

Mediation of Land Disputes in South Sumatera Province

Ellyza Octaleny¹

Sri Suwitri²

Endang Larasati³

Kismartini⁴

Abstract

Land is a natural resource that is very valuable for human life. Limited land availability creates separate disputes for humans. The cases of land disputes in South Sumatra Province, according to the Head of the Regional Office of the National Land Agency, were 27 cases, 18 cases have been completed and 9 cases have not been resolved. This study aims to analyze how the mediation of land disputes in the province of South Sumatra. The method used in this study is the study of literature by finding referrals that are relevant theories with cases or problems found. The reference is used as the basic foundation and main tool for research practice in the field. The findings in this study are that the mediation process carried out by the Regional Office of the National Land Agency is not in accordance with the Minister of Agrarian and Spatial Planning / Head of the National Land Agency No. 11 of 2016 concerning the settlement of the Land Case. The factors that influence the success of the mediation process are building trust, cooperation, neutrality of the mediator and empowerment of the parties to the dispute. The conclusion in this study is that mediation will work well if mediators can build trust and are neutral in resolving land disputes.

Keywords:

land dispute, mediation, South Sumatera Province

Introduction

Life in society is a collection of people who have different behaviors and interests. This difference can lead to conflict of interest and disputes. One object that often causes disputes is land. Land is a very valuable natural resource for human life. Limited availability of land has caused disputes for humans. The limited amount of land is not directly proportional to the amount of human growth and is accompanied by an increase in the

¹ Diponegoro University
Email: ellyzaoctaleny@ymail.com

² Diponegoro University
Email: witkusdali@gmail.com

³ Diponegoro University
Email: endanglarasatiprof57@gmail.com

⁴ Diponegoro University
Email: kis_martini@yahoo.co.id

economic value of the land, thus increasing the intensity of disputes in human life itself. Land conflicts are now a global phenomenon, including in Indonesia. In Indonesia land conflicts are often resolved through general courts and administrative courts. The process of resolving disputes through the courts tends to produce new problems because they are win-lose, unresponsive, and the case process takes a long time.

According to Dewi Kartika, the Secretary General of the Consortium for Agrarian Reform (KPA) conflicts spread in 34 Provinces, with the six highest contributors to conflicts, among others, Riau Province with 44 conflicts (9.78%), East Java with 43 conflicts (9.56%) , West Java Province with 38 conflicts (8.44%), North Sumatra Province with 36 conflicts, Aceh Province with 24 conflicts (5.33%) and South Sumatra Province with 22 conflicts (4.89%). According to the Agrarian Reform Consortium (KPA) (2018: 35), agrarian conflicts in South Sumatra are dominated by oil palm plantations and industrial timber estates (HTI). The total area of conflict in South Sumatra Province which is controlled by large companies engaged in the plantation and forestry sectors is 9.1 million hectares.

Data was released by the Agrarian Reform Consortium in 2018 shows that South Sumatra Province is the sixth province contributing to agrarian conflicts, this means that South Sumatra Province is a province that has a point of conflict that will explode at any time. One of the regions in South Sumatra Province that experienced agrarian conflicts was the border of Banyuasin Regency and Palembang City. Agrarian conflicts in this area take the form of disputes over land and land disputes, both disputes between communities and communities, communities with companies, and communities with the government. One of the regions in South Sumatra Province that experienced agrarian conflicts was the border of Banyuasin Regency and Palembang City. Agrarian conflicts in this area take the form of disputes over land and land disputes, both disputes between communities and communities, communities with companies, and communities with the government.

According to the Head of the Regional Office (Kanwil) of the National Land Agency (BPN) of South Sumatra Province, Deluma (2018), said that in 2018 there were 27 cases of land disputes, 18 cases of land disputes had been resolved and 9 cases of disputes remained and were not yet resolved. This is due to overlapping ownership of land rights due to the absence of the determination of boundaries in the Banyuasin Regency and Palembang City.

The causes of land disputes at the border of Banyuasin Regency and Palembang City can be classified as follows:

1. There is no legal certainty on the boundary in the border areas of Banyuasin Regency and Palembang City.
2. Inaccurate boundaries of residents' land with one another
3. The conversion of land from community estates to housing is carried out by the company
4. The private party's takeover of the people's land.
5. Issuance of certificates and land use rights (HGU) on troubled land carried out by the National Land Agency (BPN).
6. The control of the residents' land by the company with a plasma system that is not carried out in accordance with the agreed agreement.

Classification of the causes of land disputes as a mapping to facilitate finding the root of the problem so that it can resolve disputes that occur in the community, especially in the border areas of Banyuasin Regency and Palembang City.

In essence, all problems will have a way to solve them, including the issue of land rights disputes. Based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning No. 11 of 2016 concerning Settlement of land cases, settlement of land cases is settled by the judiciary, but according to Government Regulation (PP) Number 10 of 2006 concerning the National Land Agency, land disputes can be carried out through mediation. Government Regulation (PP) Number 10 of 2006 concerning the National Land Agency in article 23 gives the authority to the National Land Agency to study and handle land disputes through mediation. Based on these two regulations, it can be seen that there are two ways of resolving land disputes in Indonesia, namely through court and outside the court in this case mediation. Based on this explanation, the formulation of the problem in this study is how to mediate land disputes in South Sumatra Province?

This research is inseparable from the results of previous studies that have been conducted as a comparison and study. As for the results of research that are made into comparisons cannot be separated from the research topic, namely regarding Mediation through alternative dispute resolution. In a previous study conducted by Welikala (2016) who examined the community mediation system in Sri Lanka through the "Hybrid Practice"

approach with the results of the study it was found that the "Hybrid Practice" approach could provide the same beneficial solution in completing the settlement at the local level. Based on research by Itten (2017), dispute resolution is seen from the context and consensus of the mediation itself. According to him mediation will succeed or fail depending on the stakeholders. Different things are happening in Korea. In Korea the litigation dispute resolution process depends on the awareness and education possessed by the mediator. This research was supported by research conducted by Wall Jr. (1999) with a different research location namely Malaysia, according to Wall Jr. (1999) mediation depends on the behavior of the mediator and the strategy carried out by the mediator.

Based on research by Wall Jr. (1999), it is stated that mediating using development theory in resolving conflicts so that they do not extend to open conflicts. Diener and Khan said that mediation must be done in a formal way involving the institutional structure and individuals in dispute. This research was also supported by Renee (2009), according to Renee (2009), mediation was carried out formally by the state so that the results of the mediation could strengthen the results of conflict resolution. Based on this research, mediation is an alternative way that can be done by the state to settle disputes outside the court. Based on this, mediation is very effective in resolving disputes in the community. The effectiveness of mediation in resolving disputes is proven by Vlad (2013), with the research title *Effective Mediation Compared with The Traditional Legal*. The results of this study say that the mediator can resolve conflicts because the mediator is considered by the conflicting parties to be impartial so that they are considered neutral and trusted by both parties. Impartiality was also found by Maxim (2018) in his research entitled *Conflict Resolution Strategy in the North Caucasus: Underlying Concepts and Theoretical Issues*. Research by Maxim (2018) says that mediation strategies can provide solutions that create peace on both sides. Based on the previous research reference above, the closest research in this study is the research conducted by Vlad. According to Vlad (2013) mediation is an important part of the peace process, but it is not enough. This is a very difficult and tiring process, a process that can be reached when the parties are willing to reach an agreement. Mediation occurs when the parties cannot negotiate, mediation is an assisted negotiation. Assisted by a neutral and impartial third party who does not provide a solution so it does not guarantee success in resolving conflicts, but mediation can be an alternative solution to resolve

conflicts before being brought to justice. Vlad's research is used as a reference for examining Land Dispute Mediation in the Border District of Banyuasin and Palembang City.

Etymologically according to Setiadi and Kolip (2011) in the journal *Labola* (2018) with the title article *Social Conflict: Understood, Identification of the Source and Managed-Literature Study* "conflict originates from the Latin" *con* "which has a shared meaning and" *fligere* "which has a meaning collision. Based on the Indonesian dictionary the term conflict means strife, disagreement and dissent between people or groups while the sociology dictionary defines conflict as the process of achieving goals by weakening the opposing party, without regard to applicable norms and values. The same opinion was expressed by Luthans (1985) regarding conflict, according to him "Conflict has been defined as the condition of objective incompatible between values or goals, as the behavior of deliberately interfering with another's goal achievement, and emotionally internal of hostility". The essence of Luthans (1985) statement is that conflict is a mismatch between values or goals, as intentional behavior interferes with the achievement of the goals of others with hostility. The definition of the term conflict that has been stated then can be interpreted as a conflict is a dispute or conflict that occurs between two or more people by weakening the opposing party without regard to the norms and values that apply. Based on the description, the conflict can be characterized as follows: 1). There are at least two individuals or groups involved in a conflicting interaction; 2). There is conflict in achieving the goal; 3). Opposing behavior due to the conflict.

Conflicts arise due to the relationship between social, economic, political, whose roots are the struggle over sources of ownership, social status and power, whose availability is very limited with uneven distribution in the community (Setiadi & Kolip, 2011). This opinion is also supported by a statement from Oberg and Strom (2008), namely "disputes over the control over resources, or the distribution of resources, are potential reasons for civil conflict". This statement shows that resources can be a source of conflict if there is an imbalance in their distribution.

Understanding disputes in the realm of law is a problem between two or more people, both of which dispute one another's objects. These problems include land issues. These problems include land issues. Based on the regulations of the National Land Agency of the Republic of Indonesia, there are limits on disputes, conflicts and land cases. Article 1

of the Regulation of the Head of the National Land Agency states that land cases are disputes, conflicts and land cases submitted to the National Land Agency of the Republic of Indonesia to obtain handling, settlement in accordance with national legislation and / or policy and will be detailed as follows:

a. Land Dispute

Land disputes are land disputes between individuals, legal entities or institutions that have no socio-political impact.

b. Land Conflict

Land Conflict is land disputes between individuals, groups, groups, organizations, legal entities or institutions that have a tendency or have wide-ranging social and political impacts.

c. Land Case

Land cases are land disputes, the settlement of which is carried out by a judicial institution or a court decision which is still sought for handling disputes at the Indonesian Land Agency.

Based on the understanding contained in the Regulation of the Head of the National Land Agency No. 3 of 2011, the difference between disputes and conflicts can be seen that there is an emphasis on the words "no broad impact or wide impact". If a dispute that occurs in the recognition of ownership rights over land does not have a broad impact, it is called a land dispute, but if the dispute has a wide impact, it is called a land conflict.

According to Mudjiono (2007), factors causing land disputes include: 1) regulations regarding land are not yet complete; 2) non-compliance with regulations; 3) land officials who are less responsive to the needs and the amount of available land; 4) data is lacking and incomplete; 5) erroneous land data; 6) limited human resources tasked with resolving land disputes; 7) wrong land transaction; 8) there is a settlement from other agencies, so that authority overlaps.

Settlement of land disputes that often occur in Indonesia tends to use litigation mechanisms, namely settlement through the courts, so that the final results of these disputes often win companies and people who have legal documents in the form of land certificates. This legal document proves ownership or management rights over land. This often harms the community and farmers who generally do not have certificates on the ground. These

people and farmers only have customary evidence such as stories or testimonies that are not recognized by the court. Based on the incident, according to Sudrajat in the journal entitled *"Aspirasi Reformasi Hukum dan Penegakan Hukum Progresif Melalui Media Hakim Perdamaian Desa."* stated that dispute resolution is not always measured from a normative perspective, but consideration and wisdom are needed, so that a persuasive and accommodative media is needed.

based on the description above according to Alting (2013) the resolution of land disputes is adjusted to the style and characteristics of the dispute itself. According to him, the original cultural view of the Indonesian people prioritizes peace, harmony, mutual cooperation, help and tolerance, is a basic concept in dealing with a dispute, the solution is not directly to the court (litigation) but usually takes the family out of court. The success of dispute resolution through deliberation to reach consensus is determined by the good will of both parties to determine the agreed solutions.

According to Widjaja (2001) dispute resolution can be classified into a number of ways namely based on the parties that resolve disputes and the institutions that resolve disputes. According to the parties resolving the dispute can be carried out as follows:

- a. Mediation is a dispute resolution process in which third parties are asked to assist the dispute resolution process. The nature of the third party is passive and in no way has the right or authority to provide any input further to decide disputes that occur. So in mediation, the mediator only functions as the mouthpiece of the parties to the dispute. In resolving disputes through mediation the parties must fully comply with the agreement taken in mediation.
- b. Conciliation is a dispute resolution process involving a third party or more where the third party included in resolving a dispute is someone who has professionally proven his expertise. The conciliator has a significant role because the conciliator is obliged to express his views on the problems faced, how to resolve them, what are the advantages and disadvantages of the parties and their legal consequences, the conciliator has no right to make decisions in disputes for and on behalf of the parties. So in this case the conciliator is also passive and the conciliation process is taken entirely by the parties in the dispute as outlined in the form of a mutual agreement between them.

- c. Arbitration is a form of dispute resolution which involves decision making by one or more private judges called an arbitrator. The arbitrator plays a very active role as does a judge. In the case of a single arbitrator and the arbitrator's panel is obliged to decide on disputes submitted to him professionally, impartially, according to the agreement that has been taken by the disputing parties on one side and the arbitrator himself to the other party. Arbitrators must be independent in all respects.

According to Mahendra Wijaya (2001) in handling land disputes, it is indeed cross-sectoral in nature, this is because it involves various aspects of life. Therefore, the handling is not seen from one side only, but must be comprehensive and integrated so that the solution is complete. Each related institution must be functionally involved to take part in handling the land problem in accordance with the scope of its duties. It is intended that the resolution of land disputes is not only able to solve technical problems, but can be a dynamic driver in realizing national land politics that supports the success of national development.

One way to resolve land disputes is through mediation. Mediation is a form of dispute resolution outside the court, where the parties to the dispute that are held ask for or use the help of a neutral third party to help resolve disputes between them. This mediation is different from other forms of alternative dispute resolution such as negotiation or arbitration, because in this mediation in addition to presenting neutral mediators, in theory it is built on several philosophical foundations such as:

1. confidentiality, namely: that everything that happens in a meeting held by mediators and disputing parties (parties to a conflict) is confidential and must not be broadcast to the public or the press by each party.
2. voluntariness, namely: each disputing party (disputants) comes to mediation on his own volition voluntarily and there is no coercion from outside parties.
3. empowerment namely: the assumption that people who want to come to mediation actually have the ability to negotiate their own problems and can reach the agreement they want.
4. neutrality, that is, the role of the mediator is only to facilitate the process and the contents remain the property of disputants, whereas the mediator only controls the process. In mediation a mediator does not act like a judge and jury who decides

whether one of the parties is right or supports the opinion of one of them, or imposes an opinion and resolution on both parties.

5. unique solution, which is the solution produced from the mediation process does not have to be in accordance with legal standards, but rather it is produced from the creativity process and therefore the results may be more numerous.

The above statement was stated by Ruth Charlton quoted by Spencer and Brogan (2007, pp. 84-85). This opinion was also expressed by Goodpaster (1997) who interpreted mediation as “A problem-solving negotiation process in which an outside, impartial, neutral party works with disputants to assist them to reach a satisfactory negotiated agreement.” and corroborated by the statement of Wendy Faulkes (1999) which defines mediation as follows:

“Mediation involves third party who intervenes in a dispute to aid the parties in reaching an agreement. Both parties must agree to the intervention of a mediator, who can be appointed by an authority, or approached by the parties”.

Broadly speaking, the two experts have the same understanding of the concept of mediation, therefore it can be said that mediation is a problem-solving process that uses an impartial and neutral third party in working to help the disputing parties in reaching a mutual agreement that satisfies all parties. Neutrality in dispute resolution is also found in the definition of mediation put forward by Folberg and Taylor as follows:

The process by which the participants, together with the assistance of a neutral person or persons, systematically isolate dispute issues in order to develop option, consider alternatives, and reach a consensual settlement that will accommodate their needs.

Acceptable third parties (acceptability) means that the parties to the dispute allow the third party to be involved in the dispute and help the parties to reach a settlement. This acceptability does not mean that the parties always want to do or fully accept what is stated by a third party. This definition of Mediation is reinforced by Boule (2011) who said that the decision-making process of the parties to the dispute will be assisted by a third party, namely the mediator. The mediator only helps the disputing parties to reach a decision agreed by the disputing parties but does not have the authority to make decisions about the contents of the agreement.

The ideal mediation process must meet several parameters as a reference. These parameters according to Bretherton are as follows:

- a. Mediators have no authority to make decision on content, only on process
- b. Mediators do not make recommendations on outcome
- c. Rules of evidence do not apply
- d. Decision-making rest with principals (or their respresentatives in special circumstances)
- e. A major objective is full and honest discussion of the issues, and principles negotiation.
- f. The mediator, whatever conclusions he or she may reach or have reached regarding the dispute, must avoid manifesting partiality

Based on the parameters stated by Bretherton, the mediator does not have the authority to make decisions about content, only in the mediation process. A mediator does not make recommendations for the results achieved by the parties to the dispute. Provisions and regulations relating to evidence cannot be used. The final decision depends entirely on the hands of the parties to the dispute. Finally and most importantly, a mediator must be neutral and impartial to whatever conclusions the parties to the dispute will reach.

Regarding the stages of the mediation process, there has not been uniformity and standard guidelines among the mediation scholars or practitioners based on their respective experiences as mediators. Based on this, according to Riskin and Westbrook (1987), the mediation process was divided into 5 (five) stages, namely: 1) *Agreeing to mediate*; 2) *Understanding the problem*; 3) *Generating options*; 4) *Reaching agreement*; and 5) *Implementing the agreement*. Meanwhile Kovach (1994) divides the mediation process into 9 (nine) stages, namely:

1. Initial setup
2. Introduction or opening by the mediator
3. Opening statement by the parties
4. Information gathering
5. Problem identification, agenda setting and caucus
6. Express problem-solving options
7. Make a bargain

8. Deal
9. Closing

Methods

The method used in this research is the study of literature by finding references which are theories that are relevant to the case or problem found. References are used as a basic foundation and main tool for research practice in the field. The analysis technique used in this study is a qualitative method with descriptive research techniques. Miles and Huberman (1984) in Sugiyono (2009) argued that data analysis in qualitative research carried out interactive activities and continued until complete. Data analysis is very important in a study in order to provide answers to the problems studied, before data analysis is performed, data collection is first carried out, then analyzed qualitatively and interpreted logically and systematically. This research is located in South Sumatra Province, especially the border of Banyuasin Regency and Palembang City. This location was chosen because in the border area land conflicts often occur. Based on preliminary data from the province of South Sumatra, 22 conflict contributors. This means that South Sumatra is a province that has a point of conflict that will explode at any time. This research was only conducted with a documentation study that is finding and knowing how to mediate land disputes in South Sumatra Province.

Results and Discussion

Mediation of Land Disputes in South Sumatra Province

Land is one of the most valuable assets for humans. Land ownership reflects forms of wealth as the main source of political and economic power. These two forces are often the triggers of the dispute. Each land dispute has different characteristics from each other. The institution responsible for carrying out administratively land dispute resolution is the National Land Agency. To carry out its duties and functions, the National Land Agency establishes regulations in the form of the Decree of the Head of Land Affairs of the Republic of Indonesia No 11 of 2009, where the system for handling land issues is guided by the Decree of the Head of the National Land Agency No. 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Issues. The mechanism for conducting mediation is regulated in the National Land Agency Technical Guidelines of the Republic of

Indonesia Number: 05 / JUKNIS / D.V / 2007. The final result of the mediation process is agreement.

Based on these regulations, the dispute resolution is carried out by BPN as the mediator. BPN as a mediator is contained in Law No. 11 of 2016 article 12 paragraph (5) which reads in terms of disputes or conflicts not the authority of the Ministry as referred to in paragraph (2), the Ministry can take the initiative to facilitate the resolution of disputes or conflicts through mediation. Based on this regulation, dispute resolution is carried out by BPN as a mediator. BPN as a mediator is stated in Law No. 11 of 2016 article 12 paragraph (5) which reads in the event of a dispute or conflict that is not the authority of the Ministry as referred to in paragraph (2), the ministry can take the initiative to facilitate the resolution of disputes or conflicts through mediation. Article 37 paragraph (1) states that officials in the ranks of BPN can become Mediators because of their positions so that the mediators of authority are created. Based on these regulations, the BPN appoints the Head of the Land Office of the South Sumatra Province as the mediator of the settlement of land disputes in the South Sumatra Province Region. Based on available data, the resolution of land disputes in South Sumatra Province tends to be resolved in court (both in the District Court and the State Administrative Court). Settlement by mediation is considered less effective because it does not use a mediation model that is acceptable to the parties. Though factually the case should have been resolved through mediation rather than through the court both to the District Court and the State Administrative Court. This is due to the following:

1. The parties do not understand the mediation function
2. The parties are more likely to be oriented towards losing and winning
3. The parties tend to impose their own will
4. Settlement of mediations using local government officials (especially in land conflicts)

The success of mediation is determined by the ability of a mediator therefore the mediator must master a variety of skills and techniques. At the beginning of the meeting the mediator should be able to open the meeting in a way that makes the parties not feel awkward so that the negotiation process runs smoothly. The mediator must also master the skills of facilitating the parties so that they can convey their interests clearly and do not hesitate so they can work together in resolving disputes. Other skills needed for a mediator are the ability to listen effectively and the ability to communicate. In addition, the mediator

must know the applicable laws and regulations. The mediator in South Sumatra Province is the Regional Office of the National Land Agency. The Regional Office of the National Land Agency of South Sumatra Province as the mediator in the field of land distinguishes dispute resolution based on two sources, namely:

1) Initiative from the Ministry

Dispute resolution based on the initiative of the ministry is to routinely monitor complaints or reports in newspapers related to land disputes. The Head of the Land Office reports the results of monitoring every 4 (four) months to the Head of the Regional Office of the National Land Agency whose copies are addressed to the Minister and then needs to be followed up by the Minister and after that the Head of the Regional Office of the National Land Agency instructs the Land Office to conduct dispute resolution activities.

2) Public complaints.

The implementation of dispute or conflict resolution based on public complaints, the Ministry of National Land and its staff has the authority to receive complaints related to land disputes. The dispute complaint can be submitted to the Head of the Land Office in writing, through the complaints counter, contact letter or the Ministry website, then the complaint file is forwarded to the Head of the Land Office. The public complaint must at least contain the identity of the complainant and a brief description of the case by attaching a photocopy of the identity of the complainant, a photocopy of the identity of the recipient and the power of attorney if authorized, as well as supporting data or evidence related to the complaint. After the complaint has been received, the officer responsible for handling the complaint checks the complaint file. Files that meet the requirements will be processed.

Based on the description, the Regional Office of the National Land Agency of South Sumatra Province has made a distinction in how to receive complaints files regarding land disputes. At this stage the Regional Office of the National Land Agency of South Sumatra Province has implemented this stage in accordance with Regulation No. 11 of 2016 concerning the resolution of land cases. Ideally the Regional Office of the National Land Agency of South Sumatra Province in resolving land disputes must be guided by the

regulations that have been set, but there is a stage where the Regional Office of the National Land Agency of the Province of South Sumatra does not carry out the process of dispute resolution in accordance with these regulations. The process that was not carried out by the South Sumatra Provincial Regional Office was at the stage of bringing together the two parties to the dispute, whereas in accordance with the mediation regulations, the two parties must meet and agree to carry out the mediation process first so that the mediation process was in accordance with the procedure. The mediation process based on regulations must first bring together the two parties to the dispute, when both parties have agreed to mediate, the mediation process will begin.

The Regional Office of the National Land Agency of South Sumatra Province has never brought the two parties to one meeting. This is because one of the disputing parties does not want to be mediated. According to Permen 11 of 2016 concerning the settlement of land cases, article 37 paragraph (2) which reads If one of the parties is unwilling or refuses to be mediated, the settlement is left to the parties in accordance with the provisions of the legislation. If mediation cannot be attended by one of the disputing parties, the implementation can be postponed so that all disputing parties can attend. If after being properly invited 3 (three) times, the disputing party is not present at the mediation, the mediation is canceled and the parties are welcome to settle the dispute or conflict in accordance with the provisions of the legislation.

Settlement of land cases according to the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 11 of 2016 concerning Settlement of Land Cases aims to provide legal certainty and justice regarding the control, ownership, use and use of land. To provide certainty, land dispute resolution is carried out through mediation. Mediation is an effort to resolve parties' disputes with a collective agreement through a mediator who is neutral and does not make decisions or conclusions for the parties but supports the facilitator or dialogue between parties with an atmosphere of openness, honesty and exchange of opinions to reach consensus. Based on the mediation literature described earlier, mediation is a process of problem-solving negotiations in which an impartial and neutral outsider works with the disputing parties to make a satisfactory agreement.

Minister Regulation No. 11 of 2016 is in line with the opinion of Ruth Charlton. According to Ruth Charlton quoted by David Spencer and Michael Brogan (2006), there are five basic principles of mediation, namely: 1) confidentiality; 2) volunteers; 3) empowerment; 4) neutrality; and 5) a unique solution. These five basic principles are used by researchers to analyze the Land Dispute Mediation in South Sumatra Province.

1. Confidentiality

This principle of confidentiality is understood as a guideline that must be used by mediators in carrying out the mediation process. The nature of this confidentiality must be applied in resolving disputes so that all issues and interests of the disputing parties are guaranteed confidentiality. To maintain this confidentiality all records written in the mediation process should be destroyed. This principle of confidentiality, according to Ruth Charlton, can only be applied to the settlement of business disputes, marital disputes, and other disputes relating to one's honor and good name. This principle is not suitable to be applied in the resolution of disputes in the field of land in the area of South Sumatra Province. This is because land dispute cases often arise due to unclear land boundaries and unclear ownership status of land whether the land is owned by someone or not. Based on the description, the results of the mediation of the land dispute must be notified to the community or at least notified to the land owner who borders the disputed land so that there are no more people in dispute in the area.

2. Volunteer

The principle of volunteerism is a principle that is applied in resolving disputes in the path of mediation. Each party to the conflict came to the mediator of their own volition voluntarily and there was no coercion from outside parties. The principle of volunteerism was created on the basis that people would be willing to work together to find a way out of their dispute if they came to the place of negotiations of their own choice, but it should be noted that in the Supreme Court Regulation No. 1/2008 article 4 implicitly was written that all civil disputes submitted to the Court of First Instance must first be sought for settlement through peace with the help of mediators. The principle of volunteerism does not apply to land disputes because the parties to the dispute do not want to go to the Regional Office of the Land Agency of

South Sumatra Province. Disputing parties usually prefer to go directly to the Court because the court can provide legal certainty of ownership of disputed land rights.

3. Empowerment

This principle of empowerment assumes that people who want to come to mediation actually have the ability to negotiate their own problems and can reach the agreement they want. Their ability in this matter must be recognized and valued. Every solution should not be forced on the outside but must emerge from the empowerment of each party. The application of empowerment in the resolution of land disputes in South Sumatra Province refers to the Supreme Court Regulation No. 1 of 2016 article 7 paragraph 1 which states that the parties and / or their attorneys are required to take mediation in good faith. According to this regulation the mediator is obliged to encourage the parties to directly play a role in the mediation process and the mediator must encourage the parties to explore and explore their interests and find various best settlement options for the parties (article 15 paragraphs 2 and 4).

4. Neutrality

The principle of neutrality is used by mediators to be impartial to any party. The role of a mediator is only to facilitate the process while the contents of the agreement belong to the parties to the dispute. The mediator is only authorized to control the process of mediation. Ideally the Regional Office of the National Land Agency as a mediator of land disputes in South Sumatra Province has the principle of neutrality in resolving land disputes so that it does not side with either party. The mediator's neutrality is also listed in the Supreme Court Regulation No. 1 of 2016 article 1 paragraph 6 which reads the mediator is a judge or other party who has a mediator certificate as a neutral party that helps the parties in the negotiation process to look for various possible dispute resolution without using a decision or force a settlement. Based on this explanation, the principle of neutrality is a principle that can make the mediation process successful.

5. A Unique Solution

The mediation process organized by the Regional Office of the National Land Agency of the South Sumatra Province must produce a unique solution. This

principle can create results that do not have to comply with legal standards, but can be produced through a creative process. Based on this, the mediation results will likely follow the wishes of both parties, which are closely related to the concept of empowering each party.

The finding in this study is that the mediation process carried out by the Regional Office of the National Land Agency is not in accordance with the Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 11 of 2016 concerning the settlement of the Land Case. The factors that make the mediation process successful are building trust, cooperation, mediator neutrality, and empowering the parties to the dispute. Based on these findings, this manuscript can be used as a reference for other researchers to be developed into the next research.

Conclusion

In principle, every mediation process must be based on the wishes of the parties in advance both the plaintiff or the defendant. The role of the mediator captures the wishes of the parties to the dispute. mediation will work well if the mediator can build trust and be neutral in resolving land disputes. Suggestions to the parties to the dispute to be actively involved in the mediation process. It is recommended that judges and mediators be more optimized in order to realize mediation efforts that result in a peace agreement.

References

- Alting, H. (2013). *Konflik Penguasaan Tanah di Maluku Utara: Rakyat Versus Penguasa dan Pengusaha*. *Jurnal Dinamika Hukum*, 13(2). doi: 10.20884/1.jdh.2013.13.2.209
- Boulle, L. (2011). *Mediation: Principles, process, practice*. Chatswood, New South Wales: LexisNexis Butterworths.
- Deluma, M. (2018, September 24). *Kasus sengketa lahan di sumsel paling banyak di palembang, bpn minta pemda tetapkan batas wilayah*. *Tribun Sumsel*. Retrieved from <https://sumsel.tribunnews.com/2018/09/24/kasus-sengketa-lahan-di-sumsel-paling-banyak-di-palembang-bpn-minta-pemda-tetapkan-batas-wilayah>
- Diener, K. W., & Khan, S. R. (2016). Thwarting the structural and individualized issues of

- mediation: The formalized reflective approach. *Southern Law Journal*, XXVI.
- Faulkes, W. Director. (1990). The modern development of dispute resolution in Australia. *Australian Dispute Resolution Journal*, 1(2)
- Folberg, & Taylor. (1984). Mediation: A comprehensive guide to resolving conflict without litigation. *Family Court Review*, 22(2) doi: 10.1111/j.174-1617.1984.tb00106.x
- Goodpaster, G. (1997). *A guide to negotiation and mediation*. Ardsley. New York: Transnational Publisher Inc.
- Government Regulation (PP) Number 10 of 2006 concerning the National Land Agency. state sheet 2006. Retrieved from <https://www.atrbpn.go.id/Publikasi/Peraturan-Perundangan/Peraturan-Presiden/peraturan-presiden-nomor-10-tahun-2006-1212>
- Itten, A. (2017). Context and content toward consensus in public mediation. *Negotiation Journal*. 33. doi: 10.1111/nejo.12182
- Kovach, K. (1994). *Mediation principle and practice*. St. Paul, Minnesota: Wet Publishing Co.
- Labola, Y. (2018). *Social conflict: Understood, identification of the source and managed-literature study*. Satya Wacana Christian University: ResearchGate.
- Luthans, F. (1985). *Organizational Behavior*. Singapore: Mc Graw Hill.
- Maxim, P. (2018). *Conflict Resolution Strategy in the North Caucasus: Underlying Concepts and Theoretical Issues*. *Teorija in Praksa* let 55. Pp. 123-141. Retrieved from https://www.researchgate.net/publication/324442128_Conflict_resolution_strategy_in_the_north_caucasus_Underlying_concepts_and_theoretical_issues
- Vlad, M. D. (2013). Effective mediation compared with the traditional legal. *Knowledge Horizons-Economics, Dimitrie Cantemir*, 5(3), 85-89.
- Mudjiono. (2007). Alternatif penyelesaian sengketa pertanahan di indonesia melalui revitalisasi fungsi badan peradilan. *Jurnal Hukum*, 14(3), 458-473. doi: 10.20885/iustum.vol14.iss3.art6
- Oberg, M. and Strom, K. (2008). *Resources, governance and civil conflict*. London, Routledge and New York: Taylor & Francis Group.
- Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency of the Republic of Indonesia No. 11 of 2016 concerning Settlement of Land Cases. April 14, 2016. Republic of Indonesia State Gazette No 569 of 2016

- Renee, G. (2009). Alternative Dispute Resolution in the North Caucasus. *Caucasian Review of International Affairs*, 3, 333-341.
- Republic of Indonesia Supreme Court Regulation (Perma) No. 1 of 2016 concerning mediation procedure in court. 3 February 2016. Republic of Indonesia State Gazette of 2016 Number 175
- Riskin, L. L., & James E. W. (1987). *Dispute resolution and lawyers*. St Paul, Minnesota: West Publishing Co.
- Setiadi, E. M., & Kolip. (2011). *Introduction to sociology*. Jakarta: Kencana Preneda Media Group
- Spencer, D., & Brogan, M. (2007). *Mediation law and practice*. Cambridge: Cambridge University Press.
- Sudrajat, T. (2010). *Aspirasi reformasi hukum dan penegakan hukum progresif melalui media hakim perdamaian desa*. *Jurnal Dinamika Hukum*, 10(3). doi: 10.20884/1.jdh.2010.10.3.99
- Sugiyono. (2009). *Quantitative and qualitative research methods*. Bandung: CV. Alfabeta.
- Wall Jr, J., & Callister, R. (1999). Malaysian community mediation. *The Journal of Conflict Resolution*, 43(3). doi: 10.1177/0022002799043003004
- Welikala, S. (2016). Community Mediation as a hybrid practice: The case of mediation boards in Sri Lanka. *Asian Journal of Law and Society*.
- Widjaja, Gunawan. (2001). *Alternative business law series for dispute resolution*. Jakarta: PT. Raja Grafindo Persada.
- Wijaya, Mahendra. (2001). *Mediasi dan Negosiasi yang Efektif dalam Resolusi Konflik* Makalah Pelatihan ADR yang Diselenggarakan Pusat Penelitian Lingkungan Hidup, Lembaga Penelitian UNS, Surakarta.