) there is an objection regarding the announced physical data

¹⁷ *Ibid.*, hlm. 4.

¹⁸ Dominikus Dalu dan Ninik Rahayu, *Modul Pelatihan Mediasi*, Ombudsman Republik Indonesia, Jakarta, 2017. hlm. 7.

¹⁹ Ratna Sari Dewi, dan Lely Pelitasari Soebekty, *Modul Pelatihan Mediasi : Edisi Revisi*, Ombudsman Republik Indonesia, Jakarta, 2021. hlm. 11.

²⁰ Putu Rasmadi Arsha Putra, *Buku Ajar Alternative Dispute Resolution (Alternatif Penyelesaian Sengketa)*, Udayana Press, Denpasar, 2019. hlm. 82.

²¹ Basuki Rekso Wibowo, *Alternatif Penyelesaian Sengketa*, Puslitbang Mahkamah Agung Republik Indonesia, Jakarta, 2019. hlm. 36.

and or juridical data, the Head of the Adjudication Committee in systematic land registration or the Head of the Land Office in sporadic land registration shall endeavor to resolve the objection as soon as possible by deliberation to reach consensus. 2) If the deliberative settlement efforts to reach consensus as referred to in paragraph (1) bring results, a minutes of settlement shall be drawn up and if the intended settlement results in changes to what is announced in accordance with the provisions referred to in Article 26 paragraph (1) such changes shall be made on the map of the land parcels and or the list of entries concerned. 3) If the deliberative settlement efforts for consensus as referred to in paragraph (1) cannot be carried out or do not bring results, the Chairman of the Adjudication Committee in systematic land registration and the Head of the Land Office in sporadic land registration shall notify in writing the objecting party to file a lawsuit regarding the physical data and or juridical data in dispute to the Court".²²

From the provisions of Article 27 of Government Regulation No. 24 of 1997 concerning Land Registration, it can be seen that the regulation of dispute resolution in the land sector through alternative dispute resolution channels has arrangements and implementation guidelines in the form of deliberation to reach consensus.

The provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration then have implementation arrangements as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases. Specifically, mediation is explained in the provisions of Article 1 point 7 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Land Case Settlement which states, "Mediation is a way of resolving disputes and conflicts through a negotiation process to obtain an agreement of the parties with the assistance of a Mediator." Where the procedure for mediation in the land sector itself is regulated in the provisions of Article 4 through Article 36 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.

Based on the Regulation of the Head of the Land Agency of the Republic of Indonesia Number 3 of 2011 concerning Management of Land Case Assessment and Handling distinguishes land cases into land disputes, land conflicts, and land cases. Land disputes are land disputes between individuals, legal entities, or institutions that do not have a broad socio-political impact.

Implementation of Mediation in Land Settlement at the Bekasi City National Land Agency

The application of mediation in land settlement at the Bekasi City National Land Agency can be seen in the following description: The number of descriptions of employees / employees in the section of controlling and handling land disputes at the Bekasi City Land Office based on level / position, are as follows:

²² Lembaran Negara Nomor 59 Tahun 1997 tentang Peraturan Pemerintah Nomor 24 tentang Pendaftaran Tanah.

Tabel 3.1. Number of employees in the section of controlling and handling land disputes at the Bekasi City Land Office

No	Tingkat Kepegawaian	Jumlah Pegawai
1.	Eselon 1	-
2.	Eselon 2	2
3.	Eselon 3	4
4.	Eselon 4	-
5.	JFU	-
6.	PPNPN	-
Jumlah		6

Sumber : Laporan Kinerja Instansi Pemerintah Badan Pertanahan Nasional Kota Bekasi Tahun 2021

The number of employees in the section of controlling and handling land disputes at the Bekasi City Land Office based on education level is as follows:

Tabel 3.2. Number of Employees of the Land Dispute Control and Handling Section at the Bekasi City Land Office

No	Jenjang Pendidikan	Jumlah Pegawai
1.	SLTA	2
2.	D-1	-
3.	D-3	-
4.	D-4	-
5.	S1	4
6.	S2	-
Jumlah		6

Sumber : Laporan Kinerja Instansi Pemerintah Badan Pertanahan Nasional Kota Bekasi Tahun 2021

From the information above, it is known that the total number of employees in the section on control and handling of land disputes at the Bekasi City Land Office is 6 people. Furthermore, the number of cases handled by the section on control and handling of land disputes at the Bekasi City Land Office can be seen in the following table:

Tabel 3.3. Number of Dispute Cases Entering the Section of Control and Handling of Land Disputes at the Bekasi City Land Office

No	Tahun	Jumlah Perkara Yang Masuk
1	2017	31
2	2018	50
3	2019	60
4	2020	51
5	2021	60

Sumber : Laporan Kinerja Instansi Pemerintah Badan Pertanahan Nasional Kota Bekasi Tahun 2021

Furthermore, the number of cases handled by mediation by the section on control and handling of land disputes at the Bekasi City Land Office can be seen in the following table:

Tabel 3.4. Number of Cases Successfully Mediated by the Section on Control and Handling of Land Disputes at the Bekasi City Land Office

No	Tahun	Jumlah Perkara Yang Berhasil Di Mediasi	Sisa Perkara Yang Dilanjutkan ke Tingkat Litigasi	Sisa Perkara Yang Tidak Ada Tindak Lanjut dari Para Pihak
1	2017	4	24	3
2	2018	17	30	3
3	2019	17	39	4
4	2020	12	39	-
5	2021	17	41	2

Sumber : Laporan Kinerja Instansi Pemerintah Badan Pertanahan Nasional Kota Bekasi Tahun 2021.

From the information above, it can be seen that the percentage of success of mediation in the section of controlling and handling land disputes at the Bekasi City Land Office, is as follows details:

Tabel 3.5. Percentage of Land Dispute Cases Handled by the Section on Control and Handling of Land Disputes at the Bekasi City Land Office

No	Tahun	Jumlah Perkara Yang Berhasil Di Mediasi	Sisa Perkara Yang Dilanjutkan ke Tingkat Litigasi	Sisa Perkara Yang Tidak Ada Tindak Lanjut dari Para Pihak
1	2017	4 (12,9%)	24 (77,4%)	3 (9,6%)
2	2018	17 (34%)	30 (60%)	3 (6%)
3	2019	17 (28,3%)	39 (65%)	4 (6,6%)
4	2020	12 (23,5%)	39 (76,5%)	(0%)
5	2021	17 (28,3%)	41 (68,3%)	2 (3,3%)

Sumber : Laporan Kinerja Instansi Pemerintah Badan Pertanahan Nasional Kota Bekasi Tahun 2021

From the information above, it is known that in general, mediation in the section on control and handling of land disputes at the Bekasi City Land Office is not yet optimal, and its effectiveness still needs to be improved. From the results of the report on the Government Agency Performance Report at the Bekasi City Land Office, it is known that the cause of mediation is less than optimal, because the settlement by mediation is considered less effective because it does not use a mediation model that can be accepted by the parties. In fact, the case should have been effectively mediated rather than taken to court, either to the District Court or the State Administrative Court. It is known that the unsuccessful resolution of cases under the authority of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, especially the section on control and handling of land disputes at the Bekasi City Land Office, by means of mediation is caused by several things, including:²³

1) Internal Factors:

- a) The lack of employees responsible for the section on control and handling of land disputes at the Bekasi City Land Office, which only amounts to 6 personnel;
- b) The limited budget for dispute resolution, which is known to only have a budget of Rp 139,400,000.

2) External Factors

- a) The parties did not understand the function of mediation;
- b) The parties tend to be lose-win oriented;
- c) The parties are more likely to impose their will; and

²³ Tim Peneliti Kantor Pertanahan Kota Administrasi Jakarta Selatan, *Laporan Kinerja Instansi Pemerintah Kantor Pertanahan Nasional Jakarta Selatan Tahun 2021*, Kantor Pertanahan Kota Administrasi Jakarta Selatan, Jakarta, 2021. hlm.54.

- d) Mediation settlement always uses local government officials (especially in land conflicts) and in practice costs more and takes a long time related to coordination.

Where one of the effectiveness indicators that need to be considered for effective and efficient implementation of its duties and functions is the availability of human resources (HR) with sufficient numbers and high quality and professional in accordance with their functions and duties. Therefore, HR planning is needed as a process to determine the number and type of human resources needed by the Bekasi City Land Office appropriately and perform tasks as expected. The preparation of HR plans at the Bekasi City Land Office is intended to ensure that HR needs can be met constantly, both in terms of quality and quantity. For this reason, HR planning is an integral part of the HR management function and is even considered very vital for the implementation of the main tasks and functions at the Bekasi City Land Office. Optimal utilization of human resources needs to be done by assigning human resources within the section of controlling and handling land disputes at the Bekasi City Land Office more effectively and efficiently.

Implementation of Mediation in Land Ownership Disputes at the Bekasi City Land Office

In the previous description, it is known that what is to be discussed is related to the application of mediation in land ownership disputes at the Bekasi City Land Office. It is known that there are many conflict disputes and cases in Indonesia and few people know how to handle and resolve them. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency in this study, namely the Bekasi City Land Office, handles land cases openly and coordinates with other agencies or institutions. With the intention that the results of problem solving will not cause new problems in the future.

Disputes usually start from a situation where one party feels aggrieved by another. Feelings of dissatisfaction will surface if there is a conflict of interest. The aggrieved party will convey his dissatisfaction to the second party, if the second party can respond and satisfy the first party, the conflict is over, otherwise if the reaction of the second party shows a difference of opinion or has different values, there will be what is called a dispute.

If in society there is a dispute that cannot be resolved by way of consultation, then the party whose rights are harmed can file a lawsuit through the court institution. This party is called the plaintiff. The lawsuit is filed with the court authorized to resolve the dispute. However, in practice, the court process is slow and takes years, resulting in a waste of time and formalistic and technical examinations. The parties' right to be absent is often used to buy time. Such a process will result in high costs that must be incurred so that the achievement of simple, fast and low-cost justice is very difficult to achieve. Another thing that happens in the litigation process is a win lose decision, where the feeling of winning and losing will not give peace to either party and can actually cause resentment and new conflicts. On the other hand, the limited number of judges and the accumulation of civil cases in the courts also have an impact on the slow processing of civil cases in the courts.

In order to realize a simple, fast and cheap process. Article 130HIR and Article 154 RBg allow peace efforts to be made in the settlement of civil disputes. The current procedural law, either Article 130 HIR or Article 154 RBg, encourages the parties in dispute to take the mediation process as stated in Article 130 HIR regarding the implementation of peace in front of the court.

Supreme Court Regulation No.1 of 2008 also regulates mediation procedures in court. At the latest one day after the first hearing the parties must choose a Mediator who is owned by the Court or who is not listed in the Court list. If no agreement can be reached on the Mediator, the parties must appoint a Mediator from the list provided by the Court only. If this is not successful, the President of the Tribunal shall have the authority to appoint a Mediator within one working day. If the mediation is successful, the agreement with the clause of withdrawal of the case or declaration of the case has been completed shall be presented at the hearing. The Panel of Judges will then confirm the agreement as a deed of peace. However, if it fails, it is the duty of the Mediator to report this in writing to the Panel of Judges. The consequence of the failure forces the Panel of Judges to continue the case process.

Mediation as an alternative dispute resolution has not been known and recognized by the public and has also not been implemented in earnest, not all courts apply or use mediation. With the provisions in Article 130 paragraph (1) HIR or Article 154 paragraph (1) RBg, in this case the judge has an important role to seek an amicable settlement for the civil case he is examining. In this regard, the judge must be able to provide an understanding that the settlement of cases by means of peace is a better and wiser way of resolving than being resolved by means of a court decision, both in terms of community law and in terms of time, cost and energy used.

In its development, the demands for speed, confidentiality, efficiency and effectiveness as well as for maintaining the continuity of the relationship between the parties to the dispute, have not been able to respond to the litigation institution (court), which has received a lot of criticism. In its operation, the court is considered slow, expensive, wasteful of energy, time, money and win-win solutions. Therefore, alternative dispute resolution has received a positive response, especially in the business world which requires efficiency, confidentiality and preservation of cooperative relationships, is not formalistic, and wants a settlement that emphasizes justice. The alternative is mediation before the case is filed in court.

Meanwhile, mediation or alternative dispute resolution (APS) outside the court is regulated in Article 6 of Law Number 30 of 1999 concerning dispute resolution arbitration. APS institutions can be found widely in various fields such as Environmental Law, Growth, Consumer Protection and so on.

The Supreme Court of the Republic of Indonesia has also issued Supreme Court Regulation Number 2 of 2003 which was later refined by Supreme Court Regulation Number 1 of 2008 concerning Mediation Procedures in Courts which has been updated by Supreme Court Regulation Number 1 of 2016 concerning Mediation, where the regulation requires parties to civil disputes to first go through a mediation process. That is, through negotiations between the disputing parties with the help of a neutral third party

who does not have the authority to decide the Mediator. In this regard, the Supreme Court requires the use of mediation services as an effort to maximize peace as stipulated in Article 130 *Herziene Inlandsch Reglemen (HIR)* and Article 154 *Rechtsreglemen voor de Buitengewesten*.

The integration of the mediation institution into the litigation process in court is an effort that provides enough hope for the creation of services for justice seekers (*justitiabelen*) in resolving disputes quickly, simply and cheaply. By bringing the concept of mediation into the litigation process, it will open up opportunities for the entry of professional mediators who have special expertise in the field of negotiation and conflict resolution. This will certainly help the parties to the dispute in finding the best way to resolve the dispute:

- 1) After the case has been numbered, and a panel of judges has been appointed by the chairperson, the panel of judges then makes a determination for the Mediator to conduct the mediation;
- 2) After the parties are present, the panel hands over the mediation order to the Mediator and the parties;
- 3) The Mediator then suggested to the parties that the case be ended amicably by trying to reduce the losses of each litigant;
- 4) The Mediator served for 21 calendar days, whether or not the settlement was successful on the 22nd day must be submitted back to the panel that gave the decision;
- 5) If there is peace, the determination of peace shall still be made by the panel.

Based on research conducted by the author, there is also another form of dispute resolution with Mediation as an alternative civil dispute resolution where in the mediation the Mediator acts as a judge.

In accordance with the principles of civil procedural law, the judge here is also active. Active here in the sense that the judge plays an active role in seeking an amicable settlement of the case he is examining (Article 130 *Herziene Inlandsch Reglemen (HIR)* or Article 154 paragraph 1 *Rechtsreglemen voor de Buitengewesten (RBg)*). In order to make Article 130 *HIR* or 154 paragraph (1) *Rechtsreglemen voor de Buitengewesten (RBg)* effective, the Supreme Court issued Circular Letter No. 1 of 2002 on the empowerment of courts of first instance to apply the institution of peace which was later replaced by Supreme Court Regulation No. 2 of 2003 on mediation procedures in court. Based on the provisions of Supreme Court Regulation No. 2/2003, all civil cases filed in the district court must first be resolved through reconciliation with the assistance of a Mediator (Article 2 Paragraph 1). Therefore, the Judge will postpone the trial on the first day so that the parties can pursue the mediation process and is obliged to explain the mediation procedure to the litigants. Within 1 working day after the first hearing, the parties or their attorneys must confer to determine a Mediator from the court's list of Mediators or an outside Mediator. If the parties do not reach an agreement in selecting a Mediator, the presiding judge of the panel is authorized to appoint a Mediator by stipulation. However, the Judge hearing the case is prohibited from becoming a Mediator.

In its development, mediation and alternative dispute resolution outside the court are not only applied by judicial institutions but also other government agencies to shorten and facilitate dispute resolution. In taking action to resolve existing land disputes or conflicts, the Ministry of Agrarian Affairs and Spatial Planning / National Land Agency, especially the section on controlling and handling land disputes at the Bekasi City Land Office, is one of the institutions that can resolve a land dispute by prioritizing justice, namely resolving conflicts and disputes through consensus by respecting the rights and interests of the parties to the dispute, the basic principle of which is a win-win solution.

In general, in the last five years, the average number of land disputes nationally has grown by 330 cases (19.98%) per year and land conflicts have grown by 9 cases (20%) per year. The number of land disputes and conflicts that have occurred recently has the potential to cause social turmoil/insecurity.²⁴

Land disputes and conflicts some of which originate from the past can undeniably be an obstacle in development programs in general and an obstacle in fulfilling access to justice to the economic resources of the community in particular.

In line with the mandate of the Decree of the People's Consultative Assembly of the Republic of Indonesia Number IX/MPR/2001 on Agrarian Reform and Natural Resource Management, Article 5 paragraph (1) letter d and paragraph (2) letter e, which essentially resolves conflicts related to agrarian resources that have arisen so far and can anticipate potential conflicts in the future in order to ensure the implementation of law enforcement and Article 5 paragraph (1) letter e, which mentions strengthening institutions and their authority in order to carry out the implementation of agrarian reform and resolve conflicts related to agrarian resources that occur, As well as in the settlement of land disputes, namely land disputes between individuals, legal entities or institutions that do not have a broad impact, the role of the Directorate of Land Dispute Handling in relation to its duties and functions is very important.

Theoretically, in the previous description, it is known that in the Indonesian legal system, two forms of dispute resolution are known, namely through litigation, and non-litigation or better known as Alternative Dispute Resolution. Suyud Margono explains that Litigation is a lawsuit over a conflict that is ritualized to replace the real conflict, where the parties give a decision maker two conflicting choices. Litigation is a dispute resolution process in court, where all parties to the dispute face each other to defend their rights before the court. The end result of a dispute resolution through litigation is a judgment that declares a win-lose solution.²⁵

In the settlement of disputes through non-litigation efforts, in Indonesia, alternative dispute resolution (ADR) is known, which is explained in Article 1 point (10) of Law Number 30 of 1999 concerning Arbitration and ADR, which states, "Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through

²⁴ *Laporan Kinerja Instansi Pemerintah Direktorat Penanganan Sengketa Pertanahan Pada Kementerian Agraria Dan Tata Ruang / Badan Pertanahan Nasional Tahun 2021*, Direktorat Penanganan Sengketa Pertanahan Pada Kementerian Agraria Dan Tata Ruang / Badan Pertanahan Nasional, Jakarta, 2021. hlm. 4.

²⁵ Eddy Djunaedi, *Alternative Dispute Resolution dan Court Connected Dispute Resolution Yang Terkait Dengan Pengadilan*, *Loc.Cit.*, hlm. 16.

procedures agreed upon by the parties, namely out-of-court dispute resolution by means of consultation, mediation, conciliation, or expert judgment." (Article 1 point (10) of Law Number 30 of 1999 concerning Arbitration and ADR).²⁶

The discussion of alternatives in dispute resolution itself was developed to overcome the congestion and accumulation of cases in the courts and the Supreme Court. Dispute resolution through non-litigation on the one hand is considered far more effective and efficient, which is why in recent times, the development of various out-of-court settlement methods, known as ADR, has taken various forms, such as: arbitration, negotiation, mediation, conciliation, dan expert judgment.²⁷

As in the previous explanation, it is known that the definition of mediation according to Christopher W. Moore, Mediation is an intervention in negotiations or conflict from an acceptable third party who has limited or no authoritative decision making power, but helps the parties involved in voluntarily reaching a mutually acceptable settlement in the dispute.²⁸

Laurence Boulle emphasizes that mediation is a decision-making process carried out by the parties assisted by a third party as a Mediator. Boulle's statement shows that the decision-making authority is entirely in the hands of the parties and the Mediator only assists the parties in the decision-making process. The presence of the Mediator is a very important factor because the Mediator can assist and strive for a better decision-making process so as to produce a final decision that can be accepted by those in conflict.²⁹

Then, in Supreme Court Regulation Number 1 of 2016, it states the definition of mediation and the definition of Mediator.³⁰

- 1) Definition of Mediation is a dispute resolution through a negotiation process between the parties with the assistance of a Mediator;
- 2) Mediator is a neutral and impartial party, whose function is to assist the parties in finding various possible dispute resolutions.

The definition of mediation in the Supreme Court regulation is not much different from the essence of mediation proposed by previous experts. However, the definition of mediation according to the Supreme Court emphasizes one important aspect in which the Mediator proactively seeks various possibilities of dispute resolution. The mediator must be able to find alternative dispute resolution. The mediator is not only bound and focused on what the parties have in resolving the dispute between them. In this case the Mediator must be able to offer solutions or other avenues, when the parties no longer have alternatives to resolving their disputes. This is where the Mediator plays an important role as a neutral third party in assisting dispute resolution. Therefore, the Mediator should have a number of skills that can facilitate and assist the parties in resolving their dispute.³¹

²⁶ Lely Pelitasari Soebekty, dan Ninik Rahayu, *Modul Pelatihan Mediasi dan Konsiliasi*, Loc.Cit., hlm. 60.

²⁷ Dyah Aryani, *et. all.*, *Buku Saku Mediasi Sengketa Informasi Publik*, Loc.Cit., hlm. 4.

²⁸ Harifin Tumpa, *Pelaksanaan Mediasi Di Pengadilan*, Loc.Cit., hlm. 12.

²⁹ *Ibid.*, hlm. 109.

³⁰ Ismail Rumadan, *Efektifitas Pelaksanaan Mediasi Di Pengadilan Negeri*, Loc.Cit., hlm. 29.

³¹ Djafar Al Bram, *Penyelesaian Sengketa Bisnis Melalui Mediasi*, Loc.Cit., hlm. 29.

According to scholastic philosophers, there are three types of mediation:³²

- 1) Medium quod, It is something that is itself known and in knowing that something, something else is known. The usual example given for this mediation is the premises in a syllogism. Knowledge of the premises leads to knowledge of the conclusion. Another example: a red traffic light must stop must stop, so the vehicle must stop;
- 2) Medium quo, It is something that is not realized in itself but can be known through something else. For example: the lenses of the glasses we wear, we see the objects around us but the glasses themselves are not directly realized.
- 3) Medium in quo, Something that is not directly realized and in which something else is known. For example: the rearview mirror in a car, the driver of the car sees the vehicle behind and other things around him in the rearview mirror itself that he is not directly aware of.³³

In general, mediation is based on Supreme Court Regulation (Perma) Number 1 of 2008 concerning Mediation which has been updated with Supreme Court Regulation (Perma) Number 1 of 2016 concerning Mediation, which is basically a mediation process related to dispute resolution in court. Mediation is mandatory in the sense that every civil dispute that enters the court must first go through the mediation process. Not taking the mediation procedure is a violation of Article 130 HIR and or Article 154 Rbg which results in a null and void decision. The judge in the consideration of the verdict of the case must mention that the case concerned has been sought peace through mediation by mentioning the name of the Mediator for the case concerned. The nature of this mediation is closed, but in certain cases if the parties wish, then the implementation of mediation can be carried out in an open manner. The parties may choose a Mediator but the Mediator appointed must be a Mediator who has a certificate issued by an institution accredited by the Supreme Court. The parties are entitled to choose between the following options. First, a non-law judge of the court concerned; second, an advocate or academic; third, a non-law professional who is considered by the parties to have expertise or experience in the subject matter; fourth, a judge of the trial panel; fifth, a combination of the first to fourth Mediators, or a combination of the second and fourth or a combination of the third and fourth.

Based on this Perma, each stage is limited by time. Within a maximum of 5 working days after the parties appoint an agreed Mediator, each party may submit the case resume to each other and to the Mediator (Article 13 paragraph 1) Within a maximum of 5 working days after the parties fail to appoint a Mediator, each party may submit the case resume to the appointed Judge Mediator (Article 13 paragraph (2)). The mediation process lasts a maximum of 40 days since the Mediator is selected by the parties or appointed by the Chief Judge. Upon agreement of the parties, the mediation period may be extended for a maximum of 14 days from the expiration of the 40-day period. Based on the agreement of the parties, mediation may be conducted remotely using communication tools. The mediator is obliged to declare the mediation has failed if one of the parties or

³² Prasko, *Alternatif Penyelesaian Sengketa : Upaya Memaksimalkan Penegakan Hukum*, Loc.Cit., hlm. 62.

³³ Nyoman Satyayudha Dananjaya, dan Kadek Agus Sudiarawan, *Loc.Cit.*, hlm. 78.

the parties or their attorneys have not attended the mediation meeting twice in a row according to the agreed mediation meeting schedule or have not attended the mediation meeting twice in a row without reason after being properly summoned. If after the mediation process is underway the Mediator understands that the dispute being mediated involves assets or property or interests that are obviously related to other parties not mentioned in the lawsuit so that other interested parties cannot be a party to the mediation process, the Mediator may inform the parties and the examining Judge that the case is not suitable for mediation on the grounds that the parties are incomplete. If an agreement is reached, the parties with the assistance of the Mediator shall formulate in writing the agreement reached and signed by the parties and the Mediator. If in the mediation process the parties are represented by legal counsel, the parties shall state in writing their approval of the agreement reached. Before signing, the Mediator shall examine the material of the peace agreement to avoid any agreement that is contrary to the law or that cannot be implemented or that contains bad faith.

The parties reappear before the Judge on the appointed court day to notify the peace agreement. The parties may submit the peace agreement to the Judge to be confirmed in the form of a deed of peace. If the parties do not want the peace agreement to be confirmed in the form of a deed of peace, the peace agreement must contain a clause to revoke the lawsuit and or a clause stating that the case is over. If within a predetermined time limit an agreement cannot be reached, the Mediator shall state in writing that the mediation process has failed and notify the Judge of the failure. The Judge shall immediately proceed with the examination of the case in accordance with the provisions of the applicable procedural law. At each stage of the case examination, the Judge examining the case remains authorized to encourage or seek peace until before pronouncing a decision. The peace effort lasts for 14 working days from the time the parties convey their desire to make peace to the Judge examining the case. If the parties fail to reach an agreement, the statements and confessions of the parties in the mediation process cannot be used as evidence in the trial of the case concerned or other cases. The Mediator's notes shall also be destroyed. The mediator may not be asked to be a witness in the proceedings of the case in question. The mediator cannot be held criminally or civilly liable for the contents of the peace agreement resulting from the mediation process. The venue for mediation may be one of the rooms of the court of first instance or at another place agreed by the parties. Judge mediators may not conduct mediation outside the court. If the mediation is conducted in one of the court rooms, there is no fee. If conducted elsewhere, the costs shall be borne by the parties based on an agreement. The parties, based on their agreement, may pursue reconciliation efforts in cases that are being processed/examined at the appeal, cassation and judicial review levels.

The agreement of the parties to pursue reconciliation shall be submitted in writing to the Chairman of the Court of First Instance that is adjudicating. The President of the Court of First Instance shall immediately notify the President of the competent Court of Appeal or the President of the Supreme Court of the intention of the parties to make peace. The examination of the case shall be postponed for 14 working days after receiving notification of the parties' intention to make peace. If the file or memory of the appeal, cassation, judicial review has not been sent, then the Chairman of the Court of First

Instance is obliged to postpone the delivery, to give the parties the opportunity to seek peace.

The settlement of disputes in the land sector is basically resolved through mediation by the Land Office, where this has a regulation in the provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration. The provisions of Article 27 state that, "1) If within the announcement period as referred to in Article 26 paragraph (1) there is an objection regarding the announced physical data and or juridical data, the Head of the Adjudication Committee in systematic land registration or the Head of the Land Office in sporadic land registration shall endeavor to resolve the objection by deliberation as soon as possible. 2) If the settlement efforts by deliberation to reach consensus as referred to in paragraph (1) bring results, minutes of the settlement shall be drawn up and if the intended settlement results in changes to what is announced according to the provisions referred to in Article 26 paragraph (1), such changes shall be made on the map of the land parcels and or the list of entries concerned. 3) If the deliberative settlement efforts for consensus as referred to in paragraph (1) cannot be carried out or do not bring results, the Chairman of the Adjudication Committee in systematic land registration and the Head of the Land Office in sporadic land registration shall notify in writing the objecting party to file a lawsuit regarding the physical data and or juridical data in dispute with the Court.³⁴

From the provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration, it can be seen that the regulation of dispute resolution in the land sector through alternative dispute resolution channels has arrangements and implementation guidelines in the form of deliberation to reach consensus.

The provisions of Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration then have implementation arrangements as stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases. Specifically, mediation is explained in the provisions of Article 1 point 7 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Land Case Settlement which states, "Mediation is a way of resolving disputes and conflicts through a negotiation process to obtain an agreement of the parties with the assistance of a Mediator." Where the procedure for mediation in the land sector itself is regulated in the provisions of Article 4 through Article 36 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning or Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.

The general problems and strategic issues faced in carrying out the duties and functions of the section on control and handling of land disputes at the Bekasi City Land Office are the assessment of case settlement criteria that are different from other institutions / agencies which make it seem as if no work has been carried out and it seems that they are repeatedly handled for the same case, not optimal program and budget planning, so that budget revisions are still being carried out which cause slow budget

³⁴ Lembaran Negara Nomor 59 Tahun 1997 tentang Peraturan Pemerintah Nomor 24 tentang Pendaftaran Tanah.

absorption and limited human resources in carrying out the duties and functions of each organizational unit are also a separate problem. Recent land issues have become increasingly complex, resulting in legal certainty over land rights no longer being upheld due to, among other things, the role of the land mafia in the land sector. In addition, there are many dimensions of dispute resolution that must be handled divided into 9 Dispute Resolution Typologies, namely:³⁵ Land Tenure and Ownership; Determination of Rights and Land Registration; Boundaries/Location of Land Parcels; Compensation for Land Acquisition; Land Object of Land Reform; Partikelir Land Issues; Customary Land/Ulayat; Implementation of Court Decisions; Neglected Land Issues.

Therefore, it is necessary for the Government to take a firm stance to prevent land mafia practices and dispute resolution as a form of the State's presence in the life of the nation and state in order to realize the welfare and greatest prosperity of the people.

The Directorate of Land Dispute Handling based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 16 of 2020 concerning Organization and Work Procedures of the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency has the task of preparing the formulation of technical policies and carrying out the assessment, handling and settlement of land disputes. In carrying out its duties, the Directorate of Land Dispute Handling organizes functions:

- 1) Preparing policy formulation in the field of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 2) Implementation of policies on handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 3) Preparation of norms, standards, procedures, and criteria in the field of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 4) Implementation of assessment, identification and mapping of problems following up on complaints related to the handling and settlement of disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 5) Implementation of research, information gathering, coordination meetings and case titles in the framework of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 6) Preparing the issuance of decisions on the results of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;

³⁵ Prasko, *Alternatif Penyelesaian Sengketa : Upaya Memaksimalkan Penegakan Hukum Op. Cit.*, hlm. 126.

- 7) Implementation of identification, assessment and mapping of problems in an effort to find the root of the problem as material for the preparation of policies to prevent disputes over the determination of rights and land registration, land boundary disputes, disputes over land tenure and ownership;
- 8) Implementation of inventory, identification and data processing of the results of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;
- 9) Implementation of activities for handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes through mediation;
- 10) Implementation of technical guidance and supervision in the field of handling and resolving disputes over the determination of rights and land registration, land boundary disputes, land tenure and ownership disputes;

In this study, based on the previous description, it is known that in general, mediation in the section on controlling and handling land disputes at the Bekasi City Land Office is actually not effective enough, where the section on controlling and handling land disputes at the Bekasi City Land Office in 2017 was only able to resolve disputes with mediation as many as 4 (12.9%) disputes, out of 31 disputes that entered through public complaints, then in 2018 disputes that were successfully resolved through mediation were only 17 (34%), then in 2019, it is known that disputes that were successfully resolved through mediation were only 17 (28.3%), out of 60 disputes submitted through public complaints, then in 2020 it is known that disputes that were successfully resolved through mediation were only 12 (23.5%), out of 51 disputes submitted through public complaints, and in 2021 it is known that disputes that were successfully resolved through mediation were only 17 (28.3%), out of 60 disputes submitted through public complaints.

The factors causing mediation to not run effectively and the role of the section on controlling and handling land disputes at the Bekasi City Land Office has not been maximized in resolving disputes with mediation are known to be caused by several things, including:³⁶

- 1) Internal Factors
 - a) The lack of employees responsible for the section on control and handling of land disputes at the Bekasi City Land Office, which only amounts to 6 personnel;
 - b) The limited budget for dispute resolution, which is known to only have a budget of Rp 139,400,000, where it is known that this is far from the budget for other activities such as the budget for:
 - Management support program and implementation of other technical tasks which has a budget of Rp 17,807,510,000;

³⁶ Tim Peneliti Kantor Pertanahan Kota Administrasi Jakarta Selatan, *Laporan Kinerja Instansi Pemerintah Kantor Pertanahan Nasional Jakarta Selatan Tahun 2021*, Kantor Pertanahan Kota Administrasi Jakarta Selatan, Jakarta, 2021. hlm.54.

- Implementation of Infrastructure Development which has a budget of Rp 897,701,000;
 - Implementation of the Structuring of Agrarian Legal Relations in the region which has a budget of Rp 1,544,142,000.
- 2) External Factors
- a) The parties do not understand the function of mediation;
 - b) The parties tend to be oriented towards losing and winning;
 - c) The parties are more likely to impose their own will; and
 - d) Mediation settlement always uses local government officials (especially in land conflicts) and in practice costs more and takes longer to coordinate.

Legal Certainty of the Application of the Mediation Method in Settling Land Disputes at the Bekasi City Land Office

Based on the previous description, it is known that what will be discussed in this section is related to the legal protection of the application of the mediation method in resolving land disputes at the Bekasi City Land Office. The settlement of land cases in Bekasi City from the data presented based on the Bekasi City Land Office Government Agency Performance Accountability Report, the success rate of mediation, basically, has not been maximized enough, so that land settlements are more likely to be resolved in court or by litigation.

Indonesian people feel that peaceful dispute resolution has led them to a harmonious, fair, balanced life, and the maintenance of community values. The community seeks to resolve their disputes appropriately by upholding the value of togetherness and not depriving or suppressing individual freedom and not allowing it to continue but must seek a way to resolve it.

The resolution of conflicts or disputes in the community refers to the principle of freedom that benefits both parties, parties can offer dispute resolution options with intermediaries. The parties are not fixated on proving right or wrong in the dispute they face, but they tend to think of a settlement for the future, by accommodating their interests in a balanced manner.

Mediation as an alternative dispute resolution is a settlement that provides a win-win solution for the parties to the dispute. The existence of mediation as a form of dispute resolution mechanism is part of the social norms that live and develop in Indonesian society which is oriented towards balance and harmony, in which everyone feels respected, valued and no one is defeated, mediation will provide access to the community to resolve disputes more quickly and reduce the burden of cases in the courts.

On the one hand, in the previous explanation, it is known that this research wants to discuss the legal certainty of the application of the mediation method in resolving land disputes at the Bekasi City Land Office, where Jan Michiel Otto's theory of legal certainty

is used to examine and analyze the discussion of the legal certainty of the application of the mediation method in resolving land disputes at the Bekasi City Land Office.

Dispute resolution outside the court or called Alternative Dispute Resolution is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. Alternative dispute resolution institutions are basically an agreement between the parties to the dispute that must be obeyed. As a consequence, the agreement of the disputing parties is voluntary and therefore cannot be imposed by one party to the other disputing parties.

On the one hand, it is known that mediation was previously regulated under BPN Head Decree No. 34/2007. The implementation of this model is carried out by officials/employees appointed with a letter of assignment/command from the Head of the Land Office, Head of the Regional Office of BPN, Head of BPN. So the mediator who handles the case is not based on the agreement of the parties, but based on the letter of assignment. The appointed Mediator is an Authoritative Mediator in the sense that the Mediator has the ability to influence the final outcome of a mediation process, while the parties must have a direct interest in the issues being mediated.

There are several stages in this mediation. First, the preparation to bring the two parties together. In relation to this preparation, a Mediator must know the subject matter and the seat of the problem. Analyze whether the problem can be resolved through mediation or not. Furthermore, a tentative dispute handling team is formed, because there are times when authorized structural officials can directly organize mediation.

Next, prepare the materials needed to conduct mediation on the subject of the dispute, then make a review resume so that the Mediator has mastered the substance of the problem, straighten the problem, suggest and even warn if the agreement sought will tend to violate regulations in the land sector, for example violating the interests of holders of mortgage rights, the interests of other heirs, violating the nature of the granting of rights. This stage ends with the determination of the time and place of the mediation. Second, the invitation. This invitation is extended to the parties concerned, relevant agencies (if deemed necessary) to hold the dispute resolution meeting and are asked to bring the necessary data/information. The structure of the meeting is arranged with a "U seat" or circle seating position.

Then, mediation activities. This activity begins with an effort to overcome obstacles in the relationship between parties (personnel relations between parties). So that the atmosphere between the two parties to the dispute is more fluid, familiar and not rigid.

Furthermore, clarification of the parties is carried out. With this clarification, the parties know their respective positions. The mediator will condition so that there is no sense of favoring one party / both parties objectively as well as equal positions, rights and obligations. Each has the right to provide and obtain information/data submitted by the opponent. The parties may refute or request clarification from the opponent and must respect the other party. Regulating the implementation of mediation in the sense that from the beginning of the mediation the rules of mediation have been conveyed which must be obeyed by all parties involved in the mediation. These rules may be initiated by

the Mediator or may be developed by agreement of the parties. In the event of a deviation from these rules, it can be done only with the consent of the parties.

The agenda of the deliberation is intended so that the process of deliberation, discussion, negotiation can be directed and does not widen / get out of the focus of the issue, the Mediator must maintain the moment of conversation so as not to be provoked or carried away / dissolved by the parties' talks. The mediator prepares a discussion program/agenda that includes the substance of the problem, time allocation, schedule for the next meeting which needs to be approved by the parties. Next, identify interests. This identification is done to determine the real subject matter, and whether there is relevance as material for negotiation. The subject matter should be the focus in the subsequent mediation process. If there is a deviation, the mediator must remind the parties to return to the focus of the problem. The interests that are the focus of the mediation can determine the settlement agreement. The interests here do not have to be seen from the legal aspect only, it can be seen from other aspects as long as it is possible to negotiate and the results do not violate the law.

Then, the stage of generalizing the parties' options. In this stage, the collection of options is carried out as a requested alternative, then the generalization of the alternative is carried out so that there is a relationship between the alternative and the problem. By generalizing options that do not distinguish who the options come from and focusing on efforts to discuss options that might become solutions, the mediation process will be easier. It is known that options are a number of proposals that will be used as alternative dispute resolution in a mediation process. The parties can propose the desired settlement options. In authoritative mediation the Mediator can also present other options or alternatives. For example, the generalization of the chosen option is: the boundary of the land is left, the land remains under real control, the party who should have the right to ask for compensation. Bargaining for options can be tough and closed and there is even a possibility of deadlock. Here the Mediator should use private sessions or caucuses. The manner in which options have been bargained over can lead to undesirable conditions. The Mediator should remind the parties of the purpose and focus of the problem at hand. In the event that the Mediator sees a hidden interest, a caucus or private session may be conducted. Private sessions with either party must be with the knowledge and consent of the opposing party. The opposing party should be given the opportunity to use the same private session. This process often has to be repeated at different times. The outcome of this stage is a list of options for alternative resolution of the dispute in question.

Next, the parties enter the stage of determining the preferred option. There is a list of options selected and then an assessment of these options is carried out by each party. The parties are given the opportunity to determine whether to accept or reject the option, and calculate the profit and loss for each party. The parties may consult other parties such as lawyers, experts regarding the options. The mediator must be able to influence the parties not to use the opportunity to pressure the opposing party. Here calculations are needed with logical, rational and objective considerations to realize an agreement on the chosen option. This is where the Mediator's skills will be tested. The result of this activity is the determination of which option is accepted by both parties, but it is not final, it must be discussed further.

Then after the participants have determined the options, the mediating parties can conduct final negotiations. The parties conduct final negotiations, namely clarification of the firmness of the agreed options for resolving the dispute. The result of this stage is a dispute resolution decision which is an agreement between the parties to the dispute. The agreement basically contains the options accepted, as well as the rights and obligations of the parties. Furthermore, clarification of the agreement is made to the parties. This clarification is necessary so that the parties are no longer in doubt about their choice to settle the dispute and voluntarily implement it.

After that, the formalization of the dispute resolution agreement, formulated in the form of an agreement or agreement. With this agreement, the mediation is substantially complete. Every mediation activity is outlined in the Minutes of Mediation as material for reports to the authorized officials to be followed up in accordance with applicable regulations. In order to have binding force the minutes are signed by the parties and the Mediator.

As for its implementation, in the section on controlling and handling land disputes at the Bekasi City Land Office, it is known that in the process of handling land disputes, it can be based on two things, namely the initiative of the ministry, in this case a recommendation / order from the Ministry of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, and can also be due to public complaints.

The settlement of land disputes in the section on controlling and handling land disputes at the Bekasi City Land Office is carried out based on initiatives from the Ministry, based on Article 5 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency Number 11 of 2016 concerning Settlement of Land Cases.

On the one hand, based on the previous description, it is known that the implementation of mediation is actually not effective enough because the role of the section on controlling and handling land disputes at the Bekasi City Land Office has not been maximized, because there are several obstacles both internal and external.

It is known that the internal obstacles experienced by the section on control and handling of land disputes at the Bekasi City Land Office are due to the limited number of personnel in the section on control and handling of land disputes at the Bekasi City Land Office, which only totals 6 people, accompanied by budget constraints, where the budget for resolving land disputes is quite minimal compared to the budget for other activities at the Bekasi City Land Office, which only amounts to IDR 139,400,000 based on the Bekasi City National Land Office Government Agency Performance Report 2021. In addition, there are also external obstacles experienced by the section on controlling and handling land disputes at the Bekasi City Land Office, such as the fact that there are still parties who do not understand the function of mediation, the views of the parties who tend to be oriented towards losing and winning, the actions of the parties who are more likely to impose their own will, and mediation settlements always use local government officials (especially in land conflicts) and in practice the costs incurred are even more and require a long time related to coordination.

IV. CONCLUSION

The application of mediation in land ownership disputes at the Land Office, in the section on controlling and handling land disputes at the Bekasi City Land Office, is actually not effective enough, where the section on controlling and handling land disputes at the Bekasi City Land Office in 2017-2020 was only able to resolve disputes with mediation with a limited number of cases due to external and internal obstacles experienced by the section on controlling and handling land disputes at the Bekasi City Land Office.

The application of the mediation method in resolving land disputes at the Bekasi City Land Office, in the section on controlling and handling land disputes, actually does not provide sufficient legal protection in carrying out mediation efforts based on Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Article 27 of Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016 concerning Land Case Settlement, and Decree of the Head of BPN Number 34 of 2007, where it is known that the results of the mediation carried out are still not optimal enough, both because there are internal obstacles and external obstacles experienced, so that it has not fulfilled repressive legal protection for the parties to the dispute.

SUGGESTIONS

To be able to increase the effectiveness of the application of mediation in land ownership disputes at the Land Office, the section on controlling and handling land disputes at the Bekasi City Land Office is expected to be able to have solutions to external and internal obstacles experienced by the section on controlling and handling land disputes at the Bekasi City Land Office, especially in arrangements where legal arrangements need to be improved in the field of improving the quality of Mediators in order to be able to increase effective and professional dispute resolution efforts, in order to avoid the accumulation of land dispute cases in court.

In the future, in order to avoid many disputes at the Bekasi City Land Office, it is recommended that the Bekasi City Land Office further improve the quality of land registration services and land data collection administration, and supervision in land registration services, in order to avoid the rise of disputes related to overlapping land ownership which is often the main factor in disputes at the Bekasi City Land Office.

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