

# Mediation As a Non- Litigation Effort in Settlement Dispute Land in Indonesia

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**Abstract :** Land is something the needs required by each Indonesian citizens. Land is the basic capital development. in life socialize in general hang his life on the benefit land and have relationship that is eternal with the state and the people. Therefore That law agrarianism in Indonesia in general general has arranged in Constitution Number 5 of 1960 concerning Basic Rules of Procedure Agrarian Law (UUPA), which is implementation (formel gesetz) Article 33 paragraph 3 of the 1945 Constitution which states that " Earth and water and wealth nature contained inside it controlled by the state and used as much as possible For prosperity of the people". As action carry on from the related Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia with earth or land. then be taken out Constitution Number 5 of 1960 concerning Basic Rules Agrarian (hereinafter abbreviated as UUPA). Scientific articles This Use study law normative or study law literature that is research conducted with method research material library or secondary data. and types research on writing This is study juridical normative. namely reviewed with approach legislation It means something problem will seen from aspect the law with examine regulation legislation. Research results show that the law in Indonesia is still need to be completed For form arrangement about Mediation As a Non-Litigation Effort in Settlement Dispute Land in Indonesia

**Keywords:** Non-litigation, mediation, land

## I. INTRODUCTION

Land is something the needs required by each Indonesian citizens. Land is the basic capital development, in life socialize in general hang his life on the benefit land and have relationship that is eternal with the state and the people. Therefore That law agrarianism in Indonesia in general general has arranged in Constitution Number 5 of 1960 concerning Basic Rules of Procedure Agrarian Law (UUPA), which is implementation (formel gesetz) Article 33 paragraph 3 of the 1945 Constitution which states that "Earth and water and natural resources nature contained inside it controlled by the state and used as much as possible For prosperity of the people".<sup>1</sup> As action carry on from the related Article 33 paragraph (3) of the 1945 Constitution of the Republic of

<sup>1</sup>Adrian Sutedi, 2007, *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Jakarta: Sinar Grafika hlm 11



Indonesia with earth or land, then be taken out Constitution Number 5 of 1960 concerning Basic Rules Agrarian (hereinafter abbreviated as UUPA).

Main objective from UUPA are :<sup>2</sup>

1. Laying the foundations for compilation national agrarian law, which is a tool for bring prosperity, happiness and justice for The state and the people, especially the people within frame public fair and prosperous.
2. Laying the foundations For stage unity and simplicity in law land.
3. Laying the foundations For provide certainty law regarding rights land for all the people. Goal in line with the concept that states that country Indonesia is an agricultural country. So from that, the writers referring to to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which, among other things, states that the earth, water, and room space and what is contained therein in it, must managed and maintained to provide maximum benefit for prosperity of the people.

So that all people in Indonesia can manage land they in line with rights and obligations they, then public it must also be own sufficient knowledge about law agrarian law is a series rules law civil law, constitutional law, and law state administration that regulates connection between individuals and legal entities with earth, water, and space space in throughout the country and also regulates its authority. <sup>3</sup>For modern societies residing in urban areas and their surroundings, of course knowledge about law agrarianism can obtained with easy. However, the situation is the same No found in the interior or rural. need distributed knowledge law said, another urgency of devotion this society is as following. Function land the more increase so that arise a consequence in the form of increasing problem land. Land is also source livelihood for people who are looking for living through source agriculture, plantations and mining. According to Koentjaraningrat, conflict or dispute also happened because existence difference perception Which is description environment that is carried out in a way based on awareness knowledge possessed a person, the environment in question is environment physique and environment social.<sup>4</sup>

If people in the village the No understand rights and obligations they to land they, then things that are not expected like conflict land and disputes land can happened. Because of that that, the writers article This has socialize a series regulations as following. The first regulation is Law of the Republic of Indonesia Number 5 of 1960 concerning Main Point Agrarian which is Indonesian law that regulates land in general. Second, we also socialize content from Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternatives Settlement The dispute that governs about settlement external disputes court. Third,

Based on review conceptual in overcome dispute namely with method mediation carried out by the parties concerned outside justice and in the justice. Besides that, disputes that often arise happen in each region Of course need effort laws that can done

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<sup>2</sup>Hendri Jayadi, Tomson Situmeang, Poltak Siringoringo, I Dewa Ayu Widyani, L Elly AM Pandiangan, Putu George Matthew Simbolon, Penyelesaian Sengketa Tanah berdasarkan Kaidah Hukum Positif dan Doktrin Hukum tentang Penyelesaian Sengketa di Indonesia, Jurnal Comunitas Servizio, Volume 5, Nomor 1, Tahun 2023 Hal 1051

<sup>3</sup>Rahmat Ramadhani, 2018, Hukum Agraria (Suatu Pengantar). Medan, UMSU Press. halaman 9

<sup>4</sup> Koentjaraningrat, 1982, Metode-metode Penelitian Masyarakat, Jakarta: PT Gramedia Pustaka Utama. Hlm 183

in face settlement dispute the land that occurs with implementing the mediation process. Causes emergence dispute This many kinds of Can due to the certification process less land clear, and influenced a feeling of indifference in easy to recognize administration ownership by another party. With This is the mediation path can taken in case conflict dispute This can it is said as one of the mechanism settlement alternative in various environmental problems life, land, fisheries, water and so on which can implemented with effective and efficient. The implementation of mediation carried out can made into as effort in form peace. According to Regulation Supreme Court of the Republic of Indonesia Number 01 of 2008 which can with fast give power right to individual

Based on background behind on so problems that arise among others, How arrangement law about mediation as non- litigation efforts in settlement dispute land in Indonesia And How is it? efforts that can be made done For increase role mediation as means settlement dispute effective and equitable land management

## II. RESEARCH METHODS

Scientific articles Mediation As a Non- Litigation Effort in Settlement Dispute Land in Indonesia uses type study law normative or study law bibliography, namely research conducted with method research material library or secondary data mere.<sup>5</sup>Types of research in writing This is study juridical normative, namely reviewed with approach legislation (*the statute approach*) It means the approach taken with examine all regulation relevant laws and regulations related with issue the law being handled. Data <sup>6</sup>collection techniques in research this, with material primary law, law secondary and tertiary collected based on topic problems formulated and studied according to classification problem according to source the hierarchy in a way sequential related with Mediation As a Non-Litigation Effort in Settlement Dispute Land in Indonesia Data analysis / materials law in research This with method studies literature (*library research*) that is with method study literature is research conducted with use literature (library), both in the form of books, notes, and report results study previous, and the rules legislation, which outlines and connects so that served in systematic writing For answer questions problem on.<sup>7</sup>

## III. DISCUSSION

### A. Legal Regulations Regarding Mediation As a Non- Litigation Effort in Settlement Dispute Land in Indonesia

Dispute land is one of the problem a classic that continues developing in Indonesia. Its complexity No only Because aspect the laws surrounding it, but also because its relevance with factor social, economic, and political disputes land often involving public small, corporate, and government, so that the solution need fair, fast, and peace - oriented mechanisms.<sup>8</sup>

<sup>5</sup> Soerjono Soekanto, Sri Mamudji. 2003. Penelitian Hukum Normatif, Suatu Tinjauan Singkat. Jakarta: PT Raja Grafindo Persada, hlm 15

<sup>6</sup> Peter Mahmud Marzuki, (2011), Penelitian Hukum, cetakan ke-11 Jakarta:Kencana, hlm 93.

<sup>7</sup> Iqbal Hasan, Analisis Data Penelitian Dengan Statistik, Bumi Aksara, Jakarta, 2008, hlm. 5

<sup>8</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi, dan Pelaksanaannya*, Jakarta: Djambatan, 2016, hlm. 421–423.

Mechanism settlement through track litigation often considered No effective Because eat long time, cost high, and cause tension social in society. Therefore that, is necessary alternative settlement more disputes peaceful and efficient, namely mediation as non- litigation efforts.<sup>9</sup>

Mediation functioning as a dialogue platform that brings together interests of the parties For look for solution together without must involving judges as breaker. Approach This in line with values deliberation For consensus that becomes base system Indonesian law as reflected in please the four Pancasila.<sup>10</sup>

## 1. Philosophical and Legal Basis of Mediation in Settlement Dispute Land

In a way philosophical, mediation in dispute land is embodiment from principle justice social and deliberation in settlement related conflicts with right on source Power agrarian principles This in line with Article 33 paragraph (3) of the 1945 Constitution which confirms that earth, water and wealth nature contained therein controlled by the state and used For as much as possible prosperity of the people.<sup>11</sup>

From the side juridical, mediation recognized in various regulation legislation that becomes base law for its implementation, including:

- a. Law Number 30 of 1999 concerning Arbitration and Alternatives Settlement Dispute Constitution This become umbrella law main for all form settlement external disputes courts, including mediation. Article 1 number (10) states that :  
 “Alternative Settlement Dispute is institution settlement dispute or different opinion through procedures agreed upon by the parties, outside court, with method consultation, negotiation, mediation, conciliation, or evaluation expert.”<sup>12</sup>  
 Article 6 paragraph (1) also confirms that dispute can completed through alternative settlement dispute based on good faith well, with put aside settlement through district court. With thus, in a way normative, mediation is form legitimate from settlement non- litigation disputes in Indonesia.<sup>13</sup>
- b. Law Number 5 of 1960 concerning Basic Rules of Procedure Agrarian Law (UUPA) UUPA becomes runway constitutional for policy land national. Article 2 paragraph (4) of the UUPA mandates that right control the country over land must implemented with notice the interests of the people. <sup>14</sup>This is means settlement conflict land ideally done with a humanistic and fair approach, not through confrontation law solely.
- c. Regulations Supreme Court of the Republic of Indonesia Number 1 of 2016 concerning Procedure Mediation in Court  
 This PERMA obligatory every case civil For go through mediation moreover formerly before enter stage proof in court.<sup>15</sup> Even though this PERMA applicable in

<sup>9</sup>Gunawan Widjaja, *Alternatif Penyelesaian Sengketa: Mediasi, Arbitrase, dan Konsiliasi*, Jakarta: RajaGrafindo Persada, 2013, hlm. 12–14.

<sup>10</sup>Sutedi, Adrian, *Hukum Pertanahan dalam Sistem Hukum Nasional*, Jakarta: Sinar Grafika, 2012, hlm. 132

<sup>11</sup> Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 33 ayat (3)

<sup>12</sup> Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa, Pasal 1 angka (10).

<sup>13</sup>Ibid., Pasal 6 ayat (1)

<sup>14</sup> Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria, Pasal 2 ayat (4).

<sup>15</sup> Peraturan Mahkamah Agung Republik Indonesia Nomor 1 Tahun 2016, Pasal 2.

the environment justice, its substance give base that mediation is mechanism main in settlement dispute civil, including land.

- d. Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of BPN Number 11 of 2016 concerning Settlement Case Land

Regulation This become base law implementation mediation within the National Land Agency (BPN). Articles 10 to with Article 13 regulating that the BPN has the authority facilitate mediation to case land that is of a nature administrative.<sup>16</sup>This process carried out by a mediator who comes from from BPN officials or party neutral which has mediator certificate.

- e. Civil Code (KUHPerdato)

Article 1851 of the Civil Code arrange that peace is something an agreement in which the parties each other end existing dispute.<sup>17</sup> Mediation results, if poured in form agreement written legally, have strength law tie as the principle of *pacta sunt servanda* (Article 1338 of the Civil Code).

With Thus, the arrangement law mediation land own strong legitimacy Good in a way philosophical, juridical, and sociological.

## 2. Implementation Mediation Dispute Land in Indonesia

Implementation mediation in dispute land in Indonesia can done through two paths main, namely :

- a. Non - Litigation Mediation

Non- litigation mediation implemented within the Ministry of Agrarian Affairs and Spatial Planning/BPN. Based on Regulation of the Minister of ATR/BPN Number 11 of 2016, mechanism mediation done with steps as following:

- 1) Reception and inspection application from the disputing parties ;
- 2) Verification beginning and analysis administrative by BPN officials ;
- 3) Appointment of mediator by the Head of the Land Office or appointed official;
- 4) Implementation mediation through meeting direct between parties dispute ;
- 5) Preparation of Minutes of Agreement (BAK) if achieved peace ;
- 6) Recording and reporting results mediation in system administration land.<sup>18</sup>

- b. Mediation in Court (Litigation) with Stages Mediation)

If dispute land has brought to court, then PERMA No. 1 of 2016 requires judges to facilitate mediation moreover first. If mediation successful, then the result poured in deed peace (deed of agreement) which has strength law permanent and executive.<sup>19</sup>

Difference between both of them lies in the power law results mediation — results mediation in court nature executive, whereas results mediation at the BPN is of a nature civil administrative and binding both morally and contractual.

## 3. Challenges in Arrangement Mediation Land

<sup>16</sup> Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 11 Tahun 2016, Pasal 10–13.

<sup>17</sup>Kitab Undang-Undang Hukum Perdata, Pasal 1851

<sup>18</sup>Arie S. Hutagalung, *Penyelesaian Sengketa Pertanahan Melalui Mediasi*, Jakarta: Universitas Indonesia, 2017, hlm. 87–90

<sup>19</sup>Abdul Manan, *Penerapan Mediasi dalam Penyelesaian Sengketa di Pengadilan*, Jakarta: Kencana, 2014, hlm. 44–48.

Although mediation has arranged in various regulations, their implementation face a number of challenges, including:

- a. Limitations base law executive results non- litigation mediation.  
The results of the BPN mediation were not can direct executed if one of them party deny promise, because Not yet There is regulations governing mechanism determination results mediation by the court.<sup>20</sup>
  - 1) Quality and capacity of the mediator.  
Many mediators in the BPN environment have not own training professional in field law agrarian and technique negotiation conflict.<sup>21</sup>
  - 2) Lack of awareness public to mediation.  
Most of the public Still consider settlement through court as the only one form formal justice.<sup>22</sup>
  - 3) Overlapping overlap authority between institution.  
Dispute land often involving agency different such as BPN, government areas, and courts, which give rise to confusion in handling.<sup>23</sup>
- b. Direction of Reinforcement Arrangement Mediation Land to Front  
For strengthen effectiveness mediation land as means settlement non- litigation disputes, required a number of step strategic, namely:
  - 1) Regulatory Reform  
Government need emit Regulation Government about Mediation Land as derivative of UUPA, which provides strength law executive to results mediation.
  - 2) Certification and Professionalization of Mediators  
BPN needs Work The same with Supreme Court and institutions education law in training professional mediators certified in the field agrarian.
  - 3) System Integration Digital Mediation  
The implementation of the e-mediation system in the BPN environment will make it easier transparency and accountability settlement dispute land.
  - 4) Inter-Institutional Synergy  
BPN, MA, and Kemenkumham need compile guidelines together For avoid overlapping overlap authority in handling case land.<sup>24</sup>

With steps said, mediation land can become means settlement efficient, equitable and sustainable dispute resolution.

## **B. Efforts that can be made done for increase role mediation as means settlement dispute effective and equitable land management**

Dispute land in Indonesia is complex issues Because involving aspect legal, social, economic, even politics. Dispute kind of This often arise consequence overlapping overlap right on land, error in publishing certificate, or weakness administration land.

<sup>20</sup>Maria S.W. Sumardjono, *Kebijakan Pertanahan: Antara Regulasi dan Implementasi*, Jakarta: Kompas, 2008, hlm. 176–182.

<sup>21</sup> Boedi Harsono, *Op. Cit.*, halaman. 430.

<sup>22</sup> Sudikno Mertokusumo, *Hukum dan Peradilan di Indonesia*, Yogyakarta: Liberty, 2009, hlm. 65.

<sup>23</sup>Gunawan Widjaja, *Op. Cit. halaman.* 24–25.

<sup>24</sup>Kementerian ATR/BPN, *Pedoman Pelaksanaan Mediasi Pertanahan*, Jakarta: Direktorat Sengketa dan Konflik Tanah, 2020, hlm. 11–13.

<sup>25</sup>Settlement dispute through track litigation in court often eat long time, cost big, and leads to tension social in society. Therefore that, mediation as means non-litigation settlement become strategic alternatives For present justice in a way fast, cheap, and peaceful.<sup>26</sup>

However in in practice, effectiveness mediation land in Indonesia is still face various obstacles, such as weakness base law results mediation, limitations mediator competence, and low awareness public For finish dispute in a way peace.<sup>27</sup>Therefore that, is necessary a series effort systematic and measurable For increase role mediation in settlement dispute land to be more effective and fair.

## 1. Strengthening Legal Basis and Certainty of Mediation Results

An important first effort done is strengthen runway law so that the results mediation own strength law binding and can executed. During this, the result mediation facilitated by the National Land Agency (BPN) has not yet own strength executive, because only poured in the Minutes of Agreement (BAK) without ratification institution judiciary.<sup>28</sup>

Therefore that, it is necessary done strengthening regulations through amendment to Regulation of the Minister of ATR/BPN Number 11 of 2016 concerning Settlement Land Cases, so that the results mediation can have the same legal status with deed peace as arranged in Article 130 of the Herziene Indonesian Regulation (HIR) and Article 1851 of the Civil Code.<sup>29</sup>

With Thus, the results mediation can submitted to district court for get deed of birth or judge's decision, so that own strength definite and protective execution interests of the parties.<sup>30</sup>This step will also increase trust public to mediation as means settlement legitimate dispute in a way law and justice in a way substantial.

## 2. Improvement Competence and Professionalism of Mediators

The mediator has role central in success mediation. Many mediations fail No Because substance the dispute difficult, but because the mediator does not own ability managerial and communication adequate conflict.<sup>31</sup>

For that, it is necessary done standardization land mediator training involving the BPN, Supreme Court, and other institutions certification professional. Training the must covers aspect law agrarian, psychology social and engineering negotiation based interests (interest-based negotiation).<sup>32</sup>

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<sup>25</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi, dan Pelaksanaannya*, Jakarta: Djambatan, 2016, hlm. 423.

<sup>26</sup>Gunawan Widjaja, *Alternatif Penyelesaian Sengketa: Mediasi, Arbitrase, dan Konsiliasi*, Jakarta: RajaGrafindo Persada, 2013, hlm. 12.

<sup>27</sup>Arie S. Hutagalung, *Penyelesaian Sengketa Pertanian Melalui Mediasi*, Jakarta: Fakultas Hukum Universitas Indonesia, 2017, hlm. 87.

<sup>28</sup>Maria S.W. Sumardjono, *Kebijakan Pertanian: Antara Regulasi dan Implementasi*, Jakarta: Kompas, 2008, hlm. 175.

<sup>29</sup> Herziene Indonesian Regulation (HIR), Article 130.

<sup>30</sup>Civil Code, Article 1851.

<sup>31</sup>Abdul Manan, *Penerapan Mediasi dalam Penyelesaian Sengketa di Pengadilan*, Jakarta: Kencana, 2014, hlm. 44.

<sup>32</sup>Ibid., hlm. 46.

In addition, it is necessary implemented mechanism accreditation and codes ethics of land mediators so that each mediator has not quite enough answer professionalism and integrity in operate his duties. This effort will ensure that the mediation process No only formality administrative, but become receptacle achievement true justice (substantive justice).<sup>33</sup>

### **3. Strengthening the role of the National Land Agency (BPN) as Facilitator Mediation**

As institutions that have authority in administration land, BPN plays a role strategic in facilitate mediation dispute land. However in practice, implementation mediation in the BPN environment often constrained by limitations source Power human, burden administrative, as well as Not yet the existence of a special unit that handles mediation in a way systematic.<sup>34</sup>

Therefore that, it is necessary done a number of step strategic, including :

- a. Establishment of Mediation Unit Land at every Land Office Regency /City;
- b. Improvement capacity BPN employees in field resolution conflict and law agrarian ;
- c. Development system digital mediation information land For transparency of process and publication results agreement ;
- d. Work The same cross institution between BPN, government regions and institutions self-reliance community (NGO) in the field of land.

Steps the will strengthen BPN's position as proactive problem solving institution in settlement conflict land in a way peace and justice.<sup>35</sup>

### **4. Community Empowerment and Socialization Mediation**

One of obstacle main in implementation mediation land is low awareness public to benefit settlement dispute through non- litigation path. Many parties are still look at that settlement in court is the only one road For get justice.<sup>36</sup>

For overcome matter said, the government together with BPN is necessary do socialization intensive and sustainable to community, especially in disaster- prone areas conflict land. Activities counseling law, training public law customs and campaigns public about importance settlement peace must encouraged.<sup>37</sup>

In addition, the government can empowering institution customs or figure public For play a role as a local mediator who understands context social and cultural local. Approach This in line with values living deliberation and mutual cooperation in Indonesian society.<sup>38</sup>

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<sup>33</sup> Sutedi, Adrian, *Hukum Pertanahan dalam Sistem Hukum Nasional*, Jakarta: Sinar Grafika, 2012, hlm. 133

<sup>34</sup> Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 11 Tahun 2016 tentang Penyelesaian Kasus Pertanahan, Pasal 10–13.

<sup>35</sup> Boedi Harsono, *Op. Cit.*, hlm. 431.

<sup>36</sup> Maria SW Sumardjono, *Op. Cit.*, hlm. 182.

<sup>37</sup> *Ibid.*, p. 185.

<sup>38</sup> Arie S. Hutagalung, *Op. Cit.*, halaman. 92.



## 5. Integration of Principles Justice Restorative in Mediation Land

Improvement efforts role mediation No only limited to aspects formal law, but also must integrate principle justice restorative justice. Principles This emphasize on recovery connection social and balance justice between the parties to the dispute.<sup>39</sup>

In context dispute land, implementation justice restorative means notice aspect social, economic, and cultural affected communities. The mediator needs to push a solution that is not only fair above paper, but also can accepted in a way social and moral by the parties.<sup>40</sup>

Implementation principle This will make mediation No only as mechanism settlement dispute, but also as instrument reconciliation strengthening social cohesion public.<sup>41</sup>

## IV. CONCLUSION

Mechanism settlement through track litigation often considered No effective Because eat long time, cost high, and cause tension social in society. Therefore that, is necessary alternative settlement more disputes peaceful and efficient, namely mediation as non- litigation efforts. Mediation functioning as a dialogue platform that brings together interests of the parties For look for solution together without must involving judges as breaker Dispute land in Indonesia is complex issues Because involving aspect legal, social, economic, even politics. Dispute kind of This often arise consequence overlapping overlap right on land, error in publishing certificate, or weakness administration land. Settlement dispute through track litigation in court often eat long time, cost big, and leads to tension social in society. Therefore that, mediation as means non- litigation settlement become strategic alternatives For present justice in a way fast, cheap, and peaceful. However in in practice, effectiveness mediation land in Indonesia is still face various obstacles, such as weakness base law results mediation, limitations mediator competence, and low awareness public For finish dispute in a way peace

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<sup>39</sup> Sudikno Mertokusumo, *Hukum dan Peradilan di Indonesia*, Yogyakarta: Liberty, 2009, hlm. 65.

<sup>40</sup>Ibid., hlm. 67.

<sup>41</sup>Gunawan Widjaja, *Op. Cit.*, hlm. 25.

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### **Scientific Articles**

Hendri Jayadi, Tomson Situmeang, Poltak Siringoringo, I Dewa Ayu Widyani, L Elly AM Pandiangan, Putu George Matthew Simbolon, *Penyelesaian Sengketa Tanah berdasarkan Kaidah Hukum Positif dan Doktrin Hukum tentang Penyelesaian Sengketa di Indonesia*, Jurnal *Comunitas Servizio*, Volume 5, Nomor 1, Tahun 2023

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Kitab Undang-Undang Hukum Perdata,

Herziene Indonesisch Reglement (HIR).

Undang-Undang Nomor 30 Tahun 1999 tentang Arbitrase dan Alternatif Penyelesaian Sengketa

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