

Non-Litigational Settlement of Land Boundaries Disputes Through Mediation at the Land Office of Semarang Regency

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Abstract. The land is one of the most important factors and the most valuable price, so it often causes land disputes. There are various options for resolving land disputes. One alternative in dispute resolution is mediation which will be offered first by the Land Office. The focus of this research is to recognize and evaluate the contribution made by the Semarang Regency Land Office in resolving land disputes by arbitration, as well as to identify and analyze the land dispute resolution process at the Semarang Regency Land Office. The juridical empirical technique was applied with descriptive-analytical research criteria. After that, both main and secondary information are analyzed qualitatively. The findings of this study reveal that the Semarang Regency Land Office has maximized its role as a third party or mediator in settling land boundary disputes through mediation as a third party or mediator due to human resource factors and adequate mediation sites in accordance with the stipulations of the legislation. Then, in resolving land boundary disputes at the Semarang Regency Land Office, it's consistent with and does not contradict National Land Agency Regulation 21 of 2020 with regard to the Conduct and Solution of Land Issues.

Keywords: Land boundary dispute, Mediation, Land Office.

1 Introduction

Soil is a natural resource that sustains human life. As a result, everyone strives to acquire land, although land disputes are not uncommon [1][2]. Land rights are an inherent form of land ownership and cannot be removed. As a result, the community requires legal stability and safeguards as landowners [3][4]. Land registration is one effort to achieve certainty of law regarding land ownership, which includes guaranteed legal certainty regarding the subject who is the legitimate holder, ensured legal certainty regarding the position, limits, and area of land parcels [4].

The placement, determination, and maintenance of land boundaries must be considered by the property user throughout the registration of property procedure based on the agreement and acceptance of the proprietor of the land surrounding his land. The necessity for land boundary marks to be installed and maintained due to land tenure not following confirmation of ownership of rights frequently causes problems. Inconsistencies about where to find the land, land area, and land boundaries may be the source of the disagreement or problem [5][6].

Land disputes are one of the problems that never end being discussed. Cases involving disputes in the land sector can be said never to subside and even have a tendency to

increase. In Indonesia, one of the laws governing land is Law No. 5 of 1960 covering Basic Agrarian Regulations, referred to as the Basic Agrarian Law (BAL).

Land disputes can be handled through litigation (court), non-litigation (outside of court), and crime reporting. Alternative dispute resolution out of court is in Article 1 point 10 of Law No. 30 of 1999 [7]. Mediation is the process of resolving disputes among two or more parties through negotiation or consensus with the assistance of an objective third party who lacks decision-making authority [8]. The explanation of mediation from an etymological perspective emphasizes the existence of a third party who bridges the disputing parties to resolve their disputes [9]. Mediation is usually said to be successful; the parties must have an equal or equal bargaining position, and the parties must also respect the good relationship between the disputants. But in reality, many still find it difficult to get an agreement between the disputing parties. Indonesia, especially in Central Java Province in Semarang Regency, has several dispute cases that have been successfully handled, but it is possible that some were not resolved by the Semarang Regency Land Office [10][11][12].

In 2006, the Semarang Regency Land Office began using mediation to settle conflicts. The Land Problem Handling and Control Section and, particularly, the Land Dispute, Violence, and Case Handling Section manage dispute resolution. In mediation, the Semarang Regency Land Office serves as a third party or "Mediator." The Semarang Regency Land Office's peacemaker is a certified mediator [13].

Based on the above, the writer is interested in writing with the title "Non-Litigational Settlement of Land Boundaries Disputes Through Mediation at the Land Office of Semarang Regency." This writing contains two problems, namely as follows:

- a. What is the role of the land office in resolving land boundary disputes in a non-litigation manner through mediation at the Semarang Regency Land Office??
- b. What is the process of resolving land boundary disputes non-litigation through mediation at the Semarang Regency Land Office?

2 Research Method

The empirical juridical method was used in this investigation. Empirical juridical research is legal research that focuses on the execution or application of normative legal requirements on any specific legal event taking place in the community [14]. The empirical juridical method uses primary data, so this research uses laws and regulations associated with data and facts in the field. The authors aim to conduct an investigation on the legal review of land boundary dispute resolution through mediation at the Semarang District Land Department.

This study makes use of two different kinds of data. First, primary data was gathered through interviews, i.e. data collected from field research sources. Second, the secondary data used in this study were gathered through a literature review, which involved locating and studying various sources of reading related to the problem under studies, such as laws and regulations, legal books, legal papers, articles on the internet, newspapers, and other materials related to the problem's focus.

3 Results and Discussion

3.1 The Role of the Land Office in Settlement of Land Boundary Disputes Non-Litigation Through Mediation at the Land Office of Semarang Regency

Land conflicts are one of those issues that never seem to go away. The National Ministry of Land organization (Badan Pertanahan Nasional/BPN) is a non-ministerial authority tasked with conducting research and dealing with land-related problems, arguments, conflicts, and cases. Land disputes handled by the State Land Agency (BPN) are settled through mediation.

Dispute resolution depends on how the dispute is managed. Dispute management, referred to here, is how the disputing parties face and try to resolve their disputes. The disputing parties can take many ways to deal with or resolve their dispute, depending on the situation and conditions that exist in them. Mediation is a settlement method expected to resolve disputes fairly for the disputing parties. It is because the mediation process is a deliberation between the disputing parties. So if the mediation is fruitful, the result is a win-win solution because it is fast, cheap, and does not eliminate brotherhood because no one is pure one hundred percent hurt and one hundred percent benefited, so that the parties are satisfied with the results of the deliberation [15].

The mediator is a crucial participant in the mediation process. The Dispute, Conflict, and Case Subsection handles land disputes at the Semarang Regency Land Office through mediation. The conflict, Conflict, and Case Subsection serves as a conflict resolution mediator. A structural officer at the Semarang Regency Land Office or a professional mediator serves as the mediator at the Semarang Regency Land Office. Mediation is carried out in the Semarang Regency Land Office by an appointed official/employee with a letter of assignment/order from the Land Office's Head.

In resolving this land boundary dispute, the Land Office as a mediator plays a very important role starting before and after negotiations with the disputing parties. The mediator at the Semarang Regency Land Office is neutral, just trying to help those in dispute settle the differences between them impartially because it is following the rules and conditions so that it is conducive even though no deal has yet been reached [15]. Land dispute resolution is handled by the Semarang Regency Land Office, which acts as a mediator and has tactics to overcome relationship barriers between the disputing parties so that the parties want to resolve their disputes through the mediation process. Every mediator in the Semarang Regency Land Office has tactics on how to raise someone who is in a lower position and lower a head who is in an upper position because the final result of mediation is not based on existing evidence; the mediator only reads and sees evidence but is not used for authority decide because the agreement is in the hands of the disputing parties by occasionally including jokes so that the atmosphere is more comfortable [15]. In mediation, it is often encountered that there are differences of opinion and long debates so that with the presence of several tactics, the mediator will not be difficult to overcome, and the parties can immediately find a bright spot in the problem at hand.

In practice, Dispute resolution, which is currently being promoted by the Land Office of Semarang Regency, namely through mediation led by a mediator from the Land Office with the help of a mediator, it is not uncommon to reach a peace agreement between the disputing parties and eventually end up in court. This, however, cannot be used as a reference because the mediator's engagement in dispute resolution at the Semarang Regency Land Office is merely an attempt to assist both sides in resolving disagreements impartially. After all, even if there is no agreement, it is advantageous to follow the rules and regulations [5].

Obstacles in the process caused the low degree of success of mediation helped by judges at the Semarang Regency Land Department. Because the disputing parties are more concerned with their emotions in explaining their cases, while third parties or mediators at the Semarang Land Office are neutral impartial, only trying to help resolve the cases of the parties until as much as possible find the factors behind the dispute [6]. In other words, the main role played by a mediator is to bring together different interests to achieve a meeting point that can be used as a solution to the problem. It follows the provisions and does not conflict with the legislation.

The low level of success with the help of mediators here cannot be used as a reference to whether the Semarang Regency Land Office plays a role or not. Meanwhile, the elements that determine success during dispute settlement come not from the mediator, but from the warring parties.

3.2 Land Boundary Dispute Settlement Process Non-Litigation Through Mediation at the Semarang Regency Land Office

The Minister of Agrarian Affairs and Space Planning and Head of the National Land Authority of the Republic of Indonesia issued Regulation No. 11 of 2016 Concerning the Settlement of Land Cases. According to Article 11 paragraph (3) of the Minister of Agrarian Affairs Regulation No. 11 of 2016, conflicts and disagreements are under the authority of the ministry, in this case, the Ministry of Agrarian Affairs and Spatial Planning. There is a distinction between issues, dispute resolution, and land cases in land cases. Land conflicts are small-scale disagreements between persons, legal organizations, or agencies. Land conflicts, on the other hand, are land disputes between individuals, organizations, teams, and legal structures that have a propensity or broad influence.

Mediation can be done through mediation if each side agrees to negotiate using the principle of contemplation in order to reach an agreement for the benefit of all parties. If just one party rejects, the settlement will be decided in accordance with the law. Technically, mediation must be completed within 30 days if the arbitrator is from the ministry, the Regional Office of the National Land Agency (BPN), or the Land Office. Because the certificate is land proof of land freedoms, the Land Office will manage the problem of the land boundary dispute for the holder of land rights or the owner of the certificate who is in a land boundary dispute. Ownership and ownership of land by a legal entity/individual whose name must be written in it and explain the land parcels' location, description, size, and boundaries. It is done so that the parties with interest in land boundary disputes are resolved by the Land Agency quickly and efficiently.

The execution of mediation at the Semarang Regency Land Office for any incoming problems must all be in accordance with the process or procedure provided by the Semarang Regency Land Office. The process or procedure is expected to be completed properly and produce satisfactory results for the disputing parties. The Semarang Regency Land Office establishes a process or procedure that must be passed by the parties who will take the mediation route in an effort to settle their land disputes.

If the coordination is deemed sufficient, the next stage will be a summons to the complainant in advance through a summons or telephone. This summons is intended to dig deeper into information from the complainant regarding the land boundary dispute. Information received from the complainant will be recorded or resumed by the dispute department. The complainant will also be notified if a mediation process will be carried out to resolve the case at hand.

The following process is the summoning of the complainant to explain to the complainant from complainant regarding the disputed issue reported by the complainant. This call will also be made using a summons or telephone. Then, suppose a deeper dig has been carried out regarding the information of the opposing party. In that situation, the Semarang Regional Land Office would offer conflict resolution through mediation to settle the issue. Furthermore, if the complainant and the complainant agree to go through a mediation procedure, the Semarang Regency Land Office's dispute division will summon both parties at the same time. Then, to settle the issues, a mediation process was carried out, with the mediator coming from the Semarang Regency Land Office.

This mediation process can be done three times. If the first and second mediation processes are unsuccessful or do not get an agreement, a third mediation can be carried out. If at the time of the third mediation it is not successful or there is no agreement, then it can take litigation or the court route, namely a trial, to resolve the boundary dispute. However, the rest will be left to the disputing parties whether to go to court or remain a disputed case.

The minutes issued will later be reported to the Head of the Semarang Regency Land Office. The minutes can be used as evidence of the settlement of disputed cases that have been completed and can also be registered with the court to get stronger legal force [17].

According to the description previously, dispute resolution can be accomplished through mediation. Mediation can be carried out by the Ministry, Regional Offices, and Land Offices in line with their jurisdiction, and/or at the initiative of the parties in conflict, or by individuals or entities in accordance with their initiative [1][2].

The Semarang Regency Land Office implements mediation methods or procedures related to land boundary disputes through Government Regulations of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency No. 21 of 2020, namely Complaints submitted by the parties to the dispute to the Semarang Regency Land Office in the form of complaints through direct complaint reception counters or online media organized by the Ministry, Kanwil, Office land [2]. This complaint must include the complainant's name and a brief description of the case. It is then entered into a register book and delivered to authorized personnel for referral to the Head of the Disputes, Conflicts, and Cases Subsection. The goal is to investigate the administrative completeness of the allegation in question. The dispute section will conduct a case study and gather data and information internally with collaboration between employees and leaders in the next step of the file that has been disposed of by the Head of the Agrarian and Spatial Planning Office/Head of the National Land Agency, on behalf of Semarang Regency [1][3][16]. Article 6 describes the process of settling disputes through mediation, which is separated into many parts, namely:

a. Case Study

Case studies based on Article 6 paragraph (1) letter an are conducted to aid in the processing of cases. The findings of the case studies referred to in Article 7 paragraph (2) will later serve as the foundation for conducting the initial case.

b. Initial Degree

According to Article 8 paragraph (2), the initial title is led by the director, which was Head of Section V, or Head of Section V, depending on their tasks and functions. If the case falls under the authority of another agency, the results of the initial title in Article 8 paragraph (3) are used to prepare a letter to the Head of the Regional Office and/or the Head of the Land Office for case settlement. The treaty's Article 8 paragraph (4) gives a summary of the initial title signed by the registrar.

- c. Research
Article 9 paragraph (1) research aims to obtain physical data. The findings of the research described in Article 9 paragraph (5) are documented in a research report signed by the officer and made available to the Head of the Regional Office, Head of the Land Office, or a representative office.
- d. Expose Research Results
According to Article 10 paragraph (1), research results must be presented in the form of a research report. The purpose of the presentation of research results in Article 11 paragraph (2) is to provide data/information materials that explain the legal state of legal products and each party's legal standing. According to Article 12 paragraph (1), a final decision is made if the presentation of the research results indicates that there is adequate data and a basis for reaching a decision.
- e. Coordination Meeting
A coordination meeting based on Article 14 paragraph (1) is held to obtain input from competent experts or related institutions/institutions in resolving cases. If the coordination meeting produces a conclusion, it will be followed by a final title based on Article 14, paragraph (2). The results of the coordination meeting based on Article 14 paragraph (7) are stated in the coordination meeting minutes.
- f. Final Degree
The final title in Article 15, paragraph (2) is intended to evaluate the handling that has been carried out, ensure the compatibility between evidence data and material for witness and/or expert testimony, refine case files and determine whether or not the application of law and statutory provisions to cases handled is appropriate. The final degree results in Article 15, paragraph (5) are the basis for making decisions on case settlement as outlined in the minutes of processing and letters of recommendation.
- g. Case Resolution
Settlement of issues based on letters of recommendation must be followed up on by the Head of the Regional Office and/or the Land Office. If the proposed settlement of the case as a final title at the Land Office to the Head of the Area Office cannot be followed up on, the Head of the Local Office submits a notification regarding the non-follow-up of the proposed Case Settlement as referred to in Article 15 paragraph (6) letter d, along with reasons and considerations, as well as settlement instructions.

From the description above, the Semarang District Land Office's dispute resolution process through mediation follows the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency. The existence of ways of resolving disputes has existed since humans themselves. With all the advantages and disadvantages God gives, it brings humans into various disputes and conflicts. However, humans are always trying to find a solution to find a position of balance so they can survive. Dispute resolution through litigation or courts still has many shortcomings, including being very bureaucratic, time-consuming, laborious, and costly; although the principle of dispute resolution in court is that it is resolved quickly and inexpensively, in reality, it is still difficult to implement.

4 Conclusion

Following the findings of the previous chapter's research and debate, this writing can be summarized as follows. The role of the Semarang Regency Land Office as a mediator has the

role of helping the parties, which are neutral, impartial, only trying to help resolve cases from the parties to as much as possible find the factors behind the dispute to reach an agreement decision point. The role as a mediator is difficult following the function and authority to resolve disputes through mediation. However, in practice, not everything works. It does not mean that the Semarang Regency Land Office is not successful, but that the parties to the dispute are still not satisfied with the dispute resolution offered by the Semarang Regency Land Office. Case studies, preliminary degrees, research, presentation of research results, coordination meetings, final titles, and a settlement are all part of the mediation process. The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 21 of 2020 about the Handling and Settlement of Land Cases governs all stages of the process.

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